



KFG Working Paper Series • No. 50 • June 2021

Helmut Philipp Aust and Alejandro Rodiles

**Cities and Local Governments:
International Development from Below?**

Berlin Potsdam Research Group „The International Rule of Law – Rise or Decline?“

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KFG Working Paper Series

Edited by Andrew Hurrell, Heike Krieger and Andreas Zimmermann

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Aust, Helmut Philipp and Rodiles, Alejandro, Cities and Local Governments: International Development from Below?, KFG Working Paper Series, No. 50, Berlin Potsdam Research Group “The International Rule of Law – Rise or Decline?”, Berlin, June 2021.

ISSN 2509-3770 (Internet)

ISSN 2509-3762 (Print)

This publication has been funded by the German Research Foundation (DFG)

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Berlin Potsdam Research Group
International Law – Rise or Decline?

Habelschwerdter Allee 34a
14195 Berlin

info@kfg-intlaw.de
+49 (0)30 838-61521
www.kfg-intlaw.de

Cities and Local Governments: International Development from Below?

Helmut Philipp Aust* and Alejandro Rodiles**

Forthcoming in Luis Eslava, Ruth M Buchanan, and Sundhya Pahuja (eds), *The Oxford Handbook of International Law and Development*

Abstract:

Cities and local governments have become both important sites for international development as well as actors which aspire to shape the practice in this field. This paper retraces the emergence of cities and local governments as having this dual character, in order to provide the ground for a more forward-looking deliberation on some of the emerging themes on the role of cities in and for international law and development today. We see in particular a friction between two seemingly competing and broader understandings of global development, in both of which cities play a prominent role: the SDGs as adopted in 2015, and China's Belt and Road Initiative (BRI). The SDGs are the most important multilateral articulation of ideas of development today. To this extent, they are considerably shaped by the long shadow of the post-Cold War era and the shifting priorities of influential actors like the United States, the European Union, but also increasingly vocal states from the 'Global South'. The BRI follows a different idea of international development, built around the notions of non-interference and 'win-win cooperation.' What unites these two blueprints for global development is that international law, as traditionally understood, does not seem to take center stage. Or rather, we wish to expound, it may be a new type of international law which emerges from these global constellations of international development which comes not only, but also from below.

* Freie Universität Berlin.

** ITAM, Mexico City; Senior Fellow, KFG Berlin-Potsdam Research Group "International Law – Rise or Decline?".

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1. Introduction

In 2013, the Constitution of Honduras underwent major amendments in order to allow the national Congress to create so-called ‘Zones of Employment and Economic Development’ (Zonas de Empleo y Desarrollo Económico, or ZEDEs). These are subnational territorial units of the Republic of Honduras, in addition to the departments and municipalities. However, ZEDEs are not traditional local governments in the sense of public law entities. ZEDEs are better described as local governance enclaves within the nation-state, where the latter’s constitution has only a reduced reach. These enclaves enjoy a special legal and fiscal regime, an autonomous administration, and have their own special courts, which may choose to apply foreign law.¹ In Honduras, ZEDEs are better known as ‘model cities’ (‘ciudades modelo’), evoking the original idea by former chief economist of the World Bank, Paul Romer, who first formulated the idea of ‘charter cities.’ To Romer, the creation of such cities would be a way out of the impasse of modern development cooperation. Located preferably in developing countries and with direct access to the sea, these charter cities would be created from scratch (hence, also termed ‘instant cities’) and would be based on an agreement between the host state, a partner country as well as private investors willing to contribute to the creation of such a city. Residence in these cities would be based on the free consent of those willing to live there. Moving to a charter city would be attractive as people would know what to expect — a guaranteed level of democracy, the rule of law, and human rights coupled with the protection of labor rights, better security, and an absence of corruption, which would arguably be typical for many developing countries.

Today, there are two charter cities under construction in Honduras: Próspera, in the Island of Roatán, and Ciudad Morazán, located in the outskirts of Choloma, Honduras’ third largest city. In both cases, the Charter Cities Institute (CCI) is heavily involved. This nonprofit organization based in Washington D.C. was created in 2017 with the aim of advancing Romer’s idea worldwide, helping to create ‘the ecosystem for charter cities.’² For such purposes, the CCI has drafted ‘reference guides,’ such as a ‘model city charter’ and ‘model legislation,’ and it facilitates partnerships between host states, partner countries and private investors. Beyond Honduras, it has promoted charter cities in Nigeria and Zambia, and even signed a Memorandum of Understanding (MoU) with Zambia’s Development Agency, in order to improve Zambia’s special economic zones (SEZ) framework.³ Be it in Africa or Latin America, the idea is straightforward: ‘securing special jurisdictions’ where better governance and development can flourish without, or with very limited, interference from the nation-state.⁴

¹ *La Gaceta*, No. 33.033, Poder Legislativo, Decreto No. 236-2012 (Tegucigalpa, 24 January 2013), A.14-A.16. It is important to recall that this constitutional amendment was introduced after a previous legal reform creating special development regions (Regiones Especiales de Desarrollo, or RED), based on Paul Romer’s ideas, was declared unconstitutional by the Honduran Supreme Court, also because it was deemed to violate Honduras’ sovereignty. After that, the Congress, controlled by the President’s ruling party, passed a law which removed several of the Justices, in what became known as a ‘technical coup’ against the judicial branch. See Michael R Castle Miller, ‘The Ciudades Modelo Project: Testing the Legality of Paul Romer’s Charter Cities Concept by Analyzing the Constitutionality of the Honduran Zones for Employment and Economic Development’ (2015) 22(2) *Willamette Journal of International Law and Dispute Resolution* 271; see also José Luis Palma-Herrera, ‘El Regreso de los Enclaves a Honduras en el Siglo XXI: Las Zonas de Empleo y Desarrollo Económico (ZEDE) - La Versión de las Ciudades Chárter Rechazada por su Creador Paul Romer (2010-2019)’ (2019) 45 *Anuario de Estudios Centroamericanos* 95.

² For information, see Charter Cities Institute (CCI), at <https://www.chartercitiesinstitute.org/> (last visited 19 May 2021).

³ See Charter Cities Institute Annual Report 2020, 25, at https://assets.website-files.com/5d253237e31f051057dc0a2b/5fda4c3eb419b508e1ad8c19_Charter%20Cities%20Institute%202020%20Annual%20Report.pdf (last visited 19 May 2021).

⁴ According to the CCI’s model legislation, charter cities should only be subject to the criminal, constitutional and international law of the host state, see CCI Model Legislation, at <https://assets.website-files.com/>

Charter cities are a daring illustration of recent trends in urban development thinking, for they symbolize that development is amenable to decontextualized planning, which can then be brought to concrete places. What is more, they also project a particular vision of the city and the urban, a vision which sees the city as a potential harbinger of hope if only it is given ideal conditions under which it can prosper. But let us be clear, this development idea also requires to cut off the city (or terrain) from its national (and natural) texture, not in the form of a secession from a state which would involve a degree of political self-determination, but through a form of tutelage in which international actors come to play a decisive role for guaranteeing that progress is not just professed but effectively implemented. At the same time, the ZEDE/charter city model, and to a lesser extent free zone cities more broadly,⁵ stand in contrast with ideals of what cities should also be: historically grown places with a given identity, shaped by the plans and desires as well as every-day living practices of their inhabitants.⁶ In contrast, the charter city model comes across as an atypical but highly consequential form of centralized planning for development.⁷ It may not have much in common with mainstream development in and for cities around the globe, but in its hubris it encapsulates a promise that resonates across states, international organizations, cities, and their global networks alike: that the city is a place for the future and that human development will be primarily urban.⁸ All this raises the question of whether the future of international development is to be sought 'from below,' to borrow the phrase coined by Balakrishnan Rajagopal.⁹

This common theme finds expression in today's most important global policy documents like the Sustainable Development Goals (SDGs).¹⁰ It is fleshed out further in the 'New Urban Agenda' (NUA)¹¹ as well as in the practice of global city networks like 'C40.'¹² However, many of these documents and current global practices in the field of urban development operate at a much more modest scale than the ZEDE/charter city model, reflecting more nimble governance interventions which are occupied with making cities safe and sustainable, inclusive and resilient, to pick up the language of SDG 11.¹³ Yet, there are competing conceptions of good urban governance on offer and some of these originate from the world of international development. In particular, the World Bank has long put a

[5d253237e31f051057dc0a2b/5eebb2dbac6218c7d1009742_Reference%20Guide_Model%20Legislation.pdf](https://www.kfg.org/working-paper/5d253237e31f051057dc0a2b/5eebb2dbac6218c7d1009742_Reference%20Guide_Model%20Legislation.pdf) (last visited 19 May 2021). This has been implemented faithfully in ZEDAs legal framework (n 1).

⁵ On free zone cities as a form of 'global infrastructural spatial matrix' that replicates along the world, creating 'undeclared forms of polity' while practically outspacing national jurisdictions, see Keller Easterling, *Extrastatecraft: The Power of Infrastructure Space* (Verso 2014).

⁶ On city identity see Martina Löw, *Soziologie der Städte* (Suhrkamp 2010) 65 et seq; Daniel Bell and Avner de-Shalit, *The Spirit of Cities: Why Identity of a City Matters in a Global Age* (Princeton UP 2014).

⁷ Planning and development are highly unstable and intertwined notions, for a deconstruction of their relationship in a particular local context see Markus Draechsel, *Islamabad and the Politics of International Development in Pakistan* (CUP 2015).

⁸ This view sometimes finds expression in the slogan of an 'urban age.' For a critical analysis see Neil Brenner and Christian Schmid, 'The "Urban Age" in Question' (2014) 38 *International Journal of Urban and Regional Research* 731.

⁹ Balakrishnan Rajagopal, *International Law from Below – Development, Social Movements and Third World Resistance* (CUP 2003) (hereafter Rajagopal, *International Law from Below*).

¹⁰ Sustainable Development Goals, UN Doc. A/RES/70/1 (2015) (hereafter SDGs).

¹¹ The New Urban Agenda, adopted at the Habitat III Conference in Quito, 2016, endorsed by the UN General Assembly in UN Doc. A/RES/71/256 (2017) (hereafter NUA).

¹² C40 Cities at www.c40.org (last visited 19 May 2021).

¹³ See further on these ambitions Helmut Philipp Aust and Anél du Plessis, 'Good Urban Governance as a Global Aspiration' in D French and L Kotzé (eds), *Sustainable Development Goals – Law, Theory and Implementation* (Edward Elgar 2018) 201; as well as the contributions in Helmut Philipp Aust and Anél du Plessis (eds), *The Globalisation of Urban Governance – Legal Perspectives on Sustainable Development Goal 11* (Routledge 2019) (hereafter Aust and du Plessis, *The Globalization of Urban Governance*).

focus on bankable and well-managed cities.¹⁴ It is easy to dismiss all these aspirations as lofty and empty formulations which can be filled with any type of meaning. But arguably, these normative ideals can have an impact on the life of residents in cities and other local communities around the globe. Through a mêlée of international, national, and local interventions, urban space is shaped, crafted, redesigned, and indeed ‘developed.’

It is the purpose of this chapter to understand how cities and local governments have become both important sites for international development activities as well as actors which aspire to shape the practice in this field. Section 2 of the chapter will retrace the emergence of cities and local governments as having this dual character. This discussion will provide the ground for a more forward-looking deliberation on some of the emerging themes on the role of cities in and for international law and development today, in section 3. Here, we see in particular a tension between different conceptions of development playing out, which all have an impact on cities and local governments around the globe and which are, to varying degrees, open for being shaped by cities as well. We can witness in particular a tension between two seemingly competing and broader understandings of development: one derives from the SDGs as adopted in 2015. With all their inherent tensions, the SDGs reflect the current state of the art of a multilateral formulation of guiding ideas of development. To this extent, they are considerably shaped by the long shadow of the post-Cold War era and the shifting priorities of influential actors like the United States, the European Union, but also increasingly vocal states from the ‘Global South’ about the notion of development and the role that the law has to play in this regard. The other overarching vision which we see has been put on the table by China and derives very much from its ‘Belt and Road Initiative’ (BRI). Difficult to grasp as it is, the BRI follows a Chinese understanding of a different kind of international cooperation, built around the notions of harmony and ‘win-win cooperation.’¹⁵ Part of the BRI strategy involves connecting port cities all over the world, thereby turning them into dots on the map of the great Chinese infrastructure project. As it has been recently argued by Shisong Jiang, a city-focus on the BRI would ‘actually provide China with an innate platform opportunity to enhance its competitiveness in the politics of international law.’¹⁶

Before we start, a few definitional remarks are in order. Writing about ‘the city’ and its local government is of course problematic in the light of the diversity of cities and other forms of urban settlements around the globe. There is also not an agreed international law definition on cities, urban areas, local governments, and the like. But this need not preclude us from thinking about international development through the prism of cities and local governments. When we write about cities and local governments in the following, we base our arguments on a wide understanding of these notions. We will flag different dimensions as we move along, as for instance a focus on social movements, which would be excluded by a narrow and formalist understanding of the city as a mere public law entity. This promises to be fruitful for a better comprehension of the tensions between the global and the local, which play out in the major difficulties involved when trying to make sustainable development a reality in the places where it is supposed to happen.¹⁷

¹⁴ Luis Eslava, *Local Space, Global Life. The Everyday Operation of International Law and Development* (CUP 2015) 12 (hereafter Eslava, *Local Space, Global Life*).

¹⁵ See Congyan Cai, *The Rise of China and International Law – Taking Chinese Exceptionalism Seriously* (OUP 2019) 97-8.

¹⁶ Shisong Jiang, ‘Marching to an International Law Powerhouse Through Cities: An Ideational Reflection on China’s “Belt and Road” Initiative’ in Giuseppe Martinico and Xueyan WU (eds), *A Legal Analysis of the Belt and Road Initiative* (Palgrave Macmillan 2020) 221, at 224 (hereafter Jiang, ‘Marching to an International Law Powerhouse’).

¹⁷ On these tensions see already Ileana M Porras, ‘The City and International Law: In Pursuit of Sustainable Development’ (2009) 36 *Fordham Urban Law Journal* 538, at 540-541 (hereafter Porras, ‘The City and International Law’).

2. International Development and Cities

a) The local turn in international development

Traditionally, the world of international development was primarily occupied by states and the international organizations (IOs) these states have created. In particular, the International Bank for Reconstruction and Development (World Bank) has been seen as the prime actor of a field dedicated to help some states to ‘catch up’ with supposedly more ‘developed states’.¹⁸ This phenomenon has been aptly described by Antony Anghie as the ‘dynamic of difference,’ according to which development is constructed as a never-ending practice and discourse which perpetuates the cleavages that ‘catching up’ via development is meant to fill.¹⁹ Under a traditional understanding of international development law, it is the World Bank as an IO which interacts on behalf of the international community with individual nation-states. Agreements are entered into in order to provide funding for massive developmental plans, with loans from the bank enabling the conditions for the realization of these often rather ‘megalomaniac’ projects.²⁰ This description is a bit of a caricature, but it is apt to stylize a traditional understanding of international development in order to appreciate the role and obligations that cities and their governments have increasingly taken up in recent years.

As it has been demonstrated, for example, by Michael Riegner, the World Bank has by now developed a rich practice of organizing its projects directly with city governments.²¹ This is first of all a consequence of a disenchantment with the traditional forms of international development cooperation undertaken between IOs and states and their central governments. Corrupt government elites of the recipient states and other reasons such as institutional failure at the national level, which contribute to the recurrent mismanagement of funds and poor results in regard to the goals of development,²² have provoked a wide-spread donor fatigue, arguably leading to a great disillusionment with liberal understandings of international development.²³ The local presents itself as the better alternative for several reasons, which go from the simple need to try an alternative to more reasoned hopes in a decentralized model which offers more and different venues, not to mention local governments’ intensive self-promotion.²⁴ One of the strongest hopes motivating the

¹⁸ Luis Eslava, ‘The Developmental State: Independence, Dependency, and History of the South’ in Phillip Dann and Jochen von Bernstorff (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (OUP 2019) 71.

¹⁹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 4.

²⁰ For a succinct overview of the traditional understanding see Stefan Kadelbach, ‘Entwicklungsvölkerrecht’ in Andreas Fischer-Lescano et al (eds), *Frieden in Freiheit: Festschrift für Michael Bothe zum 70. Geburtstag* (Nomos 2008) 625.

²¹ Michael Riegner, ‘Development Cooperation and the City’ in Helmut Philipp Aust and Janne E Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar 2021) 251 (hereafter Aust and Nijman, *International Law and Cities*, and Riegner, ‘Development Cooperation and the City’ respectively); see also the contribution by Urmila Soni (Govindjee), ‘Cities’ in Koen de Feyter, Gamze Erdem Türkelli and Stéphanie de Moerloose (eds), *Encyclopedia of Law and Development* (Edward Elgar 2021) 24.

²² Georgia Levenson Keohane, *Capital and the Common Good – How Innovative Finance is Tackling the World’s Most Urgent Problems* (Columbia University Press 2016) 6-11, 60-63 (arguing for the shift from traditional donor-recipient schemes to market-driven models of financing for development, due to the failure of the former in terms of corruption and mismanagement).

²³ See, for instance, Mark Duffield, ‘Challenging Environments: Danger, Resilience, and the Aid Industry’ (2012) 43 *Security Dialogue* 475 (hereafter Duffield, ‘Challenging Environments’); David Chandler, ‘International Statebuilding and the Ideology of Resilience’ (2013) 33 *Politics* 276.

²⁴ On the several motivations underlying ‘the desirability of decentralization and local empowerment,’ see Yishai Blank, ‘The City and the World’ (2006) 44 *Columbia Journal of Transnational Law* 875, at 880-881 (hereafter Blank, ‘The City and the World’); for a critical perspective on decentralization see Janne E Nijman, ‘Renaissance of the City as Global Actor. The Role of Foreign Policy and International Law Practices in the Construction of Cities as

resort to the local is that municipal and other communal authorities are closer to the addressees of development aid, and hence in a better position of knowing their concrete needs as well as the means that can work best to meet these needs (what kind of social programs, infrastructures, public policies, etc.). Related to a more efficient channeling of resources, local authorities are also thought to be better placed for building trust relations with the addressees of aid, something which turns out to be crucial for the legitimacy of developmental interventions over time. Thus, knowledge and trust, as well as a dose of faith in that local authorities may be more efficient and less corrupt than national ones, seem to be driving forces underpinning the turn to the local in international development.

Whether this is indeed the case is an open question, but it is important to note that influential actors of the international development world emphasized already in the 1990s that the future of development cooperation involves collaboration with local governments more than with nation states. As former World Bank President James Wolfensohn remarked at the turn of the century:

We are moving now in the work that we do at the Bank from nation-state lending, to provincial and state lending, to urban lending. It is a function of size, and it is a function of practicality. If you are trying to design programs to reach people, it is just impossible to do it at the top only. This is a practical matter. Support and encouragement for appropriate management of city-regions is crucial to the whole issue of national development.²⁵

The whole ideology of the urban turn in international development is encapsulated in this quote. For development to be successful, it seems inevitable to reach out to the local level and to bypass the nation-state. It is another question to what extent such an approach is legally and functionally feasible, and whether indeed central governments can be sidelined so easily.²⁶ A closer look at the legal conditions for the Bank to enter into direct legal relations with cities and their governments shows that the nation-states are all but sidelined. At least formally, states have to give such a direct interaction between the World Bank and a given city in their territory their blessing, thereby ensuring that their local governments do not enter into legal relations with international organizations without their assent.²⁷ Whether they can politically withhold their consent when a big loan is involved, is another matter. But legally it makes all the difference that at least formally cities are not allowed to operate independently from their central government when it comes to relations with the World Bank. It should also be noted that the internationalization of cities is in part also driven by national governments who have grasped that ‘the process of decentralization has presented policy-makers with an opportunity to segment nation-states strategically into manageable (local) units where a hierarchically organized polycentric system of governance can then be operationalized.’²⁸ In a way, the ‘model cities’ experiment in Honduras as well as other forms of charter cities around the world are most radical expressions of this idea.

Global Actors’ in Andreas Fahrmeier et al (eds), *The Transformation of Foreign Policy: Drawing and Managing Boundaries from Antiquity to the Present* (OUP 2016) 209, at 216-21.

²⁵ James D Wolfensohn, ‘The World Bank and Global City-Regions’ in Allen J Scott (ed), *Global City-Regions. Trends, Theory, Policy* (OUP 2001) 44, at 46.

²⁶ For Malawi, see Michael Chasukwa and Dan Banik, ‘Bypassing Government: Aid Effectiveness and Malawi’s Local Development Fund’ (2019) 7 *Politics and Governance* 103; on the difficulties arising from decentralization reforms in Indonesia, partly spurred by international donors, see Anwar Nasution, ‘The Government Decentralization Program in Indonesia’ in Naoyuki Yoshino and Peter J Morgan (eds), *Central and Local Government Relations in Asia* (Edward Elgar 2017) 276.

²⁷ IBRD Art. III Sec. 4 (i)(iii), Art. V Sec. 4 and 7.

²⁸ Eslava, *Local Space, Global Life* (n 14) 140; see also Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (Columbia UP 1996) 29 for the related point that ‘(t)he state itself has been a key agent in the implementation of global processes, and it has emerged quite altered by this participation.’

The legal characterization of the relations between the Bank and local governments is quite complex, however. The practice of the World Bank seems to be equivocal when it comes to the legal nature of the agreements with local governments, making it possible to qualify these lending agreements as governed by public international law.²⁹ According to traditional wisdom on the question of subjectivity and legal personality in international law, this would mean that cities entering into legal relations with the World Bank could be considered as subjects of international law, i.e. holding rights and obligations directly under international law. It is another question whether member states of the Bank share this view. This question has never been resolved in a determinate manner, a solution sustainable as long as there are no serious conflicts over the content and implementation of legal agreements between the World Bank and local governments.³⁰ The debate on cities' subjectivity under international law might also not be the most important one.³¹ With leaving this question open, the evolving forms of cooperation between the World Bank and cities might be seen as being emblematic of the wider field of the global activities of cities. Be it in the field of climate change,³² security cooperation³³ or human rights protection,³⁴ when cities go global, these activities do not take the shape of the traditional forms of cooperation as foreseen by international law. At the same time, they are not meaningless for international law, for they show that the established categories are only capable of explaining so much. The more one insists on the absolute formalistic rigor of Article 38 of the Statute of the International Court of Justice and the established categories of legal personality, the less one is capable of coming to terms with the varieties of normativity which are prevalent in today's global conditions.³⁵

b) The Potential and Limits of Cities in and for International Development

While the narrative of disenchantment with traditional schemes of development cooperation between central states and international organizations and the ensuing turn to the local has its merits, the practices that emerge from it bear their own problems and introduce new uncertainties in regard to the meaning and viability of contemporary international development. In this section, we describe some of these problems and uncertainties while unravelling their emerging intersections with ideas and practices of international law. Our aim is to explore what these intersections say about the law of international development.

In a nutshell, the story of these intersections is one of a consecutive but also parallel move from embedment to the evolution of counter-practices: embedment first in the sense that established actors of development cooperation have come to rely on cities and local governments – something appreciated by many of the latter. However, cities and local governments have not just been passive actors at the receiving end of this trend. Some cities and their governments, but most importantly also social movements *within* cities have aspired to push back against concepts of international

²⁹ Michael Riegner, 'International Institutions and the City – Towards a Comparative Law of Glocal Governance' in Aust and du Plessis, *The Globalisation of Urban Governance* (n 13) 38, at 46.

³⁰ Ibid, 45.

³¹ Jan Klabbers, 'Inter-Legality, Cities, and the Changing Nature of Authority' in Aust and Nijman, *International Law and Cities* (n 21) 419 (hereafter Klabbers, 'Inter-Legality'); Samantha Besson, *Reconstruire l'ordre institutionnel international* (Fayard 2021) 41-43.

³² Anél du Plessis, 'Climate Change Law and Sustainable Development' in Aust and Nijman, *International Law and Cities* (n 21) 187.

³³ Alejandro Rodiles, 'The Global Insecure Counterterrorism City' in Aust and Nijman, *International Law and Cities* (n 21) 214 (hereafter Rodiles, 'The Global Insecure Counterterrorism City').

³⁴ Martha F Davis, 'Finding International Law "Close to Home": The Case of Human Rights Cities' in Aust and Nijman, *International Law and Cities* (n 21) 227.

³⁵ Klabbers, 'Inter-Legality' (n 31).

development which they criticize for pursuing a (neo-)liberal agenda³⁶ of development for which the substitution of an inter-state focus for the newfound interest in cities is not much more than a fig-leaf.

First, the disenchantment described above may represent a recognition of the failure of liberal internationalist ideologies in the promotion of world-wide development. However, this does not mean that there has been an opening for a truly critical reflection of what has gone wrong as a whole when it comes to bettering the life conditions of the poor – beyond the failures of recipient states. Instead, it seems that liberal internationalism has been replaced by ‘a neoliberal concern to downsize and decentralize bureaucratic functions,’ which is at the same time tied to the promotion of a spirit of entrepreneurialism and market efficiency.³⁷ As has been noted by critical development scholars, such devotion to the spirit of entrepreneurialism is revealing for a broader resignation with big development plans and ideas.³⁸ Concretely, this has been translated, at least since the adoption of the Millennium Development Goals (MDGs), into a scheme that focuses on interventions at the local level often through the facilitation of private investment in city infrastructures and public services.³⁹

Second and as already noted above, international agencies and donor governments may increasingly have the local level as their preferred partner, but the nation-state cannot be completely sidelined. Often, specific programs designed at the global level which are meant to be implemented locally without much interference from central authorities, depend nevertheless on financial and institutional frameworks that are established in laws and regulations at the central level. Such problems of coordination among the international (or foreign), the national, and the local, which may have several levels on its part, question the efficiency that is usually attributed to the kind of development work directed at the local level.⁴⁰

Third, even if cities are better placed for implementing international development initiatives due to their proximity to the people, i.e. the knowledge and trust presumptions they enjoy, they probably still lack the experience of national governments who have a better comprehension of interconnected international dynamics: *receiving aid here, may compromise you there*. The now almost infamous centrality of national governments has historically proven to be of great value for less powerful states in containing interventionist maneuvers.⁴¹ In this light, the city may even serve

³⁶ For a classic piece on this point, see David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso 2012). We note that almost ten years ago, this book was presented as a birthday gift from one of us to the other, unaware of a future joint publication on the matter.

³⁷ Tania Murray Li, ‘Practices of Assemblage and Community Forest Management’ (2007) 36 *Economy and Society* 263, at 284.

³⁸ *Ibid*; Duffield, ‘Challenging Environments’ (n 23).

³⁹ On the perils of the privatization of local public services through the internationalization of local governments, see already Gerald E Frug and David J Barron, ‘International Local Government’ (2006) 38 *The Urban Lawyer* 1, at 57 (hereafter Frug and Barron ‘International Local Government’); and Porras, ‘The City and International Law’ (n 17) 563-566; this turn to privatization stands also in contrast to earlier emphases of the 1976 Habitat declaration which was inspired considerably by postcolonial approaches, see further Joshua K Leon, ‘The global governance of housing: 1945-2016’ (2020) *Planning Perspectives*, advance access online, at 9-10.

⁴⁰ For an important account on the difficulties in and between the different ‘territorialities of sovereignty’ as evidenced in the handling of the Covid-19 pandemic, see Diane E Davis, ‘Beyond Health and Hygiene: The Governance Crisis and Responses to the Pandemic’ (unpublished manuscript, on file with the authors); these problems of coordination are also very present in Porras’ notion of ‘extraterritorial effects and incapacities of cities to deal effectively with them because [in] the absence of a national or international mandate, cities are bound to consider local interests only when they engage in the trade-offs required by the pursuit of sustainable development,’ Porras, ‘The City and International Law’ (n 17) 544.

⁴¹ See Alejandro Rodiles, *Coalitions of the Willing and International Law – The Interplay between Formality and Informality* (CUP 2018) 139-141 (hereafter Rodiles, *Coalitions of the Willing*).

as a new entry-point 'to penetrate weaker governments.'⁴² This could be described as a continuation of old tactics of intervention tied to the development work of agencies from the North, performed directly *within societies* of the South.⁴³

Fourth, the role of social movements within cities, and of citizenship at large in relation to international development and the law underpinning it, is complex and changing. Pioneering legal studies on the city and international development rightly emphasize the risks of capture of the public (physical and political) space by the big capital of foreign investment.⁴⁴ In marking the abuse of this narrative of more facile local participation by city governments (eager for private money and international status) and international institutions (desperate to bypass the nation state), these studies have contributed to debunk two myths at once: that of the city as the ideal locus for sustainable development to take hold, and that of local development as an expression of citizens' participation in decision-making processes on concrete projects.⁴⁵ Importantly though, this critique speaks to globalized elites of city officials and to international development bureaucracies driven by the local hype. It does neither address nor neglect local resistance and its possibilities to articulate and mobilize counter-practices to international development work, which are actually capable of making 'international law from below.'⁴⁶ Indeed, local social forces are those who can best articulate and most legitimately defend 'alternative visions of modernity and development by emphasizing rights to identity, territory, and autonomy.'⁴⁷ *La Coordinadora en Defensa del Agua y de la Vida*, Cochabamba's social movement of 1999–2000, which fought against a World Bank driven water privatization project, is a case in point for local resistance against the myths of development. Note also that beyond the successful rejection of this particular privatization project framed in the language of progress, this movement initiated an ongoing struggle in the reconfiguration of international rights, as Bolivia's initiatives at the UN on the human right to water *and* the rights of water show.⁴⁸ Moreover, *La Coordinadora* is a powerful symbol in the project of decolonizing

⁴² Robert Keohane and Joseph N Nye, 'Transgovernmental Relations and International Organizations' (1974) 27 *World Politics* 39, at 47.

⁴³ See Samuel P Huntington, 'Transnational Organizations in World Politics' (1974) 27 *World Politics* 333, at 348 (mentioning that 'the expansion of the United States into the world in large part took the form of the creation and development of U.S. agencies designed not just to deal with other governments, but to operate within other societies').

⁴⁴ Blank, 'The City and the World' (n 24) 879 (on the image of the city as private corporation rather than public entity); Porras, 'The City and International Law' (n 17) 539, 574-576; Frug and Barron, 'International Local Government' (n 39); for an articulation of two different visions of the public and the private city respectively see Janne E Nijman, 'The Future of the City and the International Law of the Future' in Sam Muller et al (eds), *The Law of the Future and the Future of Law* (Opsahl 2011) 213.

⁴⁵ Most clearly on this Porras, 'The City and International Law' (n 17) 574-576.

⁴⁶ Rajagopal, *International Law from Below* (n 9).

⁴⁷ *Ibid*, 271. As documented by Porras, the self-promoted narrative of the city as 'the natural geography of community formation' has been enthusiastically received and reproduced by international organizations and the international community more broadly, seeking for alternatives to the centralized state bureaucracies in development cooperation, see Porras, 'The City and International Law' (n 17) 549-563.

⁴⁸ On the human right to water and sanitation, see UN Doc. A/RES/64/292 (2010), and subsequent ones. This has become part of the 2030 Agenda, as SDG 6 on the availability and sustainable management of water and sanitation shows, see SDGs (n 10). On the articulation at the UN level of the rights of nature or Mother Earth (Pachamama), see UN Doc. A/RES/64/196 (2009), and subsequent ones; on *La Coordinadora*, see Nancy G Postero, *Now We Are Citizens – Indigenous Politics in Postmulticultural Bolivia* (Stanford University Press 2007) 193-197.

international law,⁴⁹ for it has shed light onto the continuities of Spanish Scholasticism in the contemporary missions of international (development) law in the Americas.⁵⁰

But as mentioned, things are changing. The ‘multi-stakeholderism’⁵¹ that characterizes contemporary international development, as it is clearest in the holistic philosophy and pragmatic instrumentalization of the SDGs, exerts strong alignment pressure on the different social actors that are called upon to make sustainable development work. Here, we are not talking only about the capture of public space by the private sector. Making the SDGs work requires much more than the substitution of public city services by the construction and maintenance of infrastructures by public-private-partnerships (PPPs). The ‘safe city’ needs as much a functioning police force as it needs good neighbour initiatives. The ‘inclusive city’ requires a city hall thoroughly committed to non-discrimination as well as start-ups on harvesting rainwater. The ‘clean city’ is about an efficient public transport system and about apps that trace and show in real time traffic and pollution concentrations gathered from the data that the ordinary activities of the citizens generate. While the whole-of-society approach of the SDGs expands the local space in terms of participation and innovation, it also depoliticizes, however, development by conflating providers and addressees. Everyone becomes an agent of development.⁵² And if the pioneering scholarship on cities and international law is right in cautioning that the city is always in peril of losing its (emergent) self-determination to the global, while trying to conquer it back from the national,⁵³ then contemporary development practice may bear the risk of diluting citizenship power. One should indeed question whether citizens are actually empowered, when they try to exercise their right to their city by resorting to a global matrix of do-it and help-yourself instructions.

c) Implications for International Law

Accordingly, there is a duality at play here when it comes to the increasing involvement of cities in the field of international development. There is clearly a potential for decentering the state and its institutions, and hence to provide an impetus for a form of ‘international law from below.’⁵⁴ But it is also the case that ‘international development from below’ is not necessarily immune to the very same economic and political forces which have been dominating the field for some time. For scholars of international law, the big question is to what extent this ambivalence also plays out in the domain of the law. Are we just painting an impressionistic picture of some kind of confluence of international, national, and subnational actors, all arguably in some way relevant for international development? Or is there more to this in the sense that also the international law of development is changing due to the growing role of cities and local governments? An immediate impact on the structures of international law can indeed be seen in the practice of the World Bank to enter into loan agreements directly with local governments. At least potentially, this practice creates new subjects of international law if these agreements are considered to be governed by public international law.⁵⁵

⁴⁹ Sundhya Pahuja, *Decolonizing International Law – Development, Economic Growth and the Politics of Universality* (CUP 2011).

⁵⁰ Alejandro Rodiles, ‘Is There a Populist International Law (in Latin America)?’ (2018) 49 *Netherlands Yearbook of International Law* 69, at 87-89.

⁵¹ On multi-stakeholderism in international law more broadly, see Wolfgang Benedek, ‘Multi-Stakeholderism in the Development of International Law’ in Ulrich Fastenrath et al (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011) 201.

⁵² This is a theme one of us has explored in a previous contribution: Helmut Philipp Aust, ‘Good Urban Citizen’ in Jessie Hohmann and Daniel Joyce (eds), *International Law’s Objects* (OUP 2018) 225.

⁵³ See Blank, ‘The City and the World’ (n 24), Frug and Barron, ‘International Local Government’ (n 39), and Porras, ‘The City and International Law’ (n 17).

⁵⁴ Rajagopal, *International Law from Below* (n 9).

⁵⁵ Riegner, ‘Development Cooperation and the City’ (n 21).

For an academic discipline which is still very much enamored with the centrality of the state and its key importance for basically all doctrinal concepts, this is not something to be overlooked.

The importance of the ‘urban turn’ of international development law does not exhaust itself with such formalities, however. As Luis Eslava has argued powerfully, international, national, and local ‘normative frameworks, in close relationship with development ideals, are currently being deployed to construct local space and subjects that are attuned with global expectations.’⁵⁶ In any case, the growing involvement of cities in the field of international development is arguably another expression of what can be understood as a process of informalization of international law and the growth of global governance. In the last two decades, there has been a trend away from lawmaking in the form of entering into legally binding multilateral agreements.⁵⁷ Instead, states and other influential actors resort to non-binding agreements or integrate ‘innovative’ normative structures into treaties, which reduce their bindingness to a considerable degree. The latter was certainly the case with the 2015 Paris Agreement on Climate Change,⁵⁸ a key legal instrument when it comes to the realization of sustainable development in and for cities. And the 2015 Sustainable Development Goals⁵⁹ are in and of themselves a powerful expression of the recourse to normative documents of great practical importance, an importance which derives, however, less from the force of law than from a confluence of political, moral, social, and scientific factors. Cities and their local governments are natural partners for this development. Even though World Bank practice potentially acknowledges them as subjects of international law, this is far from the mainstream view. Accordingly, if cities wish to participate in global development discourses, they will do so on a footing of informal and ad hoc cooperation. The more important they become in the field of international development, the more they challenge established patterns of its law.

3. Cities and the Multiple Futures of International Development

The SDGs are a prime example of the trend described above, also because they are a driving force in global development’s turn to the city (see section 3.a). However, it is unclear to what extent the SDGs and their underlying global normative expectations will remain the most important blueprint for questions of economic and social development. Another form of global development seems to be on the horizon – Chinese conceptions of ‘win-win cooperation’ along the lines of the Belt and Road (see section 3.b), which has a marked interest on the role that cities can play, if only through the superficially sentimental remnants of echoes of Silk Road cities.⁶⁰ What unites these two blueprints for global development is that international law, as traditionally understood, does not seem to take center stage. Or rather, we wish to expound, it may be a new type of international law which emerges from these global constellations of international development which comes not only, but also from below (section 3.c).

⁵⁶ Eslava, *Local Space, Global Life* (n 14) 10.

⁵⁷ Joost Pauwelyn, Ramses A Wessels and Jan Wouters, ‘When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking’ (2014) 25 EJIL 733; Rodiles, *Coalitions of the Willing* (n 41); Heike Krieger and Georg Nolte, ‘The International Rule of Law – Rise or Decline? – Approaching Current Foundational Challenges’ in Heike Krieger, Georg Nolte and Andreas Zimmermann (eds), *The International Rule of Law – Rise or Decline?* (OUP 2019) 3, 11.

⁵⁸ Paris Agreement of 12 December 2015, entered into force on 4 November 2016, not yet in UNTS. On the incorporation of global governance techniques into the Paris Agreement, most of all the notion of ‘best practices multilateralism,’ see Rodiles, *Coalitions of the Willing* (n 41) 198-202.

⁵⁹ SDGs (n 10).

⁶⁰ For a historical take on cities along the Silk Road see Valerie Hansen, ‘Silk Road Cities and Their Co-Existing Legal Traditions’ in Aust and Nijman, *International Law and Cities* (n 21) 17.

a) Cities and the Sustainable Development Goals

It is no exaggeration to say that with the adoption of the UN 2030 Agenda, the relationship between the city and international development entered into a new era. In contrast to the MDGs,⁶¹ one of the seventeen SDGs deals concretely with cities. According to SDG 11, cities and human settlements should be made ‘inclusive, safe, resilient and sustainable.’ This formula is already very broad, addressing poverty reduction, disaster risk management, non-discrimination, environmental protection, mobility, and public security, to name but a few of its core aspects. Furthermore, if one considers the ten targets that concretize this goal, then many facets of the catchphrase ‘the right to the city’ as understood for instance in the NUA are encompassed: from dignified housing and access to clean air and water, over freedom of movement and from fear, to the free development of the city dweller’s personality.⁶² This already speaks volumes about the role of the city in international development, but it actually goes well beyond. The local level is effectively omnipresent in the whole 2030 Agenda. This has to do with the close relationship between the different goals, their targets, and indicators for measurement of compliance.⁶³

Take for instance SDG 9 on ‘industry innovation and infrastructure.’ One of its targets is the development of sustainable and resilient infrastructure. An indicator for measuring that this target has been met is the access of passengers by mode of transport, which on its part coincides with one of the targets of SDG 11 on access to sustainable public transport systems and the corresponding indicator on the proportion of population enjoying such transportation. Mobility is related to the reduction of inequality according to SDG 10. However, mobility is not restricted to transportation. Proper street light networks are as much about infrastructure as they are about free movement, and the proportion of people who ‘feel safe walking alone around the area they live’ is a way of measuring the fulfillment of SDG 16 on peace and security.⁶⁴ In cities with high rates of gender violence, such interventions into street lighting render infrastructure resilient for purposes of women’s safety, especially if connected to camera surveillance systems, panic buttons, mobility improvement design, and street art, like Mexico City’s *Senderos Camina Segura* program,⁶⁵ which is aimed at reducing violence against women in the public, a target of SDG 5 on gender equality.

The above shows that beyond the focus on local governments by international bureaucracies, the city is now a key concept in the articulation of international development discourse writ large. Moreover, the local is, at the same time, a main vehicle for making the SDGs work. If the 2002

⁶¹ For the origins of the MDGs see the ‘United Nations Millennium Declaration’, UN Doc. A/RES/55/2 (2000).

⁶² NUA (n 11) para. 11; it is another question to what extent this notion of the ‘right to the city’ has a concrete meaning and how it relates to its original and much more radical emanation as formulated in the work of Henri Lefebvre and others, see Henri Lefebvre, *Espace et politique — Le droit à la ville II* (Paris: Anthropos 1972) 11; for critical reflections on the capture of this concept by IOs, city networks and for the purpose of city marketing see Jonathan Darling, ‘Defying the demand to “go home”: from human rights cities to the urbanization of human rights’ in Barbara Oomen et al (eds), *Global Urban Justice — The Rise of Human Rights Cities* (CUP 2016) 121, at 135; Margit Mayer, ‘The “Right to the City” in Urban Social Movements’ in Neil Brenner et al (eds), *Cities for People, Not for Profit — Critical Urban Theory and the Right to the City* (Routledge 2012) 63, at 74; Michele Grigolo, *The Human Rights City — New York, San Francisco, Barcelona* (Routledge 2019) 56.

⁶³ The references in the following lines are based on UN Doc. A/RES/71/313 (10 July 2017), Annex *Global Indicator Framework for the Sustainable Development Goals and Targets of the 2030 Agenda for Sustainable Development*; for a brief yet crucial insight into the dynamics of the SDGs and their indicators, see Sally Engle Merry, ‘The Sustainable Development Goals Confront the Infrastructure of Measurement’ (2019) *Global Policy* 146 (hereafter Merry, ‘The Sustainable Development Goals’).

⁶⁴ See Hannah Birkenkötter, ‘Ensuring Access to Public Space as a Dimension of “Safe Cities”: The Role of UN Entities in Shaping the Global Urban Agenda’ in Aust and du Plessis, *The Globalisation of Urban Governance* (n 13) 127, at 128-29.

⁶⁵ CDMX Portal Ciudadano, *Sendero Seguro: Camina Libre, Camina Segura*, at <https://www.cdmx.gob.mx/portal/articulo/sendero-seguro-camina-libre-camina-segura> (last visited 19 May 2021).

Monterrey Consensus on the Financing of Development already encouraged the participation of public and private initiatives at the local level to help bringing the MDGs to fruition,⁶⁶ SDG 17, which is about the means of implementation, is triggering something of a new dimension. These means rely heavily on partnership-building and continuous networking. Based on the idea of ‘multistakeholderism,’ partnerships are built with all sorts of actors and on all levels, an idea which is also spelled out further in the NUA. At the time of writing, the SDG Partnership Platform accounts for over 5300 partnerships from IOs to local governments to companies.⁶⁷ However, it is the second aspect mentioned above which arguably represents a paradigm shift in international development work and law. In this context, ‘continuous networking’ can be described as the assembling of existing and emerging social practices of resilience *on the ground* that are somehow (or may prove to be) useful for the implementation of the SDGs.⁶⁸ These practices are mapped by local SDG Accelerator Labs, which are a sort of special local units of UNDP country offices.⁶⁹ These mapping exercises involve ethnographic work and data mining, the rest is about *accelerating* the local initiatives, which may be ripe for their dissemination in the sense of a ‘good practice,’ or may still need finetuning. In the latter case, as well as much as financing is concerned, the Lab serves as a broker for new partnerships. There are already 60 SDG Accelerator Labs in cities around the world, and a good 30 more underway. Accordingly, mapping, experimenting, brokering, and replicating the local are becoming the new activities of international cooperation for development.

The multi-stakeholderism inherent to the SDGs and its co-evolutive dynamics of cross-referencing to practices on the ground is not unproblematic though. While this new developmentalism certainly opens venues for participation and has the great potential of empowering the local and through it grassroots movements in a further concretization of international law from below,⁷⁰ it bears the risk of perpetuating vulnerable life, especially in poorer countries.⁷¹ Examples abound, but a case in point is the complex network of people involved in the garbage business in and around major cities in the Global South. These networks are driven by poverty, deficient public services, corruption, and distrust in authorities. As every resident of such a megalopolis will acknowledge: without the huge informal trash business, cities would literally collapse in litter. Thus, networks of this kind make a crucial contribution in the making of resilient cities. Hence, they are heralded by international institutions as good practices to be replicated in the pursuance of sustainable development.⁷² But resilience is born out of need and precarity here, one should not forget. The bricolage is admirable, no doubt, but it is hardly the long-term solution that all the citizens of these cities need, beginning with the bricoleurs themselves. We submit that sharpening our understanding of ‘the liminalities of resilience’⁷³ is fundamental in unravelling what can be lost when hope in the law is given up.

⁶⁶ Report of the International Conference on Financing for Development, Monterrey, Mexico, 18–22 March 2002 (A/CONF.198/11, chapter 1, resolution 1, annex) para 12.

⁶⁷ See <https://sustainabledevelopment.un.org/partnerships/> (last visited 19 May 2021).

⁶⁸ The notion is increasingly used in other areas of international law too; for its use in global counterterrorism law see Rodiles, ‘The Global Insecure Counterterrorism City’ (n 33).

⁶⁹ See UNDP Global Accelerator Labs, at <https://acceleratorlabs.undp.org/> (last visited 19 May 2021).

⁷⁰ Rajagopal, *International Law from Below* (n 9).

⁷¹ For a general critique, see Brad Evans and Julian Reid, *Resilient Life: The Art of Living Dangerously* (Polity 2014).

⁷² See, for instance, UNDP, ‘The Power of Grassroots Solutions in the Waste Recovery Chain’ (23 February 2021), at <https://www.gt.undp.org/content/guatemala/es/home/blog/2021/02/23/-the-power-of-grassroots-solutions-in-the-waste-recovery-chain.html> (last visited 19 May 2021). Here, the UNDP Accelerator Lab in Guatemala has mapped the network, trying to sense emerging processes of responsiveness in the waste management around Guatemala City; on mapping and sensing as modes of governance see David Chandler, *Ontopolitics in the Anthropocene: An Introduction to Mapping, Sensing and Hacking* (Routledge 2018) 31-137.

⁷³ Borrowing the expression from Luis Eslava and Lina Bucheley, ‘Security and Development? A Story about Petty Crime, the Petty State and its Petty Law’ (2019) 67 *Revista de Estudios Sociales* 40; similarly pointing to the contradictions of community resilience promotion in the framework of transnational security policies, see Alejandro Rodiles, ‘The Tensions between Local Resilience-Building and Transnational Action — US-Mexican

b) A competing blueprint? Cities, development and the Belt, and Road Initiative

A different approach to the future of development and the role that cities may play therein may follow from China's Belt and Road Initiative (BRI). The scope of the BRI is not easy to determine, but it can be understood as a functional conglomerate which serves to project China's growing economic and political power onto the world stage. What is and what is not part of the BRI is not always easy to discern.⁷⁴ Accordingly, scholars have argued for a functional approach which understands activities to fall within the BRI's scope as long as they further its purposes. This wide and somehow circular understanding follows from the fact that the BRI is a 'holistic' exercise.⁷⁵ The structure of the BRI is ambiguous. It has been characterized as a 'hub-and-spoke network,' with China being the hub and the respective mechanisms and agreements the spokes.⁷⁶ Accordingly, Heng Wang describes it as a 'loosely connected network of new or existing bilateral and multilateral mechanisms.'⁷⁷ Its underlying motivation would be to 'gradually form a set of instruments for policy coordination on financial integration, trade liberalization, and people-to-people connectivity across Asia and beyond.'⁷⁸

The role that cities play in the BRI is so far understudied. It is obvious that through the practice of (re-)creating images of a (new) silk road, the BRI also relies on connecting cities across the globe, in particular port cities, and other strategic points of interests in international transportation networks, such as major airports.⁷⁹ This is in line with the basic features of the BRI: infrastructure modernization and enhanced connectivity as drivers of free trade and industrialization-led development. The Initiative is as such praised by the UN Industrial Development Organization (UNIDO) as having the potential to turn into 'the most ambitious modern-day international development project ever conceived,' while providing 'ample opportunities for industrial growth within the context of urban development.'⁸⁰

This enthusiasm is not restricted to a single UN specialized agency, but representative of the hopes that the broader UN system is putting into China's BRI as a most promising catalyst in the realization of the SDGs, particularly but not exclusively at the local level. Prove to this is, inter alia, the 'Belt and Road Sustainable Cities Alliance,' launched via a plurilateral MoU between the Chinese government, UN-Habitat, other IOs, and a California-based public charitable foundation on clean energy.⁸¹ Due to the heavy reliance on public-private-partnerships for the implementation of the SDGs,⁸² the BRI

Cooperation in Crime Affected Communities in Northern Mexico, and What this Tells Us about Global Urban Governance' in Aust and du Plessis, *The Globalisation of Urban Governance* (n 13) 247.

⁷⁴ Peter Frankopan, *The New Silk Roads – The Present and Future of the World* (Bloomsbury 2018) 119.

⁷⁵ Heng Wang, 'China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability' (2019) 22 *Journal of International Economic Law* 29, at 32 (hereafter Wang, 'China's Approach to the Belt and Road Initiative').

⁷⁶ *Ibid.*, 35.

⁷⁷ *Ibid.*, 36. In this sense, the BRI bears remarkable similarities with major US-led coalitions of the willing, see Rodiles, *Coalitions of the Willing* (n 41) 89-90.

⁷⁸ Wang, 'China's Approach to the Belt and Road Initiative' (n 75) 36.

⁷⁹ See further Jiang, 'Marching to an International Law Powerhouse' (n 16) 239; see also Weqiang Lin and Qi Ai, 'Aerial Silk Roads: Airport Infrastructures in China's Belt and Road Initiative' (2020) 51 *Development and Change* 1123 (hereafter Lin and Ai, 'Aerial Silk Roads').

⁸⁰ UNIDO, 'Industry for Development – When Industry meets the city: the Belt and Road Initiative' (September 2017) *MakingIt: UNIDO's Quarterly Magazine*, at https://www.unido.org/sites/default/files/2017-09/makingit_24_full_web_0.pdf (last visited 19 May 2021).

⁸¹ See <https://www.efchina.org/News-en/EF-China-News-en/news-efchina-20190508-en> (last visited 19 May 2021); see also Jiang, 'Marching to an International Law Powerhouse' (n 16) 240.

⁸² Concretely, SDG 17 as concretized via its targets and indicators, see further Merry, 'The Sustainable Development Goals' (n 63) 147.

spurs alliances between local public authorities and the business sector, including Chinese foreign investment, under the umbrella of sustainable development. A prime example of the latter is the Green Belt and Road Investor Alliance, which under the tenet of ‘greening finance and industry,’ gathers Chinese investment banks, corporations, the Chinese-British Business Council, the City of London as the Secretariat, and the Mayor of London as ‘supporter.’⁸³

Yet another dimension through which the BRI flows into the promises of local sustainable development is by means of its Digital Silk Road, launched in 2015. The President of the People’s Republic of China, Xi Jinping, has called for pursuing an ‘innovation-driven development and intensify cooperation in frontier areas such as digital economy, artificial intelligence, nanotechnology and quantum computing, and advance the development of big data, cloud computing and smart cities so as to turn them into a digital silk road of the 21st Century.’⁸⁴ In general, this focus on technology and smart cities should not be surprising, as it aspires to export a signature element of China’s rise in recent years, its immense technological prowess. Harnessing technology for the sake of sustainable development is well in line with the ambitions of the SDGs, in particular SDG 11, since ‘inclusive, safe, resilient and sustainable’ cities are unconceivable today without the integration of most advanced technologies into the built-environment and of digitized information systems into the provision of public services. SDG 11 may not state it, but it is clearly about the ‘smart city.’⁸⁵

In the end, we may see a complementary and mutually enforcing dynamic of sustainable development and the BRI. Or put differently, we might witness how the SDGs become increasingly shaped by Chinese understandings of development.⁸⁶ For cities, however, a more prominent role of China (and its cities) might bring a new dynamic to the debate on their contribution to international law and development. As it has been articulated recently by Shisong Jiang, looking at the rising importance of cities in and for international law with a Chinese focus implies not so much asking ‘what are the contributions that cities can make for international law on the occasion of state failure,’ but rather, as he puts it, ‘more strategically’ asking ‘how can the sovereign states make full use of their cities to contribute to their interests in international law and the further development of international law as a whole.’⁸⁷ Incidentally, this takes us back to the insight that the internationalization of cities is not necessarily a process from the bottom-up, but can also be driven by strategic considerations of (nation-)states. In the context of the BRI, this statist mindset derives in part from an acknowledgment of the limited scope of maneuver that Chinese cities enjoy in a highly centralized system in which all power ultimately resides with the Communist Party.⁸⁸ Assuming that the role and power of China – and hence its cities – will only continue to grow in the international arena, this brings up the question of how our understanding of good urban governance will also evolve. The political scientists and city scholars Ian Klaus and Simon Curtis have rightly pointed out that emblematic world cities are expressions of world order but also shape the world

⁸³ See the website of ‘London & Partners’ <http://beltandroad.london/about/> (last visited 19 May 2021).

⁸⁴ Xi Jinping, President of the People’s Republic of China, Speech at the Opening Ceremony of The Belt and Road Forum for International Cooperation (Beijing, 14 May 2017), at http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm (last visited 19 May 2021).

⁸⁵ See also on the relationship between the SDGs and smart cities Helmut Philipp Aust, ‘“The System Only Dreams in Total Darkness” – The Future of Human Rights Law in the Age of Algorithmic Authority’ (2017) 60 *German Yearbook of International Law* 71, at 76-77 and 84.

⁸⁶ For a different account of the contradictions and synergies between the BRI and the SDGs, see Johanna Aleria P Lorenzo, ‘A Multilateral Track for Sustainable Development Along the Belt and Road: Aligning Country Ownership with International Rule of Law’, *KFG Working Paper Series No 47*, Berlin Potsdam Research Group “The International Rule of Law – Rise or Decline?” (April 2021), at https://www.kfg-intlaw.de/Publications/working_papers.php?ID=1 (last visited 19 May 2021).

⁸⁷ Jiang, ‘Marching to an International Law Powerhouse’ (n 16) 236-37.

⁸⁸ *Ibid*, 237-38.

order in turn.⁸⁹ If the ‘global city’ was a notion defined by Western liberalism of the 1990s, they do not foresee urban futures characterized by the ‘freedoms that have long-been associated with cities.’⁹⁰ It is another question, of course, whether central planning in its 21st century Chinese form will be able to come to grips with the ‘more popular, organic and informal elements of urban space’ that is inherent to cities.⁹¹

c) Cities in International Development and the Development of International Law

It is too early to tell which vision of development will win the day, the SDGs or a Chinese conception of development as embodied in the BRI, if these conceptions are competing at all. What is not so unlikely is that one or the other concept of development, or both, will also determine the future role of cities and local governments in the field of international development cooperation. What is more, both visions of development do not seem to rely too much on formally binding international law. The SDGs are multilateral in their character and origin, but they are also an expression of a broader turn of the international community away from binding legal commitments towards more flexible forms of global governance. The BRI shares this focus on informality and network-like forms of global governance, yet not with international institutions at the centre, but rather a Chinese hub with spokes all leading back to Beijing. The more influence China and its BRI will have on the future of international development, the less pronounced Western and liberal understandings of good urban governance will become. In line with Chinese preferences for upholding a strict understanding of non-interference into states’ internal affairs, the BRI does not set forth ambitious goals for good governance, let alone good urban governance. It is results-oriented and pragmatic to the greatest possible extent, as long as the concrete results of cooperation are in line with Chinese preferences. Accordingly, it seems as if both conceptions of development do not put too much emphasis on the law in context of international development – or should we rather say public international law as it has been defined for a long time from a Western and Eurocentric perspective?

4. Conclusion and Outlook

Our intention here has been to shed light at some of the many aspects of the intriguing relationship between international development and cities. We have described how a field defined by states and inter-state organizations has gradually embraced cities and local governments as alternative avenues for development and how the latter have also embraced this state of affairs. Today, the international realm and international development in particular exert a major influence on the ideal type of the contemporary city. The most prominent emanation of this are the SDGs, in particular through SDG 11 which sets forth a particular vision of good urban governance through its emphasis on safe and sustainable, inclusive and resilient cities. These terms are broad enough to be filled with various philosophies of international development and it is an open question how the international understanding of these terms will evolve in the future. Many different courses of development seem to be possible, with the idea of ‘charter cities’ being only a particularly extreme example of how urban futures can be imagined. More likely is a tug of war between different conceptions of international development at the city level. If the recent trend of the growing importance of cities in and for international law is a consequence of the liberal mindset of the 1990s with its emphasis on ‘disaggregated statehood,’ it will be intriguing to trace how the growing power and influence of China and the gradual realization of its BRI will impact on our understanding of the city of the future. It is

⁸⁹ Ian Klaus and Simon Curtis, ‘Cities of the New Silk Roads’, *Diplomatic Courier* of 27 November 2019, at <https://www.diplomaticcourier.com/posts/cities-of-the-new-silk-roads> (last visited 19 May 2021).

⁹⁰ Ibid.

⁹¹ Ibid; on how the ‘Aerial Silk Road’ is showing some unintended consequences, giving voice to locales in China where these airports are built, see Lin and Ai, ‘Aerial Silk Roads’ (n 79).

too early to tell how this saga will evolve. But if we reflect on the title of our contribution — international development from below — it seems apt to stress the question mark with which we have appended our title. It would certainly be misleading to stress the growing role of cities in a way which would lead to diminishing the role of the state and of the international institutions it has created. Rather, it seems as if the local level has been added as another dimension to the multi-level game of global law and development. As always, adding complexity opens up new possibilities for interaction and cooperation. It may also open up new channels of influence. Cities along the New Silk Roads, and those otherwise involved in 21st century sustainable development, will be well advised to take this into consideration. At the same time, the past liaison between international law and development should not be idealized.

The Authors



Since 2016 Helmut Aust is Professor of Public and International Law at Freie Universität Berlin, Department of Law. His research focuses on questions of public international law (especially sources, responsibility, collective security and human rights) as well as on comparative foreign relations law. A special focus of his work lies on the growing role of cities as global actors. In this context, he co-chairs a Study Group of the International Law Association (ILA) with Janne Nijman on “The Role of Cities in International Law”.

Publications include *Complicity and the Law of State Responsibility* (CUP 2011), *The Interpretation of International Law by Domestic Courts* (OUP 2016, co-edited with Georg Nolte), *Das Recht der globalen Stadt* (Mohr Siebeck 2017); *The Globalisation of Urban Governance* (Routledge 2019, co-edited with Anél du Plessis), *Encounters between Foreign Relations and International Law* (CUP 2021, co-edited with Thomas Kleinlein) as well as the forthcoming *Research Handbook on International Law and Cities* (Edward Elgar 2021, co-edited with Janne E. Nijman).



Alejandro Rodiles is an associate professor of international law and global governance at ITAM School of Law, in Mexico City. He earned his law degree (LL.B.) from the National Autonomous University of Mexico (UNAM) and obtained his PhD from Humboldt University, Berlin. His PhD thesis was awarded with the Faculty Price of the Faculty of Law of Humboldt University. In July 2016, he was elected a member of Mexico’s National Research System (SNI, level I). Rodiles has been a lecturer at UNAM’s Faculty of Law, a research fellow at Humboldt University, and a visiting professor at El Colegio de México. He has been awarded with the British Academy Newton Mobility Grant (together with Gavin Sullivan from Kent University) and with the ESIL Book Prize 2019 for his monograph *Coalitions of the Willing and International Law* (CUP 2018). He is a member of the International Law Association (ILA, Mexican Branch) and of ITAM’s Centre for Studies on Security, Intelligence and Governance (CESIG). Alejandro Rodiles has ample experience as a former Mexican diplomat. Among other duties, he served as the legal adviser of the Permanent Mission of Mexico to the United Nations, in New York, during his country’s elected membership of the Security Council (2009-2010).

Professor Rodiles’ research has focused on the impacts of global governance mechanisms on the structures of international law, with a focus on security issues and treaty law. Also, he has been involved in projects on comparative international law, foreign relations law, infrastructures as regulation (InfraReg) and cities and international law. During his research fellowship at KFG, Rodiles will engage in a new project on rule of law ideas underlying contemporary infrastructural development projects.

The Kolleg-Forschungsgruppe “The International Rule of Law – Rise or Decline?” examines the role of international law in a changing global order. We assume that a systemically relevant crisis of international law of unusual proportions is currently taking place which requires a reassessment of the state and the role of the international legal order. Do the challenges which have arisen in recent years lead to a new type of international law? Do we witness the return of a ‘classical’ type of international law in which States have more political leeway? Or are we simply observing a slump in the development of an international rule of law based on a universal understanding of values? What role can, and should, international law play in the future?

The Research Group brings together international lawyers and political scientists from three institutions in the Berlin-Brandenburg region: Freie Universität Berlin, Humboldt-Universität zu Berlin and Universität Potsdam. An important pillar of the Research Group consists of the fellow programme for international researchers who visit the Research Group for periods up to two years. Individual research projects pursued benefit from dense interdisciplinary exchanges among senior scholars, practitioners, postdoctoral fellows and doctoral students from diverse academic backgrounds.