Politics and Governance (ISSN: 2183–2463)
2023, Volume 11, Issue 3, Pages 145–156
https://doi.org/10.17645/pag.v11i3.6718

Article

Shaping Global Public Spheres Through International Law: An Investigation Into International Climate Change Law

Moritz Vinken

Max Planck Institute for Comparative Public Law and International Law, Germany; vinken@mpil.de

Submitted: 26 January 2023 | Accepted: 24 May 2023 | Published: 31 August 2023

Abstract
This article makes three arguments to contribute to this thematic issue's intention of examining the role of public spheres in global politics. To begin with, it attempts to develop the concept of "strong" public spheres to include plenary organs of international institutions. It believes in the potential of this concept as a heuristic fiction. The study then examines the role of international law in shaping global public spheres and their role in global politics. International law's characteristics have contributed to the current incomplete manifestations of global publics. Not only has international law constructed the institutional frameworks of the "strong" public sphere within international institutions, but it has also integrated civil society actors into the deliberative processes of will formation of these institutions. Finally, this research turns to international climate change law as a case study. The institutional structures created by international climate change law have not only created one "strong" public sphere in the form of the conference of the parties but rely on a second "strong" global public, the Intergovernmental Panel on Climate Change, which aims to institutionalise the global climate science community without abandoning an intergovernmental structure. What is more, the paradigm shift accompanying the Paris Agreement has made global climate change governance increasingly reliant on an active transnational global public sphere.

Keywords
global public spheres; international climate change law; public international law; public sphere theory

Issue
This article is part of the issue "Publics in Global Politics" edited by Janne Mende (Max Planck Institute for Comparative Public Law and International Law) and Thomas Müller (Bielefeld University).

1. Introduction: Global Governance and Public Spheres

Global governance studies have demonstrated how the relationship between publics and global politics has profoundly changed. This transformation has affected the manifestations of publics present in the global realm and how they "shape and are shaped by global politics" (Mende & Müller, 2023, p. 95). This observation presupposes a certain understanding of what might constitute a public at a global scale.

Fraser defines a public, or a public sphere, as a "space for the communicative generation of public opinion" and "a vehicle for marshalling [as well as channelling] public opinion as a political force" (Fraser, 2014, p. 7). Nevertheless, the features and functions of an *Öffentlichkeit* (i.e., public) have been developed and theorised in relation to the territorial nation-state and its imagined community, its propagated national identity (Habermas, 1962). In the context of the Westphalian nation-state, the public sphere is clearly theorised as distinct from the state: "Although the state is so to speak the executor of the public political sphere, it is not a part of it… The public sphere [is to be understood] as a sphere which mediates between society and the state (…)" (Habermas et al., 1974, p. 115). Still, public sphere theory also acknowledges that certain organs of the state may operate as a public sphere. With the emergence of parliamentary sovereignty, two distinguishable types of public spheres emerge, the so-called "weak" publics—civil society which generates public opinion but not laws (Fraser, 1990, p. 75; Habermas, 1992, pp. 373–382)—and "strong" publics—structures of public deliberation within the state (such as parliament) whose deliberations may result in sovereign law-making. In this domestic context,

the role of law within the interplay between the state and the public sphere(s) is twofold: On the one hand, the law is supposed to codify the general interest articulated by the public (Fraser, 2014, pp. 9, 13). On the other hand, and structurally more important, the law dictates the relationship between the state and society (regarding the normative potential of law for the creation of (European) society, see von Bogdandy, 2022). It is the role of the law to protect how "weak" publics generate public opinion and control the state (Marxsen, 2011, p. 217), as well as to regulate how strong publics are constituted and make use of state power.

In contrast to this established theorisation, the notion of a public at the global level is a subject of considerable discussion. Evidently, the same characteristics and standards of a public sphere at the national level cannot be promisingly applied to the global scale simply because the conditions of an emerging public sphere differ greatly from the national context (Zürn, 2021, p. 162). There is nothing remotely comparable to a sovereign state at the global level, nor is there a comparable imagined community or society. Faced with these strikingly different constellations, some scholars state the absence of a normatively meaningful political public sphere and proceed to examine the effects of such an absence (Zürn, 2021).

Compared to such a radical conclusion, it may be just as promising to investigate which kind of "lesser" manifestations of publics have emerged in the global political system, what kind of (imagined) community these manifestations have contributed to, and to what extent they participate in global politics. The editorial of this thematic issue develops a conceptual framework for this purpose (Mende & Müller, 2023). The editors distinguish four types of manifestations of publics at the global level: audiences, discursive spheres, institutions, and public interests. This article aims to contribute to this framework by analysing the role of international law in the process of shaping the publics at the global level and integrating them into processes of global politics. Just as law's decisive role in shaping the relationship between the state and public sphere has been analysed in the domestic context, so international law deserves to be investigated in its role for global publics.

Firstly, this article will reconsider the notion of the global public sphere, proposing an understanding of this concept that includes the plenary organs of international institutions (Section 2.1). Thereafter, it will suggest that international law has contributed to the development of the current landscape and manifestations of global publics and has played an important role in its conceptualisation (Section 2.2). This article will then turn to international climate change law and demonstrate that it has been the scene of a conscious and continual process of shaping manifestations of global public spheres (Section 3). I suggest that international law pursues and promotes a certain vision for global publics and their role in global politics. The intention is to lay the groundwork for further critical perspectives regarding the necessity to rethink the critical function of public sphere theory in a global context and how the international legal system, in particular the climate regime, aims at including non-state actors.

2. Global Public Spheres and International Law

2.1. The Global Public Sphere in Theory

A global political system has solidified, which functionally requires a public sphere or public spheres (Zürn, 2021, p. 161). Still, a public sphere comparable to that of the national context does not exist at the global level and, in the absence of world government, cannot exist. Still, efforts have been made to theorise global publics spheres in the current context of global politics and the international legal order. These efforts approach the concept of a public sphere as a "heuristic fiction" (Vaihinger, 1913), a pragmatic concept that derives its critical thrust from the process of its application to an institutional reality, which does not (yet) fully satisfy the concept's criteria. This means that theorisations of a global public sphere must develop their normative and legitimacy-generating functions in light of the current manifestations of such spheres. If not, such a conceptualisation cannot generate normative thrust in the first place.

Most of the efforts to theorise such global public spheres have focused on the notion of transnational publics (Nash, 2014). This echoes the central idea of opposing the public sphere to the state to act as a counterweight and keep the latter in check (Fraser, 1990, p. 75). These transnational publics have mostly been theorised as opposing the institutions created by the inter-national legal order, hegemonic states, and influential private industries (Habermas, 2008, p. 10, instead speaks of a transnational level of world society and therein includes some international organisations). While this article will follow the widely accepted understanding of the transnational public sphere, the conceptualisation of global public spheres that I propose attempts to transpose another aspect of public sphere theory to the global context: the idea of "strong" publics developed by Fraser (Fraser, 1990, pp. 75–76, 1991). With the emergence of parliamentary democracy, Fraser observes the emergence of strong publics as the "publics whose discourse encompasses both opinion-formation and decision-making," "a locus of public deliberation culminating in legally binding decisions" (Fraser, 1990, p. 75). Certainly, in the absence of a democratic world-state, a strong public comparable to that of a parliament does not exist at the global level. Nevertheless, following the rationale of the existing inter-national legal system, the notion of "strong" public might be beneficially adapted to the global level and its inter-state characteristics.

With the advent of global governance and the multiplication of international organisations and other international institutions, interstate cooperation has, to some

extent, detached itself from the original Hobbesian vision of the international order. The international organisations that have emerged usually have plenary bodies, where representatives of all member states meet regularly. These plenary organs typically have some form of decision-making power (even if often only regarding the internal functioning of the organisation and, beyond that, only via formally non-binding instruments, as is the case for the UN General Assembly). In general, these plenary bodies serve as the central deliberative organs and constitute a discursive sphere dedicated to contributing to over-arching opinion formation and consensus-building. As such international organisations create political spaces for the articulation of common interests. Their deliberative organs are not only instruments for managing common problems but must also be seen as institutionalised fora of global politics (see Klabbers, 2005 on the international organisation as *agora*), as "space[s] for the communicative generation of [global, inter-national] public opinion" (Fraser, 2014, p. 7).

The theorisation of a global public sphere applied in this article transcribes the distinction between "strong" and "weak" publics, developed by Fraser, to the global level by distinguishing between the "weak" public sphere of a transnational civil society and the "strong" public sphere that manifests in the deliberative plenary bodies of international organisations and institutions. In the typology of public spheres, suggested by Mende and Müller, these strong public spheres fall in the category of institutions (Mende & Müller, 2023). Clearly, they differ strongly in their characteristics from their national counterparts due to the international legal framework they are situated in. Transposing this dual understanding of a public sphere to the global level means that, on the one hand, it encompasses inter-national public spheres, which manifest in the deliberative plenary organs of international organisations and institutions, and, on the other hand, transnational public spheres composed of civil society actors.

Several arguments have been raised against such and similar theorisations. Among those is the argument that even within the deliberative organs of international organisations, the member states of these organisations continue to act in a particularistic manner following their own interests and are accountable (if at all) only to their own constituencies. Even in cases of deliberation leading to consensus, "the convergence of states' interests around a set of shared values or programmatic objectives should not be confused with 'publicness' " (Eriksen & Sending, 2013, p. 336; similarly, Habermas, 2005). However, Habermas himself thinks that an international order capable of a global public sphere does not necessarily require the complete disappearance of the states and their interests into that international order and its communicative spheres (Habermas, 2005, p. 229). On the contrary, we can observe that the density of international organisations, as well as the deliberative practices within these institutions, have forced states to cooperate and compromise. It is the discursive sphere created by international organisations and institutions that acts as a melting pot in which the particularistic negotiation positions of states can fuse around shared values (von Bogdandy & Habermas, 2013, p. 301). This has even gone so far that states consider themselves to be part of an international community, even if, of course, they do not always act accordingly (see Lindberg, 2014). This international community is composed of a network of international institutions and organisations that contain deliberative organs which act as spaces for the creation of one specific form of public opinion: the inter-state public opinion (Johnstone, 2011, p. 18; Mitzen, 2005, pp. 406–408).

A second argument raised against the presence of strong publics at the global level is the fact that, according to Fraser's conceptualisation, the "strong" public sphere is supposed to be capable of binding and enforceable law-making and must be accountable to the "weak" public sphere (Fraser, 1990, p. 75). These conditions are not met in a manner comparable to the context of a democratic nation-state: It lacks an overarching democratic world-state equipped with an elected "strong" public sphere in which all parties engage on equal footing (Eriksen & Sending, 2013, p. 222). Moreover, the "weak" transnational public sphere that is in the process of formation, emerges under very different circumstances and with very different characteristics than in the context of a democratic nation-state. The most apparent difference to the context of the nation-state is that both these spheres are much further removed from the concerned individuals than in the case of the domestic publics. This is why Habermas suggests a dual strategy that considers both individuals (world citizens) and states as the relevant subjects from which the legitimacy of international public authority needs to derive (Habermas, 2005, p. 244). The "strong" public spheres at the global level derive their legitimacy from the representatives of nation-states (which act as intermediaries for the national demos) irrespective of the political system of the nation-state. Additionally, the space for political negotiations and elaborations of common views is suffused with power imbalances and unequal opportunities despite the formally egalitarian plane of sovereign equality (Eriksen & Sending, 2013, p. 229). Finally, the legal instruments of the existing and fragmented international organisations are often formally non-binding and even less enforceable (Eriksen & Sending, 2013, p. 229). Nevertheless, this does not necessarily mean that they are devoid of authoritative character, for example, soft law instruments often play a functionally equivalent role to hard law (Pauwelyn et al., 2014; von Bogdandy et al., 2017; White, 2016). The reality of an inegalitarian international institutional landscape, which is fragmented along a multitude of substantive and geographic lines should not lead to the conclusion of the inexistence of a new form of "strong" sectoral public spheres. This would

risk depriving the concept of public sphere of analytical, critical, and normative potential at the global level.

Of course, the theorisation of "strong" global public spheres presented here harbours risks of losing a degree of the critical force intrinsic to its conceptualisation, namely, the normative legitimacy and political efficacy of public opinion developed in the context of the nation-state (Fraser, 2014, p. 20). In applying this understanding, I do not wish to turn a blind eye to the need to rethink legitimacy and political efficacy as critical functions for a theorisation of a global public sphere or to ignore the fact that these observable forms of "strong" global publics are often exposed to and impotent towards the domination by hegemonic states, a-politicised economic rationales, and transnational private actors. Furthermore, I do not suggest that these "strong" publics sufficiently legitimate all acts of international institutions. On the contrary, my intention is to develop a concept that can incorporate the lesser, "incomplete" (Eriksen & Sending, 2013, p. 215) forms of publics that have emerged at the global level and, in doing so, make these forms of publics more accessible to critique. I suggest that the conceptualisation of "strong" global publics can be analytically useful in identifying those institutions which should be conceived as part of rudimentary global public spheres and open these institutions to being scrutinised by a concept that has a critical normative function and potential. Identifying the existing rudimentary "strong" public spheres might constitute a basis for further inquiries into the presence or absence of the necessary critical functions of public spheres and for the necessary rethinking of legitimacy and political efficacy as critical functions.

2.2. International Law and Global Public Spheres

The editorial of this thematic issue does not specifically address the role of international law in the interrelationship between publics and global politics (Mende & Müller, 2023). Nevertheless, international law is key—the understanding of international law employed here is not restricted to its established sources, such as treaties, custom, and general principles, but extends to international institutions' (soft) legal instruments. Despite being an increasingly influential phenomenon of transnationalisation, international law still plays a central role in canalising the processes of global politics. Moreover, in the formation of a global public sphere, international law plays a role comparable to domestic law at the level of the nation state. Of course, international law faces multiple limitations unknown to domestic law. Nevertheless, similarly to national law, international law codifies the result of a general interest articulated by the "strong" public spheres at the international level (e.g., in the form of legal instruments adopted by the plenary bodies of international organisations). Additionally, it dictates the organisational structure of these "strong" publics, their functioning, and how they integrate the public opinion generated by "weak" publics, for example, with the inclusion of certain non-state actors in deliberative processes and the formation of public opinion. It comes as no surprise then that the constitutionalisation of international law has been considered a prerequisite for global public spheres to emerge (Brunkhorst, 2002; Habermas, 2008). Consequently, international law has actively shaped the manifestations of public spheres and institutionalised their role in global politics. Although many manifestations of global publics also develop outside the purview of international law, or even in reaction to its insufficiencies, international law embodies a certain idea of global publics, their manifestations, and their role in global politics.

Public international law has always been largely state-centric. It follows a private law paradigm and is classically portrayed as "a horizontal order of co-existence based on consent" (for a critical engagement with this see von Bogdandy et al., 2017, p. 118). With the advent of global governance, this paradigm has become increasingly inadequate to describe a legal order that has developed a sophisticated institutional structure, which has heavily altered horizontal relations between states and how negotiations take place, compromises are articulated, and consensus or, in some cases, sufficient majorities are found. This institutional structure of international law is particularly marked by the success of international organisations, which have created political spaces for the articulation of common interests (Klabbers, 2005).

However, with their last big surge of success in the 1990s and early 2000s, also came an increasing loss in clarity of their legal conceptualisation, if they ever had any (Golia & Peters, 2022, p. 25). Simultaneously, international organisations and their bureaucracies have increasingly begun to wield and exercise considerable amounts of public authority (Biermann & Siebenhüner, 2009; von Bogdandy et al., 2017). International legal scholars quickly grew aware of the issues of lacking legitimacy, transparency, and accountability of these institutional structures and their authoritative acts. Consequently, considerable efforts were undertaken to further develop the international legal framework in order to equip it with the necessary instruments to fully grasp, control, and legitimise these authoritative acts. Such attempts can be found in fields like international institutional law, global constitutionalism, global administrative law, and the international public authority approach. Some of these attempts were explicitly keen on incorporating discourse theory and public sphere theory into their normative frameworks (Goldmann, 2016). This indicates the critical potential of applying public sphere theory analytically as well as critically to international legal frameworks.

While the normative aspirations that try to grapple with these developments are still being refined and further adapted to the ever-changing reality, the existing legal structures of international organisations have clearly already played a part in the institutionalisation of certain manifestations of global public spheres within processes of global politics. International institutional law "provide[s] for the legal constructions constituting a

space for politics" (Venzke, 2008, p. 1425) for an "international community." These legal constructions have established the plenary bodies as a form of "strong" global public spheres. The international bureaucracies that have developed around these "strong" publics, of course, do not constitute global public spheres themselves, but they have considerable influence over the formation of opinion that takes place within the "strong" global publics of international organisations (see Section 3.2).

Moreover, international law has not only contributed to the specific manifestations of "strong" global publics, but it has also, from the very origins of international institutional law, influenced the institutionalised manifestations of emerging "weak" transnational spheres. As Habermas et al. (1974, p. 115) state, "[t]he public sphere [is to be understood] as a sphere which mediates between society and the state." Just as law organises this process of mediation at the national level so does international law at the global level, even if not with the same all-encompassing authority. By integrating a varied range of non-state actors in the deliberative processes of international organisations, international institutional law articulates a certain understanding of what is to be considered global society and what it considers to be the "weak" transnational public spheres, which should mediate between the "strong" global public spheres within international organisations and its imagined/constructed global society.

2.3. International Organisations and the Inclusion of Non-State Actors

Many public sphere theorists have begun to develop a theorisation of transnational public spheres (for an overview, see Fraser, 2021). This process, as this thematic issue indicates, is far from being concluded. A part of the discussion has revolved around the questions of to what extent NGOs and other civil society groups should be considered part of this new transnational public sphere and to what extent they represent societal public opinion. International law has been rather clear in its programmatic attitude towards these questions. From very early on, it viewed these actors as part of a public sphere, might it be from different national spheres or one transnational sphere. International institutional law has from its earliest days been influenced by these actors.

The involvement of NGOs and other non-state actors in international legal processes goes back to the very formation of international organisations. They grew out of and in symbiosis with industrial, professional, academic, and other early forms of non-governmental organisations, or, to put it differently, civil society associations (Charnovitz, 1997; Golia & Peters, 2022, p. 29). Throughout the last two centuries, one can frequently observe an "oscillation" between "private trans-national associations [and] inter-governmental organizations" not seldomly resulting in the hybridity of institutions (Peters & Peter, 2012, p. 187). The (historic) role of NGOs in the formation of the global political system through international law and international institutions is not disputed. It is well-recognised that NGOs play an important role in the "development, interpretation, judicial application, and enforcement of international law" (Charnovitz, 2006, p. 352). International law itself formalised (at least some of) the roles played by NGOs. For example, Article 71 of the UN Charter pertaining to the functioning of the Economic and Social Council (ECOSOC) institutionalised the possibility of consultation with NGOs. This set a benchmark for other UN institutions so that today (if certain conditions are met) some participation of NGOs is generally accepted (Charnovitz, 1997, pp. 249–256). As such, NGOs have contributed to the "creation of a new international ethos" (Törnquist-Chesnier, 2010, p. 260), through their participation in the various processes surrounding international law.

What can one conclude about the manifestations of "strong" and "weak" global public spheres and the role of international law? Some have concluded that NGOs play such a central role in the decision-making processes of international organisations that they cannot fall into the category of "weak" publics (Eriksen & Sending, 2013, p. 229). Still, the framework and rationale behind international law seem to contradict this assumption. States are still the central subjects of international law, the centre of the deliberative process, and are in the driving seat of decision-making within the plenary bodies of international organisations. Therefore, NGOs and other civil society actors do not become part of the "strong" global public constructed by international law. Rather, international law has awarded them an important role as voices of a transnational public sphere in the deliberative processes of international organisations even if it can be disputed whether they can fill that role in a normatively sufficient manner.

By integrating NGOs and other civil society actors into deliberative processes, international institutional law has established a particular relation between these "weak" and "strong" public spheres. In doing so, international law has supported the conception of international organisations and institutions as a communicative space that, next to its member states and the "strong" publics they form in plenary bodies, consciously included a wide range of actors that it perceives as a part of some form of the transnational public sphere (Scholte, 2016). In this conception, international organisations are capable of generating a public opinion beyond that of the convergence of self-interested positions of individual member states, ideally leading to the creation of a distinct "will" of the international organisation (the notion of "distinct will" also operates as a heuristic fiction; Klabbers, 2015, p. 13).

2.4. The Proceduralisation of International Law and Its Institutionalising Effect on Global Publics

A final development in international law has played an important role in the conceptualisation of global public

spheres. This is the *proceduralisation* of international law. Several fields of international law, especially international environmental law, have been witnessing the establishment of "procedural frameworks for consensus-building, long-term interaction, standard-setting, and performance assessment" (Brunnée, 2019, p. 106).

The *proceduralisation* of international law has raised the criticism that international law had started to yield to the "governance mindset" and to "managerialism" (Koskenniemi, 2007, pp. 13, 29). This would weaken international environmental law as it would not lead to an "enhancement of substantive rules, but their displacement by procedure" (Brunnée, 2019, p. 110) making the subject matter "amenable for diplomatic treatment" (Koskenniemi, 1991, p. 78). But a more constructivist reading of this *proceduralisation* uncovers that, because of it, international law "can operate as…a 'surface' for a thin (legal) community of political adversaries" (Brunnée, 2019, p. 113). The *proceduralisation* of international law strengthens its interactional characteristics. It is interactional because it stipulates that the emergence of legal obligations can only result on a basis of shared understandings and sustained practices of legality, which require institutionalised fora for continuous and regular interaction that allow input by the relevant actors (Brunnée, 2004, p. 51; Brunnée & Toope, 2010, Chapters 1 and 4). Through its *proceduralisation*, international law develops international organisations and their laws more and more as a "surface," a space, a forum for communicative interactions that lead to the formation of opinions and understandings of an (international) community.

3. International Climate Change Law: A Specific Vision for Global Publics

The previous observations on the role of international law have been kept very general, conscious of its persisting fragmentation (Koskenniemi & Leino, 2002; Peters, 2017). Depending on the field in question, international law has contributed to different institutional and procedural landscapes. Of course, this means that it has affected the manifestations of global publics differently, depending on the area of law in question. Consequently, the fragmentation of international law translates into a fragmentation of the landscape of global publics. Thus, uncovering the role of international law in the architecture of global publics can only be done one fragment and one "sectoral" global public at a time (Zürn, 2021, p. 163). International climate change law is a particularly interesting object of inquiry due to its institutional structures and processes that rely on the participation of a large range of actors. It has been the scene of a conscious and continual process of shaping manifestations of global public spheres and integrating private non-state actors as members of a transnational public sphere in processes of global climate change politics. Especially with the Paris Agreement (2015), international climate change law has undergone a paradigm shift (Franzius, 2017), envisaging a catalytic regime that is increasingly reliant on strong and active global publics.

3.1. Multilateral Environmental Agreements

International environmental law relies on multilateral environmental agreements (MEAs), which are international treaties between multiple state parties with an environmental subject matter (Staal, 2019, p. 24). Once concluded, they form the basis for further development of international environmental law in a specific subject matter. MEAs establish a specific kind of institution, a plenary treaty body, that convenes representatives of all treaty parties at regular intervals determined by the MEA. They are called conferences of the parties (COP) and/or meetings of the parties (MOP) and are charged with further developing the legal regime of the MEA. The legal character of these COPs/MOPs is disputed, being neither an international organisation with an independent legal personality nor mere diplomatic conferences (Staal, 2019, p. 30).

The relevant framework convention in the field of international climate change law is the UNFCCC. As a framework convention, it does not contain fully developed substantive obligations, but rather general principles to facilitate "[the] gathering and exchange of information, and [the] establish[ment] of institutions and processes for further treaty development" (Staal, 2019, p. 27). This has had one significant side effect: most of its normative thrust is directed towards creating institutionalised fora and procedures aimed at the development of shared understandings and sustained practices of legality. Therefore, the primary intention is to create a "strong" interstate public sphere which offers a communicative space for the generation of common opinions that can then be transposed into legal instruments.

Constructivist international relations as well as international law scholars have supported this understanding of the institutional structures established by MEAs. They have argued that such legal frameworks not only promote the creation of spaces for the development of social practices and interactions but also have considerable influence over international politics, as they allow for deeper levels of shared understanding to build upon (Brunnée & Toope, 2000; Brunnée, 2004). In this regard, the structures of MEAs are a central phenomenon of the *proceduralisation* of international law. In the climate regime, this *proceduralisation* is not only limited to the framework convention (UNFCCC) but has increasingly spread to the subsequent agreements and protocols, which were adopted under the framework convention. While the Kyoto Protocol still followed a top-down approach (nearly universal to international law) by positing legally binding, substantive targets, and timetables for emission reductions, the Paris Agreement adopted more of a bottom-up approach regarding climate mitigation efforts, thereby placing procedural obligations

ever more at the centre of the climate regime. By replacing internationally binding emission reduction obligations with the obligation of conduct for nation-states to regularly submit self-imposed (necessarily progressing; Paris Agreement, 2015, Article 4.3) nationally determined contributions (NDCs; Voigt & Ferreira, 2016), the Paris Agreement "places the catalytic logic at its core, constituting…perhaps the first major catalytic regime" (Hale, 2018, p. 16). This catalytic logic is grounded on procedural obligations with an unmistakable emphasis on transparency obligations and the process of global stocktaking (Paris Agreement, 2015, Articles 13 and 14). It hopes to stimulate first-movers and, via the iteration of commitments, builds on the transfer of experiences and an increasing effect of prior action to subsequent action (Hale, 2018, pp. 3, 16). The reliance on "binding procedural obligations…are meant to drive substantive steps by the parties" (Brunnée, 2018, p. 103).

The generation of common understandings and opinions within these "strong" global publics spheres is increasingly dependent on insights from and on communication with non-state actors, such as civil society actors and the scientific communities (Bodansky & Diringer, 2010, pp. 5–11; Schiele, 2014, p. 30). It is in this regard that the international bureaucracy behind the UNFCCC has taken an increasingly central role.

3.2. Orchestration and Global Publics

Orchestration has been defined as a "process whereby states, or intergovernmental organizations initiate, guide, broaden, and strengthen transnational governance by non-state and/or sub-state actors" (Abbott & Snidal, 2009; Hale & Roger, 2013, p. 60). My contribution employs a wider understanding that also includes processes by which international institutions rely on each other regarding their governance efforts. Within the structures of MEAs, the reliance on orchestration becomes particularly apparent in the work of the secretariats (Hickmann et al., 2019). The secretariat of the UNFCCC was established under Article 8 of the Framework Convention (UNFCCC, 1992). Its main tasks are to provide the COP as well as the bodies established under the Convention with the necessary arrangements for their respective sessions, with services as required, to compile and transmit reports submitted to it by other bodies, and to ensure the necessary coordination with the secretariats of other relevant international bodies. The UNFCCC and similar MEAs have relied greatly on the secretariat's administrative mandate to organise and coordinate the functioning of their multilateral conventions and integrate and disseminate information compiled by other bodies within these processes and the larger UN context.

These international bureaucracies themselves do not constitute global public spheres, rather they take up a role of connecting the "strong" public sphere of the COP with other international institutions. This means that part of what international bureaucracies do is to introduce the knowledge and understandings developed by other international institutions often in exchange with non-state actors into the negotiation process of the "strong" global publics. The climate regime currently depends on such coordination of numerous other UN institutions related to environmental policy. These institutions are generally characterised by their limited substantive management responsibilities, their mandate to coordinate processes of policymaking, and their capacity to provide these processes with the necessary tools and information. One example is the UN Environment Programme (UNEP). Absent of management responsibilities, UNEP was mainly charged with the dissemination of information as well as the coordination of policymaking, initially between states, but increasingly also between the growing number of relevant UN agencies. Additionally, UNEP established relationships with NGOs, including those in the UN-guided processes of global environmental governance (Bodansky, 2010, pp. 29, 118).

The "strong" global public sphere of the COP is very much dependent on this orchestration as it provides the information necessary to form a common understanding and public opinion. The centrality of orchestration for the climate regime becomes particularly salient regarding the necessity of a common scientific basis. For this reason (amongst others), the UNFCCC established the permanent Subsidiary Body for Scientific and Technological Advice, acting as a "link between the scientific information provided by expert sources…on the one hand, and the policy-oriented needs of the COP" (https://unfccc.int/process/bodies/subsidiary-bodies/sbsta). In the climate regime, this scientific expertise is primarily provided by the Intergovernmental Panel on Climate Change (IPCC).

3.2.1. Integration and Institutionalisation of a Global Public of Climate Scientists

The IPCC has become an actor relying on a heavily institutionalised scientific network supplying the scientific basis for international climate negotiations (Beck & Mahony, 2018; Provost, 2019). It has been established as the "authoritative voice of international science" and must be understood as a science-policy "boundary organization" (Beck & Mahony, 2018, pp. 1, 3). The institutional structure of the IPCC reflects its position between the scientific and the political. Its plenary body is composed of representatives from all member states and approves the scientific reports conducted by the separate working groups which in turn are composed of scientists from the member states. The IPCC has developed formalised rules of procedure to assure the inclusion of relevant scientific evidence on global warming and ensure the correct representation of scientists from the Global South. Conscious of its work at the border between the political and the scientific, the IPCC

always tried to be clear regarding its position and has self-identified as a scientific body which was "policy relevant" but "policy neutral" (Beck & Mahony, 2018, p. 5). However successful the IPCC is in these regards, its institutional structure is intent on representing the global climate science community. It does so by combining an intergovernmental model of representation with the effort of formalising the procedures of the accumulation and assessment of scientific data. It seems that the IPCC represents the effort to institutionalise a global public sphere for the scientific community within the UN system—a strong public sphere at that. Even if the IPCC reports do not constitute any form of a binding legal instrument, they have become incredibly authoritative and the central scientific reference point within the framework of the UNFCCC.

3.2.2. The Reliance of the Conferences of the Parties on a Transnational Public Sphere

The institutional landscape previously outlined has also always aspired towards the mobilisation of civil society and other private actors. Within the UNFCCC framework, access and inclusion of non-state actors to a range of deliberative and participatory mechanisms around the COPs have continuously increased (Secretariat of the United Nations Framework Convention on Climate Change, 2006). This mirrors the general practice within the UN system, in which non-governmental organisations qualified in the matters of a given agreement are admitted as observers.

Cynically one could remark that "out of the many thousands of people only about a hundred actually did anything" (Bodansky, 2010, p. 108). This is true to the extent that only a fraction of the people attending the COPs/MOPs are involved in the inter-state diplomatic negotiations. But, as Bodansky (2010, p. 108) also notes, it is because "[i]nternational environmental conferences and processes…are multi-ring circuses," namely, "trade shows, public relations and educational arenas, and quasi-academic conferences," that "government operators do not operate freely. They are subject to a tight set of constraints, emanating from a wide array of actors" (see also Rietig, 2016). It is these actors and their roles that "represent an essential and unique feature of the climate regime and its ability for long-term momentum and ambition" (Klein et al., 2017, p. 51).

These yearly COPs then are much more than a meeting of the "strong" public sphere, the plenary treaty body of the UNFFC. It unites civil society actors from all over the globe and offers an institutional frame for the transnational public sphere they make up. This is not to say that this transnational public sphere did not begin to form before the establishment of the UNFCCC, but that the COP offers a space for the formation, solidification, and articulation of the public opinion of that transnational public sphere. What is more, it is also a space to hold the member states and the COP publicly accountable for their actions (or inactions). With the adoption of the Paris Agreement, this last role becomes ever more important. Its pledge and review system is built upon a legitimisation strategy that strongly relies on transparency and the accessibility of information on the member states efforts. The Paris Agreement and the subsequent COPs have continuously mentioned the importance of public participation in the climate regime and rely on the weak transnational public sphere to hold the member states accountable (examining the risks, Lee et al., 2012).

But with the Paris Agreement, the international climate regime places an additional task of scrutiny on the transnational public sphere, namely, to also hold private actors accountable to their commitments.

3.3. The Emerging Role of Transnational Publics in the Current Stage of Hybrid Multilateralism

Climate governance was never limited to the intergovernmental processes of the UNFCCC (Nasiritousi et al., 2014). Alternative arenas of transnational governance have developed various experiments in climate governance ranging from private carbon reporting, labelling, and offsetting schemes to the networks of sub-state actors, such as transnational city networks (Pattberg & Stripple, 2008, p. 369). The paradigm shift of the Paris Agreement reflected the attempt to include these transnational efforts at climate change governance within the UNFCCC. The Copenhagen COP (Copenhagen Climate Accord, 2009) laid the groundwork for establishing platforms for private actors to pledge and coordinate their climate mitigation efforts under the umbrella of the UNFCCC (Bäckstrand et al., 2017). These platforms for non-state actors follow a similar bottom-up logic established for member-state pledges. Both seek to unlock the agency of the actors they address (Hale & Roger, 2013, p. 64).

The platforms referred to here are the Lima–Paris Action Agenda (LPAA) and the Non-State Actor Zone for Climate Action (NAZCA). Both, the LPAA and NAZCA were launched at COP-20 in Lima, one year before the conclusion of the Paris Agreement (Lima Call for Climate Action, 2014). The LPAA offered a platform to showcase selected cooperative climate-action initiatives, while NAZCA is an online portal and aggregator of climate actions from substate and non-state actors, which is operated by the UNFCCC secretariat and relies on voluntary bottom-up reporting of actions, commitments, and pledges by actors (Bäckstrand & Kuyper, 2017). Additionally, two High-Level Climate Champions were created in the COP decision accompanying the Paris Agreement (Report of the Conference of the Parties on its twenty-first session, 2015), which were meant to effectively include non-state actors in climate change mitigation and adaptation efforts. Ahead of the COP-26, in 2020, these High-Level Climate Champions launched the Race to Zero Campaign, giving non-state actors a platform to pledge to achieve net zero carbon emissions by 2050 at the latest

(Hsu et al., 2018; https://unfccc.int/climate-action/race-to-zero-campaign).

Both the LPAA and the NAZCA as well as the appointment of the two High-Level Champions originated from the UNFCCC process and it is important to note the "special [orchestrating] role" the UNFCCC takes up by pursuing "a form of institutionalization that blurs the conventional distinctions between public and private, intergovernmental and transnational actors" (Hale & Roger, 2013, p. 61). What is striking is that the efforts of private actors are no longer merely seen "as alternatives to or substitutes for national and intergovernmental commitments, [but] as… complements to…national pledges" (Chan et al., 2015, p. 469). Moreover, "with universal membership, the UNFCCC [seemingly] provides the secretariat…[with] legitimacy to convene and orchestrate non-state initiatives in pursuit of public goals" (Chan et al., 2015, p. 470), which has resulted in the climate regime developing towards hybrid multilateralism. On the one hand, this is characterised by the bottom-up architecture regarding state pledges that depend on global publics to act as experts and watchdogs. On the other hand, it encourages pledges by non-state actors (not unsimilar to the pledges by states) and openly depends on their implementation efforts (Bäckstrand et al., 2017, pp. 574–575). However, what is still lacking regarding the institutional framework in charge of capturing non-state pledges is a transparency and accountability framework similar to the one of the Paris Agreement regarding the NDCs of nation-states (Bäckstrand & Kuyper, 2017, pp. 18–20; Streck, 2021; Voigt, 2016). It is in this regard that the climate regime currently relies even more on the scrutiny of the transnational public sphere that it has helped institutionalise around the COPs.

4. Conclusion

In order to contribute to this thematic issue, this article analyses how international law has contributed to shaping global publics and their role in global politics. It first attempts to translate the concept of "strong" public spheres to include plenary organs of international institutions. It does not do so to argue that these plenary organs sufficiently fulfil the functions of legitimacy and political efficacy of a public sphere, but because it builds on the potential of the concept of public sphere as a heuristic fiction. Understanding international institutions' plenary organs as incomplete "strong" public spheres allows us to critically assess their current role given the concept's critical potential.

International law's characteristics and developments have contributed to the state of institutionalisation of global publics. Not only has international law constructed the institutional frameworks of the "strong" public sphere within international institutions, it has also integrated NGOs as civil society actors into the deliberative processes of will formation of these institutions. Consequently, international law has institutionalised processes/spaces for representatives of "weak" transnational public spheres to play a role in the processes of global politics within these international institutions. The increasing *proceduralisation* of international law has underlined its role in the construction of global public spheres ever more clearly.

In particular, the institutional structures created by international climate change law have not only established one inter-state "strong" public sphere in the form of COPs but also rely on a second "strong" global public, the IPCC, which is unique as it aims to institutionalise the global climate science community without abandoning an intergovernmental structure. The paradigm shift accompanying the Paris Agreement has made international climate change law ever more reliant on an actively manifesting transnational global public sphere to exercise scrutiny over both member-states and private actors participating in the hybrid multilateralism of the climate regime.

Acknowledgments

I would like to thank Janne Mende and Thomas Müller as well as the other authors of this thematic issue for their helpful comments. Thanks also to Iona McEntee, Alexia Katsiginis, and Selina Mack.

Conflict of Interests

The author declares no conflict of interest.

References

Abbott, K. W., & Snidal, D. (2009). Strengthening international regulation through transnational new governance: Overcoming the orchestration deficit. *Vanderbilt Journal of Transnational Law*, *42*, 501–578.

Bäckstrand, K., & Kuyper, J. W. (2017). The democratic legitimacy of orchestration: The UNFCCC, non-state actors, and transnational climate governance. *Environmental Politics*, *26*(4), 764–788. https://doi.org/10.1080/09644016.2017.1323579

Bäckstrand, K., Kuyper, J. W., Linnér, B.-O., & Lövbrand, E. (2017). Non-state actors in global climate governance: From Copenhagen to Paris and beyond. *Environmental Politics*, *26*(4), 561–579. https://doi.org/10.1080/09644016.2017.1327485

Beck, S., & Mahony, M. (2018). The IPCC and the new map of science and politics. *WIREs Climate Change*, *9*(6), Article e547. https://doi.org/10.1002/wcc.547

Biermann, F., & Siebenhüner, B. (Eds.). (2009). *Managers of global change: The influence of international environmental bureaucracies*. MIT Press. https://doi.org/10.7551/mitpress/9780262012744.001.0001

Bodansky, D. (2010). *The art and craft of international environmental law*. Harvard University Press.

Bodansky, D., & Diringer, E. (2010). *The evolution of multilateral regimes: Implications for climate change*. Pew

Center on Global Climate Change. https://doi.org/10.2139/ssrn.1773828

Brunkhorst, H. (2002). Globalising democracy without a state: Weak public, strong public, global constitutionalism. *Millennium: Journal of International Studies*, *31*(3), 675–690. https://doi.org/10.1177/03058298020310030301

Brunnée, J. (2004). COPing with consent: Law-making under multilateral environmental agreements. *Leiden Journal of International Law*, *15*(1), 1–52. https://doi.org/10.1017/s0922156502000018

Brunnée, J. (2018). Procedure and substance in international environmental law and the protection of the global commons. In S. Cogolati & J. Wouters (Eds.), *The commons and a new global governance* (pp. 291–321). Edward Elgar Publishing. https://doi.org/10.4337/9781788118514.00023

Brunnée, J. (2019). *Procedure and substance in international environmental law* (Vol. 405). Brill. https://doi.org/10.1163/1875-8096_pplrdc_a9789004433007_02

Brunnée, J., & Toope, S. J. (2000). International law and constructivism: Elements of an interactional theory of international law. *Columbia Journal of Transnational Law*, *39*, 19–74.

Brunnée, J., & Toope, S. J. (2010). *Legitimacy and legality in international law: An interactional account*. Cambridge University Press. https://doi.org/10.1017/CBO9780511781261

Chan, S., Asselt, H., Hale, T., Abbott, K. W., Beisheim, M., Hoffmann, M., Guy, B., Höhne, N., Hsu, A., Pattberg, P., Pauw, P., Ramstein, C., & Widerberg, O. (2015). Reinvigorating international climate policy: A comprehensive framework for effective nonstate action. *Global Policy*, *6*(4), 466–473. https://doi.org/10.1111/1758-5899.12294

Charnovitz, S. (1997). Two centuries of participation: NGOs and international governance. *Michigan Journal of International Law*, *18*(2), 184–286.

Charnovitz, S. (2006). Nongovernmental organizations and international law. *The American Journal of International Law*, *100*(2), 348–372. https://doi.org/10.1017/s0002930000016699

Copenhagen Climate Accord, 2009, FCCC/CP/2009/11/Add.1. https://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf

Eriksen, S. S., & Sending, O. J. (2013). There is no global public: The idea of the public and the legitimation of governance. *International Theory*, *5*(2), 213–237. https://doi.org/10.1017/s1752971913000183

Franzius, C. (2017). *Das Paris-Abkommen zum Klimaschutz als Umweltvölkerrechtlicher Paradigmenwechsel* [The Paris Agreement as a paradigm shift in international climate change law] (Research Paper 3/2017). Forschungsstelle für Europäisches Umweltrecht.

Fraser, N. (1990). Rethinking the public sphere: A contribution to the critique of actually existing democracy. *Social Text*, *1990*(25/26), 56–80. https://doi.org/10.2307/466240

Fraser, N. (1991). Rethinking the public sphere: A contribution to the critique of actually existing democracy. In C. Calhoun (Ed.), *Habermas and the public sphere* (pp. 109–142). MIT Press.

Fraser, N. (2014). Transnationalizing the public sphere: On the legitimacy and efficacy of public opinion in a post-Westphalian world. In K. Nash (Ed.), *Transnationalizing the public sphere* (pp. 8–42). Polity Press.

Fraser, N. (2021). Neue Überlegungen zur Transnationalisierung der Öffentlichkeit [New reflections on the transnationalisation of the public sphere]. *Leviathan*, *49*(37), 139–159. https://doi.org/10.5771/9783748912187

Goldmann, M. (2016). A matter of perspective: Global governance and the distinction between public and private authority (and not law). *Global Constitutionalism*, *5*(1), 48–84. https://doi.org/10.1017/s2045381715000209

Golia, A. J., & Peters, A. (2022). The concept of international organization. In J. Klabbers (Ed.), *The Cambridge companion to international organizations law* (pp. 25–49). Cambridge University Press. https://doi.org/10.1017/9781108574242.003

Habermas, J. (1962). *Strukturwandel der Öffentlichkeit* [The structural transformation of the public sphere]. Suhrkamp.

Habermas, J. (1992). *Faktizität und Geltung* [Between facts and norms]. Suhrkamp.

Habermas, J. (2005). Eine politische Verfassung für die pluralistische Weltgesellschaft? [A political constitution for pluralistic world society?] *Kritische Justiz*, *38*(3), 222–247. https://doi.org/10.5771/0023-4834-2005-3-222

Habermas, J. (2008). Konstitutionalisierung des Völkerrechts und die Legitimationsprobleme einer verfassten Weltgesellschaft [Constitutionalization of international law and the issues of legitimation of a constituted world society]. In W. Brugger, U. Neumann, & S. Kirste (Eds.), *Rechtsphilosophie im 21. Jahrhundert* [Legal philosophy in the 21st century] (pp. 360–379). Suhrkamp.

Habermas, J., Lennox, S., & Lennox, F. (1974). The public sphere: An encyclopedia article (1964). *New German Critique*, *1974*(3), 49–55. https://doi.org/10.2307/487737

Hale, T. (2018). *Catalytic cooperation* (BSG Working Paper Series No. 26).https://www.bsg.ox.ac.uk/sites/default/files/2018-09/BSG-WP-2018-026.pdf

Hale, T., & Roger, C. (2013). Orchestration and transnational climate governance. *The Review of International Organizations*, *9*, 59–82. https://doi.org/10.1007/s11558-013-9174-0

Hickmann, T., Widerberg, O., Lederer, M., & Pattberg, P. (2019). The United Nations Framework Convention on Climate Change Secretariat as an orchestrator in global climate policymaking. *International Review*

of Administrative Sciences, *87*(1), 21–38. https://doi.org/10.1177/0020852319840425

Hsu, A., Widerberg, O., Weinfurter, A., Roelfsema, M., Chan, S., Luthekemoller, K., & Bakhtiari, F. (2018). *Bridging the emissions gap: The role of non-state and subnational actors—Pre-release version of a chapter of the forthcoming UN environment emissions gap report 2018*. United Nations Environment Programme. https://wedocs.unep.org/20.500.11822/26093

Johnstone, I. (2011). *The power of deliberation*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780195394931.001.0001

Klabbers, J. (2005). Two concepts of international organization. *International Organizations Law Review*, *2*, 277–293. https://doi.org/10.1163/15723740577509371 7

Klabbers, J. (2015). *An introduction to international organizations law* (3rd ed.). Cambridge University Press. https://doi.org/10.1017/cbo9781139946308

Klein, D., Carazo, M. P., Doelle, M., & Bulmer, J. (Eds.). (2017). *The Paris Agreement on climate change: Analysis and commentary*. Oxford University Press.

Koskenniemi, M. (1991). Peaceful settlement of environmental disputes. *Nordic Journal of International Law*, *60*, 73–92. https://doi.org/10.1163/157181091x00232

Koskenniemi, M. (2007). The fate of international law: Between technique and politics. *Modern Law Review*, *70*(1), 1–30. https://doi.org/10.1111/j.1468-2230.2006.00624.x

Koskenniemi, M., & Leino, P. (2002). Fragmentation of international law? Postmodern anxieties. *Leiden Journal of International Law*, *15*(3), 553–579. https://doi.org/10.1017/s0922156502000262

Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997, FCCC/CP/1997/L.7/Add.1. https://unfccc.int/resource/docs/convkp/kpeng.pdf

Lee, M., Armeni, C., de Cendra, J., Chaytor, S., Lock, S., Maslin, M., Redgwell, C., & Rydin, Y. (2012). Public participation and climate change infrastructure. *Journal of Environmental Law*, *25*(1), 33–62. https://doi.org/10.1093/jel/eqs027

Lima Call for Climate Action, 2014, Decision 1/CP.20. FCCC/CP/2014/10/Add.1. https://unfccc.int/resource/docs/2014/cop20/eng/10a01.pdf#page=2%22

Lindberg, T. (2014). *Making sense of the "international community*." Council on Foreign Relations. https://www.cfr.org/sites/default/files/pdf/2014/01/IIGG_WorkingPaper14_Lindberg.pdf

Marxsen, C. (2011). *Geltung und Macht—Jürgen Habermas' Theorie von Recht, Staat und Demokratie* [Validity and power—Jürgen Habermas' theory of law, state and democracy]. Wilhelm Fink. https://doi.org/10.30965/9783846752074

Mende, J., & Müller, T. (2023). Publics in global politics: A framing paper. *Politics and Governance*, *11*(3), 91–97.

Mitzen, J. (2005). Reading Habermas in anarchy: Multilateral diplomacy and global public spheres. *American Political Science Review*, *99*(3), 401–417. https://doi.org/10.1017/s0003055405051749

Nash, K. (Ed.). (2014). *Transnationalizing the public sphere*. Polity Press.

Nasiritousi, N., Hjerpe, M., & Linnér, B.-O. (2014). The roles of non-state actors in climate change governance: Understanding agency through governance profiles. *International Environmental Agreements: Politics, Law and Economics*, *16*(1), 109–126. https://doi.org/10.1007/s10784-014-9243-8

Paris Agreement, 2015, FCCCC/CP/2015/L.9/Rev.1. https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Pauwelyn, J., Wessel, R. A., & Wouters, J. (2014). Informal international law as presumptive law: Exploring new modes of law-making. In R. Liivoja & J. Petman (Eds.), *International law-making* (pp. 75–102). Routledge. https://doi.org/10.4324/9780203074879-14

Pattberg, P. H., & Stripple, J. (2008). Beyond the public and private divide: Remapping transnational climate governance in the 21st century. *International Environmental Agreements: Politics, Law and Economics*, *8*, 367–388. https://doi.org/10.1007/s10784-008-9085-3

Peters, A. (2017). The refinement of international law: From fragmentation to regime interaction and politicization. *International Journal of Constitutional Law*, *15*(3), 671–704. https://doi.org/10.1093/icon/mox056

Peters, A., & Peter, S. (2012). International organizations: Between technocracy and democracy. In B. Fassbender & A. Peters (Eds.), *Oxford handbook of the history of international law* (pp. 170–197). Oxford University Press. https://doi.org/10.1093/law/9780199599752.003.0008

Provost, G. (2019). Rigorous and relevant: Applying lessons from the history of IPCC special reports to the post-Paris Agreement world. *Harvard Environmental Law Review*, *43*(2), 507–546.

Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 2015, Decision 1/CP.21. FCCC/CP/2015/10/Add.1. https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf

Rietig, K. (2016). The power of strategy: Environmental NGO influence in international climate negotiations. *Global Governance: A Review of Multilateralism and International Organizations*, *22*(2), 269–288. https://doi.org/10.1163/19426720-02202006

Schiele, S. (2014). *Evolution of international environmental regimes*. Cambridge University Press. https://doi.org/10.1017/cbo9781107358553

Scholte, J. A. (2016). Relations with civil society. In J. Katz Cogan, I. Hurd, & I. Johnstone (Eds.), *The*

Oxford handbook of international organizations (pp. 712–729). Oxford University Press. https://doi.org/10.1093/law/9780199672202.001.0001

Secretariat of the United Nations Framework Convention on Climate Change. (2006). *Admission of Observers: Intergovernmental and Non-governmental Organizations: Note by the Secretariat* (FCCC/CP/2006/2). https://digitallibrary.un.org/record/585424

Staal, T. (2019). *Authority and legitimacy of environmental post-treaty rules*. Bloomsbury. https://doi.org/10.5040/9781509925599

Streck, C. (2021). Strengthening the Paris Agreement by holding non-state actors accountable: Establishing normative links between transnational partnerships and treaty implementation. *Transnational Environmental Law*, *10*(3), 493–515. https://doi.org/10.1017/s2047102521000091

Törnquist-Chesnier, M. (2010). NGOs and international law. *Journal of Human Rights*, *3*(2), 253–263. https://doi.org/10.1080/1475483042000210766

UNFCCC, 1992, FCCC/INFORMAL/84 GE. 05–62220 (E) 200705n. https://unfccc.int/resource/docs/convkp/conveng.pdf

Vaihinger, H. (1913). *Die Philosophie des Als Ob* [Philosophy of the as if] (2nd ed.). Reuther & Reichard.

Venzke, I. (2008). International bureaucracies from a political science perspective—Agency, authority and international institutional law. *German Law Journal*, *9*(11), 1401–1428. https://doi.org/10.1017/s2071832200000523

Voigt, C. (2016). The compliance and implementation mechanism of the Paris Agreement. *Review of European, Comparative & International Environmental Law*, *25*(2), 161–173. https://doi.org/10.1111/reel.12155

Voigt, C., & Ferreira, F. (2016). 'Dynamic differentiation': The principles of CBDR-RC, progression and highest possible ambition in the Paris Agreement. *Transnational Environmental Law*, *5*(2), 285–303. https://doi.org/10.1017/s2047102516000212

von Bogdandy, A. (2022). *Strukturwandel des öffentlichen Rechts* [The structural transformation of public law]. Suhrkamp.

von Bogdandy, A., Goldmann, M., & Venzke, I. (2017). From public international to international public law: Translating world public opinion into international public authority. *European Journal of International Law*, *28*(1), 115–145. https://doi.org/10.1093/ejil/chx002

von Bogdandy, A., & Habermas, J. (2013). Diskurstheorie und Völkerrecht: Ein Interview mit Jürgen Habermas [Discourse theory and international law: An interview with Jürgen Habermas]. *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, *73*, 295–303.

White, N. D. (2016). Lawmaking. In J. Katz Cogan, I. Hurd, & I. Johnstone (Eds.), *The Oxford handbook of international organizations* (pp. 559–580). Oxford University Press. https://doi.org/10.1093/law/9780199672202.001.0001

Zürn, M. (2021). Öffentlichkeit und Global Governance [Public sphere and global governance]. *Leviathan*, *49*(37), 160–187. https://doi.org/10.5771/9783748912187-160

About the Author

Moritz Vinken is a PhD candidate and research fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany. He studied law at the Humboldt University Berlin (*Erstes Staatsexamen*), the Université Panthéon Assas, Paris (*Maîtr. en droit*), and at King's College London (LL.M.).