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Agnieszka Szpak
Nicolaus Copernicus University

Michał Piechowicz
Nicolaus Copernicus University

CITIES AS A TRANSNATIONAL INSTITUTIONAL BYPASS OF NATION-STATES

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Authors
Agnieszka Szpak, an Associate Professor at the Faculty of Political Science and Security Studies of the Nicolaus Copernicus University in Toruń, Poland. Author of more than 150 scientific publications on international law, international humanitarian law, indigenous peoples and cities in international relations. She teaches inter alia public international law, international humanitarian law of armed conflicts, diplomatic law, multilateral diplomacy.

https://orcid.org/0000-0001-7601-1230
aszpak@umk.pl

Michał Piechowicz, adjunct at the Department of European Studies at the Faculty of Political science and Security Studies at the Nicolaus Copernicus University in Torun. Author of publications in the field of European integration, management and security. Research interests focus on issues related to the decision-making processes, the role of the metropolis and issues of EU foreign and security policy.

https://orcid.org/0000-0001-9501-3696
piechowicz@umk.pl

Data availability
The data that support the findings of this study are available upon request from the corresponding author. The data are not publicly available due to Twitter's Academic Research use restriction.

Abstract
The paper will explore the significance of the role cities play in transnational institutional bypass of nation-States. The authors provide examples of cities playing the role of a transnational institutional bypass of nation-States and indicate the circumstances that may compel cities to act as such a bypass and fulfil the nation-State functions. The aim of the paper is to show that cities may successfully bypass nation-States in specific circumstances, including some cases of nation-States being unwilling to act in order to achieve a greater good that is in the interests of people living in a given nation-State or, even on a broader scale, in the interests of mankind. To best of the authors' knowledge, this is the first attempt to introduce the concept of an institutional bypass to cities and to construe conditions applicable in such a case.

Keywords
cities; city networks; institutional bypass; multi-level governance; climate change; human rights

Introduction

Cities have always been the centers of political, social, cultural, and organizational innovations as well as 'places where a lot of wealth and power are concentrated, and which are

in a position to take part in very influential global networks in a state of limited but real independence *vis-á-vis* their nation-States and national governments' (Auby, 2011, p. 205). At the same time nation-States face the global-scale challenges such as changes in climate or economic globalization. They have at their disposal organizations such as the World Trade Organization, the International Monetary Fund, or the United Nations Framework Convention on Climate Change system as fora for cooperation, dialogue, and debate; however, nation-States' actions are usually too slow to keep pace with the changing circumstances such as, for example, accelerating climate change. Very often agreements reached within such organizations represent the lowest common denominator (Swiney & Foster, 2019), particularly as these organizations are universal in character, and reaching a consensus or even a majority in such a structure may prove difficult. As Swiney and Foster (2019) argue, if we consider either climate change or economic globalization, some cities with their networks, sufficient economic resources, and cultural and intellectual potential are better suited and more ready to deal with tasks of such kind. Nation-States are often regarded as passive and unable to deal efficiently with global problems that affect humanity, the majority of which now lives in cities (Swiney & Foster, 2019). While nation-States will not disappear in the foreseeable future, "they are giving way to alternate networks and distributed forms of power" (Muggah, 2020; on the complex relationship between cities and nation-States see OECD 2014). Cities and their networks are examples of such "distributed forms of power", reshaping the international political order. Naturally, national policies affect what cities can or cannot do. Also, national governments can create incentives for cities to adopt certain policies. On the other hand, cities are not immune to problems, threats, and challenges either. For example, despite the efforts undertaken under the Millennium Development Goals Sustainable, 828 million people still live in slums. Cities occupy about three percent of the world's land area but account for 60–80 per cent of energy consumption and 75 per cent of carbon emissions (Goal 11, online).

This article will explore the issue of a city as a non-State actor that may play a significant role in a transnational institutional bypass of nation-States. The authors do not analyze the topic from a strictly legal point of view but rather a political one. By 'cities' the authors mean all cities, not only global or mega-cities, because international cooperation and – as is relevant in the present context – a possibility of an institutional bypass is not a privilege only of global and large cities but also of small and medium-sized cities that intensify their activities in the field of international relations. Hence, this is not only the direction of the biggest cities' activities but a wider trend. On the other hand, today the majority of cities are to some extent global as they show evidence of globalization in activities that take place within them (Taylor, 2007, p. 15; Acuto & Steele, p. 4). New York, London, Paris, and Tokyo are the world's leading economic and financial centers, while Boston, Seattle, Amsterdam, and Stockholm are the leading global technological hubs. Rotterdam, Melbourne, and Durban are the biggest international seaports. Other cities may be regarded as global cultural centres, *e.g.* Berlin, Florence, Venice, Barcelona, and Liverpool (European Capital of Culture). The notion of a city encompasses a local government, while the notion of a 'nation-State' encompasses its central authorities, most of all its national/central government and administration. As argued by Peter J. Taylor (2004, p. 200) globalization liberated cities from 'containerization imposed by states. […] London is not simply Britain's world city, any more than Milan is Italy's world city or Toronto is Canada's world city. These cities and other world cities operate through a world city network that is

reproducing cities beyond their state's exigencies'. Some authors limit their arguments to global cities. Simon Curtis (2008, p. 4; see also Curtis, 2011) argues that

> the emergence of the global city phenomenon is an important indication of broader transformative tendencies in the contemporary international system [… and] the rise of the global city reveals another historic shift in the nature of the international system, and indicates the theoretical resources that may allow us to comprehend such a change. The important relationship between cities and states, it is argued, is now undergoing a historic shift, just as it has at many other points in the past.

This paper will attempt to show some indications of this 'historic shift', where cities, not only global ones, are perceived as a new influential actor in international relations.

On the other hand, some researchers refuse to consider cities as actors; they see cities (even global ones) as a 'part of a historical and ongoing imperial terrain' in which they are 'a mechanism through which capital produces raced space' (Danewid, 2019, p. 292) or 'a *dispositif* of power' – a notion that can aid world politics in reframing the concept of 'urbanization' in search of fresh alternatives (Kangas, 2017, p. 1). However, as Anni Kangas explains (2017, p. 18), if we approach global cities as actors, it can add confusion to the politics (of which clashing interests are an inherent part) characteristic for the majority of urban communities. If such cities are to function, the governments need to normalise and legitimise the concept of hierarchical, competitive city relations (Danewid, 2019, p. 6). In one of his publications Simon Curtis (2019) states that what global cities are is both the key element and the end result of a political project aimed at creating a global market society. From this vantage point, global cities embody the free-market political philosophy, formulated and supported by international society in a specific historical configuration.

First, the concept of institutional bypass will be outlined, followed by the examples of cities playing the role of transnational institutional bypass of nation-States. The paper will indicate the circumstances that may compel cities to act as such a bypass and fulfil the State functions. Selected expressions of the actions of cities implementing international law and exercising nation-State prerogatives will be mentioned, including human rights, climate change and environmental law and national/international security. The hypothesis of the paper is that cities may successfully bypass nation-States in some (sometimes extraordinary) circumstances, including cases of nation-States being unwilling to act in order to achieve a greater good that is in the interest of its citizens or, on an even broader scale, in the interest of mankind. In this way cities are important components/participants of the global multi-level governance. This article is inevitably interdisciplinary, combining the perspectives of international law and international relations. Hence, the research methods adopted involve content analysis of the most representative literature in the disciplines of international law, international relations, and political science as well as the formal-legal method concentrating on the analysis of the relevant legally binding and non-binding documents. This literature will be most useful in the considerations concerning cities' general status according to international law, the concept of an institutional bypass and the place and role of cities in that concept.

The novelty of the article lies in the adaptation of the concept of an institutional bypass to cities and construing conditions applicable in such cases. It also provides a detailed definition of a transnational institutional bypass in its application to cities, which can be regarded as a contribution to a theoretical debate on the concept of institutional by-

pass as well as the participation of cities in global multi-level governance. As such, this article fits into the theoretical framework of institutional liberalism with its emphasis on the importance and role in international relations not only of nation-States but also non-State actors (among others, international organizations, non-governmental organizations, transnational corporations, natural persons, and arguably cities), the hierarchy of problems in international relations with the most important issue being not security but the well-being of citizens, which translates into attaching more importance to social, economic, and ecological problems rather than military ones. This approach opens up to non-State participants of international relations, and stresses the interdependence of nation-State interests, the plurality of international actors, the democratization of international life, and the increase in international interdependence.

The Concept of an Institutional Bypass

The concept of an institutional bypass encompasses 'a parallel institution that performs exactly the same function of the dysfunctional institution' (Prado & Hoffman, 2017a, p. 229). Mariana Mota Prado and Steven J. Hoffman (2017b, p. 231; Prado, 2011a, Prado, 2011b) compare the institutional bypass to the coronary bypass that is conducted when there is a circulation blockage and a need arises to graft new pathways around the congested arteries. In the institutional bypass the dominant institution is blocked and not working properly causing another – a bypass – to take over its functions. Sometimes the bypass is created anew and sometimes this is an already existing institution. It might also be a pre-existing institution whose purpose has changed in order to serve as a bypass and which starts performing new functions, which are the same functions as those of the dominant institution. An institution is understood as 'bodies (formal and informal) charged by a society with making, administering, enforcing or adjudicating its laws or policies' (Prado, 2011b, p. 10; Prado & Hoffman, 2017b, p. 233; Prado & Hoffman, 2019, p. 276; Prado & Trebilcock, 2019, p. 27) which includes States and cities, relevant for this article. The concept of an institutional bypass is useful in the analysis of cities' participation in the implementation and enforcement of international law, especially human rights and environmental law.

The above-mentioned authors define **international** institutional bypass as

- a type of institutional reform that has the following six characteristics:
- it keeps the dominant institution in place;
- it creates an optional alternative pathway through which to discharge functions performed by the dominant institution;
- it has at least one distinctive feature that aims at addressing a perceived dysfunction in the dominant institution [it is not a mere replica];
- it has effects in the same international regime or domestic legal order of the dominant institution;
- it is compatible with the requirements of the international regime or domestic legal order within which the bypass is operating; and
- it is separated from the dominant institution's governance structure (Prado & Hoffman, 2017b, p. 232; Prado & Hoffman, 2019, p. 279; Prado & Trebilcock, 2019, p. 28).

In 2019 Prado and Trebilcock (2019, p. 28) highlighted the importance of acknowledging the fact that functions performed by international bypasses often deal with applying

and enforcing rules and norms. Considering this institutional/legal dimension, the last three elements are particularly relevant.

Institutional bypass may be horizontal or vertical. The former means bypass that operates 'within the same jurisdiction as the dominant institution' (generally an international institution bypasses other international institutions) whereas the vertical bypass refers to 'the dominant institution and the bypass [being located] at different jurisdictional levels' (Prado & Hoffman 2017a, p. 230; Prado & Hoffman, 2019, p. 279). At least one international and one domestic institution is involved in the latter. The dominant institution and the bypass must be either national, regional, or international, which means that it is possible that international institution may be bypassed by a regional or national one and *vice versa* (Prado & Hoffman, 2017a, p. 230; Prado & Hoffman, 2019, p. 279).

As seen from the above conditions, in the case of an institutional bypass, the bypassed institution still exists but is dysfunctional in at least one aspect. The bypass may compete with the dominant institution attempting to take over its functions and position, but it may also support and complement it (for a more detailed analysis of the possible reaction of the dominant institution, see Prado & Trebilcock, 2019, pp. 11–17). Prado and Hoffman (2017b, p. 232) indicate that this concept must offer the actors a choice between those two institutions – the dominant one and the bypass. The overall aim of the bypass is to solve the problems and/or challenges that the dominant institution is set to resolve or deal with. This concept may be of great value in the analysis of the changes in the global governance (Prado & Hoffman, 2017a, p. 230; Stuenkel, 2017; Medhora, 2017). It is worth adding that cities are regarded as 'the unit of public participation' and 'an alternative global governance model' (Koo-hong, 2016).

In this article, the dominant institution is a nation-State and the bypass is a city. Are the above mentioned six characteristics met in this case? Let us begin with the general remark that in the case of cities bypassing (also in the variant of complementing nation-States and not competing with them) nation-States we are rather dealing with transnational institutional bypass as, firstly, it might be argued that the nation-State and the city are located at the same level. Taking into account their institutional position and mutual relationships – the bypass occurs at the domestic/internal level. Cities are definitely parts of the nation-State. On the other hand and as will be expanded below, cities are capable of activities distinct from their host States. Hence, for the purposes of this article the concept of institutional bypass as defined by Prado and Hoffman must be slightly modified in order to reflect its internal nature and institutional position, meaning that a national institution is bypassed by a national institution but the bypass activities transcend the national sphere. The literature on the transnational legal order and their relationship with international law is now vast and complex and, due to space constraints, it is useful to very briefly place the 'transnationality' of the bypass concept within this literature (see for example Shaffer and Halliday 2021). It was Philip Jessup that coined the phrase 'transnational law' which according to him is 'to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories' (Jessup, 1956, p. 2; Chapter II, n.d., p. 61). By this logic, as long as national and international law had the effects of transcending national frontiers, they would constitute a part of transnational law, and the latter would be able to address actors both from public (state and governmental) and private (nongovernmental, civil society) spheres. However, in the eyes of other writers

transnational law is conceptually distinct from international and national law because its primary sources as well as its subjects are not nation-state agencies or treaty-based international institutions, but rather private actors – collective, corporate, or individual – that may be involved in transnational relations (Cotterrell, 2012, pp. 500–524). Overall, with his concept Jessup established a space within which other sources of law can be acknowledged, together with legal rules and other law-related knowledge that are of practical importance yet do not match the standard categories (Affolder, 2020). Similarly, the term 'transnational legal orders', proposed by Terence Halliday and Gregory Shaffer, may be understood as a framing perspective, encompassing the processes of transnational, international, national, and local lawmaking and practice, both public and private, in all its dynamic tension (Alter, 2020, p. 37). The concept of transnational legal orders is by necessity a broad one, as it has to provide space in which the participants from all these levels and spheres can become involved in law-making. From this angle, the framework offered by transnational legal orders provides a corrective to international law approaches that overlook sub-national level actors (such as cities), focusing solely on states and international institutions.

Secondly, nation-States operate in the international order but the order that is being affected by the transnational institutional bypass is not only international but also internal (domestic): human rights, public order and security, and clean environment also have an internal aspect. 'Being affected' means that cities enact domestic legislation that is in line with international rules and norms. In such a case, it may seem *prima facie* that there is no legal activity in the international order but the international dimension is also present here. Cities simply implement international law through their domestic legislation. Thus, considering that the results of the bypass affect both the internal/domestic and the international orders as well as the institutional position and mutual relationships between nation-States and cities, the authors adopt the term 'transnational institutional bypass' as it more accurately reflects the nature of the bypass under examination. The adjective 'transnational' embraces activities undertaken by cities beyond national borders and sometimes without the direct authorisation of their nation-States. Hence the international element would pertain to the range of cities' activities undertaken by the cities and the results of the bypass but not to the institutional position of the institutions. For all these reasons the concept of cities bypassing nation-States does not exactly fit within the definition of the international institutional bypass but rather within the transnational institutional bypass.

With reference to the six conditions, the first one is easy to meet as the nation-State is kept in place. The second one assumes that a city may perform some of the functions of the nation-State (such as respecting human rights or ensuring sustainable development), which is clearly possible, and the effects of the cities' activities will be experienced in the nation-State's legal order. Thus it may be argued that the fourth condition 'in the same regime or legal order of the dominant institution' could be met. One should add that the results of the transnational institutional bypass have wider implications and may affect the international order (for example with regard to climate change; hence the adjective 'transnational'). The main beneficiaries of this conduct should be the people – citizens of the city and the nation-State. Going back to the second condition, its fulfilment will depend on the circumstances to which the institutional bypass will apply. Those circumstances will be examined below. In the case of the State's unwillingness or inability to

implement some regulations, for example human rights law or environmental law, there is a possibility of cities bypassing or complementing States in this respect.

The third condition is usually relatively easily met as cities are different from nation-States, so they are distinguishable from the dominant institution. As stated, cities can be regarded as territorial non-State actors (van der Pluijm & Melissen, 2007, pp. 7–8), sub-national actors (Koo-hong, 2016; Acuto, 2013, p. 8; Roberts, 2017; Sassen, 2002, p. 1; Aoki *et al*., 2008, p. 457) or sub-State actors in contrast to non-State actors or 'state related actors' (Amen *et al*., 2011, p. 38). As such cities enjoy some degree of independence. Thus, as argued by Helmut Philipp Aust (2015, p. 270), cities can be viewed as 'a particular form of non-state actors in international law: they are parts of states, but they also bring to the international level their own political identity which transcends this characteristic of belonging to "the state"'. This quotation expresses very well the specific position of cities: they are clearly part of nation-States, but their activities can transcend such States. Hence, they are relatively autonomous actors inside nation-States and not separate from them, but still cities distinguish from the dominant institution of the nation-State (for more details of the autonomous status of cites see Hirschl 2020).

Conditions 5 and 6 are the most troublesome in the case of cities bypassing nation-States. The former means that the city's conduct must be compatible with the international obligations of nation-States, and in the case of State's unwillingness to ratify and implement some international law regulations, cities sometimes take the place of nation-States and internalise, enforce, and implement international law even without the consent of their States. This might call into question this compatibility and call for a modification of the institutional bypass in its application in this article, although not necessarily as in some cases cities are accorded some degree of autonomy. Moreover, the fundamental question arises – are cities implementing international law contrary to their State's international obligations or in excess of them? Finally, condition no. 6 will be met if the city is treated as being outside the nation-State's governance structure, which we think could be met if we regard cities as part of the nation-State but without equating this with being a part of its government structure. Cities could rather be perceived as participants of a wider civil society and, through their networks, of the global civil society. Cities are fertile soil for the civil society to flourish. And this in turn is linked to the fact that 'civil society plays a crucial role in … the legitimacy and effectiveness of global/regional governance' (Armstrong & Gilson, 2011, p. 5).

Accordingly, a detailed definition of transnational institutional bypass includes the following elements:

- its internal aspect means that a national institution (a nation-State – a national government) is bypassed by a national institution (a city) but the bypass's activities transcend the national sphere. Hence the international element boils down to the range of activities undertaken by the cities and the results of the bypass experienced not only in the domestic order but also in the international one. In spite of the presence of this internal element and taking into account the institutional position of the bypassing and the bypassed entities, the concept of cities bypassing States is of transnational character;
- as a rule, the nation-State is kept in place and the bypass offers an alternative possibility of providing services necessary for the wellbeing of its citizens or even for

the wellbeing of mankind (climate change and clean environment because of their transboundary/transnational nature).

- the city may perform some of the functions of the nation-State, and the effects of the activities of cities will be experienced in the nation-State's legal order (thus, in the same regime as that of the dominant institution). The main beneficiaries of this conduct should be the people, citizens of the city and the nation-State as well. And cities may be more efficient at providing services to their inhabitants;
- the bypassing institution (a city) is different from the bypassed nation-State, so it is distinguishable from the dominant institution;
- the city's conduct must be compatible with the international obligations of nation-States; in the case of nation-State's unwillingness to ratify and implement some international law regulations, cities sometimes take the place of nation-States and internalise, enforce, and implement international law even without the consent of their States, yet still not against the nation-State's legal obligations but in excess of them;
- the bypassing institution (a city) is considered as being outside the nation-State's central government structure, which is possible if cities are regarded as part of the nation-State but are not a part of its government structure.

Cities as a Transnational Institutional Bypass – Examples and Analysis

Thus far we have learned that cities may provide an alternative to the State by performing some of the latter's functions. Hence, cities may bypass nation-States (mostly complementing them). In what kind of circumstances may cities act in such a role? Those circumstances embrace unwillingness of the nation-States, where their lack of consent is a barrier to implementing international law in order to solve urgent problems, sometimes of a global character (like climate change). Its main feature is State's inaction when such an action is desirable, when a nation-State is unwilling to act. Here the city acts contrary to, or parallel to, the nation-State but – as will be explained below – it actually depends on one's point of view.

To illustrate the above remarks on the cities bypassing nation-States, some examples will be given.

The scenario of a bypass pertains mostly to human rights law and environmental law (climate change). There are cases of cities cooperating, taking part in international relations or enforcing international law regarding these spheres, for example the *Global Cities Covenant on Climate – the Mexico City Pact*, adopted during the 2010 World Mayors Summit on Climate in Mexico by 207 city mayors (World Mayors Summit on Climate – Mayors push for hope after Copenhagen), or the organization C40 promoting programs that propagate using bikes in cities and designating certain streets as pedestrian only as a way to combat climate changes (Barber, 2014, p. 22). To quote Janne Nijman (2011, 214), '[c]ities are part of the problem of climate change, but also part of the solution'. Though cities are responsible for *ca*. 75% of global emissions of CO2, they have started – solo or in cooperation with other municipalities – many programs and actions intended as countermeasures against environmental pollution (Nijman, 2011, p. 214). An initiative launched independently of State's obligations was, for example, the appeal to other cities made in 2005 by the Mayor of Seattle Greg Nickels, who implored them to implement the Kyoto protocol locally by reducing the levels of emission of greenhouse gases. The response was

very positive and this constituted the beginning of a network of over 1000 cities named the U.S. Mayors Climate Protection Agreement (Nijman, 2011, p. 222). These cities implemented the Kyoto norms through their local policies, while the host State was not bound by the protocol. In such cases '[i]nternational law […] plays a role in the self-identification of the city as a global actor which takes account of its responsibility with respect to climate change and takes the lead in the governance of one of the most urgent global challenges' (Nijman, 2011, p. 222). Although the international community finally adopted the *Paris Climate Agreement*, its implementation has been restricted by the US threatening to withdraw. When President Donald Trump explained his decision to withdraw from the Paris Climate agreement by saying that he was 'elected to represent the citizens of Pittsburgh, not Paris', the Mayor of Pittsburgh, Bill Peduto, quickly replied that his city will follow the Paris Agreement as it is in the interest of Pittsburgh's residents, economy, and future (Roberts, 2017, p. 12). Peduto was followed by about 30 mayors, three governors, more than 80 university presidents and about 100 companies that are attempting to negotiate with the UN a possibility of signing the Paris Agreement, which is quite an extraordinary move (Roberts, 2017, p. 12).

As of today, 466 US Mayors representing 74 million Americans have promised to implement the Paris Agreement (see: https://climatemayors.org/actions-paris-climate-agreement/). As Ileana M. Porras (2008, p. 592) argued, '[i]n the absence of strong state leadership on climate change, cities have offered to step into the breach, and they have been welcomed with open arms by the international community'.

Even cities that do not bypass nation-states do not rule out such a possibility. When asked about it, Felip Roca Blasco, the director of the *Department of International Relations* of Barcelona, said that Barcelona would probably do the same. He then brilliantly explained that when states (like the US) do not ratify international treaties such as the UN *Convention on the Elimination of Discrimination of Women* but cities are implementing it, 'it is not cities that bypass states but states that bypass the global community' (interview with Felip Roca Blasco, the director of the *Department of International Relations* of Barcelona, online, 31 August 2021).

Actually, cities are well prepared to deal with global challenges such as climate change. Current choices of cities in the field of durable urban infrastructure will impact the effects and scope of climate change as well as people's capability to reduce GHG emissions and to adjust to shifting circumstances. Municipal actions are undertaken in the wider framework of national legal and administrative regulations that may authorize and facilitate cities' action or slow it down. Hence, what is required for city's initiatives to succeed is policy support at the regional and national levels together with sufficient resources (OECD 2014, p. 3, 7).

Very often cities also implement human rights conventions that their host States did not even ratify. Barbara Oomen and Moritz Baumgärtel (2018) underline cities' potential to have significant input into finding effective solutions to global challenges, such as those involving human rights. The researchers set out to prove that using human rights as a discourse on governance in the context of cities is not only legitimate but also very relevant today. For example, San Francisco (via *Ordinance 1998 on the Local Implementation of the UN Convention on the Elimination of Discrimination Against Women*) and Los Angeles have adopted the *UN Convention on the Elimination of all Forms of Discrimination against Women* (the US did not ratify the Convention) (Frug and Barron, 2006;

Nijman, 2011, pp. 222–223). Another example is the *Child Friendly Cities Initiative*, which constitutes a worldwide network of cities whose task is to implement the UN Convention on the Rights of the Child in the participating cities. One may also add the International Coalition of Cities against Racism and Discrimination under the auspices of UNESCO, whose goal is to implement UN conventions on anti-discrimination within the participating cities (Nijman, 2011, pp. 221–222). In the United Kingdom, the city of York is another interesting example: while the UK as a rule opposed the Human Rights Act, York purposefully used international human rights as a framework for its local policies. The city also chose to mitigate the growing severity of national migration policies by welcoming refugees (Lin 2018, p. 48).

Another example of cities bypassing States is the relatively recent Pact of Free Cities signed on December 16, 2019 by representatives of four capital cities: Bratislava, Budapest, Prague and Warsaw. The reasons for concluding this agreement include the difficulty in getting representatives of central and local governments to reach agreement, which is a common problem in relations between these entities. However, it is caused not only by the frequent differences in priorities regarding the implemented activities. Also the differences in the goals and importance of the activities undertaken by central and local authorities chiefly result from the fact that the European capitals that signed the Pact are headed by politicians from parties that are in opposition to the parties currently ruling in those countries. The most relevant objectives of the Pact are protecting and promoting common values (human rights, protection against discrimination, and maintaining the rule of law) and lobbying for direct urban funding at the EU-level. Therefore, cooperation priorities included in the Pact regard lobbying together in the European Union to increase the financial resources that the EU transfers directly to cities, bypassing central governments (Dimitrova, 2019).

As is clear from the above examples, cities often attempt to internalize international law and enforce it so that, in a way, international law is transposed into local law. In this line of argument, Janne Nijman also predicts that in the future cities will informally participate more strongly in international law-making and will increasingly implement and enforce international law – and that they will be doing that on their own initiative, independent of nation-State obligations or in excess of (and not contrary to) the international obligations accepted by their nation-States (Nijman, 2011, pp. 221, 224). This trend or prognosis is already noticeable in the field of international human rights law and environmental law, and it definitely illustrates the cities as a bypass of nation-States which hold back their consent to be bound by and implement rules that contribute to the resolution of urgent global problems such as climate change. Lesley Wexler (2006) foresees that cities soon might bypass nation-States to implement international environmental norms and human rights. Karen Knop (2012, p. 5) subscribes to the point of view that endorsement or 'implementation' of treaties by cities such as San Francisco may suggest that with the progressing disaggregation of democratic nation-States, multiple sub-State/local government actors have emerged, which use international law to shape themselves. Judith Resnik (2012, p. 537) claims that the incorporation of the *UN Convention on the Elimination of all Forms of Discrimination against Women* by San Francisco is an example of a translocal social movement. The increasing visibility of local, often grassroots, initiatives led some researchers to considering this as an innovative transformation of the nation-State, a phenomenon they call 'rescaling'.

The above examples prove that most of the remarks in this article are of a descriptive and conceptual character. In general, cities bypassing nation-States is already happening (especially in the fields of implementation of human rights and environmental law, the latter strictly connected to the fight against climate change). Yet cities attempt to go further: for example, they would like to accede to international agreements such as the Paris Climate Agreement. So far, it has not been possible, which does not prevent cities from implementing such agreements. Accession to the Paris Agreement would fit into the transnational bypass concept; the difference between implementing it without formally acceding to it and formally acceding to it is a matter of degree rather than kind (cities bypassing States are listed in Table 1 below).

Table 1. Examples of cities bypassing States

City	How it bypasses State
Seattle initiating US Mayors' Climate Protection Agreement	Implementing the Kyoto Protocol without the US having ratified the Protocol
Pittsburgh and other American cities (Climate Mayors)	Implementing the Paris Climate Agreement when President Donald Trump announced the US' withdrawal from it
San Francisco and Los Angeles	Implementing the UN Convention on the Elimination of All Forms of Discrimination Against Women which the US did not ratify
York (UK)	Implementing human rights law when the UK opposed the Human Rights Act
Pact of Free Cities	Lobbying for direct urban funding at the EU level (directly to cities), bypassing central governments.

Source: authors' original study.

Concluding Remarks

The paper examined the issue of a city as a non-State actor that may play a significant role in a transnational institutional bypass of nation-States and specified circumstances that may compel cities to act as such a bypass and fulfil the State's functions. Generally, when cities fulfil nation-State's functions, they bypass nation-States but rather by way of complementing their actions and not competing with them. This is also the case of nation-States being unwilling to act in order to achieve the greater good that is in the interest of the people living in a given nation-State or, even on a broader scale, in the interest of humanity. As mentioned, it all depends on the point of view: one may treat cities as acting against the wishes of nation-States or without their consent, or merely as complementing nation-States, filling the gaps in nation-State activities and undertaking international obligations in excess of (and not necessarily contrary to) those accepted by their home States.

The last type of bypass refers *inter alia* to climate change and respect for human rights. Hence, the hypothesis has been confirmed.

This article also hinted at a possibility of cities successfully bypassing nation-States in the circumstances mentioned above. One could also add that in general cities are usually a temporal bypass although (if their ambitions for autonomy are taken into account) they attempt to enlarge the sphere of their functions and competencies on a more permanent basis. Accordingly, cities have sought to become active players at the international level. One of their strategies includes forming international NGOs such as United Cities and Local Governments, the most renowned of such cities networks. This strategy aims at gaining visibility in international relations (Porras, 2008, pp. 537–539). Such networks attempt lobbying for regulations they see as beneficial, and exerting pressure on nation-States when the latter are negotiating bilaterally or multilaterally. Obviously, if multiple cities form a cooperative network, their position and leverage is enhanced (Nijman, 2011, p. 224).

We are aware that this paper adopts a rather optimistic view of the recent developments involving cities. We are also aware that in the same way as cities may be able to act in compliance with international instruments in the absence of State action, they may also violate international instruments, even when these are embraced by nation-States. But, taking all this into account, cities are nevertheless considered a desirable part of the global governance architecture (Acuto, 2013, p. 2) or multilevel/multi-layered governance (Auby, 2011, p. 208). Nation-States and governmental international organisations (such as the UN or the WTO) are no longer the only problem-solving actors present in the international arena. As demonstrated by this article, cities also have a role in problem-solving, even globally – particularly when they form powerful city networks, multiplying in this way their potentials and strengths. As Michele Acuto (2013, p. 169) concludes his book, 'governance assemblages [such as for example cities and their networks] do not unfold in a vacuum, but rather in a complex spatiality where they are forced to intersect or bypass other structures, which in turn affect their nature'. As the above examples show, cities act 'at scales and through activates outside the reach of national institutions' (David and de Duren, 2011, p. 1). As part of the global governance, cities take part in managing global problems, first and foremost climate change and sustainable development (Goldin, 2013, p. 3). It should be stressed that efforts of cities in solving urgent global problems should be supported by States, international organisations, and financial institutions (Bouteligier, 2013, p. 1).

The examples of cities bypassing nation-States also indicate the trend towards de-formalisation of international law, meaning that even without the formal consent of the nation-State to be bound by certain international law rules, those rules are nonetheless implemented through the local laws and policies of the cities. This in turn also shows the growing role of cities within international law as well as intensifying interaction between cities and international law (Nijman, 2011, p. 223). The rising position of cities 'transforms the relations between the city and the state. The future of a state will be determined increasingly by the future of its cities' (Nijman, 2011, p. 218). It is also the result of the fact that international community of the 21st century is mostly urban and will be so even more as, by 2050 66 percent of the world population will live in cities (World Urbanization Prospects, 2014).

There are also contrary views which approach the growing role of cities, termed 'city regionalism', as a medium and a result of partially territorial reorganization of the State, but even more as 'a decisive moment in the internationalization of the State itself' (Jonas and Moisio, 2016: 2). This city regionalism is becoming an important medium for the State to wield power in the 21st century. While in the mid-20th century development of independent cities was an integral part of States' activities in the framework of nation-building, today we can observe a qualitative shift in the geopolitical location of cities as actors operating on behalf of the State rather than bypassing them (Jonas and Moisio, 2016: 2–3). Accordingly, city regionalism is merely a rescaling of a State (Jonas and Moisio, 2016: 7–8). Consequently, the rising power of cities has significant implications for reconfiguration of the territoriality of the nation-State, and – as such – city regionalism should be understood as related to spatial transformation of the nation-State, not as its demise (Jonas and Moisio, 2016: 8).

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