Editorial

Cities in the Shadows of International Institutional Law

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International organizations have become more interested in working with cities, and cities have become more interested in working with international organizations. The motivations of each are largely the same and straightforward: the mutual conclusion that certain issues require global coordinated action and that such action can only be fully and successfully accomplished by working at and with the local level. International organizations, especially their leaders and staff, now recognise that their success requires, at the very least, the assistance of local authorities, and they believe, counter to the default rules and assumptions of the international system, that the interface between organizations and cities often works best when it is direct and unmediated by national authorities. As more and more global problems are sourced to cities, for international organizations cities have become obvious and sometimes even optimal partners for both functional and legitimacy reasons. For their part, cities have come to appreciate that global processes have local effects, and they have therefore sought influence in and the assistance of international organizations. Like the concomitant moves by international organizations to engage with cities without states as minders, there is a logic to this piercing of the veil of national sovereignty that has been borne of contemporary circumstances.¹

¹ I leave aside here issues that arise between international organizations and their host cities.

These collaborative inclinations are mostly recent and, except in retrospect, their aptness is not self-evident in a global system premised upon the primacy of states and the separation of the international from the domestic. International organizations and cities may have mutual interests in certain issues and indeed may wish to collaborate with each other on those matters, but they are not natural partners. Cities are not members of international organizations, states are. Cities do not have international legal personality, states do. And states officially act within and with international organizations, not cities. To the extent that the work of international organizations pertains to cities and that cities and international organizations wish to work together, the standard model envisions that states should function as intermediary and gatekeeper. According to this approach, states represent cities and their interests before international organizations, and states implement within the domestic arena, including at the local level, the decisions and projects of international organizations insofar as they pertain to cities by means of their own choosing, incurring responsibility as well for any local breaches of international obligations. The connections between cities and international organizations are thus attenuated, both in law and traditionally in practice. Despite this formal framework, the urgency of current transnational challenges, the increasing focus of international organizations and cities on these problems, the insistence of cities that they be allowed to participate in international decision-making processes, and a greater appreciation of the advantages of working at and with the local level, have pushed international organizations and cities haltingly toward greater interaction and cooperation. This has led at times, and controversially, to direct relationships between the secretariats of international organizations and cities that effectively “leapfrog” the state, “decouple” cities from their national governments, and disaggregate the unitary state.

We can understand the connections between cities and international organizations in three ways. First, cities are the object of the normative work of international organizations. International organizations have promoted projects, created programming, established rules and rubrics, collected and distributed information, and provided funding specific to urban issues, as well as global issues that manifest in cities. In doing so, international organizations have conceptualised cities, their government, their economies, their geography and their relations with their populations in particular ways.² Second,

2 See eg ASEAN Cooperation on Environmentally Sustainable City <<https://environment.asean.org/awgesc/>>; Intercultural Cities Programme <<https://www.coe.int/en/web/interculturalcities/>>; Food for the Cities Initiative <<http://www.fao.org/fcit/fcit-home/en/>>;

international organizations are increasingly encouraging and working with cities to implement these international policies directly themselves, including policies that are not strictly urban, without the intervention or permission of national governments, sidelining national authorities through the separate processes of “decentralisation” and “localisation.”³ Third, cities are beginning to have a greater, if indirect, voice in the policymaking, albeit not the decision-making, of international organizations. Cities do not want to be just policy-takers. They also want to be policy makers. And international organizations, in particular their secretariats, have begun to seek and facilitate their policy input.⁴

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- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, UN Doc. A/HRC/28/62 (22 December 2014); Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee, UN Doc. A/HRC/30/49 (7 August 2015); Local government and human rights – Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/42/22 (2 July 2019); Decision IPCC/XLIII-6 (11–13 April 2016) <https://www.ipcc.ch/site/assets/uploads/2018/05/p43_decisions.pdf>; International Organization for Migration, World Migration Report 2015: Migrants and Cities: New Partnerships to Manage Mobility (International Organization for Migration 2015); ITU-T, Smart Sustainable Cities <<https://www.itu.int/en/ITU-T/ssc/Pages/default.aspx>>; OECD Centre for Entrepreneurship, SMEs, Regions and Cities, 20 Years of Urban Policy at OECD (OECD 2019); OECD Centre for Entrepreneurship, SMEs, Regions and Cities, OECD Principles on Urban Policy (OECD 2019); Creative Cities Network <<https://en.unesco.org/creative-cities/home>>; World Heritage List <<https://whc.unesco.org/en/list/>>; What We Do: Cities <<https://www.unenvironment.org/explore-topics/resource-efficiency/what-we-do/cities>>; Child Friendly Cities Initiative <<https://childfriendlycities.org/>>; UNODC Urban Safety Governance Initiative <<https://www.unodc.org/unodc/en/urban-safety/index.html>>; Healthy Cities Programme, <https://www.who.int/healthpromotion/healthy-cities/en/>.
- 3 See eg Emerging and Sustainable Cities Program of the Inter-American Development Bank, <https://www.iadb.org/en/urban-development-and-housing/emerging-and-sustainable-cities-program>; Mayoral Forum on Human Mobility, Migration and Development; Venice City Solutions – Financing the SDGs; Cities Alliance, <https://citiesalliance.org/>; Global Network of Learning Cities, <http://uil.unesco.org/lifelong-learning/learning-cities>; CityNet, <https://citynet-ap.org/>; Local 2030, <https://www.local2030.org/discover-tools>; World Bank, Doing Business, <https://www.doingbusiness.org/>; World Health Organization, ‘WHO Global Network for Age-friendly Cities and Communities’ <https://www.who.int/ageing/projects/age_friendly_cities_network/en/>
- 4 See, e.g., ‘Development Effectiveness and the 2013 Agenda’ (Global Partnership for Effective Development Co-operation) <<https://www.effectivecooperation.org/landing-page/about-partnership>>; Global Partnership for Effective Development Co-operation, ‘First High-Level Meeting of the Global Partnership for Effective Development Co-operation: Building Towards an Inclusive Post-2015 Development Agenda’ (Mexico High Level Meeting Communiqué, 16 April 2014) annex 2 <https://www.mzv.cz/file/1755457/Development_Effectiveness_HLM_Mexico_2014_Communique.pdf>; ‘The GFMD Mayors Mechanism’ (Global Forum on

While not inevitable, this dynamic has resulted in the gradual creation of an operational system of governance, in which informal arrangements cloak the cracks in the inherited structure, with a knowing, if sometimes reluctant, nod from national governments. Cities and international organizations increasingly work together symbiotically through partnerships of various forms, organizations create programming and reports specifically directed to cities, the importance of local authorities in policymaking and policy implementation is increasingly recognised in the international texts that govern the work of and set the agendas for international organizations, and all along states retain their status and formal control. This is not to exaggerate the role of cities in international organizations, which varies significantly by organization and topic, but those in the know appreciate how and when the system works, how it differs from the official narrative, and where the fault lines are located. It is a silent compromise among those involved, still being worked out and evolving, the contours of which most seem to accept, at least for now.⁵

Though there is some “law” that governs specific aspects of city-IO interactions (such as the internal law of organizations and human rights law), mostly, as one would expect from informal cooperation, the operational system is constructed through practice in the shadows of law. Those who observe through and stick to the conventional dogmas of international law have a difficult time recognising, processing, and appreciating this hidden, but not hidden, world. Attempts to fit the interactions and relationships that have evolved within established categories, such as soft law, and efforts to incorporate the international institutional presence of cities into recognised doctrines, like international legal capacity, miss the significance of current developments and how they may in fact be altering some of the fundamentals of the international legal system. Without discounting the distinction between law and informality, and the challenges that an informal system present (such as with transparency and accountability), a preoccupation with pedigree can blind us to the effective exercise of power by legitimate authority outside of formally sanctioned processes.

Migration & Development) <<https://www.gfmd.org/process/gfmd-mayors-mechanism>>; ‘United Nations Advisory Committee of Local Authorities’ (UN Habitat) <<https://unhabitat.org/network/united-nations-advisory-committee-of-local-authorities-unacla>>; United Nations Advisory Committee of Local Authorities, ‘Report of Activities, 2015–2018’.

5 For a fuller discussion, see Jacob Katz Cogan, ‘International Organizations and Cities’ in Helmut Aust and Janne E. Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar Publishing, forthcoming 2021).

There has always been a shadow or operational constitution of international organizations, and so this mode should not surprise,⁶ but the recent moves to integrate cities into the work of IOs is representative of a newer trend in international regulation: the bypassing of the state.⁷ The challenges that international organizations are now tasked with solving require the participation, cooperation, and action of parties that traditionally did not work with and were not the focus of IOs, except indirectly through the state as an intermediary acting in its discretion. The direct relations between cities and IOs are just one among many examples of how states are no longer the gatekeepers between international and domestic governance that they once had been. Indeed, the constructed distinctions between the “international” and the “domestic” that served for so long as the basis of the current international legal system are themselves being reconfigured. The shadow relations of cities and IOs are a sign of this reworking and are a necessary adaptation by IOs as they seek to maintain their relevance going forward.

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6 See eg Jacob Katz Cogan, ‘Financing and Budgets’ in Katz Cogan et al (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 903; Jacob Katz Cogan, ‘Representation and Power in International Organization: The Operational Constitution and Its Critics’ (2009) 103 *American Journal of International Law* 209.

7 See generally Jacob Katz Cogan, ‘The Regulatory Turn in International Law’ (2011) 52 *Harvard International Law Journal* 321.