
BORDER CITIES AND INTERNATIONAL LAW

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[A] [INTRODUCTION]

There is a good deal of interest in a) cities as international law actors and b) borders. Essentially, what I do in this paper is bring these two areas together in a look at the role of border cities in international law and diplomacy.² I do that through a case study of one urban borderland namely, Windsor (Ontario, Canada)–Detroit (Michigan, United States (US)).³

Let us start with the interest in the role of cities in international law or, as it is sometimes termed, the local turn in international law. This local turn was preceded by, and parallels, an interest in subnational entities, especially in federated states. But the ‘buzz’ now is definitely around the urbanization of international law. In one sense of course, this is not new. City-states played major roles in antiquity and there has long been interest in microstates such as the Vatican City, as well as disputed border cities with a history of unique governance, such as Trieste and Danzig. But, until relatively recently, cities have often been ignored as international law players. Ignored at least as important players engaged in activities beyond ‘sister city’ diplomacy (which should not be discounted in terms of a contribution to peace and cultural and economic

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² ‘City diplomacy involves the institutions and processes by which cities engage in relations with actors on an international political stage with the aim of representing themselves and their interest to one another’: van der Pluijm (2007).

³ The case study was first written as a ‘city report’ for the ILA’s Study Group on the Role of Cities in International Law. This article relies on the substance and text of that report throughout: Waters (2021). See also [ILA City Reports](#) online.

exchange).⁴ Part of the reason for this is that cities lack a constitutional mandate to engage in diplomacy in most jurisdictions. In Canada for example, cities were the definite losers at Confederation in 1867. The Supreme Court of Canada recently highlighted the lack of constitutional status for municipalities in its decision regarding provincial cuts to the size of Toronto's city council during the 2018 election campaign. The majority noted that 'municipalities are mere creatures of statute who exercise whatever powers, through officers appointed by whatever process, that provincial legislatures consider fit' (*Toronto (City) v Ontario (Attorney General)* (2021): paragraph 82). However, whatever one's views of the appropriate jurisdictional division between cities and higher orders of government, there can be little doubt that, as a matter of practice, cities have entered a wide variety of areas unforeseen by the drafters of constitutions or legislation on municipalities.⁵ In other words, generally speaking, cities have been left with scope for free action in international relations and some are rising to the occasion. This is certainly true of megacities, but it is also true of many mid- and small-sized cities. The spheres in which cities have engaged with international law vary, but have clustered around climate change, migration and sanctuary, and human rights and human development. In the wake of COP26, and the leadership role cities attempted to show at that conference, climate change is the most prominent issue around which cities have engaged.⁶ The activities of cities have been accompanied by a burgeoning scholarly sub-field, including the publication of a *Research Handbook on International Law and Cities* as well as an International Law Association (ILA) Study Group on the Role of Cities in International Law⁷ (Cartier 2021; see also Beaudouin 2021).

At the same time as there is growing interest in cities and international law, there is an abiding interest in borders generally. The border studies field is interdisciplinary and all over the map, if you will. Borders and borderlands are described, in popular accounts and scholarship alike, as everything from quirky to marginal, to suspect and oppressive. Of course, which border is under consideration is often the determining factor in how it is perceived. As an example of the 'border as quirk' school, take an excerpt from the well-regarded Invisible 99% podcast:

⁴ And indeed, these relationships can occasionally be controversial: see Braich (2021).

⁵ In other words, while cities may have no explicit mandate to engage internationally under existing constitutional orders, they are generally not excluded from doing so. See Cartier (2021).

⁶ See [Global Covenant of Mayors for Climate & Energy](#); [C40 Cities](#) (a global network of 97 member cities and mayors taking action against climate change).

⁷ [ILA City Reports](#) online.

The United States and Canada share the longest international border in the world and, ever since Canada got the keys to the place in 1867, we've been pretty peaceful and genial neighbours to each other. The previous landlord, Great Britain, well the US had a bit more of a spotty relationship with them. We invaded them, they burned down our house. It was a whole thing. But even though the border with Canada is now pretty tame, when two countries touch each other over a stretch of 5500 miles it can result in some surprisingly weird disputes, misunderstandings, geographical quirks and some really good stories.

By contrast, on the US's southern border, a much more critical perspective is typical. Harsha Walia, in describing the US's southern border writes: 'The US–Mexico border must be understood not only as a racist weapon to exclude migrants and refugees, but as foundationally organized through, and hence inseparable from, imperialist expansion, Indigenous elimination and anti-Black enslavement.' (Walia 2021: 21) To be clear, a critical lens is also required at the US's northern border, where for example, the pandemic exposed Canada's treatment of migrant workers, but the focus of analysis is often very different (Tungohan 2021). At the very least, it can be said with confidence that the US's southern border has received many times the amount of attention than its northern counterpart.

Surprisingly, linking the urbanization of international law together with border studies yields a sparse field: border cities are an underexplored phenomenon. When they are not ignored, border cities are often considered marginal hinterlands, or suspect (sometimes because loyalties are seen to be divided, or because of perceptions of smuggling and other vice inherent to border life). In my view, however, they have unique, practical interactive and interpretive experience of international law and diplomacy which provides insights into new urbanism, borderland governance, and international law and relations by actors other than the nation-state. I don't want to overstate the case that border cities are ignored. Notably, under the auspices of the Council of Europe and the European Union, there have been studies, tool kits and even treaties on the subject in place for some time.⁸ And there has been more recent attention around border cities and migration governance. Despite border cities being the location where international decision-making takes practical effect (whether as host cities or transit cities), border cities have been largely left out of the

⁸ See, for example, European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Council of Europe, 21 May 1980, European Treaty Series–No 106 (Madrid).

policy-making process. Some of them are pushing back.⁹ Nonetheless, in broad brushstrokes, it is fair to say that border cities are understudied, especially outside of the European context.

[B] WINDSOR–DETROIT

I turn now to Windsor–Detroit as a case study, seen through the eyes of a Windsorite, in an account that was originally written as my contribution to the ‘city reports’ of the ILA’s Study Group on the Role of Cities in International Law.

Windsor sits opposite Detroit, Michigan, on the Detroit River, along the Canada–US boundary. It is tempting to say that the two cities sit on a ‘natural’ border, but there is nothing natural or traditional about the river being a border. It was neither a border for the Indigenous peoples of the area (from the Three Fires Confederacy of the Ojibwa, the Odawa and the Potawatomi peoples) (Hoy 2021), nor one for the French settlers (Teasdale 2019).¹⁰ Indeed, the French settlement of Detroit (a derivation of ‘rivière du détroit’ or ‘river of the straight’) existed on both sides of the river; the water was a conduit rather than a barrier for the settlement. The river is just over half a kilometre wide in places and the cities are tangibly close. As a resident of Windsor, I can see and even hear Detroit (concerts and festivals, as well as sirens and the elevated ‘People Mover’ train screeching on bends in the rails) (University of Windsor 2012). For a decade, some Windsorites could even feel Detroit. A mysterious low frequency rumbling or hum sparking conspiracy theories was eventually linked to a Detroit industrial island on the US side of the river (Martin & Ors 2020). Fishers and boaters from both countries intermingle on the river and try to stay clear of Great Lakes shipping. The border region is integrated economically, culturally and through interpersonal relations. From manufacturing to sports, and from dating to family dinners out, Windsor is in many ways part of metro Detroit. Despite these ties and the obvious potential for transnational sensibility, neither Windsor nor its big cousin across the Detroit River have sought a prominent role as international actors. Windsor and Detroit are border cities but not world cities. The governance links between the cities are low-key and informal. Further, as suggested earlier, they are border cities which have been

⁹ Formed in 2019, the Border Towns and Islands Network agreement, for example, was signed between seven local authorities based on an initiative of the Municipality of Lampedusa and Linosa in Italy. Other members include municipalities in Malta, Cyprus and Hungary. The network was formed to promote cooperation and support as border cities and islands, and to present a unified voice at the European Union and international institutions.

¹⁰ See also early maps of Detroit in Manning Thomas & Bekkering (2015).

relatively ignored in the field of border studies, certainly vis à vis the US's southern border with Mexico, or border cities within Europe. Let's now pull back the 'screen' between the two cities (Darroch & Nelson 2012).

As a border city, Windsor provides a unique perspective on cities and international law and diplomacy. In the ILA report, I highlight the lack of formal governance links between Windsor and Detroit. Despite the thick integration of the two cities on many planes—economic, cultural, and personal—there are few formal cross-border governance mechanisms in place at the city-to-city level. Part of the reason for this is that well-established nation-to-nation governance links which regulate the Canada–US border are firmly in place. Trade (the 'new NAFTA'),¹¹ security (up to co-locating border staff)¹² and boundary waters (through the International Joint Commission, among other regimes)¹³ are all managed without obvious involvement of the neighbouring cities. Scratch a little below the surface, however, and there is a large, often obscure, swathe of international relations between Windsor and Detroit.

Much of this diplomacy lies not in city council chambers but in broader public sector entities and 'authorities'. I borrow this latter term from Valverde and Flynn, who suggest in an article focused on Toronto, but with implications for most cities, that

[s]pecial-purpose public authorities are ubiquitous, indeed are more numerous than governments. Some are time-limited (say an urban development corporation set up to revitalize a particular urban intersection), but many are ongoing, such as transit, housing and conservation authorities, and public utilities. (Flynn & Valverde 2020).

This concept seems especially *à propos* in understanding diplomacy at the Windsor–Detroit border (Herzog 1991).¹⁴ From the Windsor–Detroit Tunnel Corporation (jointly controlled by the City of Windsor on the Canadian side and outsourced to a private corporation on the US), to emergency services cooperation, to cooperation between harbour masters, to policing and to cooperation over sporting/recreational events (marathons, cycle tourism and joint annual fireworks held on the river commemorating both national holidays), practical diplomacy takes place on a large scale.

¹¹ Canada–United States–Mexico Agreement 2019.

¹² Pursuant to the Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America 2015.

¹³ The Boundary Waters Treaty of 1909, United States of America and Great Britain, 11 January 1909.

¹⁴ On 'transborder regional microdiplomacy', see Herzog (1991).

This binational city governance is not always apparent or transparent, but it is real and exists along multiple points of contact. Often these links rely on the influence of individuals and non-governmental organizations who are ‘boundary spanners’.¹⁵ (As an aside, given Windsor–Detroit’s industrial heritage, I particularly like the term ‘spanner’, with implications both of a tool as well as someone who straddles). My own law school, with its links to Detroit law schools, would fall into this category. In addition to direct links, these boundary spanners also impact—sometimes in coalitions across the Detroit River—nation-nation governance schemes. To take one simple example involving an ‘authority’, construction of a new bridge over the Detroit River—named after Gordie Howe, a Canadian player for the Detroit Red Wings hockey team—is currently ongoing. Following advocacy from active transportation advocates on both sides of the river, the Windsor–Detroit Bridge Authority agreed that the new span will have multi-use paths for cyclists and pedestrians and not just vehicles.¹⁶ (Interestingly, the bridge is itself an example of innovative and collaborative border management between Canada and the US with implications for border city life (Lawson & Bersin 2020); the Bridge Authority is a not-for-profit Crown corporation owned by the Canadian government, but it is established by an agreement between Canada and a subnational entity, the State of Michigan.)¹⁷

There is an increasing recognition that relying on informal boundary spanners will be insufficient to meet the sustainability and liveability agendas that the two cities are pursuing. More formal cross-border governance links are needed. In some ways the pandemic highlighted the importance of the border region having a voice with national and provincial/state governments. None of this is to say that informal integration is or will be steady, organic or easy. For starters, given the differences in scale,¹⁸ Detroit matters more to Windsor than vice versa. More broadly, there is a transnational unease which permeates interactions between the two cities. Border securitisation post 9-11, racial profiling and other structural barriers to access for marginalised communities (passport

¹⁵ Boundary spanners are ‘vital individuals who facilitate the sharing of expertise by linking two or more groups of people separated by location, hierarchy, or function’: Egan & Loë (2020). On the availability of boundary spanners in the Windsor–Detroit beyond water resource issues, see Levina & Vaast (2005).

¹⁶ ‘The decision to include a pedestrian and bicycle lane is the result of public consultation and feedback from communities on both sides of the border’ (Gordie Howe International Bridge 2017).

¹⁷ Crossing Agreement between Canada and Michigan, 14 June 2012. The fact that the Authority is solely Canadian reflects the unwillingness of the US or Michigan to pay for the Bridge’s construction.

¹⁸ Although the City of Detroit has a population of roughly 670,000, metro Detroit has a population of over 4 million people (US Census Bureau 2021).

requirements, crossing fees, current lack of active transportation links), trade friction/'America First' policies, and vacillations of perceptions of Detroit (bankrupt/depopulated/crime-ridden or a great-American comeback story/the next Brooklyn) are all among the reasons for simultaneous division as well as integration.¹⁹ Perhaps unsurprisingly, the number of border crossings has been on the decline in recent years,²⁰ even before the pandemic. Despite this transnational anxiety, the extent of the economic and cultural linking of the cities—in some ways both on their own national peripheries—is remarkable. And the potential for inter-city diplomacy along the border—hopefully, in my view, in a way which engages international legal standards around climate change and beyond—is a goal worth shooting for.

[C] CONCLUSION

While this study takes Windsor–Detroit as a case study, my initial impression—and additional work will be needed to confirm this—is that the experience of this borderland is not atypical. Border cities provide a rich and underexplored site of engagement with international law and diplomacy. This rich practice is often informal, facilitated by 'boundary spanners' who can influence and interpret broad conversations around binational as well as borderland governance. Border city diplomacy could be ratcheted up to provide more effective borderland governance around issues of sustainability, climate change, migration, human rights and development, and health. In sum, there is tremendous potential in the urban spaces between states.

About the Author

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References Cited

- Beaudouin, Anouche (2021) *Droit International des Villes Le Kremlin-Bicêtre*, France: Mare & Martin.
- Braich, Baneet (2021) 'China Comes out against Proposed Vancouver Friendship City in Taiwan' *CBC News* 12 November 2021.
- Darroch, Michael (2014) 'Border Scenes: Detroit ± Windsor' 29(3) *Cultural Studies*.
- Darroch Michael & Kim Nelson (2012) 'Windsoria: Border / Screen / Environment' 40 *Public* online.
- Cartier, Geneviève (2021) 'The Relationship between the City from a Comparative (Constitutional) Perspective' in Helmut P Aust, Janne E Nijman & Miha Marcenko (eds), *Research Handbook on International Law and Cities* Cheltenham: Edward Elgar.
- Egan, J & Robert C de Loë (2020) 'Thinking Outside the "Water Box" in the Detroit River Area of Concern' 46(6) *Journal of Great Lakes Research*.
- Exploredotgov (2020) 'Border Crossing Entry Data: Annual Data'.
- Flynn, Alexandra & Marianna Valverde (2020) *Where the Sidewalk Ends: The Governance of Waterfront Toronto's Sidewalk Labs Deal Windsor: The Windsor Yearbook of Access to Justice*
- Gordie Howe International Bridge (2017) 'Bike or Hike the Bridge' *Spotlight*.
- Herzog, Lawrence (1991) 'International Boundary Cities: The Debate of Transfrontier Planning in Two Border Regions' 31(3) *Natural Resources Journal*.
- Hoy, Benjamin (2021) *A Line of Blood and Dirt: Creating the Canada–United States Border across Indigenous Lands* New York: Oxford University Press.
- Invisible 99% (2021) 'Fifty-Four Forty or Fight' Podcast 26 October 2021.
- Lawson, Chappell & Alan Bersin (2020) 'Collaborative Border Management' 14(1) *World Customs Journal*.
- Levina, Natalia & Emmanuelle Vaast (2005) 'The Emergence of Boundary Spanning Competence in Practice: Implications for Implementation and Use of Information Systems' 29(2) *MIS Quarterly*.
- Manning Thomas, June & Henco Bekkering (2015) *Mapping Detroit* Detroit: Wayne State University Press.

- Martin, Rachel, Noel King & Colin Novak (2020) 'It Took a Pandemic: Mystery of Windsor Hum Is Solved' *NPR* 4 August 2020.
- Teasdale, Guillaume (2019) *Fruits of Perseverance: The French Presence in the Detroit River Region, 1701–1815* Montreal: McGill-Queen's University Press.
- Tungohan, Ethel (2021) 'How Covid-19 Exposed Canada's Treatment of Migrant Workers' *Pandemic Borders: Analysis* 30 September 2021.
- University of Windsor (2012) 'Straddling Metaphorical Borders Essential Part of Ensemble's Performances'.
- US Census Bureau (2021) 'QuickFacts: Detroit City, Michigan; Michigan'.
- van der Pluijm, Roger (2007) 'City Diplomacy: The Expanding Role of Cities in International Politics' Clingendael Diplomacy Papers/Netherlands Institute of International Relations.
- Walia, Harsha (2021) *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* Blackpoint, Nova Scotia/Winnipeg, Manitoba: Fernwood Publishing.
- Waters, Christopher (2021) 'The ILA Study Group on the Role of Cities in International Law City Report: Windsor' International Law Association.

Legislation Cited

- Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America, 16 March 2015, Can TS E103842
- Boundary Waters Treaty 1909, United States of America and Great Britain, 11 January 1909, International Joint Commission
- Canada–United States–Mexico Agreement (CUSMA), 10 December 2019, Can TS 2020 No 6 (entered into force 1 July 2020)
- Crossing Agreement between Canada and Michigan, 14 June 2012
- European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Council of Europe, 21 May 1980, European Treaty Series–No 106 (Madrid)

Cases Cited

- Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34