

The Role of Cities in International Migration Governance: Migratory Paradiplomacy in the Global Compacts for Migration and Refugees

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Abstract: The present article addresses the question of whether cities can be considered new sites for international compliance, given their explicit inclusion in contemporary international soft law instruments such as the Global Compacts for Migration and Refugees. It analyses the role of cities as local and international actors in migration issues in terms of how they have been constructed as actors influencing international migration law and discusses the implications of the migratory paradiplomacy they exercise.

A. Introduction

Contemporary non-legally-binding international instruments (soft law) are in the process of incorporating local authorities and cities. The Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR), adopted by the UN General Assembly in December 2018, are recent examples of this trend.

Cities have been actively involved since the beginning of the process of negotiating and adopting the GCM, generating new fora and instruments. Prominent examples are the Mayors Mechanism of the Global Forum on Migration and Development (GFMD) and the Mayors Migration Council (MMC). Other incidences include cities' own international soft law instruments, such as the Marrakech Mayors Declaration, through which cities have committed themselves to working together on behalf of migrants and refugees and to advancing the principles and objectives of the GCM and the GCR. This Declaration was presented on 17th December 2018, prior to the adoption of the GCM in Marrakech.

Both Compacts explicitly refer to local authorities and cities, recognising their importance for international migration governance and their potential to fill gaps in the protection of migrant rights provided by national governments.

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These recent developments highlight the emerging role of cities in international migration governance, positioning them as ‘actors’ of public international law (PIL) in a growing debate about their role and functions. The present article analyses the role of cities both as local and international actors in migration issues, in particular in the context of the two Compacts. It addresses the following questions: How are cities being considered as local/international actors influencing international migration law and what are the implications of their paradiplomacy?

We use the cases of the GCM and the GCR to examine the formal incorporation of local authorities into non-binding international instruments, specifically analysing two cities’ mechanisms: the Mayoral Forum and the MMC. In addition, we seek to contribute to the research on paradiplomacy in the field of international relations (IR) through a discussion of the cooperation, competition, and – potentially – contradictions between local policies and the migration policies of central governments.

The article is divided into five sections, covering the following themes: the inclusion of cities in the Global Compacts and their legal potential as soft PIL (B.); the concept of paradiplomacy and the rising role of cities in PIL in general (C.); the role of cities as norm creators and norm implementers in the context of the 2030 Agenda and the Global Compacts (D.); the trajectory of the Mayoral Forum and the MMC as international actors (E.); and, finally, policy conflicts raised by cities’ migratory paradiplomacy (F.).

B. The inclusion of local governments in the GCM and GCR

In contrast to hard international migration law, the GCM and GCR are contemporary examples of soft PIL in this field. They provide a framework for international cooperation and for national public policy that aims at the protection of immigrant and refugee rights. This framework resulted from the State-led negotiation process that traces back to the informal dialogue of the Global Forum on Migration and Development (GFMD). The latter also involved parliamentarians, civil society organisations, the business sector, and local governments.¹

The GCM adopts a so-called whole-of-government approach. It specifically establishes that “[t]o develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government”. In other words, local, state, and national policies are

1 See Juan José Camacho, and Fernando De la Mora, México ante el Pacto Mundial para la Migración [Mexico and the Global Compact for Migration], Documentos de Política Migratoria CIDE 8, México 2019, p. 14. The Global Forum on Migration and Development (GFMD) started as an informal mechanism in 2007 and was incorporated, in 2013, into the Mayoral Forum on Human Mobility, Migration and Development, because of the controversial role of cities in the international migration agenda, in contrast to the incorporation of the private sector (civil society organizations and business).

relevant to the GCM's implementation, with the proviso that this be led by States to ensure that they cannot avoid their responsibilities.²

The GCM mentions the term "local" 41 times, incorporating the local sphere of government into its scope of action for a wide range of issues and objectives such as the following: data collection; investment in local sustainable development; access to services; access to local labour markets; the establishment of local community centres for migrants; and, the provision of legal identity documents for both national and foreign migrants. These provisions recognise the importance of local government as a key space for migrants and diasporas and wherein inclusion occurs or access to services is provided, thus reaffirming the importance of local government to the daily life of migrants.

In its Objective 21 ("Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration"), the GCM also recognises the importance of addressing the needs of the communities into which returning migrants arrive, by including provisions in local development strategies, infrastructure planning, and budget allocations. This objective is particularly significant, given that local governments have been raising concern ever since the beginning of the process via which the GCM was established about the need to ensure that a proper budget is allocated to ensure that the migration dynamics in their territories can be addressed effectively. As cities are the primary destinations for immigrants and returning migrants, the GCM specifically refers to local authorities' responsibilities, within their jurisdictions, for the local implementation of laws and policies.

Similarly, the GRC also recognises the importance of the local sphere for refugees. The last two sections of the GCR specifically address "local integration" and "other local solutions" to achieve the three traditional durable solutions for refugees – that is, voluntary return, resettlement, and local integration. The GCR includes cities and local authorities on the list of "relevant stakeholders" in the process of establishing them, recognising them as "first responders" in the work to achieve a significant medium-term impact. Moreover, the GCR states that in order to strengthen institutional capacities, infrastructure, and accommodation for migrants at a local level, the generation of funding and capacity should be both provided and supported by the international community. The Compact proposes the recruitment of local personnel by humanitarian and development agencies and the provision, by local governments, of civil registration systems to establish legal identity and prevent the risk of statelessness. It stresses the role of city and municipality networks in hosting refugees through which good practice and innovative approaches are shared by means of city networks, including twinning arrangements and the provision of support from the United Nations High Commissioner for Refugees (UNHCR). The GCR also states that "local integration is a dynamic and two-way process, which requires efforts by all parties" and recognises that "States and relevant stakeholders will contribute resources and expertise, including technical guidance on legal and institutional frameworks that foster the

2 GCM, A/RES/73/195, para. 48.

peaceful and productive inclusion of refugees and the well-being of local communities, and to address issues such as documentation and residence permits.”³

Thus, not only States but also local governments and cities are considered relevant actors for the implementation of both Compacts, although in a subordinated and subsidiarity position to the national migration policies implemented by States, requiring coordination and collaboration between national and local governments. However, as the main responsibility lies with the States, the architecture of international migration and refugee governance remains dominated by them. Therefore, it is important to further examine the role of local governments and cities and their role in the progression from international soft law to local hard law.

In this context, what is the legal value of both Compacts as soft law instruments? According to Michèle Olivier, “the value of ‘soft law’ lies on the moral and political level... [It] plays an important role in facilitating and mobilizing the consent of states required to establish binding international law.”⁴ From this perspective, soft law could be a first step to arriving at a binding PIL that comprises signed treaties, conventions, and agreed mechanisms for monitoring the implementation of State compliance. In other words, soft law forms a part of the political process by means of which PIL could be adopted. On a conceptual level, Ulrich Fastenrath suggests that gradation in legal normativity has been a constant characteristic in all legal theories. Due to the heterogeneous world we live in, with goals that are not always common and linguistic/intellectual backgrounds that are never identical, it is of vital importance to formulate clear legal propositions and narrow the scope for interpretation in order to ensure that the behaviour of all actors remains predictable. Soft law is an invaluable tool in this area because it enables worldwide agreement on the content of hard law and limits the scope of subjective auto-determination.⁵

Hence, while both Compacts can be considered soft law, they could still gain legal significance in the context of international migration law. As suggested by Alessandro Bufalini, the GCM compact also has legal value because it confirms the existence of certain rules and principles, thus reaffirming and strengthening its normative value.⁶ For example, the GCM reiterates that immigrant detention must be “only a measure of last resort and work towards alternatives”, and it recognises that respect for the rule of law, due process, and access to justice are fundamental to all dimensions of international migration governance. The GCM and GCR can thus serve an important interpretative function and

3 GCR, A/73/12 (Part II), para. 98 and 100.

4 Michèle Olivier, The relevance of ‘soft law’ as a source of international human rights, *The Comparative and International Law Journal of Southern Africa* 35 (2002), p. 289.

5 Ulrich Fastenrath, Relative Normativity in International Law, *European Journal of International Law* 4 (1993), pp. 305–340.

6 Alessandro Bufalini, The Global Compact for Safe, Orderly and Regular Migration: What is its contribution to International Migration Law?, *Questions of International Law*, 2019, <http://www.qil-qdi.org/the-global-compact-for-safe-orderly-and-regular-migration-what-is-its-contribution-to-international-migration-law/> (last accessed on 11 April 2021).

can provide guidelines for courts and legal decision-making, not only in relation to hard international migration law (on which both Compacts are based) but also to the interpretation of national law under the scope of international standards.

It should be noted that local governments and other stakeholders had been included in the GCM since the inception of the formal planning process, a decision which could be explained by the fact that migration is a pressing and controversial issue for States and their constituencies. This situation has hindered the development and ratification of binding instruments of migration governance, such as the International Labour Organization's Conventions on Migrant Workers or the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Moreover, this situation has also obstructed attempts to reach a consensus amongst origin, transit, and host countries on the governance and management of international migration. In this context, the GCM is of great significance. Given its soft-law nature, it fills a void in the attempts to achieve this long-awaited consensus.

To ensure that the foregoing considerations are reflected in the actual implementation of the GCM, its development process was open to a wide range of stakeholders and, even more, took both whole-of-government and whole-of-society approaches. The GCM process sought to attend to the complexity inherent in migration issues by including new and local actors in international migration governance in an effort to bring new ideas, proposals, and views to the debate and in order to facilitate consensus and advance its eventual implementation. According to Joan Subirats and Bruno Dente, the existence of a plurality of points of view makes it possible to imagine different approaches to the problem itself, various intervention mechanisms, and various decision-making procedures.⁷ Complexity increases the number of possible alternative solutions while the formation of coalitions between national governments and their local governments enables the political weight of decisions taken on migration issues to be shared, while also enriching the dialogue, offering new perspectives, and encouraging innovation. Therefore, the relationship among local, national, and international legal spheres is not hierarchical but rather interdependent.

C. Paradiplomacy and the rising role of cities in international law

Local government is the level of government closest to the population and is the first to respond to problems affecting migrants, asylum seekers, and refugees in areas such as access to services. Their territorial responsibilities enable local governments to address different issues more effectively while also promoting themselves internationally as proactive actors with clear objectives interested in resolving the migration and refugee challenges that their cities face through local policy and law-making.

⁷ Joan Subirats / Bruno Dente, *El análisis y estudio de los procesos de decisión en políticas públicas* [The analysis and study of the decision-making process in public policy], Barcelona 2014.

While international relations are traditionally led by States, they are also undergoing a transformation towards more open processes and diffused governance as a result of the need to provide much more effective responses and local solutions to national, international, and transnational dynamics. Therefore, the internationalisation of local government presents a consolidated trend. Since the 1980s, cities and local territories have increased their international activities, becoming more visible with the advent of globalisation which prompted local governments to begin to reposition their international economic, cultural, and political interests. In this context, *paradiplomacy* emerged as a research area in the field of IR. Parallel diplomacy, or *paradiplomacy*, was defined originally by Ivo Duchacek as “the direct and indirect entries of non-central governments into the field of international relations”. Duchacek and federalist scholars within the field of IR initially considered the increasing role played by transborder interchanges and international activism by states in Australia and the United States, provinces in Canada, Swiss cantons, West German and Austrian *l nders*, and Spanish regions with these activities functioning in parallel to official diplomacy and foreign policies.⁸

In the research field of paradiplomacy, cities and local territories are considered “international actors” as they project their interests and strategies in the international arena. The strategies applied by them include economic promotion abroad, the establishment of international representation offices, negotiation of international agreements (including sister city agreements), diaspora engagement, city networking, and the establishment of international organisations of local authorities such as the Union Internationale des Villes created in 1913 and the contemporary organization of United Cities and Local Governments (UCLG).⁹ City diplomacy became relevant, particularly for the so-called *world*, *global*, and *transnational* cities.¹⁰ In exercising paradiplomacy and acting via multilateral forums, cities actively seek

8 Ivo Duchacek, *Perforated Sovereignities: Towards a Typology of New Actors in International Relations*, in: Hans Michelman / Panayotis Soldatos (eds.), *Federalism and International Relations*. New York 1990, p.15. In this paper, we use the classical concept of *paradiplomacy*, in contrast to other terms such as *federative diplomacy* applied only in federal countries and *diplomatic international decentralized cooperation*, because, in controversial international migration issues occurring between different spheres of government, parallel diplomacy, rather than cooperation, prevails. Authors such as Rodrigo Tavares and Jorge Schiavon have revived the concept of paradiplomacy in the field of IR. See *Rodrigo Tavares*, *Paradiplomacy. Cities and States as Global Players*, New York 2016 and *Jorge Schiavon*, *Comparative paradiplomacy*, New York 2018.

9 Adriana Sletza Ortega, *Los gobiernos locales como actores internacionales, reflexiones te ricas* [Local governments as international actors, theoretical reflections], *Trabajos de Investigaci n en Paradiplomacia* 3 (2012), pp. 18–38; Nahuel Oddone and Mariana Luna Pont, *Avances disciplinarios en las Relaciones Internacionales: La definici n de actor internacional en el estudio de la paradiplomacia* [Disciplinary Progress in International Relations: the Definition of International Actor in the Study of Paradiplomacy], *Revista Relaciones Internacionales* 92 (2019), pp. 77–107.

10 John Friedmann, *The World City Hypothesis*, *Development and Change* 17 (1986), pp. 69–84; Sassen Saskia, *The Global City*: New York, London, Tokyo, Princeton 1991; Federico Besserer, *Ciudad transnacional y ciudad global. Intersecciones te ricas y emp ricas* [Transnational city and

legitimation for their international activism in an attempt to have a normative impact on PIL and formalise “urban agency” in the international system.¹¹

In light of these paradipomatic trends, legal scholars also debate the role of local authorities in formal international law. The review of the literature on cities and PIL, conducted during the present research, identified three different approaches. The first is interested in how the historical trajectory of cities influences PIL. The second approach seeks to link international and local law, and the third discusses cities as “objects” and “subjects” of PIL.

The first approach considers the significant role played by cities in the historical codification of PIL and current devolutionary powers, with Janne Nijman pointing out the “renaissance role” played by cities which use the language, norms, and practices of foreign policy and PIL, thus reconstituting themselves as international, and even global, actors.¹² Andrew Bodiford has argued that cities did not lose their historical status within PIL with the development of the nation-state and, instead, should be recognised as global actors because they continue to perform the functions pertaining to international subjects today.¹³

Representative of the second approach is the important discussion initiated by Gerald Frug and David Barron. They proposed the concept of *international local government law* in order to focus on how local powers are framed by international, national, and local laws and on how cities play a role that is subordinate to national governments while, at the same time, acting as independent international actors.¹⁴ Their proposal is notable because cities are able to act in the international arena as legitimate independent actors by fulfilling their local mandates interdependently and by interacting with world politics and the global economy. In contrast to national governments, local authorities have specific jurisdiction within a specific territory, pursuing their international interests and strategies through paradiplomacy.

global city. Theoretical and empirical intersections], in: Federico Besserer (ed.), *Intersecciones urbanas. Ciudad transnacional / Ciudad global*, México 2016, pp. 19–53.

- 11 *Vanesa I. Castello*, Las ciudades en el Derecho Internacional. Especial referencia a la participación en el seno de Naciones Unidas y la relación entre presencia institucional e impacto normativo [Cities in International Law. Special reference to participation within the United Nations and the relationship between institutional presence and normative impact], *Perspectivas Revista de Ciencias Sociales* 3 (2017), pp. 122–142; *Michael Acuto / Anna Kosovac / Daniel Pejiec / Terry Louise Jones*, The City as actor in UN frameworks: formalizing “urban agency” in the international system?, *Territory, Politics, Governance*, 2021, <https://www.tandfonline.com/doi/full/10.1080/21622671.2020.1860810> (last accessed on January 20 2021).
- 12 *Janne Nijman*, Renaissance of the City as Global Actor. The role of foreign policy and international law practices in the construction of cities as global actors, in: *Andreas Fahrmeir / Gunther Hellmann / Miloš Vec* (eds.), *The Transformation of Foreign Policy: Drawing and Managing Boundaries from Antiquity to the Present*, Oxford 2016, pp. 209–242.
- 13 *Andrew Bodiford*, Cities in International Law: Reclaiming Rights as Global Custom, *The City University of New York Law Review* 23 (2020), pp. 1–37.
- 14 *Gerald Frug / David Barron*, *International Local Government Law*, *The Urban Lawyer* 38 (2006), pp. 1–62.

A third approach was introduced by Yishai Blank, who posited the construction of localities as “objects” of international and transnational regulation and the role of cities as possible “subjects” of PIL. Blank wrote about the role of cities both in the global legal order and as “normative mediators between the world and the state”.¹⁵ Through their paradiplomatic activities, cities and local authorities are challenging the traditional State-centric foundations of international relations and PIL. States formally recognise themselves as the primary and plenipotentiary subjects of PIL, given that only they have unrestricted international “personality” or “subjectivity”. In contrast, any other international subject is defined as such and can only be granted legal personality by States. From a traditional State-centric perspective, international personality under PIL includes both rights and obligations and implies responsibility for behaviour incompatible with norms, direct legitimacy to claim international norm violations, and international legal consequences.¹⁶ International subjectivity/personality has been discussed when considering the international role of non-State actors while the formal subjects of PIL are States, international organisations, *de facto* governments, national liberation movements, transnational corporations, non-governmental organisations, and individuals. Still, PIL considers States as the only full subjects of international rights and duties, whereas local authorities remain subordinate to the State.

However, considering particular areas such as human rights, migrations, refugees, and climate change, the role of cities in PIL has become more relevant in recent years. For example, Barbara Oomen and Moritz Baumgärtel raised the idea of local governments as both “objects” and “subjects” of international human rights law.¹⁷ With regard to climate change, Helmut Aust argues that the concept of legal authority goes beyond the debate about subjectivity and personality if the entity has international law-making powers, while, under PIL, cities can only exercise powers conferred to them by States. Therefore, Aust focuses on the international authority of cities as a result of two political processes: the global activities conducted by cities and the recognition of these activities by States.¹⁸ In addition, he has pointed out that cities and subnational authorities are considered public

15 Yishai Blank, *The City and the World*, Columbia Journal of Transnational Law 44 (2006), pp. 875–939.

16 Roland Portmann, *Legal Personality in International Law*, Cambridge 2010, p. 382.

17 Barbara Oomen / Moritz Baumgärtel, *Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law*, European Journal of International Law 29 (2018), p. 607–630; Josephine van Zeben, *Local Governments as Subjects and Objects of EU Law: Legitimate Limits?*, in: Samo Bardutzky / Elaine Fahey (eds.), *Framing the Subjects and Objects of Contemporary EU Law*, Cheltenham and Northampton 2017, pp. 123–144.

18 Helmut Aust, *Cities as International Legal Authorities: Remarks on Recent Developments and Possible Future Trends of Research*, Journal of Comparative Urban Law and Policy 4 (2020), pp. 82–88.

actors in PIL as State organs under the Articles of State Responsibility adopted by the International Law Commission, specifically in Article 4.¹⁹

As outlined above, these developments have raised a significant debate about cities among legal scholars, challenging the narrow and formal conception of subjectivity/personality under PIL, legal responsibilities, the reconfiguration of State sovereignty, and the traditional sources of PIL.²⁰ However, cities are still mostly considered in roles accepted by States and/or are constructed as “objects” of international legal norms. If that is so, what is the meaning of their inclusion in international instruments, and how do they exercise their agency and rising “subjectivity” as part of the process of converting international norms into local law and policy? The following sections of the present paper analyse the construction of cities and local governments both as objects and actors of international migration law, reviewing their migration paradiplomacy and the international mechanisms through which mayors and cities have committed themselves to the international migration governance agenda.

D. Cities as norm implementers and creators in the context of the 2030 Agenda and the Global Compacts

How do local governments interact with PIL in the field of migration governance? We argue that they assume two main roles: norm implementation and norm creation. This is the effect of a political strategy applied by local governments in order to exert a normative impact on PIL. It emerged in the context of the Habitat Conferences,²¹ convened since 1996 by the United Nations to address the subject of human settlements, sustainable development, and human rights. As a result, the international activism of local authorities has involved both hard and soft PIL expecting a localisation of international norms, as we shall demonstrate in this section.

Currently, the 2030 Agenda for Sustainable Development serves as the main guideline for actions to be taken by national and local governments. It has been integrated into various national, state, and municipal development plans, implementing indicators, monitoring mechanisms, and policy. Moreover, the Global Taskforce of Local and Regional Governments has focused on the process of locating targets and indicators for the 2030 Agenda and ensuring the inclusion of migration issues related to the Sustainable Development Goals (SDGs). This is particularly clear in the case of Goal 10 and Target 10.7, which seek to “[F]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”

19 Helmut Aust, The shifting role of cities in the global climate change regime: From Paris to Pittsburgh and back? Review of European Comparative and International Environmental Law 28 (2019), p. 59.

20 See, most recently, Helmut Aust / Jane Nijmen (eds.), Research Handbook on International Law and Cities Cheltenham and Northampton 2021.

21 Castello, note 15, pp. 122–142.

and forms the background for the GCM.²² Also of note is the intersection between Goal 10, Target 10.7, and Goal 11, which stipulates the aim to “[m]ake cities and human settlements inclusive, safe, resilient and sustainable”.

Ever since local governments’ networks such as United Cities and Local Governments (UCLG) have been actively involved in the intersection between sustainable development agenda, the new urban agenda, and human rights through soft law instruments such as “The World Charter for the Right to the City” (2004), international organisations have been insisting on repositioning the key role of local governments for international migration governance and establishing a positive narrative for their contributions. In 2016, UNESCO published the report titled *Cities Welcoming Refugees and Migrants: Enhancing Effective Urban Governance in an Age of Migration*. In addition, the International Organization for Migration (IOM) published the *World Migration Report 2015 – Migrants and Cities: New Partnerships to Manage Mobility*, while the tenth chapter of the *World Migration Report 2018* is titled *Migrants and Cities: Stepping beyond World Migration Report 2015*. These publications have focused on the “good practices” of different cities in working toward the social inclusion of migrants.

Eventually, States formally opened the door for local governments to participate in the GCM process by adopting the General Assembly Resolution A/RES/71/280 on the “Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration”. This resolution includes local governments as relevant stakeholders that participate through informal dialogues at the invitation of the co-facilitators. At the same time, however, the modalities resolution stipulates that the intergovernmental nature of the negotiations must be fully respected so that the GCM is a State-led process. The intergovernmental negotiations for the GCM comprised six State-led rounds of negotiation, each of which provided space for informal dialogues with stakeholders of all kinds. At this stage, the UCLG played an essential role, following-up on intergovernmental negotiations and collaborating with local governments to advocate both for the inclusion of clear references in the text of the GCM to local governments and the recognition of their expertise in its implementation and review.²³

Thus, the 2030 Agenda, the GCM, and the GCR emerged in an interconnected process, with an estimated 65 % of the 2030 Agenda targets depending on local actions.²⁴ The 2030 Agenda and the concept of sustainable development are explicitly referenced both in the GCM and the GCR. Sustainable development is being interpreted as the integration of envi-

22 UNGA. Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1.

23 *United Cities and Local Governments*. Global Compact on Migration: What are the next steps for local and regional governments?, <https://www.uclg.org/es/node/28844> (last accessed on 10 February 2021).

24 *United Nations*, Local Authorities Major Group – Position paper on the High-level Political Forum, <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=270&menu=3170> (last accessed on 10 January 2021).

ronmental protection and fair socio-economic development, as illustrated in both Principle 4 of the Rio Declaration and the Resolution A/RES/S-19/2 of the UN General Assembly. Incidentally, the connection between sustainable development and migration could serve as a normative argument providing additional legal significance for the enforceability of the Global Compacts.²⁵

Summarising the above developments in Table 1, we provide a list of international declarations, compacts, and reports produced by international organisations since 2004. It comprises the soft law instruments most relevant for cities, connecting the urban agenda in migration governance and sustainable development. Cities and local authorities are addressed in these reports, declarations, and compacts not only as “objects” but also as “subjects”, that is, these documents increasingly build on their agency and subjectivity because they call for cities to be given a decisive role in global migration governance.

Table 1.

Main international soft-law instruments pertaining to cities and migration	International reports enhancing the role of local authorities in international migration governance
<ul style="list-style-type: none"> • The World Charter for the Right to the City (2004) • The Barcelona Declaration (2014) • The Quito Local Agenda on Migration and Development (2015) • The Mechelen Declaration (2015) • 2030 Agenda for Sustainable Development (2016) • The New York Declaration for Refugees and Migrants (2016) • The New Urban Agenda (2016) • The Marrakech Mayors Declaration – Cities Working together for Migrants and Refugees (2018) • The Global Compact for Safe, Orderly and Regular Migration (2018) • The Global Compact on Refugees (2018) 	<ul style="list-style-type: none"> • The Global Migration Group’s <i>Mainstreaming Migration into Development Planning: A Handbook for Policymakers and Practitioners</i> (2010) • IOM: <i>World Migration Report 2015 – Migrants and Cities: New Partnerships to Manage Mobility</i> (2015) • UN Secretary-General Report: <i>In safety and dignity: addressing large movements of refugees and migrants</i> (2016) • UNESCO Report: <i>Cities welcoming refugees and migrants: enhancing effective urban governance in an age of migration</i> (2016) • Sutherland Report (2017) • IOM: <i>World Migration Report 2018</i>. Chapter 10 “Migrants and cities: Stepping beyond <i>World Migration Report 2015</i>” (2018)

These soft law instruments in the context of cities are of great significance to migrants and refugees. For example, the World Charter for the Right to the City (2004) provides a platform for the international human rights agenda of local authorities. The content of

25 Virginie Barral, Sustainable Development in International Law: Nature and Operation of an Evolutionary Legal Norm, *European Journal of International Law*, 23 (2012), p. 377-400; Ulrich Beyerlin, Sustainable Development, *Oxford Public International Law*, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1609> (last accessed on 10 February 2021).

the Charter includes the commitment made by the world's cities to adopt legislative and regulatory measures, legal frameworks, and international treaties in order to reflect civil and political rights. This is highly significant for the local implementation of PIL both in local legislation and public policy. It is also most relevant for immigrants and refugees in cities that the Charter considers all inhabitants as citizens without distinction and promotes their political participation.²⁶ Consequently, the World Charter for the Right to the City became a key international instrument for recognising the role of immigrants in cities, protecting their rights, and promoting their political, social, and cultural participation.

Reflecting on these developments, migration and refugee movements are key issues of a research agenda about the localisation of International Human Rights Law in cities.²⁷ In the context of compliance gaps in international migration law, local governments are able to rely on the *right to the city* approach which considers how the city is co-created by its inhabitants, irrespective of their nationality, in an equal, human-centred, and sustainable way. These new innovative approaches to migration and refugees constitute new paradigms for the implementation of the Global Compacts and the future of migration governance and sustainable development. Referring to the localisation of international migration and refugee law, Barbara Oomen has noted the importance of the generation of local norms in the field both of migration and the integration of refugees, what she called *jurisgenerative* activities and the “glocalisation” of both immigrants and the refugee rights regime.²⁸ Therefore, it is necessary to highlight not only the cities’ participation in multilateralism and in localising international and global sustainability, migration, and urban governance agendas, but also their creative proposals for the improvement of international human rights law.

As mentioned in section B. of this article, one of the possible effects that have legal implications for soft-law instruments and, specifically, for the Global Compacts is the localisation of its content through binding instruments at a national or local level. These legal effects are related not only to international soft law instruments but also to PIL in general, so it has become a phenomenon that is gaining new attention from scholars. For example, Nichols Haddad published an interesting article exploring how local governments in the United States are implementing binding ordinances aligned to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁹ This effect is

26 Art. 1, para. 5.

27 Martha F. Davis / Thomas Gammeltoft Hansen / Emily Hanna, *Human Rights Cities and Regions. Swedish and International Perspectives*, Malmö 2017; Barbara Oomen / Martha Davis / Michele Grigolo (eds.), *Global Urban Justice: the rise of human rights cities*, Cambridge 2016; Elif Durmuş, *A typology of local governments’ engagement with human rights: Legal pluralist contributions to international law and human rights*, *Netherlands Quarterly of Human Rights* 38 (2020), pp. 30–54.

28 Barbara Oomen, *Decoupling and Teaming up: The Rise and Proliferation of Transnational Municipal Networks in the Field of Migration*, *International Migration Review* 54 (2019), pp. 913–939.

29 Heidi Nichols Haddad, *When Global Becomes Municipal: US Cities Localizing Unratified International Human Rights Law*, *European Journal of International Law* 31 (2020), pp. 1379–1399.

also true in the specific case of the GCM. It can be seen, for example, in the development of the São Paulo 1st Municipal Immigrant Policy Plan, which was developed with the support of the IOM and UNHCR³⁰. This new instrument addresses the GCM in Section 4, titled *Orientative and Normative Frameworks*, and recognises the role of the GCM as an instrument that “recognized the role of cities in migration governance, seeking to involve municipalities from the preparatory stage; highlighting the need for concentrated efforts at all levels, including the municipal level, for the effective implementation of the Pact”.

The São Paulo plan also recognises that the majority of the GCM objectives include actions relevant to local governments and the city of São Paulo, ascribing to them specific objectives that are related to the content of the plan. In the case of the GCM, the logic for this localisation of PIL can be explained by the need for local governments to implement migratory policies in their territories in order to respond to the migratory dynamics shaping their cities. This is especially important if we consider that, for example, the city of São Paulo receives approximately 35 % of Brazil’s immigration flows³¹. Moreover, this localisation can also serve as a means of aligning local policies to the current international standards, as part of the logic applied nationally in the implementation of the GCM from a whole-of-government and whole-of-society approach.

Another significant mechanism in this area is the Voluntary Local Reviews (VLRs) that show the progress of local governments in the development of policies aligned to sustainable development goals, including progress in terms of migration, as related to the 2030 Agenda and the SDGs. For example, the VLR undertaken for Buenos Aires identified local policies regarding migration, such as *¡Hola Soy Migrante!* and the program *BA Migrante*, which contribute to the recognition and visibility of immigrant communities in the city.³²

E. Trajectory of the Mayoral Forum (MF) and the Mayors Migration Council (MMC)

Having established the crucial role of (individual) cities and local authorities in international migration governance, this paper now turns to their international networks and forums. As stated by constructivist international relations scholars, international forums are spaces

30 *Prefeitura de São Paulo*. 1 Plano Municipal de Políticas para imigrantes 2021–2024 [Municipal Immigrant Policy Plan], https://www.prefeitura.sp.gov.br/cidade/secretarias/upload/direitos_humanos/MIGRANTES/PUBLICACOES/Plano%20Municipal_Produto%20Final_Atualizado_02.pdf (last accessed on 1 October 2021).

31 *Prefeitura de São Paulo*. Política Municipal para la Población Inmigrante en São Paulo [Municipal Policy for the Immigrant Population in São Paulo], https://www.cepal.org/sites/default/files/presentations/20190528_4_maria_berenice_giannella.pdf (last accessed on 1 October 2021).

32 *Buenos Aires Ciudad*. Reporte Local Voluntario. Localización de la Agenda 2030 en la Ciudad de Buenos Aires [Local Voluntary Report. Localisation of the 2030 Agenda in the City of Buenos Aires.], Buenos Aires Ciudad 2021, p. 51.

of norm socialisation.³³ In this regard, cities created two international migratory mechanisms in recent years: the Mayoral Forum (MF) in 2013 and the Mayors Migration Council (MMC) in 2018. The MF has facilitated an annual city-to-city dialogue on migration and was launched at the UN General Assembly's second High-Level Dialogue on Migration and Development in 2013.

The outcome of the first reunion of the MF was the *Barcelona Declaration* (2014) which developed the foundations for a future local agenda for mobility and development, highlighting both migration as a positive urban phenomenon and the role of cities as poles of attraction and drivers for change. This Declaration also requests that local governments be given a voice in the development of migration policy and that the local effects of these policies also be considered. It also demands that all peoples are treated with dignity and respect regardless of their origin and calls for more realistic legislation that would minimise exclusion. Therefore, this Declaration set out an important discursive path.

The 5th Mayoral Forum, entitled *City Leadership in Implementing the UN Global Compacts*, took place in Marrakech, Morocco, on 8th December 2018, during UN Migration Week, which took place before the UN Intergovernmental Conference to adopt the GCM. The mayors participating in the forum adopted the *Marrakech Mayors Declaration – Cities Working Together for Migrants and Refugees* in which local governments reaffirmed the commitments and statements made by cities and networks in the process of developing the global compacts through which they strove for the inclusion of a multilevel governance approach.

An additional outcome of the 5th Mayoral Forum in Marrakech in 2018 was the launch of the new MMC, a new initiative created “by mayors for mayors” in response to the growing needs of local governments to access decision-making spaces and resources in order to address immigration in their cities. The objective of the MMC is to support cities “with access, capacity, knowledge, and connections to engage in migration diplomacy and policymaking at the international, regional, and national level”. This migration diplomacy or migratory paradiplomacy became explicit in the MCC. It is managed both by a team based in New York City and by a leadership board comprising the mayors of Los Angeles, Milan, Amman, Bristol, Freetown, Kampala, Montreal, São Paulo, Zurich, and Athens, representing different regions of the world.

As the steering committee of the Mayors Mechanism, the MMC has a partnership with the UCLG and the IOM as well as other important networks such as the C40 Cities Leadership Group, which is a network of cities working on climate change issues to seek convergences between migration, refugee, and sustainable development agendas. In fact, during the COVID-19 pandemic, the MMC issued a joint statement calling for an inclusive response to the virus and launched a global solidarity campaign. The MMC has highlighted

33 Martha Finnemore / Kathryn Sikkink, Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics, *Annual Review of Political Science* 4 (2001), p. 401.

its commitment to implementing the GCM and the shared actions that local governments, especially the members of the mayors' leadership board, were taking to support migrants in their cities. For example, during the pandemic, the city of Los Angeles was providing direct cash assistance to its residents, including undocumented migrants, ineligible for federal support. In this context, the MMC also launched the Global Cities Fund for Inclusive Pandemic Response, which will provide direct technical and financial support for the implementation of specific projects. The five cities selected, in 2020, as recipients of this fund were Mexico City (Mexico), Barranquilla (Colombia), Beirut (Lebanon), Freetown (Sierra Leone), and Lima (Peru).

In addition, official documents that emerged in the context of the regional GCM reviews conducted in 2020 and 2021 mention the participation of mayors in various forums and "good practices" applied on a local level. They recognise that more collaboration between national and local governments and more decisive involvement of local authorities is required. They identify the local implementation and real articulation among local, national, regional, and international levels as one of the greatest challenges for the GCM.³⁴ In the United Nations Economic Commission for Europe (UNECE), cities are considered for two specific tasks: 1) local-level help with the inclusion of migrants and their transition as newcomers and 2) provision of municipal services through various public-private partnerships.³⁵

The Mayoral Forum mainly focuses on dialogue, declarations, and soft instruments, whereas the MMC is more operative for local progressive policies. It is an important example of how local governments are able to act as counterweights to national migration policy, showcasing more open and inclusive policies for the immigrant populations in their cities and filling the gaps left by nation-states. The MMC is able to play an important role in deploying migration paradiplomacy and following up on the implementation of the Global Compacts and commitments made by local governments in the mayoral declarations.

While both mechanisms rely on the personal role of mayors, some cities also have enrolled in relevant international city networks for the protection of immigrants, such as the Intercultural Cities Network sponsored by the Council of Europe (which developed an Index ranking intercultural policies conducted by cities), the Refugee Cities Program, and the UNHCR #WithRefugees campaign. The latter has already been endorsed by 175 cities committed to promoting inclusion and embracing refugees. It is also important to note the decisive role of powerful sanctuary cities for immigrants in the United States – such as

34 See, e.g., *United Nations Economic and Social Commission for Asia and the Pacific*, Asia-Pacific. Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration, https://www.unescap.org/sites/default/d8files/event-documents/ESCAP_GCM_2021_CPR2_ENG.pdf (last accessed on 13 May 2021).

35 United Nations Network for Migration, Informal Multi-stakeholder Consultation Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE Region, https://migrationnetwork.un.org/sites/default/files/docs/gcm_unece_regional_review_multistakeholder_meeting_report_by_rapporteur_1.pdf (last accessed on 13 May 2021).

New York, Chicago, and Los Angeles – while Donald Trump’s administration boycotted the multilateral effort of the GMC.

However, while mayors can deliver committed speeches, the evaluation of national and local legislation and policy for the protection of the human rights of migrants and refugees is required. Local legislation that implements soft/hard PIL arguably make a lasting difference only if it institutionalises progressive policies benefiting migrants and refugees, regardless of the city’s current mayoral incumbent. Local legislation favouring migrant and refugee human rights will contribute to addressing what Luis E. Thayer and his colleagues describe as the “mood politics” that occurs when local migration policies heavily depend on officials and gatekeepers within the bureaucratic apparatus.³⁶

F. Cooperation, competition, or contradictions: conflicts over cities’ migratory paradiplomacy

The role of local governments in international migration issues, international norms, and migration paradiplomacy does not only raise questions about the legal qualification of cities under the international rule of law, due to their lack of responsibility as formal subjects of PIL and their subordinated role as organs of the State; their migratory paradiplomacy also raises questions on how their paradiplomatic activism relates to the role of other tiers of government on a more practical level, that is, in terms of policies.

Paradiplomacy can be recognised in the constitutional foundations of local and, at times, of national governments, legally defining the international role of local authorities, their scope, and limitations.³⁷ However, in terms of international migration policies, migratory paradiplomacy is often controversial. Migration raises practical problems amongst the different tiers of government in terms of their respective agenda and decision-making powers over migrant populations, national migration legislation, and formal migration policy. Subsidiarity, decentralisation, and multilevel governance have been discussed in the context of the rise of diverse local migration policies implemented by cities and local governments and have even been “decoupled” from national migration policies.³⁸

- 36 *Luis Eduardo Thayer / Fernanda Stang / Charlene Dilla*, La política del estado de ánimo. La debilidad de las políticas migratorias locales en Santiago de Chile [Mood Politics. The weakness of local migration policies in Santiago de Chile], *Perfiles latinoamericanos* 28 (2020) pp. 171–201.
- 37 *Geneviève Cartier*, The relationship between the state and the city from a comparative (constitutional) perspective, in: *Helmut Aust / Jane Nijmen* (eds.), *Research Handbook of International Law and Cities*, Cheltenham and Northampton 2021, pp. 381–397; *Noé Cornago*, note 44; *Jorge Schiavon*, *Comparative paradiplomacy*, New York 2018.
- 38 *Peter Scholten*, Between National Models and Multi-Level Decoupling: The Pursuit of Multi-Level Governance in Dutch and UK Policies Towards Migrant Incorporation. *Int. Migration & Integration* 17 (2016), pp. 973–994; *Peter Scholten*, Two Worlds Apart? Multilevel Governance and the Gap between national and local integration policies, in: *Tizania Caponio / Peter Scholten / Ricard Zapata* (eds.), *The Routledge Handbook of the Governance of Migration and Diversity in Cities*, New York 2019, pp. 157–167.

International migration can become problematic for local governments facing the complications of “multilevel” governance and States’ asymmetric migration governance.³⁹ This is due to the fact that multilevel migration governance may vary greatly depending on the degree of State decentralisation, formal and informal agreements, and the lack of resources available to smaller cities for migrant services.⁴⁰ Therefore, when a city or local authority engages in international activism around migrant rights, different outcomes could result in cooperation, competition, and contradiction in terms of the implementation of these policy measures and migratory paradiplomacy.

An ideal type of cooperation in migration paradiplomacy occurs when national and local authorities agree on an international agenda that links migration, refugee, sustainability, development, and human rights. In this scenario, States exercising responsibility and leadership in migration issues link foreign policy coherence to domestic migration policy and promote the active participation of local government both in domestic and foreign affairs towards a progressive migrant rights agenda. Legislation and governance mechanisms that clarify the jurisdictions and responsibilities of each tier of government in terms of international migration and refugee issues may result in cooperation between national governments and subnational authorities. The theoretical assumption of the GCM and GCR is that cooperation should prevail and that migratory paradiplomacy is aligned to the formal foreign policy and domestic migration policy of the State.

Political competition between national and local governments in diplomacy conducted on migration matters is, however, usually displayed when national migration policy and the activities of local authorities pursue different goals. Local participation fills the gaps in protection left by national governments, particularly in the areas of migrant and refugee inclusion as well as local social cohesion. Local governments that are more internationally active in multilateral migration forums, conferences, and mechanisms present their own initiatives and programs, compensating for the failures of national migration policies implemented by States. This contrast is particularly marked in highly decentralised governments with active local authorities, a model in which competition often prevails.

Frequently, paradiplomacy in migration and refugee matters even leads to contradictions between international, national, and local laws and migration policies, as well as exhibiting gaps in international compliance. Local governments engage in international and transnational activism on migration issues and human rights by exercising their own political legitimacy as international actors. The local-international commitment to comply with the international norms protecting migrants, cooperate with international organisations

39 Kayamba Tshitshi Ndouba, Pensando la inmigración desde las instituciones de la ciudad [Thinking about immigration from the perspective of city institutions], *Migraciones Internacionales* 11 (2020), <https://doi.org/10.33679/rmi.v1i1.1982>. (last accessed on 13 January 2022).

40 See, for instance, Hannes Schammann / Danielle Gluns / Christiane Heilmann / Sandra Müller / Tobias Wittchen / Christin Younso / Franziska Ziegler, Defining and transforming local migration policies: a conceptual approach backed by evidence from Germany, *Journal of Ethnic and Migration Studies* 47 (2021) pp. 2897–2915.

and diaspora organisations, and participate in international forums raises the international profile of local governments instead of emphasising the contradictions involved in this work. The recent case of a pro-refugee Italian mayor, Domenico Lucano, sentenced to 13 years “for instigating illegal migration” illustrates the difficulties of migration paradiplomacy. He was mentioned by *Fortune* magazine as one of the 50 Greatest Leaders in the World because his local settlement program for refugees had the effect of reversing depopulation and the closure of the local school in his small town Riace.⁴¹

G. Conclusions

As the international and transnational dynamics involved in migration are a challenge for cities and local territories, migratory paradiplomacy has raised awareness of the re-emergence of the international role of cities and local authorities, prompting a discussion of their international/local authority. Contemporary non-binding international instruments (soft PIL), particularly the Global Compacts, incorporate local authorities, expecting legal and practical effects for the implementation of progressive legislation and policy. They are considered by States and international organisations as relevant actors in international migration governance in their own right.

Transcending a State-centric perspective requires local authorities to make international agreements a reality at a local level, given the vital local-transnational logic and consequences of many global and transnational challenges, especially in the field of migration. They are required to play an active role in legitimising themselves as stakeholders in international migratory governance that demand access to decision-making spaces at a national and international level. Local governments, with the support of international organisations such as the IOM and city networks such as the UCLG, have deployed paradiplomacy and embarked on advocacy efforts to highlight the importance of local governments both to migration and associated with the sustainable development agenda.

Using the Mayoral Forums and the declarations that resulted from them as tools to highlight their importance and the challenges faced, local governments called for action from States in this area. These soft law instruments provide evidence to support the claims of local governments that they are key stakeholders in designing the architecture of international migration governance. The inclusion of the Mayors Mechanism at the GFMD was an important step towards more inclusive models of international migration governance and this led to the creation of the MMC. It is expected the rollout of local programs seeking to localise PIL and follow-up on the implementation of both soft and hard PIL. This is especially important when considering the fact that one of the biggest

41 Pro-refugee Italian mayor sentenced to 13 years for abetting illegal migration, *The Guardian*, 30 September 2021, <https://www.theguardian.com/world/2021/sep/30/pro-refugee-italian-mayor-sentenced-to-13-years-for-abetting-migration> (last accessed on 19 October 2021).

challenges for international migration law has not been a lack of legislation but rather poor implementation by States, with cities becoming new counter-powers.⁴²

The incorporation of cities and local governments was a result of their continuous activism, in particular in the context of the 2030 Sustainable Development Agenda. While they have participated in negotiations and regional reviews, they now require an even more significant role once they are formally considered in the implementation and evaluation of the GCM. Soft international migration law, such as the Global Compacts, that explicitly incorporates local authorities with specific functions reduces the risk of relativisation of rights and noncompliance and, in fact, opens the possibility of new developments for enabling compliance with international human rights law into local territories.

42 *Vincent Chetail*, *International Migration Law*, New York 2019, p. 399, 403.