

NOTE

Cities in International Law: The New Landscape of Global Governance

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For decades, the legal capacity of cities has not been taken seriously. This Note calls on international lawyers to refocus our field of vision to fully appreciate the role cities are already playing in international politics, the ways in which cities' new global activism engages international law, and the potential for cities to challenge state power. My typology of how cities have already started engaging with international law suggests that we must start giving cities the attention they deserve. Structurally, the proverbial table is becoming more crowded, as mayors join the stage with presidents, foreign ministers, and UN diplomats. The rise of cities may also result in a greater contestation of norms at the global level, the bifurcation of national policy positions, and even contradictory state practices and statements of opinio juris. Cities' direct engagement with international law is also opening up new channels for compliance with and enforcement of international law as cities seek to either implement international legal rules locally or apply pressure on other actors who fail to comply. Moving from structure to substance, the growing voice of cities in international affairs may push international law towards a greater emphasis on subsidiarity, local implementation, and issues of municipal concern. Given that city activism is often triggered by a divergence between national and urban policy preferences, cities may push international law to the political left. I suggest a relaxation of realist thinking combined with increased legitimization of cities to allow them to best contribute to the international legal system.

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I. INTRODUCTION

After inking his name to the first line of the signature page of the Chicago Climate Charter, Mayor Rahm Emanuel codified what looked like a standard international treaty. Signed by representatives across the globe, the document pushed for a reduction in greenhouse gas emissions by an even greater margin than levels negotiated by the Paris Agreement.¹ But unlike an actual treaty, the Charter was a commitment between cities, not countries. The document was not signed by states and did not meet the requirements of the Vienna Convention on the Law of Treaties (VCLT), yet in both form and substance, the agreement had a striking similarity to an international treaty and exemplified a new kind of international activism by municipal authorities.

The Chicago Climate Charter is one of the more public examples of cities claiming a seat at the table of global diplomacy and seeking inclusion in international law-making processes. Mayor Emanuel is not a lone crusader. Mayoral climate advocacy and its culmination in treaty-like agreements is only one of the ways that cities have begun to engage with an international legal system previously reserved for states alone. For example, mayors from Los Angeles, Guangzhou, and Auckland met at a high profile summit in 2016 to form the Tripartite Economic Alliance, a name reminiscent of the currency stabilizing Tripartite Agreement between England, France, and the United States in 1936.² The summit was attended by the prime minister of New Zealand as well as city mayors, and produced a treaty-like document in multiple languages with the goal “to formalize a tripartite relationship to expand economic and trade-related activity between the Parties.”³ The “Parties” in this case were cities, not states. While the Alliance lacked the binding nature of positivist international law-making, like the Chicago Climate Charter, it represented a pattern of cities increasing the “legalization”⁴ of their relationships on issues ranging from human rights to economic development. Similarly, in November 2018, the mayors of major cities in G20 countries met for the Urban 20 (U20) in Buenos Aires and

1. Chicago Climate Charter art. 1(a) (2017).

2. Phil McKenna, *Tripartite Economic Alliance*, U.S. EMBASSY & CONSULATE IN N.Z., COOK ISLANDS & NIUE (May 16, 2016), <https://nz.usembassy.gov/tripartite-economic-alliance/>. See generally Stephen V.O. Clarke, *Exchange-Rate Stabilization in Mid-1930s: Negotiating the Tripartite Agreement*, 41 PRINCETON STUD. INT'L FIN. (1977) (discussing the Tripartite Agreement of 1936 and its currency stabilizing effects).

3. Memorandum of Understanding, Tripartite Economic Alliance Between Auckland, Guangzhou, and Los Angeles, Nov. 16, 2014 [hereinafter MOU between Auckland, Guangzhou & L.A.].

4. See generally Judith Goldstein et al., *Introduction: Legalization and World Politics*, INT'L ORG. 54, 385 (2001) (“In many issue-areas, the world is witnessing a move to law.”).

produced their own communiqué, in parallel to that of national officials who met soon after. In so doing, these mayors joined the G20 process, becoming part of the most recent high-profile multilateral governance effort.⁵

These past few years have borne witness to a significant shift in the conduct of global affairs, with multilateral institutions often unable to respond to pressing global governance challenges, but subnational actors playing ever greater roles. Whether through networks of city leaders meeting across borders; transnational municipal declarations, proclamations, and agreements; or even the direct implementation of international norms in municipal ordinances, cities have emerged as noteworthy players in global governance efforts and international law making. Cities themselves are self-aware of their changing role. As Mayor Emanuel explained during the Chicago Climate Charter signing ceremony: “For a moment in time that requires action, we’re offered by the White House inaction . . . Cities are stepping into the void of leadership.”⁶

While international lawyers and international relations scholars have often disregarded this emerging municipal activism or focused instead on states, cities are starting to change the politics of international law and, perhaps, even the rules of the game itself. Mayor Emanuel’s statement suggests that this newfound emergence of cities on the world stage should not be surprising at the present moment. Not only have cities long outlived nation states, key trends of urbanization and globalization have caused cities to grow enormously in population and economic impact, increasing their political salience. Today, more than 54.5 percent of the world’s population lives in cities, and seventy percent of the global economy is derived from activities in urban areas.⁷ These trends are projected to continue so that by 2030 over sixty-five percent of the global population will be urban.⁸ Large cities are ever expanding, with an expected increase from today’s current twenty-eight cities with over ten million people, to forty-one cities in 2030.⁹ While driven largely by demographic and economic trends, cities’ newfound political and legal activism has been catalyzed in the United States and

5. Formed in 1999, the G20 or Group of Twenty is an international leadership organization with members that make up eighty percent of the global economy including India, Australia, China, Russia, the United States, and the European Union. See *About the G20*, G20.ORG, <https://www.g20.org/en/il-g20.html> (last visited Feb. 6, 2021); *Role of the G20*, EUR. COMM’N, <https://tinyurl.com/y4h3p22f> (last visited Feb. 6, 2021).

6. *Dozens of U.S. Mayors Vow to Achieve Paris Agreement Emissions Goals*, YALE ENV’T 360 (Dec. 6, 2017), <https://tinyurl.com/y4u8xc4a>.

7. U.N. Dep’t of Econ. & Soc. Aff., *The World’s Cities in 2016: Data Booklet*, at ii, U.N. Doc. ST/ESA/SER.A/392 (2016); *Economy*, UN-HABITAT, <https://unhabitat.org/economy> (last visited Feb. 6, 2021).

8. *Economy*, UN-HABITAT, <https://unhabitat.org/economy> (last visited Feb. 6, 2021).

9. *World’s Population Increasingly Urban with More than Half Living in Cities*, UNITED NATIONS (July 10, 2014), <https://tinyurl.com/yyab53hl>.

beyond by growing political divides between urban centers and national governments.¹⁰ In the United States, for example, sixty-two percent of registered voters in urban areas identify as Democrats, while in rural areas only thirty-eight percent identify as Democrats.¹¹ These political gaps have motivated cities to act globally as well as locally.¹² While international lawyers have recognized the role of many non-state actors and international legal institutions have even found space to accommodate them, neither international lawyers nor international legal institutions have recognized cities as meaningful participants in the processes of international law. The time has come for that to change to better reflect the reality and future of global governance today.

This Note offers a reevaluation of the role of cities in the international legal system so as to allow international lawyers to appreciate cities' potential impact on both the structure and substance of international law, despite the barriers cities face in changing the status quo.¹³ Structurally, the rise of cities has three significant implications. First, as cities play a larger role in international legal affairs—even if not as formal bearers of international legal personality—the proverbial table becomes more crowded, as mayors join the stage with presidents, foreign ministers, and UN diplomats,¹⁴ or convene international summits of their own.¹⁵ Directly or indirectly these efforts will and do influence the creation and interpretation of legal rules. Second, given that cities often find their voices internationally when municipal policy preferences diverge from those of national governments, the rise of cities may also result in a greater contestation of norms at the global level, the bifurcation of national policy positions, and even

10. Seth McKee, *Rural Voters and the Polarization of American Presidential Elections*, 41 POL. SCI. & POL. 101, 101-08 (2008). See generally Daniel T. Lichter & David L. Brown, *Rural America in an Urban Society: Changing Spatial and Social Boundaries*, 37 ANN. REV. SOC. 565, 565-92 (2011) (arguing for greater integration between scholarship on rural and urban communities in America).

11. Kim Parker et al., *Urban, Suburban and Rural Residents' Views on Key Social and Political Issues*, PEW RSCH. CTR. (May 22, 2018), <https://tinyurl.com/yypk4lvu>.

12. See generally Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT'L L. 348, 348-72 (2006); Lesley Wexler, *The International Deployment of Shame, Second-Best Responses, and Norm Entrepreneurship: The Campaign to Ban Landmines and the Landmine Ban Treaty*, 20 ARIZ. J. INT'L & COMPAR. L. 561 (2012) (finding that actors outside of nations are able to influence treaty formation through actions such as shaming nations into compliance during the Ottawa Treaty negotiations).

13. See generally ABRAM CHAYES, THOMAS EHRLICH & ANDREAS F. LOWENFELD, *INTERNATIONAL LEGAL PROCESS: MATERIALS FOR AN INTRODUCTORY COURSE* (1968) (arguing that current understandings of international relations are too rigid, and pre-suppose a static framework). This approach focuses on “the allocation of decision-making competence in international affairs.” *Id.* at xii.

14. U.N. Framework Convention on Climate Change, Ban Ki-moon Emphasizes Importance of Mayors in Climate Action (Oct. 17, 2016), <https://tinyurl.com/y49dggwa>.

15. See, e.g., *JCN Global Summit*, STRONG CITIES NETWORK, <https://tinyurl.com/y5t83sp2> (last visited Feb. 6, 2021).

contradictory state practice and statements of *opinio juris*.¹⁶ As the power of cities increases, the potential tension between state and local actors will likely become even more contentious. Third, cities' direct engagement with international law opens up new channels for compliance with and enforcement of international law as cities seek to either implement international legal rules locally or apply pressure on other actors who fail to comply.

Moving from structure to substance, new city activism may have two important implications. First, a trend toward subsidiarity. The growing voice of cities in international affairs may push international law toward greater emphasis on subsidiarity, local implementation, and issues of municipal concern. Traditionally, international law has placed general obligations on states, without specifying how those obligations should be fulfilled at the subnational level. With cities more firmly at the table, international legal agreements are more likely to directly implicate sub-state actors in implementation and compliance. The Paris Agreement's focus on "subnational and local level" implementation is emblematic thereof, as it represents a rare example of cities being recognized as key elements of treaty implementation.¹⁷ Second, given that city-activism is often triggered by a divergence between national and urban policy preferences, the greater role of cities may push international law to the political left. States are generally "small c" conservative actors in international affairs, balancing a range of commitments, interests, and obligations.¹⁸ Cities, in contrast, are often more willing to take risks and advance a local agenda through all available means. Their new voices in global affairs may push international law toward bolder actions, a more focused agenda, and alternate (often more liberal) preferences.

This Note proceeds in five Parts. Part II outlines the limited attention paid to cities in the field of international relations and international law. Neither the fields of international relations nor international law has given significant notice to the rise of cities as global actors. Traditional international relations theory starts with the state as the principal actor in

16. See, e.g., Katherine Levine Einstein et al., *As the Trump Administration Retreats on Climate Change, U.S. Cities are Moving Forward*, THE CLIMATE REALITY PROJECT (Feb. 21, 2018), <https://tinyurl.com/y5nnw5hr> (describing the vast difference between the Trump administration's stance on climate change and the view held by mayors in the United States).

17. Paris Agreement to the United Nations Framework Convention on Climate Change art. 11.2, Dec. 12, 2015, T.I.A.S. No. 16-1104.

18. See generally Adam Chapnick, *Peace, Order, and Good Government - The Conservative Tradition in Canadian Foreign Policy*, 60 INT'L J.: CAN.'S J. GLOB. POL'Y ANALYSIS 635 (2005) (chronicling a conservative approach to foreign affairs even in an increasingly liberal country).

international affairs.¹⁹ For international relations scholars, cities were merely constituent elements of the nation state, not relevant in their own right to international outcomes. International lawyers' view of the world has been fundamentally informed by these traditional realist views of international relations²⁰ and, as a result, international lawyers, too, have often overlooked the city.

Part III details the structural and functional role given to cities by national governments. The failure of international lawyers to even consider the role and impact of cities outlined in Part II likely flows from the fact that cities are a product of countries' domestic legal systems, subordinate to the state on the international plane. While the powers of the city differ across the legal systems of the world, cities are nevertheless formally delegated narrow and specific authorities by national governments or federal entities. Most of the time, these authorities are limited to matters of local concern including zoning, water management, transportation, waste, fire services, and other jurisdictionally-bounded issues.²¹ Even where a city's actions might place a national government in violation of international law, it is generally the national government that bears international legal responsibility.²² Almost never are cities in any country delegated formal foreign affairs authorities. In fact, Gerald Frug and Jeremiah Barron's leading article on cities and foreign affairs in the United States starts from the proposition that "cities are not free to do whatever they please."²³ As subordinates under domestic law, on the international legal plane, cities would appear to be anything but free to do as they please. Yet functionally states appear to be giving cities broad responsibility despite this lack of doctrinal support, a discrepancy that may help explain why cities are currently able to exert themselves in international law.

19. EMMERICH DE Vattel, *THE LAW OF NATIONS: OR PRINCIPLES OF THE LAW OF NATURE APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS* (Joseph Chitty ed., Cambridge Univ. Press 2011) (1834); HUGO GROTIUS, *ON THE LAW OF WAR AND PEACE* (1625).

20. Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367 (1998). See generally STEPHEN M. WALT, *THE ORIGIN OF ALLIANCES* (1987); KENNETH N. WALTZ, *REALISM AND INTERNATIONAL POLITICS* (2008) (as foundational texts of modern international relations theory that presuppose the state as the fundamental unit of international relations).

21. Robert Hebdon & Patrice Jalette, *The Restructuring of Municipal Services: A Canada - United States Comparison*, 26 ENV'T & PLAN. C: GOV. & POL'Y 144, 144 (2008).

22. Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 26 (2001) ("Article 4.1: The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State."); see, e.g., *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award (May 29, 2003).

23. Gerald Frug & David Barron, *International Local Government Law*, 38 URB. LAW. 1 (2006).

Part IV develops a typology of city engagement and outlines a set of examples of this engagement in practice. Lacking foreign affairs authorities in domestic law, when cities and mayors have engaged internationally they have historically acted primarily as issue advocates, advancing their cities' (and their own personal) political agendas.²⁴ For decades, mayors have occasionally made statements about global issues, worked with diaspora communities within their cities, or launched sister-city initiatives.²⁵ Historically, both the form and substance of these advocacy activities have been clearly distinct from the city's formal authorities²⁶ and governmental functions, given in part to the encompassing nature of U.S. federalism (which is mirrored in different ways to similar effect in many countries).²⁷ Yet these types of actions are becoming more substantive in four ways. First, cities are harnessing international law to achieve locally preferred objectives, a goal achieved by adopting international agreements or utilizing self-reporting mechanisms generally reserved for states. Second, cities are encouraging domestic compliance with international law by sanctioning national governments, even litigating issues of international legal significance. Third, cities are influencing the context of international legal norms based on municipal preferences, an objective that includes the increasingly ubiquitous mayoral compacts and city engagement with the treaty process.²⁸ Fourth, and perhaps most significantly, cities are starting to reorient the international legal system to increase their capacity at the table. This involves the development of city networks, international meetings of mayors, and structures within cities that promote international affairs.

Finally, Part V provides an analysis of the ways that international law should be shaped to best utilize the changing role of cities. While many mayors and much of the urban studies literature extoll cities as the new focal point of global governance and a key solution to the world's problems,²⁹ I take a more nuanced approach. Admittedly, cities do not have and will not attain full international legal personality without a fundamental change in the organization of state systems. Furthermore, cities are unlikely to fully replace foreign ministries and international organizations in global

24. *See, e.g.*, Press Release, Dep't of Commerce, Office of the Mayor, City of Phila., Mayor Kenney Announces International Business Trip to Canada (June 21, 2018), <https://tinyurl.com/y5xmsguv> (detailing Philadelphia mayor's trip to Quebec to learn more about economic trends in the city).

25. *See infra* Part IV.

26. *Id.*

27. For instance, in the United Kingdom, the Local Government Act of 1972 gives local authorities control only over urban planning or local education. *See* Local Government Act 1972, c. 70, § 2 (Eng.).

28. *See infra* Part IV.

29. *See generally* Michael Bloomberg, *City Century: Why Municipalities Are the Key to Fighting Climate Change*, FOREIGN AFFS. (Sept./Oct. 2015), <https://tinyurl.com/nsf3vsh> (“[C]ities, the primary drivers and likeliest victims of climate change, hold the antidote as well.”).

governance. But, they may be joining the stage. Moreover, I do not claim that the addition of cities to the global governance architecture is a panacea for the international legal system—the reality is more complex. While cities may add new structural elements and substantive pluralism to international law, those shifts and contestation may have mixed implications for different policy problems.³⁰ City actions can provide better informed solutions for issues like climate change, as municipalities are able to address granular issues that states cannot. Furthermore, cities may be an effective mechanism for pushing international goals when national governments lack capacity. If groups like the United Nations want to utilize cities as both policy creators and sources of information, they need to both adopt a less binary approach to international law as well as increase the legitimacy of international municipal organizations. While states are, and will likely remain for the foreseeable future, the only entities with full international legal personality,³¹ international law has come to engage with and, at times, even formally recognize, non-state actors as critical components of the international legal order. But, cities need organizational capacity and formal legitimacy for this engagement to be successful.

II. THE RISE OF CITIES IN INTERNATIONAL AFFAIRS (AND HOW INTERNATIONAL LAWYERS MOSTLY MISSED IT)

In 1990, Shanghai had a population of around thirteen million and a GDP of \$0.73 billion.³² By 2000 alone those numbers increased to sixteen million and \$550 billion.³³ Then, PuDong was farmland, today it is a world financial capital. Similar trends can be seen from Santiago to Sao Paulo, Lagos to London. The incredible rise of the city as a political and economic unit has been well documented in the urban studies literature, but largely ignored by political scientists and international lawyers. This Part traces the changing role of the city as a unit of human organization and legal authority

30. As the U.S. Supreme Court has noted, there are good reasons for a unified national voice in foreign affairs as it prevents potential embarrassment from a disjointed approach. *Baker v. Carr*, 369 U.S. 186, 217 (1962); Daniel Abebe, *One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs* 236 (Univ. of Chi. Pub. L. & Legal Theory, Working Paper No. 441, 2013). The “one voice” approach is particularly favored between state and local governments and the federal government given the wide range of actors, while potential divergence between the president and congress does not present such challenges.

31. *See generally* FLEUR JOHNS, INTERNATIONAL LEGAL PERSONALITY (2010) (characterizing and contrasting the lesser forms of legal personality of non-state actors with the full legal personhood of states).

32. GUANG YANG, SHANGHAI'S ECONOMIC DEVELOPMENT: ITS OPPORTUNITIES AND CHALLENGES IN THE 21ST CENTURY 4 (2002).

33. *Shanghai, China Metro Area Population 1950-2020*, MACROTRENDS (2020), <https://tinyurl.com/y59hvsvc> (last visited Feb. 6, 2021); Zhou Wenting, *Shanghai First Chinese City to Top 3 Trillion Yuan GDP*, CHINA DAILY (Jan. 20, 2018), <https://tinyurl.com/y2s38k6y>.

over time and demonstrates the ways in which both international relations and international law could benefit from an understanding of cities in urban studies.

A. The Early City-States of the Pre-Modern Era

Historically, cities have played a far greater role in international affairs than is generally appreciated. These historical origins of cities' global roles provide a useful context for understanding cities' re-engagement with international law. In early modern history, cities were often the bearers of sovereignty—international legal and political actors in their own right. From the ancient Greek city-states to the Renaissance era, cities of western and northern Europe bore full international legal personality. During medieval times, governance often did not exist at the national level, and, when it did, it was weak.³⁴ As a result, subnational entities, notably cities, assumed a direct role in transnational affairs.³⁵ In Europe, cities were able to fill this national power void and form and maintain relationships with other cities outside of national legal frameworks.³⁶ This state-like authority at the city-level often caused disruption and turbulence in the global order, as municipalities such as Florence or Venice were global power players who “could afford to wage their wars on the sea lanes and shake half the peninsula with their quarrels.”³⁷ However, cities also had the potential to advance stability and cooperation through diplomatic relations on military coordination or trade. Genoa and Florence maintained semi-formalized economic relations with local Spanish representatives and stipulated economic regulations across national boundaries independent of the nation state itself.³⁸

During this period of city autonomy, international legal influence by cities also extended to formal aspects of international law, particularly treaty-

34. For an example of this phenomenon in France during the medieval ages, see generally Neil Murphy, *Royal Power in Later Medieval France: Introduction*, FRENCH HIST. (SPECIAL ISSUE) (Neil Murphy ed., 2012), <https://tinyurl.com/y2m85raq> (noting that royal power in late medieval France was “far from being centralized” and that the exercise of such power was “frequently dependent on negotiations with local authorities”) (citing Justine Firnhaber-Baker, *Jura In Medio: The Settlement of Seigneurial Disputes in Later Medieval Languedoc*, 26 FRENCH HIST. 441 (2012)). See generally BARRY CUNLIFFE, EUROPE BETWEEN THE OCEANS (2011) (providing a general background of European networks in the era before 1000 A.D.)

35. LAURO MARTINES, POWER AND IMAGINATION: CITY-STATES IN RENAISSANCE ITALY 7 (Johns Hopkins Paperbacks 1979) (1988).

36. See generally GARRETT MATTINGLY, RENAISSANCE DIPLOMACY (1955) (chronicling the history and political power of autonomous cities in the Middle Ages); Janne E. Nijman, *Renaissance of the City as Global Actor*, in THE TRANSFORMATION OF FOREIGN POLICY (Gunther Hellmann et al. eds., 2016).

37. MATTINGLY, *supra* note 36, at 48.

38. *Id.* at 181.

making. While the documentation of treaties between cities extends far back in history, the Renaissance period was marked by a sharp increase in city-to-city treaty formation.³⁹ Early city-to-city treaties covered a range of substantive topics, however, peace treaties were particularly commonplace. This included the Treaty of Lodi, an example of a tri-city peace treaty in northern Italy between Florence, Venice, and Milan that provided a twenty-five year agreement to defend one another from aggressors as well as to maintain appropriate military forces in the cities' respective territories.⁴⁰ The Treaty of Lodi helped stabilize the region through military gridlock and served as a model for city-to-city treaties in Europe that facilitated economic development in the region.⁴¹ City treaties were not limited to western Europe, with municipalities in the Hanseatic League in central and northern Europe forming parallel peace treaties with the Danish government in 1390.⁴²

Cities (at least in some parts of the world) were essentially state actors in the international legal system during the early modern period, bearing full international legal personality.⁴³ The era of the city-state largely came to an end with the Peace of Westphalia in 1648.⁴⁴ That series of treaties defined the beginning of a new era in which nation states assumed greater power, authority, and sovereignty.⁴⁵ While there is no singular explanation for the sudden decline of cities, the shift in global power has been attributed to a rise in national authorities at the same time as disease outbreak and changes in shipping procedures that stagnated city development.⁴⁶ As the power vacuum caused by weak states narrowed and cities became subordinate to national governments, cities were left to act internationally only through their respective national governments.⁴⁷

B. *The City in a State-Centric International Legal System*

There have been a few select moments in the modern international legal system in which cities have been more than negotiating fora, especially where those cities came under special international legal protection. Section

39. See Nijman, *supra* note 36.

40. MATTINGLY, *supra* note 36, at 74.

41. *Id.* at 74.

42. Nijman, *supra* note 36, at 10-11.

43. See generally MARTINES, *supra* note 35 (chronicling the history of local control in feudal northern Italy and the ways that city governments dominated Italian politics).

44. Peter J. Taylor, *The State as Container: Territoriality in the Modern World-System*, 18 PROGRESS HUM. GEOGRAPHY 151, 152 (1994) ("The state has acted like a vortex sucking in social relations to mold them through its territoriality.").

45. *Id.* at 153.

46. CHARLES P. KINDLEBERGER, *WORLD ECONOMIC PRIMACY: 1500-1990*, at 66 (1996).

47. Leo Gross, *The Peace of Westphalia, 1648-1948*, 42 AM. J. INT'L L. 20, 40 (1948).

XI of the Treaty of Versailles expressly provided for the establishment of the Free City of Danzig “under the protection of the League of Nations.”⁴⁸ A High Commissioner was established to deal with “all differences arising between Poland and the Free City of Danzig in regard to this Treaty or any arrangements or agreements made thereunder.”⁴⁹ As such, the Treaty of Versailles expressly contemplated a degree of international legal personality for the City of Danzig.

Although there are numerous historical examples of cities playing a direct role in international law, the modern international legal system leaves little space for cities to engage. The basic premise of international law is that states alone hold full international legal personality.⁵⁰ As a nation-based order emerged from the Peace of Westphalia, even early international lawyers, such as Hugo Grotius and Emer de Vattel, saw the international legal system as a universe of states alone.⁵¹ As Vattel noted “the law of nations . . . teaches the rights subsisting between nations or states, and the obligations correspondent to those rights.”⁵² For these early international lawyers, the beauty of international law flowed from the simplicity of its membership and participation—cities and subnational actors were intentionally subrogated to nation states.

Little has changed in that regard over the past 400 years. The leading international legal treatises of the modern era focused almost exclusively on states and neglected to even consider the possibility that cities could play a role in international law. Across the 111 year history of the *American Journal of International Law* only two articles included the word “city” in their title.⁵³ In the entire database of the *Oxford Scholarly Authorities on International Law*, neither the word “city” nor “municipal” appeared in the titles of any

48. Treaty of Peace with Germany art. 102, June 28, 1919, 2 Bevens 43 [hereinafter Treaty of Versailles].

49. *Id.* art. 103. See generally Nathaniel Berman, “*But the Alternative Is Despair*”: *European Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792 (1993) (describing the Versailles system’s internationalization “experiments” in Danzig and the Saar).

50. See Statute of the International Court of Justice art. 34(1), June 26, 1945, 59 Stat. 1055, T.S. No. 993 (finding that only states can be parties before the Court).

51. GROTIUS, *supra* note 19, at 5 (detailing the role of state-to-state collaboration in his description that the “laws of each state have in view the advantage of that state . . . and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states”).

52. VATTEL, *supra* note 19, at xxi.

53. On Hein Online’s database for the *American Journal of International Law*, a title search for “city” only yields two articles with the word “city” in the title. However, one of these articles only includes the word “city” as part of a reference to a case name. Gordon Ireland, *The State of the City of the Vatican*, 27 AM. J. INT’L L. 271 (1933); Andreas Lowenfeld, *Act of State and Department of State: First National City Bank v. Banco Nacional de Cuba*, 66 AM. J. INT’L L. 795 (1972). To replicate this search, search “((title:“city”)) AND (volshortname:ajil)” in the search bar.

entries.⁵⁴ While Malcom Shaw's 2017 edition of *International Law* mentioned "city" five times in close to 1,000 pages of text, almost all of these references related to case names and not to any direct reference to cities as a distinct concept in international law.⁵⁵ Though these are crude measures of the role of cities in international law, the dearth of legal scholarship on cities indicates the narrow role they have played in both formal international law as well as the academic analysis of the field.

Perhaps the failure of international lawyers to give cities the center stage should be unsurprising. After all, the formal instruments and institutions of the international legal system limit their membership and participation to states.⁵⁶ By definition, a treaty is an "international agreement concluded between *States*."⁵⁷ Both the United Nations and the International Court of Justice (ICJ) are open only to states and permit only cursory involvement from non-state actors, such as the occasional inclusion of NGOs in informal meetings with UN leadership.⁵⁸ References to cities are also notably absent in formal international legal documents from such organizations. As Yishai Blank observes: "no international treaty or convention of the UN, and almost no decision of the . . . ICJ mentions the existence of localities."⁵⁹ The state-focus of international organizations extends to trade, with the World Trade Organization (WTO) regulating trade at the national level. The General Agreement on Tariffs and Trade (GATT) and WTO procedures judge the validity of trade actions at the national level (most favored nation) and only states have access to WTO dispute settlement processes.⁶⁰

54. *Search Results*, OXFORD PUB. INT'L L.: OXFORD SCHOLARLY AUTHORITIES ON INT'L L., http://opil.oup.com/noresults?f_0=title&noresults=true&pageSize=10&prd=OSAIL&q_0=municipal&sort=relevance (last visited Jan. 4, 2021) (showing that a search for "municipal" returns no results); *Search Results*, OXFORD PUB. INT'L L.: OXFORD SCHOLARLY AUTHORITIES ON INT'L L., https://opil.oup.com/noresults?access_0=all&f_0=title&noresults=true&pageSize=20&prd=OSAIL&q_0=city&sort=relevance (last visited Jan. 4, 2021) (showing that a search for "city" returns no results).

55. MALCOLM SHAW, *INTERNATIONAL LAW* (8th ed. 2017).

56. See generally Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT'L L. 868, 892 (2007) (detailing the lack of international legal personality cities and local governments have in formal international law).

57. Vienna Convention on the Law of Treaties art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention] (emphasis added).

58. U.N. Framework Convention on Climate Change, Ban Ki-moon Emphasizes Importance of Mayors in Climate Action (Oct. 17, 2016), <https://tinyurl.com/y49dggwa>.

59. Blank, *supra* note 56, at 884-85; see, e.g., U.N. Charter art. 4, ¶ 1 ("Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.").

60. Understanding on Rules and Procedures Governing the Settlement of Disputes art. 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

Notably, many states have resisted city roles and authorities in international law.⁶¹ National courts are often quick to limit the foreign affairs authorities of subnational actors such as cities.⁶² In the rare instances in which the door opened for cities' independent role in international law, national actors have often pushed back. For example, while Article 25 of the International Centre for Settlement of Investment Disputes (ICSID) Convention contemplates the possibility of subnational constituents by stating that jurisdiction includes "any constituent subdivision or agency of a Contracting State designated to the Centre by that State," no state has yet included a municipality as a potential "constituent subdivision."⁶³ The idea of non-state entities serving as ICSID respondents was not viewed favorably by all signatories of the ICSID Convention.⁶⁴

As a result, to the degree cities have been historically engaged in international law, they have served principally as venues for international negotiations. It is, perhaps, ironic that a plethora of treaties have been named for the city where they were negotiated—from Paris to Doha, Vienna to Geneva—even though the cities themselves are largely irrelevant to the treaties' substance.⁶⁵ Stanley Brunn notes that these choices of specific cities as negotiating forum may be consequential as a matter of cultural symbolism and even diplomatic negotiating leverage, but the city itself is merely a forum and convening place, not an actor in its own right.⁶⁶

In cases where cities have become more involved in international law and the global governance architecture, they have usually only engaged through specialized international organizations devoted specifically to cities. The creation of city-specific international organizations under the auspices of the United Nations began with an initial UN Conference on Human Settlements in 1976, followed by the formation of UN Habitat, an organ of

61. See Douglas Pivnichny, *Treaty-Based Claims Against Subdivisions of ICSID Contracting States*, 16 WASH. U. GLOB. STUD. L. REV. 125 (2017).

62. This hesitancy may be attributed in part to a desire to present a unified national policy. For a discussion on this tendency in the United States, see *infra* Part III.A.

63. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States art. 25, Mar. 18, 1965, 575 U.N.T.S. 159 [hereinafter ICSID Convention].

64. Brazil was a notable opponent to the expansion of the convention to subnational actors "because of their lack of international independent legal personality." Pivnichny, *supra* note 61, at 133. Even when cities have been made a party to a case in international law, courts are unwilling to provide them with jurisdiction separate from their national governments. See *Danderyds Kommun v. Sweden*, App No. 52559/99 (June 7, 2001), <http://hudoc.echr.coe.int/eng?i=001-5996>.

65. See Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104; World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002) (launching the Doha Round); Vienna Convention, *supra* note 57; Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

66. Stanley D. Brunn, Vaseema Nooruddin & Kimberly Sims, *Place, Culture, and Peace: Treaty Cities and National Culture in Mediating Contemporary International Disputes*, 49 GEOJOURNAL 331 (1996).

the United Nations focused on urban spaces, promoting “socially and environmentally sustainable human settlements development,” in 1977.⁶⁷ The organization has closely mirrored the Millennium Development Goals to help cities obtain higher economic and educational standards.⁶⁸ UN Habitat also helped serve as a foundation for the World Urban Campaign, a UN project that helps connect cities with governments and the private sector to reach key milestones.⁶⁹ Meeting in Quito, Ecuador in October 2016, the UN Habitat adopted a New Urban Agenda, an agreement that included goals for cities, such as “establish[ing] a connection between the dynamics of urbanization and the overall process of national development.”⁷⁰

Each of these modern examples—from UN Habitat to the World Bank—has offered a structural mechanism to engage cities with traditional international legal and global governance institutions. But, in each case, the international institutions themselves were created by states to engage cities, with formal membership limited to state actors. These institutions do provide an opening to bring cities into the global governance architecture, yet they retain cities’ fundamentally subordinate position in international law and international relations.⁷¹

C. *The Rise of the Global City in Urban Studies*

Short a few exceptions, most international lawyers have overlooked the rise of cities or focused instead on the channels in which states and cities interface.⁷² A significant body of scholarship on “global cities” has emerged

67. *Our Mission*, UN-HABITAT, <http://mirror.unhabitat.org/categories.asp?catid=10> (last visited Nov. 14, 2020).

68. *History, Mandate & Role in the UN System*, UN-HABITAT, <https://unhabitat.org/history-mandate-role-in-the-un-system/> (last visited Nov. 14, 2020).

69. *About*, WORLD URB. CAMPAIGN, <http://www.worldurbancampaign.org/about> (last visited Nov. 14, 2020).

70. U.N. Conf. on Hous. & Sustainable Urb. Dev.: HABITAT III, *The New Urban Agenda*, <http://habitat3.org/the-new-urban-agenda/> (last visited Nov. 14, 2020).

71. This subordinate position is mimicked in the few modern city-states that remain. Monaco and Singapore act as fully sovereign states in the international legal system, albeit with smaller territories and city jurisdictions that align with national borders. Singapore maintains a national government that addresses international and foreign policy concerns, while delegating local issues to five mayors divided by district. See *Our Mayors*, CMTY. DEV. COUNCIL, <https://www.cdc.org.sg/office-of-the-mayors/our-mayors> (last visited Nov. 14, 2020). Monaco, for example, separates the municipal affairs of the City of Monaco from their international legal actions as a state through the creation of municipal councils to run city affairs and even a mayor’s office, separate from national leadership. See *Le Conseil Communal*, MAIRIE DE MONACO, <http://www.mairie.mc/mairie-monaco/le-conseil-communal/> (last visited Feb. 10, 2020) (government website for the municipal council in Monaco).

72. There are notable exceptions to this, see MICHAEL J. GLENNON & ROBERT D. SLOANE, *FOREIGN AFFAIRS FEDERALISM: THE MYTH OF NATIONAL EXCLUSIVITY* (2016) (arguing in part that cities and states are filling a functional gap in a doctrine that would suggest total federal supremacy);

in the urban studies field over the past fifty years. City planners, architects, geographers, and sociologists have begun to document and analyze the rise of the city in the international space, arguing primarily that recent historical trends and sociological shifts have increased the power and salience of cities in global affairs. John Friedmann's seminal work *World Cities Hypothesis* was published in 1986, pioneering the urban studies trend of recognizing cities as prominent global actors.⁷³ Friedmann claimed that changes in labor processes led to a rise in the significance of urban areas, a phenomenon that motivated him to propose "a framework for research," based on the cities' growing global influence.⁷⁴ A number of scholars have subsequently built on Friedmann's groundwork, introducing a range of global and urban studies scholarship. This line of research advanced a central argument that a "combination of spatial dispersal and global integration has created a new strategic role for major cities . . ." ⁷⁵ "in the wider context of the evolution of international society."⁷⁶ This body of scholarship has explored the importance of cities in international affairs along three key dimensions: economic development, identity construction, and mayoral entrepreneurship. Yet, none of these urbanists have expressly linked cities to international law and global governance as such.

1. *The rise of the city as a locus of economic activity*

In the wake of Friedmann's seminal work, urbanist scholars focused primarily on the economic development of cities as drivers of increasing international influence. Early urbanist scholarship led by sociologist Saskia Sassen recognized the increasing economic might of cities as leading to a corresponding increase in global influence. Sassen notes that shifts in the structure of the global economy have concentrated economic power in urban areas,⁷⁷ such that cities have become "concentrated command points in the organization of the world economy."⁷⁸ Sassen claims the consequences of the vast increase in financial transactions occurring between cities and the financial interdependence among cities such as

Helmut Philipp Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 EUR. J. INT'L. L. 255, 256 (2015).

73. See generally John Friedmann, *The World City Hypothesis*, 17 DEV. & CHANGE 1, 1 (1986) ("My purpose in this introduction is to state . . . the main theses that link urbanization processes to global economic forces. The world city hypothesis . . . is primarily intended as a framework for research.")

74. *Id.* at 1.

75. SASKIA SASSEN, *THE GLOBAL CITY* 3 (1991).

76. Simon Curtis, *Introduction: Empowering Cities*, in *THE POWER OF CITIES IN INTERNATIONAL RELATIONS* 15 (Simon Curtis ed., 2014).

77. See generally SASSEN, *supra* note 75.

78. *Id.* at 3.

London and New York have⁷⁹ resulted in new collaborations between cities, generating a “trans-territorial marketplace” of cities as sites of decision-making.⁸⁰ Writing in the same vein, Simon Curtis has observed that “increasing economic transactions among cities served to compress “distances” between them, allowing cities to connect economically in an era when state power was already viewed as less effective and unified.⁸¹

2. *The new social identity of the city*

A second strand of the global urbanist literature emphasized the changing social identity of cities. Driven by the economic development noted above, scholars have documented how the city became a source of identity, transforming how cities were viewed from the inside out. Cities were once seen as sources of blight and disease, from London Cholera to New York City crime, not as desirable centers of style and culture.⁸² Kristin Ljungkvist explains that as cities became a locus of identity formation, they came to “play a constitutive part in interest formation.”⁸³ They also took on new roles advocating more broadly for residents’ interests across a range of dimensions, and in new fora beyond traditional city walls. As cities were impacted by the new challenges of globalization, city-based identities had to engage global forces. Michele Acuto suggests that cities “represent strategic loci where globalizing forces and flows are re-articulated, promoting the time/space compressions that are redesigning the human condition.”⁸⁴

It is through the city that global challenges touch local politics and most directly engage the lives of citizens, effectively inserting cities onto the global stage.⁸⁵ Thus, the city becomes an alternate voice in global affairs, linked closely to the local identity of urban dwellers to their city.

79. *Id.* at 6.

80. *Id.* at 333.

81. CURTIS, *supra* note 76.

82. See generally Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 308 (2004) (arguing that cities often have suffered from “blight” that requires political attention).

83. KRISTIN LJUNGKVIST, *THE GLOBAL CITY 2.0: FROM STRATEGIC SITE TO GLOBAL ACTOR* 8 (2015).

84. MICHELE ACUTO, *GLOBAL CITIES, GOVERNANCE, AND DIPLOMACY: THE URBAN LINK* 4 (2013). Sofie Bouteligier similarly discusses the city’s growing legitimacy in the international arena, attributing their deepening international capacity to increased networking between cities, motivated in part by efforts to control climate change. SOFIE BOUTELIGIER, *CITIES, NETWORKS, AND GLOBAL ENVIRONMENTAL GOVERNANCE* (2012).

85. ACUTO, *supra* note 84, at 3.

3. *Mayoral entrepreneurship*

From Bloomberg to Buttigieg, a post as mayor is a powerful springboard for individuals, a reality not ignored by urbanists. Led by political theorist-turned-urbanist Benjamin Barber, this line of analysis maintains that mayors have so consistently advocated for a place at the international table—for both themselves and their constituents—that nations have begun to listen.⁸⁶ Barber faces no shortage of examples of powerful mayors, such as former New York City mayor Michael Bloomberg whose success at gaining international standing has led him to be called “an urban global diplomat.”⁸⁷ Barber posits that the ability of mayors to showcase their local agendas on an international state is due in part to the past failures by states and international organizations to solve pressing issues such as climate change.⁸⁸ As mayors have used their positions to raise their own profiles, cities have come along with them, being elevated as their leaders found their own voices. The ability of mayors to create solutions to global problems is also explored by Veerle Heyvaert, who details how the Global Covenant of Mayors was able to achieve significant international transparency, which encouraged international compliance.⁸⁹

4. *The Democratic Identity of Cities*

Finally, urbanists have detailed the role of cities in expanding the reach of democracy or even saving it. This stems in part from the history of the city as the first experimental form of egalitarian self-government, from local villages to the “birth of democracy” in early Athens.⁹⁰ By the nineteenth century, local government became synonymous with democracy, due in part to the foundational role cities played in the development of citizenship.⁹¹ The link between cities and democracy has persevered. As cities represent smaller segments of the population and are not heavily burdened by national

86. Cf. Richard Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542 (2006) (arguing that weak cities have allowed for mayors to emerge as power players and not the converse).

87. BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD: DYSFUNCTIONAL NATIONS, RISING CITIES* 28 (2013).

88. See generally *id.* (detailing that mayors, such as Michael Bloomberg, have developed “an international infrastructure,” perhaps in part because of failures in national government).

89. Veerle Heyvaert, *What's in a Name? The Covenant of Mayors as Transnational Environmental Regulation*, 22 REV. EUR. COMPAR. & INT'L ENV'T L. 78, 86 (2013). The Global Covenant of Mayors is an organization for local government leaders that calls itself “the largest global alliance for city climate leadership, built upon the commitment of over 10,000 cities and local governments.” See *Who We Are*, GLOB. COVENANT OF MAYORS FOR CLIMATE & ENERGY <https://tinyurl.com/y3khukcu> (last visited Nov. 12, 2020).

90. BARBER, *supra* note 87, at 14; ENGIN ISIN, *DEMOCRACY, CITIZENSHIP, AND THE GLOBAL CITY* 7 (2000).

91. ISIN, *supra* note 90, at 7.

policy considerations—or often stark political divides—they are in a better position to cooperate globally and reach bottom-up compromises than national governments or the United Nations.⁹² City dwellers have more direct access and influence over their local leadership than national leadership. As Barber argues, “if mayors ruled the world, then more than 3.5 billion people . . . who are urban dwellers . . . could participate locally and cooperate globally at the same time.”⁹³ While U.S. President Joe Biden or German Chancellor Angela Merkel do not have the capacity to engage with local issues, mayors must constantly be on the ground to listen to municipal organizations and individuals.

D. Rendering the State Transparent

The evolution of the global cities literature in urban studies has largely been overlooked by international relations scholars and international lawyers. Yet, because of—or perhaps *in spite* of—this neglect, cities may be on the cusp of imposing a new-normal on the international order, forcing traditional international relations theorists to rethink their normative framework in a way that recognizes actors beyond the state, and renders the state transparent.

It is not surprising that realism, the dominant paradigm in international relations analytics, provides little traction for exploring the role of cities in international affairs.⁹⁴ Realism defines international relations as a power struggle between states. Classical realists look at states as extensions of individuals: like individuals, states have a persistent need to be the dominative being which results in a constant state of war.⁹⁵ Any political calculation, more specifically, is made in the interest of securing power.⁹⁶ Neorealists reject the premise that states are an extension of human interests, and focus instead on states’ desire to survive in a world order defined by anarchy.⁹⁷ The emergence of cities as international players bypassing traditional national governments and rendering the state

^{92.} *Id.* at 111.

^{93.} *Id.* at 5.

^{94.} Realism was the dominant international relations school of thought during the Cold War. The theory was able to explain the U.S.-Soviet conflict as a power rivalry between two states seeking to be the dominant global power. However, with the fall of the Berlin Wall, liberalism emerged as the reigning international theory, explaining multilateralism, rights and open competition as an international structure that constrains power in an effort to foster trust and cooperation human between competing states. *See generally* Quincy Wright, *Realism and Idealism in International Politics*, 5 *WORLD POL.* 116 (1952).

^{95.} *See generally* Stephen Walt, *International Relations: One World, Many Theories*, 110 *FOREIGN POL’Y* 29 (1998) (outlining the range of theories used for evaluating international relations).

^{96.} HANS MORGENTHAU & KENNETH W. THOMPSON, *POLITICS AMONG NATIONS* (1948).

^{97.} Walt, *supra* note 95.

transparent as mayors from different countries work together in an effort to protect their constituents' rights, advance their needs, and guarantee them natural resources, not only debunks the myth of states existing in a perpetual power struggle but contradicts the presumption that political leaders act purely to secure their interests which are "defined as power."⁹⁸

Liberal international relations theory, in contrast,⁹⁹ renders the state transparent, allowing both political scientists and international lawyers to recognize the diverse actors within states whose preferences matter in shaping state behavior even if cities are not directly acknowledged as valuable sub-state actors.¹⁰⁰ Liberalism recognizes the role of individual interest groups within states, some of whose preferences are eventually articulated by national governments in foreign policy. While liberalism still recognizes states as the ultimate vehicles through which international affairs occur, by rendering the state transparent, liberalism affords us a way to understand the role of cities more directly. Cities can be part of the "transmission belt," through which individual interests are articulated and eventually generate national interests.¹⁰¹ Taken to an extreme, liberal international relations theory may even recognize that certain sub-state actors can even be nodes of policy preference formation and articulation in their own right—engaging with one another directly across traditional borders rather than through the billiard ball of the state. By shining a spotlight on the activities within states, liberal international relations theory offers a vision of international law far more compatible with the expanding role of cities in global governance.

III. THE FOREIGN AFFAIRS AUTHORITIES OF CITIES IN DOMESTIC LAW

As cities are a construct of domestic legal systems, understanding the scope and breadth of their authorities under domestic law is an important step in examining their relationship with international law as well as their potential capacity in the future of international law. Unfortunately, there is no one size fits all answer to a city's legal authority under domestic law.¹⁰²

98. MORGENTHAU & THOMPSON, *supra* note 96.

99. Woodrow Wilson, a renowned liberalist, called for the establishment of a League of Nations and for global free trade policies in "14 Points" in the aftermath of World War I.

100. Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205, 227-28 (1993).

101. See generally Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513 (1997) (arguing that individuals can use preferences to change national policy).

102. For an exploration of national power division between cities and their federal governments in locations outside of the United States, see ALISTAIR COLE, *LOCAL GOVERNANCE IN ENGLAND AND FRANCE* (2001).

In almost every country, cities are a construct of the national legal system. Moreover, in federal systems such as the United States, cities are created and empowered by state law, although they are functionally responsible for significantly more decisions than the doctrine would suggest. The diversity of legal rules across 193 countries makes it impossible for any paper to fully explore the different powers and authorities of cities around the world.¹⁰³ As a starting point, however, I begin with an examination of the relationship between cities and foreign policy authorities in the United States, in part because U.S. cities have taken a leading role in engaging the international political and legal system. I follow this with a brief explanation of how several other foreign jurisdictions limit the powers of local actors.

A. Cities in U.S. Law

Particularly in the area of foreign policy, “cities are not free to do whatever they please.”¹⁰⁴ In the U.S. legal system, foreign affairs authorities are almost entirely vested in the federal government, divided up between the Executive and Legislative Branches. According to Article II, Section 2 of the U.S. Constitution, the President is the “Commander in Chief” of the U.S. military, and has the exclusive power to make treaties with, and appoint ambassadors to, other states.¹⁰⁵ Ruling that “the President alone has the power to speak or listen as a representative of the nation,” the Supreme Court has given the President additional latitude over foreign affairs.¹⁰⁶ The Legislative Branch also has foreign affairs authority as outlined in Article I, Section 8 including the power to “regulate commerce with foreign nations,” “declare war,” “raise and support armies,” “provide and maintain a navy,” and “make rules for the government and regulation of the land and naval forces.” Many constitutional law debates stem from the tension between the Executive and Legislative Branches over foreign affairs powers. The Supreme Court has deflected this question by resorting to a balancing test of interests, and thus far there has been no hard line to determine the scope of each Branch’s authority.¹⁰⁷ Instead, the presidential power to engage internationally is highest when there is legislative approval and lowest when there is direct legislation contradicting a presidential policy.¹⁰⁸ However, despite disputes over the balance between executive and legislative power,

103. A cross-national comparison of municipal powers and authorities authored by local experts in each jurisdiction would be a welcome addition to the literature but is well beyond the scope or focus of this Note.

104. Frug & Barron, *supra* note 23, at 1.

105. Louis Henkin, *Foreign Affairs and the Constitution*, 66 FOREIGN AFFS. 284, 288 (1987).

106. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

107. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

108. *Id.*

it is largely uncontested that these foreign affairs powers are vested—at least formally—with the federal government, not cities.

U.S. law on all levels cuts out municipal and state authority, although functionally there is some room for flexibility.¹⁰⁹ U.S. states do not have any constitutionally enumerated authorities in international affairs but instead, Article I, Section 10 of the Constitution stipulates that “no State shall enter into any Treaty, Alliance, or Confederation,” effectively curtailing states’ foreign affairs power.¹¹⁰ The Supreme Court had confirmed and solidified this principle, and found in *United States v. Pink* that states do not have the power to alter foreign policy to their own domestic rules, and “power over external affairs is not shared by the states; it is vested in the national government exclusively.”¹¹¹ Even if state actions only have a slight impact on federal foreign policy this can be grounds for invalidation, a position taken in *American Insurance Association v. Garamendi*, where the Supreme Court held that “an exercise of state power that touches on foreign relations must yield to the National Government’s policy.”¹¹² However, the Court noted in *Medellin v. Texas* that this holding applies only in “a narrow set of circumstances,” potentially opening the door for increased non-federal power in other areas.¹¹³

Despite a constitutional and doctrinal framework that mainly excludes them, states at least have maintained some limited powers in foreign affairs. As long as states receive consent from Congress, they may make compacts internationally, a process that may even be encouraged by states hoping to decrease their organizational responsibilities.¹¹⁴ Perhaps because of the risk of organizational gridlock, the Executive Branch does not always speak out against these state actions, even if a potential federalism argument could be raised.¹¹⁵ States are also given some influence to control trade with foreign partners and are permitted to regulate foreign trade in the event that it creates dangers to state citizens, as long as the proposed regulation is not deemed unduly burdensome on the national government.¹¹⁶ States have also

109. See GLENNON & SLOANE, *supra* note 72, at 76 (arguing that at least within the realm of states “patterns of state practice that we have recounted reflect a spontaneous ordering vis-à-vis federal-state relations in the realm of foreign affairs”)

110. See *generally* *United States v. Pink*, 315 U.S. 203 (1942) (holding that New York state was not able to alter national foreign policy); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *United States v. Belmont*, 301 U.S. 324 (1937); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

111. *Pink*, 315 U.S. at 233.

112. *Am. Inst. Ass’n. v. Garamendi*, 539 U.S. 396, 413 (2003).

113. *Medellin v. Texas*, 552 U.S. 491, 128 (2008).

114. Richard B. Bilder, *The Role of States and Cities in Foreign Relations*, 83 AM. J. INT’L L. 821, 824 (1989).

115. Duncan B. Hollis, *Unpacking the Compact Clause*, 88 TEX. L. REV. 741, 742 (2010) (detailing how a 2003 Kansas compact went unchallenged and unaddressed by the executive branch).

116. Henkin, *supra* note 105, at 161.

found ways to alter their economic laws to have a disparate impact on foreign countries as well as to influence internal affairs indirectly through targeted economic regulations that are neutral on their face.¹¹⁷

However, this represents only a sliver of overall power. If U.S. states have little formal foreign affairs powers, cities have even less.¹¹⁸ Under U.S. law, “municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them,” and their existence “rests in the absolute discretion of the state.”¹¹⁹ Even outside the realm of foreign affairs, cities in the United States have almost no sovereign power. In *Hunter v. City of Pittsburgh*, a 1907 ruling that remains good law, the Supreme Court determined that the state had sole discretion over a city’s trajectory and “the State, therefore, at its pleasure may modify or withdraw all such powers.”¹²⁰ While subsequent case history has refined this position to limit blanket state statutes over cities, cities continue to retain almost no independent power over states or the federal government.¹²¹ As such, cities can only exercise those authorities delegated to them by states, and states themselves have limited foreign affairs powers to delegate. As a result, under U.S. law, cities have almost no foreign affairs power in the formal sense.

However, cities may nevertheless be able to work around this structure and claim legal authority in foreign affairs through “Home Rule” clauses found in state constitutions. These “Home Rule” provisions allow local governments to control issues that relate primarily to local concerns and can include, as described in the Illinois State Constitution, “the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.”¹²² To find that states had, in fact, delegated foreign affairs capacity to cities would require first a determination that states had some dormant power to delegate and second that an interpretation of the “Home Rule” clauses in state constitutions, by which states delegate some authority to cities, include foreign affairs authorities. Furthermore, while cities are bound to follow state laws, “local laws and judicial decisions continue to apply . . . even if such action may have some international consequences.”¹²³ Given that the language used in these clauses is often

117. Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1639 (1997).

118. See Gerald Frug, *The City as a Legal Concept*, 96 HARV. L. REV. 1057, 1062 (1980).

119. *Hunter v. Pittsburgh*, 207 U.S. 161, 178 (1907).

120. *Id.*

121. See generally *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621 (1969) (detailing how cities lack control create regulations for local voting procedures that are not tailored to achieve a stated purpose).

122. ILL. CONST. art. VII, § 6(a).

123. Bilder, *supra* note 114, at 826.

broad and can encompass foreign affairs, cities may be able to utilize state constitutions to establish authority for a range of actions.

However, as these “Home Rule” powers are determined by states and can be narrowed at the discretion of state legislatures, they represent only a limited scope of authority.¹²⁴ Potential city authority is further contained as a majority of states impose a version of what has been labeled “Dillon’s Rule,” a provision that stipulates that cities only have the powers delegated to them directly by the state.¹²⁵ States also have broad authority to preempt municipal actions as long as such actions impact state concerns, with twenty-eight states preempting municipal minimum wage policies, forty-two states preempting tax policies, and twenty-three states preempting paid leave.¹²⁶ Even in cases where municipal policies do not fall under a state-wide scope, states can create preventative legislation as a “unique brand of preemption [that] simply prohibits a city from acting without actually addressing the extent to which [the potential city regulation] is a statewide concern.”¹²⁷

Limited formal powers aside, there is hope for cities attempting to make a dent in the traditional state system through both doctrinal and functional channels. Within their territorial jurisdictions and delegated authorities, cities *do* have significant local powers. City corporations generally have implied authority and power if they can demonstrate that their actions are “essential to the objects and purposes of the corporation as created.”¹²⁸ As detailed in the New York City Charter, mayors have significant power to allocate funds for efforts including “local parks services, street cleaning and refuse collection, housing code enforcement, highway and street maintenance and repair, sewer maintenance and repair, and the maintenance of public buildings by the department of citywide administrative services.”¹²⁹ Outside of basic services, cities are also able to form contracts with outside organizations to facilitate municipal tasks.¹³⁰ A willingness to distribute power in this fashion may even be encouraged by federal and state governments hoping to let cities solve problems that would be burdensome for the state, from climate change efforts to small-scale trade concerns. The numerous examples of city engagement that follow in Part IV show that the

124. Frug & Barron, *supra* note 23, at 15.

125. Jessie J. Richardson, Jr. et al., *Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management*, BROOKINGS INST. (Jan. 1, 2003), <https://tinyurl.com/y6zjbaaq>; JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 55 (1872).

126. NAT’L LEAGUE OF CITIES, CITY RIGHTS IN AN ERA OF PREEMPTION: A STATE-BY-STATE ANALYSIS (2018), <https://tinyurl.com/yvt9v7l2>.

127. Franklin R. Guenther, Note, *Reconsidering Home Rule and City-State Preemption in Abandoned Fields of Law*, 102 MINN. L. REV. 427, 447 (2017).

128. *City of Ottawa v. Carey*, 108 U.S. 110, 121 (1883).

129. N.Y. CITY CHARTER §106(f)(4) (2004).

130. George A. Boyne, *Bureaucratic Theory Meets Reality: Public Choice and Service Contracting in U.S. Local Government*, 58 PUB. ADMIN. REV. 474 (1998).

doctrine may be restrictive, but governments either are unable or do not want to stop cities from engaging.

B. *Cities in Foreign Jurisdictions*

While I have briefly explored only U.S. law on the authority of cities, the general trend of cities bearing almost no foreign affairs power appears to be replicated to some level in many other countries. In Canada, cities are limited by the constitution such that they can only act “within the sphere of policies delegated to them by provincial legislatures.”¹³¹ Among European countries, there is a broader range of city autonomy, as municipalities in Belgium experience broader freedoms as a consequence of historic provincial fracturing, while cities in the United Kingdom are instead financially and politically tied to the central government.¹³² The top-down approach found in the United Kingdom is not limited to Europe, as Brazil has a similar constitutional structure, with local governments controlling education and culture, and the national government maintaining a hold on foreign policy outside of city jurisdictions.¹³³

IV. MAPPING THE TERRAIN: A TYPOLOGY OF CITIES’ ENGAGEMENT WITH INTERNATIONAL LAW

Cities are increasingly engaging the international legal system for a variety of purposes through forms, mechanism, and institutions that challenge the traditional state-centric model of international law. These engagements—some with more potential than others—are becoming both more common and are directly chipping away at traditional notions of international law and institutions. This Part develops a typology to help classify and understand the range of city engagements with international law in practice today, as well as evaluates the capacity of each city mechanism to impact the structure of international law. The typology provided in Figure One is based on the purpose of the city’s engagement with international law and then maps the mechanisms cities are using to engage international law, specific examples of such engagements, and the general impact of those engagements across the range of identified purposes.¹³⁴ Following the table,

131. Ian Madison & Emmanuel Brunet-Jailly, *The International Activities of Canadian Cities: Are Canadian Cities Challenging the Gatekeeper Position of the Federal Executive in International Affairs?*, in *THE POWER OF CITIES IN INTERNATIONAL RELATIONS* 126 (Simon Curtis ed., 2014).

132. RODRIGO TAVARES, *PARADIPLMACY: CITIES AND STATES AS GLOBAL PLAYERS* 69-70 (2016); see COLE, *supra* note 102, at 3-4.

133. TAVARES, *supra* note 132, at 69.

134. While cities have long built sister-city connections, my typology focuses exclusively on cities’ global activities that either directly engage international law or mirror traditional international law in

I proceed by diving more deeply into each of the outlined purposes of cities' activity framed by examples of how these purposes are occurring.

*Figure One: Categories of City Engagement with International Law*¹³⁵

Purpose of cities' activity	Mechanism	Illustrative Examples	Impact
Harnessing international law to achieve locally preferred objectives	a) Adopting international agreements in municipal law b) Self-reporting to international institutions c) Accessing international financing d) UN Habitat	a) San Francisco CEDAW ¹³⁶ b) New York report to UN c) New Urban Agenda	a) Changes in local law b) External monitoring of city policies c) New financing opportunities
Encouraging compliance with international law by national actors	a) Mayoral commitments b) Sanctions c) Domestic litigation of international issues	a) Burma sanctions b) U.S. Sanctuary Cities and Italian immigration litigation	a) Tension between cities and national governments b) Increased compliance by third parties c) Increased issue visibility and norm contestation
Influencing the content of international legal norms based on municipal preferences	a) Mayoral commitments and compacts b) City participation in treaty processes c) "Parallel" city Ios	a) Chicago Climate Charter b) Marrakesh Agreement and Paris Agreement	a) Increased localization in international legal regimes b) New "transmission belts" in the international architecture c) New potential <i>opinio juris</i>
Reorienting the	a) City-based	a) New York and	a) Institutional

form or function. The typology also seeks to avoid what might be termed mere advocacy—for example, a mayor making a public statement that the United States should ratify an international convention—and focuses instead on city activities that directly implicate international law, like an international compact of mayors. This typology shines a light on the range of cities' international law-like activities and the potential impact of those activities for international law generally and for specific substantive areas of legal practice.

135. Note that this table is meant to be read horizontally such that in cases where there is a letter in multiple columns in the same row, this represents the same phenomenon as a mechanism, example, and impact.

136. See *infra* note 146.

international legal system to increase city-voice	international affairs capacities b) City networks and IOs c) Mayoral compacts d) City-city agreements	London b) C40, ICLI, Global Covenant of Mayors c) Chicago Climate Charter d) U.S.-Mexico Border mayors	competition and/or cooperation b) Relative normativity in international law c) Enhanced city-to-city cooperation
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It is vital to note that the elements of my typology represent a unique trend in city engagement. Cities are now shifting from traditional advocacy roles to direct engagement with international law, a change that has occurred over the past few decades. In contrast, municipal *advocacy* has a long history. In such cases, from sister city agreements to mayoral pleas to deliver humanitarian relief, the goal was merely to change their national government's approach to an international issue.¹³⁷ While the rapid expansion of such advocacy reflects a growing role of cities in both domestic and international politics, it does not involve the city taking a step toward international legal personality of its own. What makes the categories and examples in my typology below different is that the city begins to appear as a direct participant in international law. The categories in my typology reflect functional purposes of international law, including commitment and compliance. They also represent variations on traditional forms of international law through instruments that look like international treaties.

A. Harnessing International Law to Achieve Locally Preferred Objectives

Cities do not have the authority to enter into legally enforceable international agreements or to adopt even non-binding international treaties. Nevertheless, a new trend is developing, with cities assuming the mantle of international actors, adopting international agreements or writing their own ordinances that either mimic or directly reference international treaties. While this has generally been done by cities dissatisfied with their federal government's inaction with specific human rights issues, cities are not merely acting out against national governments, but instead are effectively attempting to bypass the traditional path for creating law in their own effort to shape local legislation in a preferred direction.

137. See, e.g., Adam Edelman, *Mayors' Group Calls off Trump Meeting after Justice Department Threatens Sanctuary Cities*, NBC NEWS (Jan. 24, 2018), <https://tinyurl.com/y4mw398m> (describing New York Mayor Bill de Blasio's refusal to attend the White House in response to President Trump's threat to sanctuary cities).

1. CEDAW

The UN General Assembly passed the Convention of the Elimination of all Forms of Discrimination Against Women, more commonly known by its acronym “CEDAW,” on December 18, 1979.¹³⁸ After signing onto the convention on July 17, 1980,¹³⁹ the United States has failed to take formal steps to ratify CEDAW.¹⁴⁰ Local attempts at implementing international law are evident in the “Cities for CEDAW” campaign. Inspired by San Francisco’s and Los Angeles’ pioneering attempts and ultimate success in ratifying the CEDAW,¹⁴¹ the “Cities for CEDAW” campaign was launched in March 2014 with the agenda of using CEDAW to advance women’s rights locally.¹⁴² The campaign is working to have city governments integrate the CEDAW into binding local ordinances.¹⁴³ Their draft resolution written at the U.S. Conference of Mayors states: “A local CEDAW ordinance seeks three standards; a gender analysis of city departments and commissions, an oversight body to ensure that appropriate and timely actions are taken, funding to support the implementation of the principles of CEDAW;”¹⁴⁴ and unequivocally explains how “City and County governments have an appropriate and legitimate role in affirming the importance of international law in communities as universal norms and to serve as guides for public policy.”¹⁴⁵ Motivated by the federal government’s inaction, CEDAW and international law was utilized, as Chapter 12K of San Francisco’s Administrative Code is titled “Local Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women,”¹⁴⁶ and Section 12K.5 discusses the parameters and responsibilities of the newly created Task Force responsible for implementing CEDAW and

138. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

139. *Id.*

140. *A Fact Sheet on CEDAW: Treaty for the Rights of Women*, AMNESTY INT’L (Aug. 25, 2005), https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf.

141. Initially municipal reactions to CEDAW have received significant research attention. Harold Hongju Koh, *Why America Should Ratify the Women’s Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT’L L. 263, 274 (2002). See generally Judith Resnik, *Comparative (In)equalities: CEDAW, the Jurisdiction of Gender, and the Heterogeneity of Transnational Law Production*, 10 INT’L J. CONST. L. 531, 540 (2012) (outlining the complications that CEDAW created among ratifying states).

142. *Welcome to the Cities for CEDAW Weblog*, CITIES FOR CEDAW, <https://tinyurl.com/j8wpug5> (last visited Feb. 6, 2021).

143. *Id.*

144. Resolution Supporting Cities for CEDAW Initiative by the U.S. Conference of Mayors, <https://citiesforcedaw.files.wordpress.com/2014/06/cedaw-uscm-resolution-draft-52014.pdf>.

145. *Id.*

146. S.F., CAL., ADMIN. CODE ch. 33A, § 12K (1998).

reporting on the city's progress towards eliminating all forms of discrimination against women.¹⁴⁷

San Francisco's success in implementing an international treaty in the form of local law set a precedent for other cities to match their initiative. In 2015, Los Angeles Mayor Garcetti announced a new executive directive, calling on all Los Angeles city departments to implement CEDAW's provisions which ultimately transitioned into more formal legislation.¹⁴⁸ Since then, as of August 2018, seventy-one counties and municipalities have passed CEDAW resolutions.¹⁴⁹ As of March 2018, nine cities and counties across the United States have passed CEDAW-specific ordinances, including Cincinnati, OH; Honolulu, HI; Los Angeles, CA; Pittsburgh, PA; among others.¹⁵⁰

2. *Convention on the Rights of the Child*

Though the Cities for CEDAW campaign is more comprehensive, there has been a significant movement among cities and municipalities in support of the UN Convention on the Rights of the Child (CRC). The CRC is the first international treaty to protect children through the establishment of comprehensive standards for health care, education, and legal and social rights in addition to more basic needs such as the right to free expression and the right to relax.¹⁵¹ Composed of fifty-four articles, the CRC was adopted and opened for signature on November 20th, 1989 and came into effect in September 1990.¹⁵² It has been ratified by every UN member state—even non-state entities—except for the United States.¹⁵³

Like San Francisco's international-meets-local engagement with CEDAW, New York City passed legislation in support of the CRC as an effort to express their unwavering support for U.S. ratification of the CRC in 1989.¹⁵⁴ New York is among the nine states that have adopted resolutions supporting the UN treaty, and five states that have expressed their support

147. *Id.* § 12K.5.

148. WOMEN'S INTERCULTURAL NETWORK & LEADERSHIP CONF. EDUC. FUND, CITIES FOR CEDAW: A CAMPAIGN TO MAKE THE GLOBAL LOCAL 1, 4 (2015), <https://tinyurl.com/yxu55k8w>; CITIES FOR CEDAW: *Promoting Women's Equality in Your Community Guidelines and Toolkit*, U.N. ASS'N OF THE U.S. 5, 7 <https://www.intermix.org/cedaw/UNAWomenCEDAWToolkit.pdf>.

149. Austin Ruse, *Feminists Want American Cities to Support UN CEDAW Treaty Claiming a "Right" to Abortion*, LIFE NEWS.COM (Aug. 16, 2018), <https://tinyurl.com/yeny5l3>.

150. *Cities for CEDAW: Status of Local Activities*, WOMEN'S INTERCULTURAL NETWORK & LEADERSHIP CONF. EDUC. FUND, <https://tinyurl.com/y6zyefvf> (last updated Mar. 15, 2018).

151. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

152. *Id.*

153. *Id.*

154. BLUHM LEGAL CLINIC, N.W. UNIV. SCH. OF L., U.N. CONVENTION ON THE RIGHTS OF THE CHILD: TOOLKIT FOR THE ADOPTION OF THE CONVENTION ON THE RIGHTS OF THE CHILD BY CITY COUNCILS AND STATE LEGISLATURES 8 (2009), <https://tinyurl.com/y33fnkv5>.

for the CRC.¹⁵⁵ Chicago, however, has made the most noise in their support for the CRC. Titled “City of Chicago Resolution Adopting the UN Convention on the Rights of the Child,” the resolution affirmed that “[i]t is further resolved, that the Mayor and members of the City Council of Chicago will advance policies and practices that are in harmony with the principles of the Convention on the Rights of the Child in all city agencies and organizations that address issues directly affecting the City’s children.”¹⁵⁶ The resolution also emphasized that “the City of Chicago is one of only two U.S. cities distinguished as a UNICEF Child Friendly City;”¹⁵⁷ further delineating Chicago’s unique place in the international community and strong reliance on both the form and function of international law.

3. *Montreal Human Rights Charter*

The United States is not the only country where cities have been taking steps to incorporate international law’s “substance” into local legislation. On January 1st, 2006, Montreal passed the Montreal Charter of Rights and Responsibilities (MCRR).¹⁵⁸ Exalted by the UN Educational, Scientific and Cultural Organization (UNESCO) and UN-HABITAT, the MCRR is a truly singular document: the preamble references the Universal Declaration of Human Rights; the UN World Conference on Human Rights; and the Convention on the Rights of the Child among the authoritative documents inspiring the city to draft and pass a legally binding human rights document.¹⁵⁹

The document is structured around seven fundamental themes: democracy, economic and social life, cultural life, recreation, physical activities and sports, environment and sustainable development, safety, and municipal services.¹⁶⁰ It is a municipal by-law, which makes it binding for all Ville de Montreal elected officials, city employees, and managers, which includes all employees of the city’s boroughs, para-municipalities, corporations controlled by the city, as well as any organization or individual contracted by the city.¹⁶¹ While the Charter cannot be cited as the basis for a judicial proceeding or serve as the basis for judicial remedy,¹⁶² the

155. *Id.*

156. City of Chicago Resolution Adopting the U.N. Convention on the Rights of the Child (Feb. 11, 2009), <https://tinyurl.com/y5pltv4h>.

157. *Id.*

158. Montreal Charter of Rights and Responsibilities (June 1, 2006), <https://tinyurl.com/y4lr4vhs> [hereinafter Montreal Charter].

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* art. 32.

Ombudsman de Montreal, an organization defined as “an ally and efficient resource for citizens unsatisfied with a municipal decision . . . in Montreal¹⁶³” is empowered to ensure local compliance with the MCRR, and has been granted exceptional jurisdiction “to intervene and investigate decisions that were voted by City Council, the Executive Committee or a Borough Council.”¹⁶⁴

While the MCRR is influenced by several international treaties and has been lauded by UNESCO and UN-HABITAT as a model for human rights, it does not directly ratify any international treaty; rather, it underscores the importance of the principles of several UN human rights documents and made them the focal point of its legal initiative to protect and guarantee their municipal citizen’s rights.¹⁶⁵ Nevertheless, these examples are demonstrative of the fact that cities are no longer relying on their countries to secure the basic rights of their citizens and are instead taking the initiative to ensure that these rights are protected in the manner fashioned by UN international treaties as guaranteed by the states that ratified and implemented these legal documents.¹⁶⁶

B. *Encouraging Compliance with International Law by National Actors*

Not only do cities seek to bind themselves to international law for local purposes, they also occasionally act as enforcers of international law, attempting to influence everything from human rights issues to perceived policy violations. Cities may not have the direct ability to create foreign policy or economic sanctions, however, they are able to circumvent this however temporarily to exert pressure on other foreign actors. While these efforts are often stopped by national governments or international bodies, cities and mayors are able to leverage their economic power to minimize serious consequences.¹⁶⁷ Depending on the existing political tension between cities and nations, city action in this area has the potential to frustrate national policy on international law. The actual ability of city “sanctions” to influence international law is unclear thus far, although states

163. *The Ombudsman de Montréal in a Nutshell*, OMBUDSMAN DE MONTRÉAL, <https://tinyurl.com/y5cbxqfv> (last visited Feb. 11, 2020).

164. Montreal Charter, *supra* note 158.

165. *Id.*

166. For additional examples of city action, see *European Charter for the Safeguarding of Human Rights in the City*, UNITED CITIES & LOC. GOV'TS (2012), <https://tinyurl.com/y2qw3gz3>; *World Charter on the Right to the City*, HABITAT INT'L COAL. (June 27, 2005), <http://hic-gs.org/document.php?pid=2422>; *Gwangju Human Rights Charter*, HURIGHTS OSAKA, <https://tinyurl.com/y5vbofth> (last visited Feb. 11, 2020).

167. *See* Willem v. France, App. No. 10883/05 (July 16, 2009), <https://tinyurl.com/y29tlnfy> (detailing that an offending mayor only received a small fine for his improper use of foreign affairs power).

appear to be significantly more watchful of the influence of both mayors and municipal governments.

1. *South Africa Sanctions*

This notion of cities using the international legal “structure” of sanctions on international actors is best exemplified by the slew of American cities that created economic embargoes against South Africa as a means to protest the apartheid in 1986, actions shaped in part by the United Kingdom’s previous use of city council sanctions to control apartheid in South Africa the year earlier.¹⁶⁸ Los Angeles, of the municipal leaders in the sanctions, instituted several ordinances that required the city to halt buying goods and services from the government of South Africa and allowed the city to refuse to contract with companies who had business ties in South Africa. The city’s policy had tangible impacts on offending businesses in the area and caused a range of nefarious results including the removal of the Fluer Flower Company from a contract to help expand the Los Angeles Convention Centre.¹⁶⁹ Similar policies were created in seventy other cities, including high profile locations, such as Boston and San Francisco, as well as a range of cities generally considered outside the scope of international influence, like Topeka and Camden.¹⁷⁰ On aggregate, legislation reportedly impacted \$18.5 billion in investments and severely altered financial outcomes for businesses that were sanctioned.¹⁷¹

Cities’ ability to implement these sanctions were met with mixed success, with sanctions created by the city of Baltimore avoiding preemption while similar city council policies in New York were voided.¹⁷² However, despite these restrictions, the market impacts of lost contracts remained a pervasive force in the anti-apartheid movement in the United States, indicating that even when cities are prevented by national governments, they retain some power to influence foreign affairs through sanctions, however informal.

168. *Local Authorities Against Apartheid*, FORWARD TO FREEDOM, <https://tinyurl.com/y52k7jmp> (last visited Feb. 7, 2020); Local Government Act 1988, c. 9 (Eng.).

169. Cynthia R. Fischer, *Federal Preemption and the South African Sanctions: A Survival Guide for States and Cities*, 10 LOY. L.A. INT’L & COMPAR. L. REV. 693, 693 (1988).

170. Memorandum Opinion from Charles J. Cooper, Assistant Att’y Gen., U.S. Dep’t of Just., to Edwin Meese, Att’y Gen., U.S. Dep’t of Just. (Apr. 9, 1986), <https://tinyurl.com/yxankjp3>; Rob Jones & Jennifer Davis, *Public Investment and South Africa Newsletter*, PUB. INV. & S. AFR. (Am. Comm. on Afr., New York, N.Y.), Oct. 29, 1986, <https://tinyurl.com/y2anjo6g>.

171. *Id.* at 3.

172. Bd. of Trs. v. City of Baltimore, 562 A.2d 720 (Md. 1989); Brentin Mock, *When Cities Fought the Feds Over Apartheid*, BLOOMBERG CITYLAB (May 24, 2017), <https://tinyurl.com/y23bx4rl>.

2. *Anti-Israeli Efforts in Seclin, France*

While much narrower in scope, the use of economic sanctions against another country was also utilized in 2002 by Mayor Willem of Seclin, France. Willem, in opposition to Israel's acts towards Palestinian children, implemented a city-wide boycott of Israeli products, particularly fruit juices.¹⁷³ Tensions with Israel were shared with the European Parliament during this time.¹⁷⁴ Despite a shared agenda with the greater European Union, Willem was sanctioned by the European Court of Human Rights who heard the case in 2009 and imposed a nominal fine on Willem for overstepping his powers as mayor, noting that government authorities, not a city mayor, were able to implement a boycott.¹⁷⁵ However, while Willem did not prevail in his sanction, he received only a small fine and was able to uphold the proposed embargo for several years before he was ultimately stopped.¹⁷⁶

C. *Influencing the Content of International Legal Norms Based on Municipal Preferences*

Cities are also using municipal goals to shape legal norms (often towards the political left), a goal primarily implemented through the creation of treaty-like documents. Cities do not have any "binding" legal authority over national or foreign governments, yet the creation of treaty-like documents mimicking the form of binding international law has become increasingly common. These documents have varying degrees of formality from their origins in informal sister city agreements to the strict language employed in the Chicago Climate Charter describing an intent to be bound by the commitment.¹⁷⁷ This trend of "formal" agreement creation has emerged in part as cities are disagreeing with federal governments over international policy, including the increasing broad divide between local U.S. governments and federal government in the Trump era. This is further solidified by the greater political continuity in municipalities,¹⁷⁸ such as in Chicago, compared to polarizing national politics, a feature of cities that

173. TURK. TASK FORCE, RETHINK INST., HATE SPEECH AND BEYOND: TARGETING THE GULEN MOVEMENT IN TURKEY 44 (2014).

174. David Newman & Haim Yacobi, *The EU and Israel/Palestine Conflict: An Ambivalent Relationship* (Ben Gurion Univ. Working Papers Series in EU Border Conflicts Stud., Working Paper No. 4, 2004) <https://tinyurl.com/y37mesqx>.

175. *Willem v. France*, App. No. 10883/05 (July 16, 2009) <https://tinyurl.com/y29tlnfy>.

176. *Id.*

177. Chicago Climate Charter (2017).

178. David D. Graham, *Red State, Blue City*, ATLANTIC (Mar. 2017), <https://tinyurl.com/h3e74aw> (detailing that even in conservative states in the United States, cities tend to have a unified liberal bend as "Hillary Clinton won 88 of the country's 100 biggest counties").

allows for pseudo-binding documents to be approved with little to no local controversy. Despite the local focus of these documents, they vary from issues of inherently local concern to those generally addressed at an international level.¹⁷⁹ While city “treaties” are shaping the landscape of international agreements, their capacity for permanence and authority remains to be seen.

1. *Cities and Climate*

Municipal attempts to create “binding” international norms are particularly evident in the area of climate change. These agreements have been formed primarily to extend the legal responsibility of cities, as well as convey the desire of cities to maintain a high level of climate engagement than even international standards. While these agreements between cities to reduce emissions or increase sustainable energy innovation are not formal international law, they are increasingly more likely to include language that resembles international legal commitments entered into by states. The late 1990s and early 2000s witnessed the emergence of a range of informational efforts to control climate change by city actors, however, these efforts did not begin to resemble the form of international law until the mid to late 2000s.¹⁸⁰ This included a range of increasingly formal treaty-like documents including the African Mayors Climate Change Declaration, the “We are Still In” Declaration, the Chicago Climate Charter, the Mexico City Pact, and the U.S.-China Climate Leaders Declaration.¹⁸¹ While all the listed documents are representative of treaty-like agreements in their written form and desire to express commitment, I explore the Chicago Climate Charter and the U.S.-China Climate Leaders Declaration in greater detail below as these examples represent some of the most substantial and formal efforts on the part of cities to engage in treaty-like processes with impacts on international legal norms.

i. Chicago Climate Charter

The Chicago Climate Charter represents one of the most inclusive and formal “treaty” documents made between mayors and intended to influence

179. See *infra* Part III.

180. See, e.g., African Mayors Climate Change Declaration (2012), <https://tinyurl.com/yxn9ht7>; “We Are Still In” Declaration, WE ARE STILL IN, <https://tinyurl.com/yykuv26a> (last visited Feb. 6, 2021); Chicago Climate Charter (2017); U.S.-China Climate Leaders Declaration On the Occasion of the First Session of the U.S.-China Climate-Smart/Low-Carbon Cities Summit (2015), <https://tinyurl.com/y54cw7pf> [hereinafter U.S.-China Climate Leaders Declaration].

181. African Mayors Climate Change Declaration (2012), <https://tinyurl.com/yxn9ht7>; “We Are Still In” Declaration, WE ARE STILL IN, <https://tinyurl.com/yykuv26a> (last visited Feb. 6, 2021); Chicago Climate Charter (2017); U.S.-China Climate Leaders Declaration, *supra* note 180.

these international norms. The purpose of the charter was primarily to expand the responsibility of cities in the area of climate space. This desire by mayors to formally increase city responsibility via the Charter was spurred by the United States' abandonment of the Paris Agreement.¹⁸² Former New York Mayor Bloomberg, one of the most verbal mayors on the charter, highlighted this desire to use the agreement to replicate the Paris Agreement with this statement that the pledge “[t]he emission reductions work being done in cities is critical to . . . our commitment to fulfilling the Paris Agreement.”¹⁸³ Furthermore, drafters of the agreement expressed a desire to address the urgency of climate change, including Paris mayor Anne Hidalgo’s description that “[mayors] need to be constantly sharing and replicating the best ideas.”¹⁸⁴ In light of these goals, the charter was initially signed in December 2017 by sixty-seven mayors from a host of cities across the world including Paris, Mexico City, and Vancouver, and was viewed as a way to help cities establish their commitment to environmental goals despite floundering national leadership.¹⁸⁵

The Charter, while not binding law, exemplifies many of the formal components of international treaties between nations. First, it is self-aware of its similarities to the Paris Agreement, and even begins by referencing the parallel Paris Agreement signed by 197 countries, and then states that “cities . . . are engaged and ready to act” in addition to and in the absence of state action.¹⁸⁶ Second, it is intended to mirror the language and goals of the Paris Agreement, an example of positive international law, indicating the desire of city leadership to be seen as international actors and be bound by international treaties. The Charter also implies a sense of formality and commitment through language such as the role of the agreement to “affirm [cities’] collective commitment.”¹⁸⁷ While the language used does not articulate specific targets for emissions, it encourages cities to develop their own plans to help make the 1.5 degree temperature decrease articulated in the Paris Agreement possible. Furthermore, the Charter received attention for national leadership including former President Barack Obama, who spoke before the group of mayors signing the charter. President Obama

182. Press Release, U.S. Dep’t of State, On the U.S. Withdrawal from the Paris Agreement (Nov. 4, 2019), <https://br.usembassy.gov/on-the-u-s-withdrawal-from-the-paris-agreement/>.

183. Press Release, Off. of the Mayor of Chi., Mayor Emanuel Announces Chicago has Met 40 Percent of Paris Climate Agreement Commitments (Sept. 18, 2017), <https://tinyurl.com/y6z467rw>.

184. Press Release, Off. of the Mayor of Chi., Mayor Emanuel, Global Covenant of Mayors for Climate and Energy, and C40 Cities Leadership Group Announce Chicago Will Host Inaugural North American Climate Summit and 2017 C40 Cities Bloomberg Philanthropies Awards (Sept. 18, 2017), <https://tinyurl.com/y3f2bu7w>.

185. Avery Anapol, *10 More Cities Sign on to Chicago Climate Pact*, HILL (Dec. 27, 2017), <https://tinyurl.com/y63ke9b5>.

186. Chicago Climate Charter pmbl., cl. 6 (2017).

187. *Id.* pmbl., cl. 16.

spoke about the importance of change from local leadership such as cities, not only state leaders, and asserted that the “Paris agreement was never going to solve the climate crisis on its own. It was going to be up to all of us.”¹⁸⁸ While the results of the Charter are difficult to determine given that less than a year has passed since its signing, the charter has solidified Chicago’s position as a city leading the municipal fight against climate change. Chicago hosted a 2018 forum on global cities, an event packed with climate change dialogue from green innovation to carbon emissions.¹⁸⁹

ii. *The U.S.-China Climate Leaders Declaration*

The U.S.-China Climate Leaders Declaration of 2015 represented a collaboration of Chinese and American city leaders with the joint goal of reducing emissions to meet national targets, and producing a formal document intended to be altered at each annual meeting to shape new climate goals.¹⁹⁰ Unlike earlier climate agreements between cities that focused on broad-scale agreements with little definitive commitment, the Climate Agreement included specific and individualized city goals for American cities, such as an eighty-three percent greenhouse gas (GHG) reduction by 2015 in Oakland.¹⁹¹ While Chinese cities included more general goals including “adjust and optimize the industrial structure,” the agreement nevertheless represented a strong desire to reach climate goals.¹⁹² The summit where the declaration was signed consisted of leadership from forty-nine Chinese cities and seventeen American cities, along with over 1,000 attendants.¹⁹³ Furthermore, Chinese cities have continued to solidify their desire to uphold the agreement through the formation of the Alliance of Peaking Pioneer Cities, an agreement that sets specific goals for both emissions and overall energy reform.¹⁹⁴

The declaration mirrors an international treaty by its formal nature and national parallels. The city-to-city agreement was intended to both mirror and support the 2014 Joint Announcement on Climate Change, an effort between then President Obama and President Xi Jinping referenced directly

188. John Byrne, *Obama at Climate Event in Chicago Doesn't Mention Trump's Name; Says U.S. in an 'Unusual Time'*, CHI. TRIB. (Dec. 5, 2017), <https://tinyurl.com/y22gbhh3>.

189. *Event Schedule*, THE CHI. F. ON GLOB. AFFS., <https://tinyurl.com/y3kvsqea> (last visited Feb. 6, 2021).

190. U.S.-China Climate Leaders Declaration, *supra* note 180.

191. *Id.*

192. *Id.*

193. *Second U.S.-China Climate-Smart/Low-Carbon Cities Summit*, C40 CITIES (July 7, 2015), <https://tinyurl.com/y6mw8guz>.

194. *New Report Outlines Ambition of Chinese Peaking Pioneer Cities*, ICLEI KAOHSIUNG CAPACITY CTR. (Nov. 8, 2016), <https://tinyurl.com/y656r2vn>.

in the text of the municipal declaration.¹⁹⁵ The ability of a municipal climate agreement between the two countries to serve as a primary document stipulating emissions standards in the two nations is enhanced by national failures in the wake of the Trump administration as the United States shifted away from an Obama-era focus on climate control.¹⁹⁶ Beyond the practical capacity of the agreement to act as an international treaty, the formal language used, while not legally binding, conveys a degree of commitment through phrases such as “we solemnly declare our willingness and determination to lead climate actions.”¹⁹⁷

2. *Cities and Trade*

Beyond climate change agreements, there has been a recent emergence of practical bilateral and transnational municipal trade agreements that closely resemble national economic treaties between two or more states. While cities have traded with each other under the legal rules of their national systems for hundreds of years, or, more recently, joined sister city alliances meant to encourage trade, transnational municipal economic relations have only recently been formalized such that cities are now mimicking processes of international law.¹⁹⁸ This occurs via treaty-like text as well as by provisions reminiscent of rules outlined in international organizations such as the WTO.

i. Global Cities Economic Partnership

Perhaps the most visible example of a bilateral city trade agreement is the Global Cities Economic Partnership between Chicago and Mexico City established in 2013. The agreement, signed by Chicago Mayor Rahm Emanuel and Mexico City Mayor Miguel Angel Mancera and penned in both English and Spanish, represents one of the first treaty-like agreements focused on trade between only mayors. Participants in the agreement were aware of the unconventional nature of such city-to-city “treaties,” and the agreement was described by World Business Chicago as a “first of its kind” agreement between cities.¹⁹⁹ Created with the goal of increasing innovation,

195. U.S.-China Climate Leaders Declaration On the Occasion of the First Session of the U.S.-China Climate-Smart/Low-Carbon Cities Summit (2015), <https://tinyurl.com/y54cw7pf>.

196. Manish Bapna, *There Are Still Opportunities for US-China Climate Cooperation*, WORLD RES. INST. (Feb. 7, 2018), <https://tinyurl.com/y2gpd6mg>.

197. China-U.S. Climate Leaders Declaration On the Occasion of the Second China-U.S. Climate-Smart/Low-Carbon Cities Summit (2016), <https://tinyurl.com/y5shkpcp>.

198. *See* Chicago Climate Charter (2017) (attempting to create a treaty-like document parallel to international legal agreements).

199. *World Business Chicago Signs Memorandum of Understanding with Mexican Government Economic Development Arm ProMexico*, WORLD BUS. CHI. (Mar. 6, 2013), <https://tinyurl.com/yyvhnfyc>.

elevating imports and exports, and improving each cities' competitive advantage, the agreement appears to copy themes and phrases used in the National American Free Trade Agreement (NAFTA) as part of its own text. Just as NAFTA stated in its objectives that it seeks to "establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement," the Economic Partnership text stated that it seeks to "formalize a bilateral relationship to expand job growth and economic opportunities in both cities."²⁰⁰

ii. *Tripartite Economic Alliance*

Trade agreements between cities that resemble treaties are not limited to bilateral city-to-city agreements, but also include wider scale municipal strategies. The Tripartite Economic Alliance was formed in 2014 and signed via a Memorandum of Understanding by the mayors of Los Angeles, Auckland, and Guangzhou with the goal of strengthening business partnerships as well as increasing market exchanges between locations.²⁰¹ These goals were formalized in the Tripartite Memorandum through four primary areas: economic development, foreign trade, innovation, and investment.²⁰² The agreement, similar to the climate change agreements detailed above, alluded to the formality of an international treaty through phrases such as "the parties are committed to pursuing joint and coordinated initiatives."²⁰³ While the alliance resembles a traditional sister city agreement, it is distinct from the sister city model by the use of a written document meant to solidify and establish concrete requirements and trade goals beyond mere symbolic formalities. The alliance is further indicative of rising city action in foreign policy as it received a range of attention from international leadership figures, including the U.S. Ambassador to New Zealand Mark Gilbert, who hosted a segment of the alliance and served as an advocate for the signatories.²⁰⁴ However, like all these city-to-city documents, the long-term staying power of the agreement is problematic—almost no press is currently generated by the agreement, putting into question the document's longevity.

(last visited Feb. 12, 2020); Memorandum of Understanding to Establish the Global Cities Economic Partnership between Chicago and Mexico City, Nov. 14, 2013, <https://tinyurl.com/y496c6t2>.

200. North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 289, 605.

201. Press Release, Off. of L.A. Mayor Eric Garcetti, Mayor Garcetti Advances Tripartite Economic Alliance; Signs Business-to-Business MOU with Auckland and Guangzhou (May 16, 2016) <https://tinyurl.com/yya6bcws>.

202. MOU between Auckland, Guangzhou & L.A., *supra* note 3.

203. *Id.*

204. McKenna, *supra* note 2.

D. Reorienting the International Legal System to Increase City Voice

Perhaps the method of city action with the most potential for altering the structure of the international legal order is the structural changes cities are initiating to insert their voices in the area traditionally reserved for state conceptions of international law. Unlike other forms of city action that involve semi-permanent agreements, this method has the potential to create infrastructure within cities, and—most importantly—a framework for a parallel entity to international organizations like the United Nations. These efforts to change the foundations of international law formation can be roughly divided between efforts occurring internally within cities to both increase the international law-making authority of cities and efforts to connect municipalities in multiple locations to form international organizations.

1. City-Specific Infrastructure

Individual municipalities have witnessed the development of expanding infrastructure in order to engage on the international stage. While previously cities may have invested in informal sister city agreements, select cities have transformed a general desire to engage internationally into full-scale offices capable of engaging—however indirectly—in international law. These city organizations may lack formal legal authority to claim a seat at the table, however, infrastructure and staff give them the economic capacity to engage despite restrictions on actual legal power.

i. New York

As one of the first cities to develop an Office of International Affairs in 2014, New York City is a prominent example of city engagement in the form and function of international law.²⁰⁵ Under the supervision of Mayor Bill de Blasio, the office is operated by the municipal government and acts as a diplomatic liaison for the city by fielding requests from foreign governments as well as promoting New York's policies in other national and international cities.²⁰⁶ This includes programs such as diplomatic engagement within areas of the city, outreach to students in New York via a junior ambassadors program, and business collaborations to help New York cultivate positive international business prospects.²⁰⁷

205. NYC MAYOR'S OFF. OF INT'L AFFS., <https://www1.nyc.gov/site/international/index.page> (last visited Feb. 6, 2021).

206. *About*, NYC MAYOR'S OFF. OF INT'L AFFS., <https://tinyurl.com/yyw68m7o> (last visited Feb. 6, 2021).

207. *Id.*

While many of the office's programs draw parallels to soft diplomacy and a general desire to engage internationally, recent developments initiated by New York have indicated a desire to copy the form of traditional international law. Perhaps the most significant—if merely symbolic—development of the office occurred in May 2018 when the city began reporting the Sustainable Development Goals (SDGs) to the United Nations.²⁰⁸ This process was mirrored after the Voluntary National Review process traditionally completed by nations to the United Nations, and represents a unique case of cities being held, however informally, to international standards.²⁰⁹ The novelty of New York's commitment—and its ability to fill a void in treaty implementation—is exemplified by past scholarship on the overall lack of subnational compliance mechanisms despite a federal need to meet certain standards.²¹⁰

Formal commitments aside, the de Blasio administration is self-aware of both the novelty and potential of its international office to give cities a seat at the table in international law. The office plays a motivating role for other cities with less international capacity by providing them ideas for engagement and networks of support. Competing with other locations to set ambitious goals extended back to 2015 when the office helped New York develop OneNYC's goals for sustainable growth that mirrored the UN SDGs.²¹¹ While cities in middle America or rural locations may never have the population diversity or international power of New York, they are nevertheless targets for New York's efforts to project a new balance of international political and legal engagement.

ii. Los Angeles

While New York remains home to the largest municipal department focused on international affairs, Los Angeles developed its own international department within the mayor's office with substantive programs occurring from at least 2018.²¹² The office serves as the primary body to conduct international affairs within the city, ranging from everything from global investment to diplomacy with foreign leaders.²¹³

208. *N.Y.C. Leads Global Voluntary Local Review Movement*, NYC MAYOR'S OFF. OF INT'L AFFS., <https://tinyurl.com/yxrbpk3r> (last visited Feb. 11, 2020).

209. *Id.*

210. Risa E. Kaufman, *By Some Other Means: Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971, 1974 (2012).

211. NYC MAYOR'S OFF. FOR INT'L AFFS., GLOBAL NYC 2018: CITY LEADERSHIP ON THE RISE 11 (2018).

212. *See generally International Affairs*, MAYOR ERIC GARCETTI CITY OF L.A., <https://tinyurl.com/y2fmlkjy> (last visited Oct. 21, 2020) (outlining the international programs created by the Office of International Affairs including both cultural and economic activism).

213. *Id.*

Nina Hachigian, head of the program, has focused thus far on the ability of cities to network with other cities and countries for economic benefit. Under the International Affairs Office, Los Angeles has formed a range of trade missions to meet this goal, including Mayor Garcetti's August 2018 trip to Vietnam where multiple Memorandums of Understanding between trade authorities in both countries were signed in the hopes of increasing business innovation between Los Angeles and Vietnam.²¹⁴

Beyond economics, the office has allowed Los Angeles to develop increased international standing and engage with international law outside of conventional state diplomacy. While Los Angeles does not report directly to the United Nations as seen in New York, they have "committed" to the Sustainable Development Goals outlined by the United Nations and have developed their own tracking system to demonstrate accountability.²¹⁵ This tracking is far from the standards nations are required to meet, yet nevertheless represents the function of international law via an intention to be bound to international standards. Los Angeles' international engagement also extends to areas of soft diplomacy. As domestic policy moves away from agreed-upon international standards, Los Angeles has, in contrast, used the office to showcase a commitment to everything from immigrant rights to climate change action.²¹⁶ This focus on elevating the city as well as seeking international legal engagement is a sentiment shared by Mayor Garcetti who has helped host a range of events from the Global L.A. Summit to the Los Angeles Summit on City Diplomacy.²¹⁷

iii. London

The Mayor's office in London, too, is a prime example of cities reimagining their traditional functions and adapting to a current climate where they are engaging in the larger international playground. The Mayor's legitimate, explicit license to enact policy is considerably weaker than his big-city counterparts overseas.²¹⁸ Yet despite these formal legal limitations, London Mayor Sadiq Khan has been manipulating his office's parameters,

214. Press Release, Off. of L.A. Mayor Eric Garcetti, Mayor Eric Garcetti Wraps up Asia Trade Mission with Stops in Vietnam, Hong Kong (Aug. 3, 2018), <https://tinyurl.com/y4qnmzcr>.

215. *International Affairs*, MAYOR ERIC GARCEITI CITY OF L.A., <https://tinyurl.com/y2fmlkij> (last visited Oct. 21, 2020).

216. *Id.* (detailing that "Mayor Garcetti has committed Los Angeles to implementing the Sustainable Development Goals (SDGs), or the "Global Goals," a shared agenda adopted by the member states of the United Nations to end poverty, protect the planet, and expand prosperity and equity," among other commitments).

217. *Id.*

218. Feargus O'Sullivan, *What Can London's Mayor Actually Do for the City?*, BLOOMBERG CITYLAB (Feb. 24, 2017), <https://tinyurl.com/y597h2cg>.

working with his soft-power authority to ensure London's future in an increasingly global world.

In the immediate aftermath of the Brexit vote, London Mayor Sadiq Khan assumed the responsibility of advocating for his city, bypassing the national government and seeking out international investment opportunities. In the immediate aftermath of the Brexit vote, Khan introduced the #LondonIsOpen campaign, "to show that London was united and open for business and global engagement following the EU referendum."²¹⁹ The campaign encapsulated countless motives: to reassure the expansive community of foreign nationals living and working in London that they are still welcome in the city; to alleviate any concerns of a potential rise in discrimination; to show the rest of Europe, and the world, that London is an inherently international, entrepreneurial, vibrant city, and that this vibrancy is embedded in their genetic code.²²⁰

London, unique among mayoral offices, not only has an international affairs team, but operates offices in at least twelve cities around the world. In the wake of Brexit, the Mayor opened up an additional six offices in what they determined to be key cities, including Shenzhen, Toronto, Chicago, Berlin, and Bangalore, in their effort to "ensure that London remains the best venue in the world for business."²²¹ The Paris office is expected to serve as a base for their engagement with the Benelux region, while their office in Berlin will benefit their partnerships with Switzerland and eastern Europe.²²² More interesting even than their offices in foreign countries is London's relationship with the EU. London's Brussels office is singularly tasked with EU engagement, and their representative is targeted with the responsibility of promoting the city's agenda to the EU, ensuring their interests are considered as EU policies develop, and seeking out EU funding for projects.²²³ In a visit to Brussels in 2017, Mayor Khan personally met with senior EU representatives and delivered a keynote address to the EU where he outlined "London's requirements from the Brexit negotiations and argue[d] that London and other European cities will need to work closer together than ever before in the aftermath of Brexit."²²⁴

219. #*LondonIsOpen*, MAYOR OF LONDON & LONDON ASSEMBLY, <https://tinyurl.com/y4c2jawl> (last visited on Oct. 21, 2020).

220. *Id.*

221. Press Release, Mayor of London, Mayor Bangs the Drum for London as He Increases International Presence (Nov. 17, 2017), <https://tinyurl.com/y5ghmdrx>.

222. *Id.*

223. See *London's European Office*, MAYOR OF LONDON & LONDON ASSEMBLY, <https://tinyurl.com/y2fq9m3n> (last visited on Feb. 6, 2021).

224. Press Release, Mayor of London, Mayor to Take Message to Europe that 'London is Open,' (Feb. 8, 2017), <https://tinyurl.com/y242xkqe>.

2. *The Establishment of City-Based Governance Organizations*

On a larger scale, organizations implemented and run by mayors across the world have formed over the past two decades. These organizations serve multiple purposes, from pressuring mayors to conform to the standards of their peer cities to serving as forums for exchanging solutions. While these organizations likely hold the key for city engagement with international law, the examples indicate organizational concerns and potential implementation issues must be addressed in order for these organizations to achieve their full potential.

i. The C40

Perhaps the largest and most prominent of these “trans-municipal” groups is the C40, an organization that originally formed in 2005 by then London Mayor Ken Livingstone and now includes over eighty cities covering seventeen unique areas of international concern with a focus on climate change.²²⁵ The organization has grown from a small cohort of eighteen cities and has gained international attention through strategic action such as mayoral participation in the 2009 UN Climate talks in Copenhagen.²²⁶ Many agreements crafted through the municipal leadership of the C40 are parallel to formal international legal agreements. This includes specific municipal initiatives like *Deadline 2020*, a program developed by C40 that copied the goals of the Paris Agreement among sixty-one member cities and established a commitment to reduce CO₂ emissions by three gigatons by 2030.²²⁷ While leadership in London and Chicago served an important role in both the C40’s development as well as its implementation, the C40 has also helped facilitate climate change awareness in locations that have yet to see positive results from transnational policies. For instance, the C40 Air Quality Network’s first meeting was organized by the city of Bengaluru, a location plagued by air pollution and deemed by the WHO as unsafe.²²⁸

Beyond the organization’s growing presence on the international stage, the internal dynamic of the C40 allows cities to share ideas together and copy best practices in other cities, a process that is particularly important in

225. *Cities*, C40 CITIES, <https://www.c40.org/cities> (last visited Oct. 21, 2020); *History*, C40 CITIES, <https://www.c40.org/history/> (last visited Oct. 21, 2020); *Networks*, C40 CITIES, <https://www.c40.org/networks> (last visited Oct. 21, 2020).

226. CLIMATE LEADERSHIP GRP., C40 CITIES, 10 YEARS OF RESULTS 1 (2016), <https://tinyurl.com/y5mhcfn6>.

227. *Id.* at 2; *Deadline 2020*, C40 CITIES, <https://www.c40.org/other/deadline-2020> (last visited Dec. 16, 2020).

228. Akshatha M, *Bengaluru Hosts First Meeting of C40 Air Quality Network*, ECON. TIMES (July 31, 2018), <https://tinyurl.com/yyrhej8e>.

locations where national governments do not or are not able to prioritize environmental problems on a local scale. Leadership in the Los Angeles International Affairs Office described that the C40 has motivated Los Angeles to meet all outlined goals for climate change as well as create a substantive agenda for reducing environmental harms within Los Angeles.²²⁹ Furthermore, the C40 creates pressure among individual cities to compete with each other over issues such as climate change. Mayor Anne Hidalgo of Paris even outlined that C40 initiatives have created positive change by “transforming the way that our citizens move around the city—prioritizing walking, cycling, and clean public transport,” indicating that the formal initiatives conducted by the C40 have witnessed some success.²³⁰

ii. The U20

A key initiative stemming from the C40 was the development of the U20, a group of cities modeled after the G20. Formed from city leaders from the countries represented by the G20, the U20’s primary deliverable is an annual meeting held in the same location as the G20. Consisting of twenty-five global cities, the organization was originally developed in 2017 by the Mayors of Buenos Aires and Paris.²³¹ Central themes of the U20 include promoting climate action, preparing for changes in the labor market, and improving infrastructure. Climate goals that have developed from the U20 are ambitious and include commitments to energy decarbonization as well as a 100% renewable electricity rate by 2030.²³²

While the language included in the U20 Communique is by no means binding, it does suggest that the goal of the U20 is to influence and inform. For instance, the document states that the “G20 should work hand in hand with us to achieve our collective goal of fair, inclusive, and sustainable development.”²³³ Furthermore, the U20 underlines the importance of providing specific recommendations to G20 leadership as both a way to provide individualized solutions as well as allow cities a seat at the

229. *See generally* Press Release, C40 Cities, Mayors Announce Support for Global Green New Deal; Recognize Global Climate Emergency (Oct. 9, 2019), <https://tinyurl.com/y3b39xqg> (describing a coalition of mayors from Athens to Seoul endorsing a Green Deal).

230. Press Release, The Climate Grp., Zero Emission Vehicle Challenge Launches in New York (July 10, 2018), <https://tinyurl.com/yyjnbefj>.

231. URB. 20, U20 CITIES CALL ON THE G20 TO PRIORITIZE AN URBAN PERSPECTIVE IN TACKLING GLOBAL ISSUES: AN OFFICIAL COMMUNIQUÉ FROM URBAN 20 (U20), at 2 (2018) [hereinafter U20 2018 Communique].

232. Press Release, Urb. 20, 25 Cities Commit to Work with the G20 in Response to Major Global Challenges (Apr. 18, 2018), <https://tinyurl.com/y4hrdkyz> [hereinafter U20 Press Release]; *Record Number of Mayors Endorse the U20 2020 Communique*, URB. 20 (Oct. 4, 2020), <https://www.urban20riyadh.org/record-number-mayors-endorse-u20-2020-communicue..>

233. U20 2018 Communique, *supra* note 231.

international table. Shifting from formal hierarchy to functional capacity, this sentiment of collaboration was shared by President of UCLG Parks Tau, who described that “the challenges faced by our people and planet in the urban era necessitate a repositioning of the urban agenda in the international debate.”²³⁴ In a similar light, Mayor Hidalgo described the organization as “an innovative tool for cities and national governments for fighting the major challenges of our time.”²³⁵ For these mayors who are committed to the U20, the meeting structure gives them a way to share ideas with fellow mayors, compete with each other for progress and engagement, and present a united front on issues such as climate change to world leaders and the international legal community.

Structurally, U20 meetings copy the location and timing of G20 meetings, and a deliverable for a recent meeting in 2019 was creating a platform to liaison with the G20 and presenting a formal communiqué to the G20.²³⁶ Headed by the mayors of Paris and Buenos Aires, the Buenos Aires meeting represented one of the first structural steps by the U20 to focus their efforts on direct and structured engagement with the international legal system. The most recent meeting was held in Tokyo, Japan, and included leadership from thirty-five cities, although it is not clear how much the objectives from the 2018 Buenos Aires meeting were transferred.²³⁷ Yet the goal of collaborating with the international legal system has been unsurprisingly difficult to achieve given the hierarchy of cities in the field of international law.

3. *The Global Parliament of Mayors*

Similar to the C40, the Global Parliament of Mayors represents another major mayoral organization with the goal of creating unity among international mayors. The organization was founded in 2016 and is primarily based on scholar Benjamin Barber’s idea for a parliament of mayors outlined in his book *If Mayors Ruled the World*.²³⁸ The Parliament began to form from a series of mayoral sessions held in Seoul and Amsterdam. Based in the Hague, the Parliament is self-governed by a steering committee of mayors

234. U20 Press Release, *supra* note 232.

235. *Id.*

236. *U20 Summit*, UNITED CITIES & LOC. GOV’TS, <https://tinyurl.com/y5f33bm9> (last visited Feb. 6, 2021); *see also* Press Release, C40 Cities, Urban 20 Group of Cities Meet in Tokyo and Urge G20 to Act Urgently on Climate Change, Social Inclusion and Sustainable Economic Growth (May 22, 2019), <https://tinyurl.com/y2w2cm5p> [hereinafter Press Release, C40 Cities].

237. Press Release, C40 Cities, *supra* note 236.

238. Dr. Benjamin Barber, *If Mayors Ruled the World*, GLOB. PARLIAMENT OF MAYORS, <https://globalparliamentofmayors.org/dr-benjamin-barber/> (last visited Dec. 18, 2020).

from around the world.²³⁹ This was formalized by The Hague Declaration, a document signed by the Parliament's inaugural municipal leadership team outlining the goals and responsibilities of the organization. The document includes clear nods to international law, and seeks to “build upon the aspirations and achievements of the United Nations, the OECD, COP21, [and] HABITAT III”²⁴⁰

In addition to specific environmental goals, the Parliament provides a source of motivation for mayors seeking to increase their profiles as international advocates outside of a municipal context. This includes annual mayoral awards given to exceptional leadership, a recognition granted in 2017 to Palermo Mayor Leoluca Orlando for his acceptance of immigrants into Palermo despite national policy stipulating closed borders.²⁴¹

4. *U.S.-Mexico Border Mayors Association*

Bilateral and regional organizations formed between mayors from two cities are one key form of international municipal organization. Unlike the bilateral sister city agreements that preceded them, these organizations invoke the form of international law through formalized charters and agreements centered on trade and national security.²⁴² The U.S.-Mexico Border Mayors Association, an example of this emerging trend, is an association of mayors from the border region founded in 2011. Enumerated committees include security, transportation, infrastructure, environment, emergency management, and economic development.²⁴³ The bilateral organization has its own charter, holds summits, and passes resolutions signed jointly by Mexican and American mayors. The group's formation was attributed by Wilson Center deputy director Christopher Wilson to a lack of local power on the international stage, as “border mayors . . . have struggled over the years to create and sustain forums in which they can get to know each other and work together on a common agenda.”²⁴⁴

239. *About Us*, GLOB. PARLIAMENT OF MAYORS, <https://tinyurl.com/y3q5tsho> (last visited Dec. 18, 2020).

240. The Hague Declaration On the Occasion of the Launch of the Global Parliament of Mayors (GPM) in The Hague, Sept. 11, 2016, <https://tinyurl.com/y38wn26q>.

241. GLOB. PARLIAMENT OF MAYORS, ANNUAL REPORT: GLOBAL PARLIAMENT OF MAYORS 2017 (2017), <https://globalparliamentofmayors.org/gpm-annual-report-2017/>.

242. *Border Mayors Association*, CTR. FOR U.S.-MEXICAN STUD. UC SAN DIEGO, <https://tinyurl.com/yy6ws57l> (last visited Feb. 6, 2021).

243. *U.S.-Mex. Border Mayors Association Charter*, CTR. FOR U.S.-MEXICAN STUD. UC SAN DIEGO (2011), <https://tinyurl.com/y4k9ft2l>.

244. Elliot Spagat, *U.S.-Mexico Border Mayors Worry About NAFTA Makeover*, SEATTLE TIMES (July 27, 2017), <https://tinyurl.com/y3pqlxj6>.

V. ESTABLISHING FORMAL LEGITIMACY FOR CITY NETWORKS TO ADDRESS GRIDLOCK

This typology of city engagement combined with the unique case studies points to a changing landscape in the field of international law. Structural change is occurring as cities attempt to adopt international treaties or interact with new “transmission belts” of international legal power. The substance of international law is also being altered as cities are now emboldened to adopt aggressive standards not yet achievable by national governments. While city action is not without risks, cities appear to be better prepared than states to address emerging global challenges, however limited the scope. Yet changes are needed in both the ways international lawyers view cities as well as the frequency and level in which international organizations, such as the United Nations, give cities a place at the table. Given the problems with fragmentation in city action along with the fundamental barrier of realist views of international law, increased legitimacy for cities is needed, if only for a narrow band of issues.

A. The City as a Positive Force in Global Governance

First, it is important to establish that despite the risks, there are at least some benefits of city collaboration on the international legal order. Cities have proven themselves to be efficient and pervasive government systems for addressing new problems such as climate change²⁴⁵ that do not fall within the traditional capacities of international actors. Unlike military intervention or trade policy, climate change is rooted in bottom-up processes from individuals recycling to companies developing renewable energy technology. National governments may be able to collaborate with other nations to create broad-scale goals as we witnessed in the Paris Agreement; however, they do not have the capacity to enforce regulations at a local level or ensure wide-scale compliance, from carbon emission goals to small-scale projects meant to reduce environmental damage.²⁴⁶ Furthermore, mayors and city leadership alone best know the unique problems faced by their respective cities.²⁴⁷ The approach needed in highly urban New York may be similar to a city like Paris but very different from a place like Houston that faces problems with flooding and increasingly sporadic weather; making cities—not countries—ideal political actors to create tailored solutions to new complex problems.

245. *Supra* Part IV.C.1.

246. *Supra* Part III.A.

247. *Supra* Part II.C.3.

Cities also are becoming better at stepping in when international and national legal actors fail to address or create solutions to problems traditionally under their jurisdiction. As populations increase and become more politically polarized, cities are able to produce solutions more quickly, as they often contain more political homogeneity than a nation as a whole.²⁴⁸ This is particularly evident in the United States with the election of Donald Trump in 2016, as many major cities from Chicago to New York are predominantly liberal and thus able to successfully embrace political movements such as the Chicago Charter and the goals of the Paris Agreement without high levels of political pushback from constituents.²⁴⁹ Furthermore, city leadership involves fewer actors and regulations, meaning that policy changes can move more quickly through a city administration than national or international administrations. The pervasive nature of cities across time speaks to this ability to quickly shift to fit new political environments. When nations crumbled, cities remained as sites of culture, identity, and politics.²⁵⁰

B. *Helping Cities Fill Voids in International Law*

How do we harness the benefits of cities while addressing some of the risks cities have in the international legal system? First, a less binary approach to international law is needed. As the form of cities' global activism increasingly comes to resemble traditional international law making, international lawyers may undervalue or overvalue these efforts.²⁵¹ For example, the Chicago Climate Charter looks on its face like an international treaty; if it had been signed by President Donald Trump and President Emmanuel Macron, rather than by Mayor Rahm Emanuel and Mayor Anna Hidalgo, it would qualify as a treaty under Article 7 of the VCLT.²⁵² A binary approach to international law can lead international lawyers to undervalue the real power of such documents. At the least,

248. See generally David A. Graham, *Red State, Blue City*, ATLANTIC (Mar. 2017), <https://tinyurl.com/h3e74aw> (detailing that notwithstanding the political homogeneity of cities any specific action is limited as state preemption of city regulations "hasn't gone well for the city dwellers").

249. See DAVID HELD, KEVIN YOUNG & THOMAS HALE JR., *GRIDLOCK: WHY GLOBAL COOPERATION IS FAILING WHEN WE NEED IT MOST* (2013).

250. See generally Nijman, *supra* note 36 (detailing that even while cities lost their political power in the fourteenth century, modern shifts have produced a global economy controlled by 'global cities').

251. See generally Kal Raustiala, *Form and Substance in International Agreements*, 99 AM. J. INT'L L. 581, 614 (2005) (outlining the systematic nature of many international agreements, a possible indication of the rigidity of formal international agreements).

252. Article 7 of the Vienna Convention on the Law of Treaties explains that heads of states have the power, under international law, to sign and enter into a legally binding treaty. Mayors are noticeably missing from the list of officers with the authority to transition a document into a binding treaty through the power of a pen. Vienna Convention, *supra* note 57.

international lawyers must come to engage, understand, and evaluate the future potential of such city efforts. While states are, and will likely remain for the foreseeable future, the only entities with full international legal personality,²⁵³ international law has come to engage with and, at times, even formally recognize non-state actors as critical components of the international legal order.²⁵⁴ This engagement and recognition must continue its upward trajectory for cities to have a meaningful place at the table.

Second, even if there is a change in how cities are viewed, this does not solve the problem of fragmented city action demonstrated by everything from the myriad of municipal groups to the small-scale city actions that have often failed to have staying power. Perhaps the most promising way for cities to shift this dynamic is through the development of city-specific infrastructure as well as focused development on one unified municipal international organization, such as the C40. Not only would a consolidation of city efforts into one organization make it harder for international actors to turn a blind eye to cities, but a stronger C40 would present a direct parallel to international legal organizations such as the United Nations. The potential of organizations like the C40 has yet to be fully actualized, but if the organization's recent efforts to engage with the United Nations by matching meeting times to parallel state discussions and current ties to executive domestic leadership are indications, the collaboration of mayors may be the key to more significant structural change for cities. Within the C40, mayors are able to push each other towards desirable objectives, create treaty-like documents together, and establish a leadership framework. Just as the development of the United Nations forever changed the landscape of international law and legal authority, cities may be able to rely on a similar power structure. However, unlike the United Nations, the C40 has no codified secretariat, limited capacity to develop "laws," and faces competition from other international mayoral organizations verging on the disjointed.²⁵⁵ More organization and structure would mean also cities would have more opportunities to learn from each other and start self-policing on their own. Instead of New York trying to fit a national government model by sending SDG updates to the United Nations, might it not be more effective to develop a parallel channel?

The United Nations can help solve the barriers faced by the C40 and cities in general by providing the organization with some legitimacy at the

253. See generally JOHNS, *supra* note 31 (detailing the differences between states with full legal personhood and non-state actors).

254. See generally Angela M. Banks, *The Growing Impact of Non-State Actors on the International and European Legal System*, 5 INT'L L. F. DU DROIT INTERNATIONAL 293, 294 (2003) (describing how "states are no longer the sole actors within the international and European legal systems").

255. See Press Release, C40 Cities, 25 Cities Commit to Become Emissions Neutral by 2050 to Deliver on Their Share of the Paris Agreement (Nov. 12, 2017), <https://tinyurl.com/y3opqve9> (detailing that the commitment required in C40 agreements by cities was only a "pledge").

international legal table. While thus far the U20 has reached out to the United Nations and G20, this action is still largely symbolic, only skimming the surface of substantive legal issues. Instead, cities need a more formal grant of authority to allow them to engage. This might involve formalized channels so cities can provide recommendations to the United Nations, as well as the inclusion of cities as part of the dialogue, even if they are not provided international lawmaking capacity. While the U20 is providing recommendations to the G20, direct dialogue between the two groups is less common.²⁵⁶ The United Nations' engagement with NGOs provides an instructive example for the path for cities, as "the practice of consulting with NGOs is widespread and continues to expand . . . in 1997 when NGOs began to brief groups of Council members and then, in 2004, the Council itself. NGOs have occasionally addressed special sessions of the UN General Assembly and, in September 2005, two NGO leaders made short presentations to the World Summit."²⁵⁷ The benefit of this targeted consultation approach for cities would be accurate information about issues like global warming, as well as more nuanced policy solutions.

It is also important to consider that while liberal scholars may hail the development of city organizations promoting climate change prevention and other solutions, this also creates a space for less-popular policy agendas to develop. As countries such as the United States currently struggle to regulate the capacity of regional states, it is unclear how much power should be extended to a local context. City power also creates the potential for unpredictability, as cities are able to change their policy decisions much more quickly than nations and without the traditional statutory and regulatory barriers. Not only can this potentially frustrate national policy, it may also have implications that reverberate and shape the playing field of international law. Thus, by providing legitimacy and structure to the ways in which cities shape the international legal system, there is a check on the power of cities. If we want to both monitor and control organizations like the U20 from doing whatever they want, what better way than to give them a seat at the table with the United Nations? If the examples of city outreach are any indication, national governments do not have the capacity to control cities' every move without some kind of formal balance.

VI. CONCLUSION

Most importantly, the case studies outlined above indicate that—like it or not—cities are on the cusp of challenging the structure and substance of

256. See URB. 20, 2019 URBAN 20 TOKYO MAYORS SUMMIT COMMUNIQUÉ (2019).

257. Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT'L L. 348, 368 (2006).

the international legal order, and this reckoning may not be far away. The examples highlighted in this Note along with the subsequent recommendation for increased municipal legitimacy by transnational organizations may well prompt questions as to why the past few decades have been key to cities' rise in international law. The urban studies literature provides a partial explanation for the somewhat extraordinary rise of cities as global actors, including changes in the economic and political structure described by Sassen, as well as the potential for individual mayors to gain international political standing detailed by Barber.²⁵⁸ While these past explanations provide some information on the reason for cities' current rise to increased international standing, they do not provide a comprehensive picture of why cities are playing a greater role in world affairs, why that role is likely to increase, and why cities may be on the cusp of challenging state systems without an examination of the themes and factors behind specific city actions detailed above. Instead, the answer is more likely found by examining the current challenges faced by states, and the increasingly localized nature of issues from climate change to immigration detailed above. Furthermore, as states become increasingly polarized, cities are able to utilize their relative political homogeneity to quickly facilitate action. Globalization is also playing a role in the timing of city networks, as transnational connections have vastly increased. Cities, unlike U.S. states, are a common denominator for almost every nation, making connections between Paris and Nairobi more natural than other regional networks.

Room in the international legal system for cities is not something we can ignore. Yet cities need to develop an increasingly permanent position in the sphere of international law for any significant change to occur. Furthermore, unless structural change occurs, a shifting vision and a relaxation of the formal rules of what constitutes international law are needed to create more room for cities to engage in the international legal system. International organizations also need to explore ways to shape appropriate city networks if they want to control and regulate the wave of city action that is forming. Without developing a mechanism and legitimizing this city action in specific ways, the possibility of a clash between cities and states is unavoidable. Cities have emerged as a force in global affairs generally. Yet they are now playing a meaningful role at the edges—and sometimes even the heart—of international law.

258. See generally SASSEN, *supra* note 75, at 3, 87 (arguing that economic shifts including a focus on services and finance have increased the role of cities in the global stage); BARBER, *supra* note 87, at 25 (detailing that mayors such as Michael Bloomberg have developed "an international infrastructure").

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