
Annex – Mandate of the ILA Study Group (2017)

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Proposal for an ILA Study Group on

THE ROLE OF CITIES IN INTERNATIONAL LAW

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Until recently, cities were a non-issue in public international law. They were regarded as administrative sub-units of their respective state. Apart from special cases such as experiments with ‘internationalised’ cities such as Danzig or Tangiers, cities were absent on the map of international law, at least if international law is understood in a modern, post-Westphalian sense. Of course, in earlier times, cities were important actors on an ‘international’ level if we think of the Hanseatic League, the foreign policy of Italian city republics, or, going back even further in time, the association of Greek city states. In the way that international law has been understood at least since the 18th century, however, cities did not enjoy a legal status of their own properly so speaking.

In recent years, this has begun to change. There is a growing attention to the roles that cities and other sub-national authorities have to play in law-making processes as well as in the application and enforcement of international law.

This proposal briefly sketches (1) why this development is relevant for public international law as such, (2) why there is a need for more scholarly attention to it and (3) what an International Law Association (ILA) study group (SG) could contribute in this regard. Finally, some brief remarks on organisational matters will conclude this proposal (4).

Without going into the full details of defining ‘the city’, we would like to stress here that we are interested primarily in the city as an embodiment of the local level of government in a state. This comprises cities of varying sizes and organisational capacities, ranging from the ‘global cities’ in the sense of Saskia Sassen to the ‘ordinary cities’ (Jennifer Robinson) that might not be at the forefront of global networks on climate change or security governance but are nonetheless affected by globalisation and its norms and rules and which might also be active participants in some of the processes that drive this development.

1 RELEVANCE FOR INTERNATIONAL LAW

Globalisation, urbanisation, and decentralisation are three global trends that contribute to the internationalisation of the city.¹ International and transnational activities of cities take various forms. First, cities set up associations among themselves that go beyond traditional forms of twinning or well-meaning globalist emanations of local grassroots politics. In groupings such as the ‘C40 – Climate Leadership Group’ cities aspire to contribute in a meaningful way to processes of global governance. This development has taken place most prominently in the climate change context, but also extends to other subject areas such as security cooperation, global health governance, or the enforcement of human rights.²

Second, cities have begun to cooperate more closely with international organisations (IOs), either individually when, for example, concluding loan agreements with the World Bank, or collectively through their associations such as C40 when partnering with the World Bank or UN-Habitat in order to participate in global standard setting processes. As compared to non-state actors such as non-governmental organisations (NGOs), these activities of cities raise particular legal and legitimacy issues because of their dual nature: cities are state organs and non-state actors at the same time.

Third, it can be observed that cities increasingly rely on an international normative framework in conducting their local affairs. In particular, human rights law has become a focal point for cities to reorient their policies. At times, cities aspire to implement ‘more’ international law than is binding on their respective state. An example is the local implementation of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) by San Francisco and other cities and towns in the United States. Conversely, the local government level is also increasingly affected by international legal regulation, which thereby shapes the normative environment in which cities operate.

2 CURRENT STATE OF PUBLIC INTERNATIONAL LAW SCHOLARSHIP

International law scholarship is increasingly recognising this development. The global role of cities has become the focus of attention from different points of view. After early and ground-breaking studies by Yishai Blank and Gerald Frug/David Barron,³ which brought the legal dimension of the changing role of cities in the global order to light, the field has diversified. Whereas some authors – such as the authors of this proposal – have begun to analyse the growing role of cities from a generalist and systemic perspective, ie referring to their quality as

¹ 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 *The Transformation of Foreign Policy: Drawing and Managing Boundaries*, ed. by Andreas Fahrmeir, Gunther Hellmann, and Miloš Vec (OUP, 2016) pp. 209–241.

² See further Helmut Philipp Aust, *Das Recht der globalen Stadt – Grenzüberschreitende Dimensionen kommunaler Selbstverwaltung* (Mohr Siebeck, 2017).

³ Yishai Blank, ‘The City and the World’ 44(3) *Columbia Journal of Transnational Law* 868–931 (2006); Gerald E. Frug and David J. Barron, ‘International Local Government Law’ 38 *The Urban Lawyer* 1 (2006).

emerging subjects of international law,⁴ the debate has also diversified into different sub-fields, for instance Hari Osofsky's work on sustainability issues (where cities have been particularly successful as establishing themselves as relevant actors)⁵ or Luis Eslava's critical analysis of the international legal aspects of urban redevelopment projects in the Global South).⁶

Scholarship on the growing role of cities in international law is still faced with considerable hurdles. In particular, an analysis of what cities do in and for international law quickly finds itself at odds with traditional categories of subjectivity in international law, its sources, etc. It would be one goal of the proposed SG to reflect upon the question whether these traditional categories of objects and subjects hinder the development of a realistic understanding and assessment of the role that cities play in today's international legal order. What is more, due to the increasing diversity of scholarship in the diverse fields of international law, there is now sufficient data testifying to the internationalisation of the city (networks, MoUs, etc) as well as scholarship with first reflections on the phenomenon. The SG comes at a time that stock taking is required. It aims to be the point of convergence in the scholarly debate on the changing position and role of cities in international law connecting scholars from around the world to its discussions.

3 THE MANDATE OF THE SG

The mandate of this SG is to examine the changing position and role of cities in international legal order. This relates to the following key issues:

- a. What does the internationalisation of the city mean in legal terms? What are the legal implications of cities stepping up to the international stage? What is the impact of the internationalisation of the city on the international legal order? How is the changing international legal order impacting the world's cities?
- b. To what extent is international law starting to define the legal status and government of cities?
- c. Are there specific problems attached to the role of cities as objects of international law? Is the development of direct obligations for cities under international law a challenge to the traditionally held view that every state decides for itself how to implement international law?
- d. Have cities become accepted as subjects of international law? If not, is there a process towards recognition of such a status? And by which standards can international law measure the emergence of a new category of subjects?
- e. How does the emerging role of cities impact on law-making processes in international law? To what extent can cities contribute to such processes? What are the specific legitimacy concerns raised by this development?

⁴ Aust (note 2), 141 et seq.

⁵ Hari M. Osofsky, 'Multiscalar Governance and Climate Change: Reflections on the Role of States and Cities at Copenhagen' 25 *Maryland Journal of International Law* 64–85 (2010).

⁶ Luis Eslava, *Local Space, Global Life. Everyday Operation of International Law and Development* (CUP, 2015).

4 THE CONTRIBUTION OF AN ILA STUDY GROUP IN THE CONTEXT OF PREVIOUS ILA WORK

It has always been a role of the ILA to devote attention to emerging topics and new trends. An ILA SG would be uniquely situated to assess and monitor the current development and develop suggestions on the place of cities in today's international legal order. In particular, it could go beyond a descriptive mapping of phenomena as well as purely subjective views on what international law scholarship should do in this regard. It would aspire to do the groundwork for formulating guidelines for the practice of cities, states, and IOs alike, possibly leading to the establishment of an ILA committee to further develop and propose for adoption by the ILA of such guidelines.

Already by combining the various regional groups and national chapters of the ILA, it would be guaranteed, however, that a more objective assessment of this new development could take place than is possible in the form of individual scholarly contributions. This regional diversity would also ensure that members of the SG bring knowledge of the very diverse domestic constitutional arrangements for cities and local governments to the project. We envisage membership by scholars coming from Amsterdam to Hong Kong, from Berlin to Mexico City, from London to Potchefstroom. It is essential to understand how different legal systems deal with international and transnational activities of cities. The ILA SG would therefore combine an analysis of the often very informal global processes in which cities interact with the necessary attention for the traditional doctrinal bases of international law and the diversity of the constitutional systems in which cities operate.

This SG builds on yet it is different from the ILA Committee on Non-State Actors (NSAs) that concluded its work in Johannesburg. While the mandate of the SG on NSAs was rather broad so as to include many different NSAs (ranging from multinational corporations to armed opposition groups, the Holy See, and the ICRC), which made it hard to draw any kind of general conclusions, the SG proposed here is rather focused on a particular actor that is of a highly dual nature (see *supra*) and thus with its own very specific legal *problématique* and challenges.