

Cities in a global setting:
the growing autonomy of cities in the global legal order

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Introduction

This paper deals with the growing autonomy of cities in the global setting and the new position they are claiming in the global *legal* order. First, I will briefly analyse this new trend. Two general developments play an important role: globalization and decentralisation. Secondly, this paper shows how cities themselves - empowered by globalisation and decentralisation - develop new direct relations and cooperation with global institutions, and actively claim and pursue an enhanced position on the global stage. With as a consequence, increasing direct interaction between the global and the local spheres of governance. Thirdly, this paper explores more extensively the active, direct interaction between the global and local legal spheres. Global institutions seek cooperation with cities to 'localize' global norms and policy objectives. Cities in turn have discovered the local relevance of existing global legal norms, in the areas of human rights, environmental law, and human security, and start to give these global norms effect within their local jurisdiction. The commitment of cities to solve our global problems is quintessential, the development that they take up an

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independent role in a number of areas is worth supporting. Yet, not without turning a blind eye to the possible negative side-effects. Rather than to legitimize the international role of local governments by granting them ILP, these risks may best be countered by a normative framework that sets the parameters for good urban governance. The conclusion of this paper contains a number of propositions.

1. General context: globalization and decentralisation

Two worldwide developments fuel the increasing autonomy of cities vis-à-vis the state within which they are located and their autonomous position on the global stage. The discussion as to which extent these two developments are interrelated will only be hinted at here.¹

Globalisation contributes to the growing independent role of cities at the global stage.² They increasingly develop independent global economic relations and compete for direct foreign investments to spur their local economy and the number of jobs. They also compete for tourists and the privilege of hosting global sport events. More than passive sites, they are active players of globalisation. But they are also the loci of our global challenges: air pollution, migration, and the protection of human rights - to mention just a few – show their human dimensions in the cities. Due to the increasing global interdependence – economically, culturally, and technologically in terms of ICT and media – the global developments take place locally and the local is affected by global dynamics.

The implications of globalisation for cities are many. Saskia Sassen's work offers us tremendous source of information about how globalisation takes place in and affects cities all over the world. She is of course the mother of the 'global city', with which she added an important concept to the literature on globalization. She explains how globalisation is not an abstract, de-territorialised phenomenon, but something that has a *locus*. It takes place in our cities. Sassen reconnects globalization with 'place', with urban locality, grounds it locally.³ She identifies a network of *global cities* – among which e.g. Bombay, Cairo, London, New York, Shanghai, São Paulo, Tokyo but also Amsterdam – in these cities globalisation processes take place as localized, concrete processes. Globalisation takes place *necessarily* in globally *connected* cities, according to Sassen. The *global city* is the bearer of economic

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² Definition globalization

³ "Why does it matter to recover place in analyses of global economy, particularly place as constituted in major cities? Because it allows us to see the multiplicity of economies and work cultures in which the global information economy is embedded. It also allows us to recover the concrete, localized processes through which globalization exists and to argue that much of the multiculturalism in large cities is as much a part of globalization as is international finance." S. Sassen, *Globalization and its Discontents. Essays on the new mobility of people and money* (1998), xix – xx.

globalisation, it is the – predominantly financial – carrier of the globalising world economy.⁴ Cities operate (pro-) actively in this globalized economy. Today, we are witnessing how major cities are indeed directly affected by the global financial crisis. But they are not only the active bearer of economic side of globalisation, cities world-wide are culturally connected as well. Cities are also the place where cultural globalisation is located, the global exchange of culture depends on people from a variety of cultures moving around meeting each other. An other important force of cultural globalisation are the urban ‘creative classes’. They are open to other cultures and include elements thereof in their urban way of life. But they also produce economic value. Cities and their urban culture are the homes of states’ ‘creative industry’ and knowledge-based economy, as such, cities not only have to compete for companies, but also for this creative class to stay in the city.⁵ Globalisation has also increased the migration of members of this class.

With this central place in globalisation processes, the city is also the place for new claims “whose city is it?” Its key position gives rise to new responsibilities. In deviance from Sassen’s argument that cities today produce violence rather than that they cultivate citizens,⁶ I would like to argue that by taking up a role on the global stage – provided that it is a prudent, value based role – cities show, be it with hesitation and perhaps insufficient vision and knowledge, that they are ready to take up their responsibilities to solve global problems locally and to represent the interests of their citizens globally. Urban problems due to globalisation however still eclipse the transnational relations of cities which are developing as a result of globalisation.

We are rapidly however transgressing beyond the scope of this paper. For now, it suffice to conclude that globalisation has caused major cities to take up new strategic roles, economically as well as politically or ecologically a.o. on the global stage. Major cities are empowered by their new functions in the globalized world.

Before, I come to deal with *how* they perform their new global role it is important to briefly point out that globalisation involves urbanisation.⁷ Today, 50% of the world population lives in cities in 2030 60% will live in cities and also the number of major cities (100.000+) will have increased. Urbanization is a global phenomenon, it takes place most rapidly in Africa and Asia. But also in Europe and The Netherlands, urbanization continues.⁸ The international community has indeed recognised the global problem of slum dwellers that

⁴ S. Sassen, *The Global City: New York, London, Tokyo* (1991), p. 3.

⁵ R. Florida, *The Rise of the Creative Class. Why cities without gays and rock bands are losing the economic development race*, Washington Monthly, May 2002. This article is base don his book “The Rise of the Creative Class. And how it’s transforming Work, Leisure and Everyday Life (2002).

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⁷ UNFPA, *Unleashing the Potential of Urban Growth, State of the World Population 2007*.

⁸ Het CBS constateert in haar rapport *De Nederlandse samenleving 2007: tussen 2000 en 2006*, is stedelijke bevolking met ruim 500.000 mensen toegenomen. Dit is ten dele veroorzaakt door toename van het aantal stedelijke gebieden. *De Nederlandse samenleving 2007*, p. 148 *et seq.*

comes with it and stipulated in MDG 7 that by 2015 the number of slum dwellers has to be decreased significantly and the living conditions improved considerably.⁹

Globalisation and urbanisation demand us to think through our current institutional structures at the global as well as national and local level. As a UN report notes: “*The central challenge of the 21st century will be how to make both globalization and urbanization work for all the world's people, instead of benefiting only a few.*”¹⁰ This challenge is vital, it means that cities should not merely be financial-economic centers but that their social and political structures, their local environment in terms of pollution and climate change, and their capacity to offer (human) security has to be supported rather than undermined by global processes. Cities seem to claim this support when seeking cooperation with global institutions. I will come back to this.

Today's global problems – environmental pollution, poverty, social instability and lack of cohesion in many societies – are generally most urgently felt in the cities. On the other hand, on a more positive note, as UN-Habitat concluded “*Cities and towns hold the potential to maximize the benefits and to offset the negative consequences of globalization.*”¹¹ Globalization affects cities and requires them to respond politically, administratively, and legally in order to secure good living conditions for its citizens. No longer can the city suffice with relations with the provincial or national governmental levels, good urban governance requires cities to develop transnational relations and to operate at the global stage. This new role empowers the city *vis-à-vis* the State and the international community. We will deal with the forms of global – local interaction below.

The second development that contributes to the construction of a more autonomous role for cities in the global order is ‘decentralisation’. Decentralisation is propagated by some national governments (such as the Dutch) as well as European and international institutions. As such it is a trend that affects the city from the ‘outside’: national and supra-national levels of government assign tasks and responsibilities to cities. However, cities are now also actively pursuing decentralisation through European and global institutions. Decentralisation contributes directly to the growing autonomy of cities city *vis-à-vis* the State and within the international community as a whole. It is a world-wide trend.¹²

The Dutch government actively pursues decentralisation. This is adopted in the Coalition agreement, the government aims to promote the autonomy of local governments.¹³ This is no surprise considering the political views of the Christian-democrats. But also other

⁹ *United Nations Millennium Declaration*, UNGA Resolution 8 september 2000 (A/Res/55/L.2).

¹⁰ United Nations Centre for Human Settlements (Habitat), *Cities in a Globalizing World: Global Report on Human Settlements* (2001).

¹¹ VN-Habitat rapport, *Cities in a Globalizing World: Global Report on Human Settlements* (2001).

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parties favour the idea that what can be done locally should be done locally since it is closed to the citizens involved and affected by policy measures.

The promotion of local and regional government is not only an important feature of the Dutch political culture and choices on governance, it is part of a European as well as global trend. Within the European Union, the principle of subsidiarity rules. It is very conducive to the autonomy of local and regional governments and the latest version of the EU treaty – after the Treaty of Lissabon amendments - creates new forms of supervision to monitor the implementation of the principle of subsidiarity.¹⁴ This is a continuation of the strengthening of local and regional governments as set in the Treaty of Maastricht and the establishment of the Committee of the Regions.¹⁵ The Council of Europe has adopted the “European Charter of Local Self-Government” in which promotes local self-government and thereby it stimulates the autonomy of cities in respect to the State.¹⁶ In this paper, however, I leave the European empowerment of local government aside and merely pause at the international stimulus of decentralisation.

In the global context as in the context of the European Union, decentralisation is supported largely as a means to bridge the gap between government and political decision-making on the one hand and the populace on the other. Decentralisation is seen as a key element in good governance, which stimulates democracy and political participation of citizens. Since local and regional governments are closest to the citizen and involved in many important policy decision in the area of police and security, education, health and poverty eradication, strengthening them is a way to stimulate democratization and the protection of human rights. Over the past decade, this view on decentralisation has spurred reform world-wide. The World Bank has termed this development “localization” in its World Development report “*Entering the 21st Century*.”¹⁷ ‘Lokalization’ is often adhered to for being a positive force next to globalisation, because it would enhance political participation while globalisation would rather undermining citizen participation. In this 1999/2000 report, the World Bank does not take up an advocating role on the issue. It merely observes how 95% of the democratic countries around the world have indeed elected local and regional governments and underscores that decentralisation may hold risks for the stability of a country when local government isn’t up for it (yet). Since this report, however, the World Bank is developing (be it slowly) a vision on decentralisation in order to minimise risks for the political and economic stability of a country by promotion of good urban governance. In

¹⁴ Art. 263 Geconsolideerde versie van het Verdrag betreffende de werking van de Europese Unie, jo. Art. 8 Protocol (Nr. 2) betreffende de Toepassing van de Beginselen van Subsidiariteit en Evenredigheid. *Europees Publicatieblad* 2008/C 115/ 163 en 206 (9/4/2008).

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¹⁷ Wereldontwikkelingsrapport 1999/2000, *Entering the 21st Century* (OUP, New York, 2000). Zie in het bijzonder, Hoofdstuk 5. “Decentralization: Rethinking Government,” p. 107, et seq.

its “First Global Report on Decentralization and Local Democracy” (2008) the UCLG concludes that “*the world is undergoing a quiet democratic revolution*”.¹⁸ This quiet revolution of decentralisation empowers cities, with the transfer of competences and responsibilities their autonomy vis-à-vis the State and eventually on the global stage grows.

To both the World bank and the United Nations Human Settlements Programme (UN-Habitat), good urban governance is a core value in their efforts to eradicate poverty and promote sustainability in cities. The improvement of urban governance has become a focal point of the policies of these global institutions. The objective is the “*Inclusive City, a place where everyone, regardless of wealth, gender, age, race or religion, is enabled to participate productively and positively in the opportunities cities have to offer*.”¹⁹

Within the United Nations – UN-Habitat in particular – much effort goes to the strengthening of local self-government. To some degree, one can speak of a ‘decentralisation and localisation’ -philosophy within the United Nations, which empowers city governments. In the prestigious 2004 Cardoso Report on United Nations-Civil Society Relations, the panel made a number of proposals relevant in this respect: “The General Assembly should debate a resolution *affirming and respecting local autonomy as a universal principle*.”²⁰ The Panel proposes the enhanced involvement of local authorities in United Nations processes. It submits moreover, that the to-be-established “Elected Representative Liaison Unit (see proposal 16) should liaise with local authorities and their new world association [the UCLG] and disseminate lessons of good practice”. The UCLG is the world association of local authorities, which given its “representiveness” the Panel considers to be “an important conduit for representing people at the local level in the system of global governance.” The panel therefore proposed: “The United Nations should regard United Cities and Local Governments as an advisory body on governance matters.” (proposal 18)²¹ In this vision on global governance, local governments are understood as vehicles of democracy and ‘good governance’ in a rapidly globalising world. This explicit support of local self-governance and the inclusion of local authorities in UN processes empowers city governments.

With the UCLG however we shift from the more general developments of globalisation and decentralisation, which strengthens the global autonomy of cities, to the claim by cities *themselves* of a more autonomous global position.

The autonomous position of cities vis-à-vis the state is increased by the world-wide phenomenon of ‘decentralisation’ and the role the international community plays in it by way

¹⁸ UCLG, *First Global Report on Decentralization and Local Democracy* (Barcelona, 2008), p. 9.

¹⁹ UN-Habitat, *Global Campaign on Urban Governance - Concept Paper* (2nd rev. ed. 2002, Nairobi), p. 15 et seq.

²⁰ Proposal 17, Report of the Cardoso Panel (Panel of Eminent Persons on United Nations-Civil Society Relations), ... [emphasis added]

²¹ *We the peoples: civil society, the United Nations and global governance*: Report of the Panel of Eminent Persons on United Nations–Civil Society Relations (Cardoso Panel), UN document A/58/817, 11 June 2004.

of its institutions. Decentralisation is in the first place a political objective of national governments which they can pursue directly or indirectly by way of European or global inter-governmental organisations. However, local governments are now themselves increasingly active in claiming an autonomous position on the global stage *inter alia* by seeking direct participation in global institutions.

2. Cities claim an increasingly autonomous role on the global stage

Globalisation and decentralisation contribute to the increasingly autonomous role of cities on the global stage. In this section, we will briefly explore how this role takes shape, particularly, by the direct interaction between the global level of governance and cities. We will moreover focus on the role of cities within the global legal order and the interaction between the international or global legal order and the local legal order of cities. In the next section, we will discuss the argument made by Papisca to attribute international legal personality to the cities of the world.

(i) transnational city relations

To conduct international relations is no longer a privilege of States. Around the world, cities are expanding their transnational relations significantly. Major cities – Amsterdam, Atlanta, ...Kyoto, New York, Pretoria and so and so forth - have established International Relations or Foreign Affairs Offices in their city bureaucracy.²² These Offices are *inter alia* responsible for transnational trade missions, foreign investments, international (development) cooperation, cultural exchange, and the development of the city's foreign policy as well as the relations with global institutions, such as the UN or its programmes, NGOs and global city networks. In their bilateral cooperation, cities build on the classic institute of 'twinning' usually based on transnational solidarity and development cooperation or on cultural exchange.²³ The establishment of sister cities and sister cities international network was inspired by the idea of citizen diplomacy and goes back to a post WWII initiative of Eisenhower.²⁴ Old twinning relations may shift focus from development towards cooperation and exchange on environmental issues.²⁵ New twinning relations develop. To reconcile urban living conditions of people with the dynamics of globalisation processes, cities develop new transnational

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relations with cities of the “Countries of Origin” of the immigrant population.²⁶ In The Netherlands, this cooperation occurs bilaterally, as well as multilaterally in the Holland-Morocco and Holland-Turkey Platforms established by the VNG.

European cities have established direct relations with EU institutions. The Dutch G4 cities and regions now have their own missions in Brussels, in order to influence directly EU decision-making processes that affect cities.

In Europe, as around the world, the number of city networks grows rapidly. Some are established merely to influence decision-making in the European Union of the Council of Europe, other networks are established predominantly to exchange information and best practices in a certain policy area. Traditionally, networks conjoin cities on issues of international development cooperation and human rights. Increasingly however cities unite on environment protection issues. Examples of European city networks:

- Eurocities – influence of and cooperation with EU institutions; adoption of 2008 Lyon Eurocities Declaration on Climate Change
- The Union of Capitals of the European Union – exchange of best practices
- European Network Cities for Children – supported by EU and Council of Europe
- The Council of European Municipalities and Regions, is the European branch of the UCLG
- Etc etc [PM]

However, cities in the European setting is outside the scope of this paper. Here focus is on the changing position of cities within the global setting.

(ii) The changing position of cities within global institutions:

Over the past 15 – 20 years, the global position of cities has changed considerably. This change is visible in the changing position of cities in relation to global institutions, most notably the UN and its specialised agencies and programmes. While few years ago, cities were only hesitantly addressed by global institutions for the implementation of global policy objectives, they have now been fully discovered as quintessential for proper implementation and as partners in new decision-making processes.

In 1992 in Rio de Janeiro, the UN Conference on Environment and Development adopted “Agenda 21”, which laid down a global plan of action for sustainable development in the 21st century. The Rio Declaration and Agenda 21 are important documents in international environmental law. Chapter 28 of the Agenda 21 explicitly states that without the cooperation of local governments the global sustainable development objectives will not

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be reached.²⁷ Local governments are asked to engage with local communities in order to promote sustainable development at the local level and to develop Local Agenda 21 strategies. States but also the EU have followed up on Agenda 21 and stimulated regional and local sustainable development initiatives. (Charter of European Cities and Towns Towards Sustainability (1994) also called Aalborg Charter) some cities, for instance, the old twinning partners Utrecht and Léon have concluded sustainability cooperation agreements in the context of Agenda 21. Local Agenda 21 may have been local policy yet it was at the same time part of a global policy plan. It assigned explicitly responsibility to local governments to internalise the global sustainability objectives. This interaction between the global and local level on sustainability issues may have well empowered cities on these issues, today they act more assertively.²⁸

Secondly, the increasingly autonomous position of cities becomes visible in the context of the UN Habitat Agenda. On the basis of this agenda, cities have gained influence over the last decade. The Habitat Agenda underscores the need to strengthen local autonomy and self-government, the Agenda's implementation depends on it. Currently UN-Habitat is *the* UN programme involved in promoting socially and environmentally sustainable cities around the world. It is assigned to this task by the UN General Assembly of which it is a subsidiary organ since 2001.²⁹ Considering the fact that the 21st century is also called the Urban Century, this is an enormous task not without complications. Nevertheless, this task was reaffirmed during the 1996 City Summit in Istanbul, also called Habitat II, when adopted the Habitat Agenda. Now, when UN Habitat started, cities were merely a site of problems of a global concern. But after a more passive role during the first decade, the 1996 Habitat agenda has boosted relations and cooperation with cities over the last decade. Within the context of the revitalised Habitat Agenda, cities and their associations are now recognised as “the closest *partners*” in its implementation. This new status, both at the normative policy level and at the operational level, has resulted in the institutionalisation of a permanent dialogue between the organisation and representatives of local urban governments and their associations in the United Nations Advisory Committee of Local Authorities (UNACLA).³⁰ Moreover, UN-Habitat maintains close collaboration with UCLG and argues in favour of further intensification of cities–agency relations in order for local authorities to be better heard on these issues at the global stage. The *Agreement of Cooperation between The United Nations Human Settlements Programme and United Cities and Local Governments*, signed in Barcelona on 17 September 2004, aims to strengthen and expand the collaboration to

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²⁹ UNGA resolution 56/206 of 21 December 2001.

³⁰ UNACLA mandate is stipulated in Commission on Human Settlements Resolutie 17/18 (9th meeting, 14 May 1999) *Cooperation with partners: role of local authorities in the work of the Commission*.

implementing joint initiatives on Urban Governance, Local Democracy and Decentralization, the MDGs, to promote the dialogue within the AGREED framework, and to strengthen the UNACLA as a mechanism to put the agenda of local governments forward in the United Nations System.³¹ This agreement recognises the UCLG as “important local government partner” of the United Nations as a whole and the role it has to play to “defen[d] Local Governments’ interests in United Nations conferences and fora.”³² The agreement provides moreover the normative framework for UN-Habitat – UCLG cooperation, also with respect to the *Cities Alliance* initiative. This is an initiative of UN-Habitat and the World Bank to reduce poverty and slum areas in cities around the world and to promote good urban governance.³³ UCLG represents cities and defends their interests within the framework. Cities alliance establishes moreover direct relations between cities and global financial institutions.³⁴

Thirdly, following up this line of strengthening cooperation between cities and their associations on the one hand and global institutions on the other, it is worth noting that the role of local governments in the implementation of the UN Millennium Development Goals – the global development and sustainability agenda – is well established (Millennium + 5 summit).³⁵ The UCLG has adopted the Local Government Millennium Declaration (2005) in which cities express their commitment to the MDGs:

*“We, the Mayors and local government representatives of the world and members of United Cities and Local Governments, representing over half the world’s population in 127 UN member states, are determined to see the Millennium Development Goals and Targets met.”*³⁶

[PM]

The localization of the Millennium Development Goals and in particular the localization of the right to water. During the World Water Forum in Istanbul last month (March) local authorities reaffirm the responsibility of local and regional leaders concerning water and sanitation and called on national governments for a more effective partnership.³⁷ Local authorities claim a role in the implementation of this MDG. This declaration provides ‘Guidelines for a Plan of Local and Regional Action’ and indicates that “Local and Regional

³¹ *Agreement of Cooperation between The United Nations Human Settlements Programme and United Cities and Local Governments*, signed in Barcelona on 17 September 2004, available online: http://www.un-habitat.org/downloads/docs/783_31116_uclg_cooperation.pdf

³² Preamble

³³ *Cities Alliance Charter*, 21 december 2006, para. 2. Available online: <http://www.citiesalliance.org/doc/charter/charter-english-nov-dec-06.pdf>

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³⁵ “We underline the important role of local authorities in contributing to the achievement of the internationally agreed development goals, including the Millennium Development Goals.” U.N. *World Summit Outcome document*, para. 174, A/RES/60/1 (24 oktober 2005).

³⁶ Local Government Millennium Declaration, UCLG World Council, Beijing, 10 juni 2005, (http://www.cities-localgovernments.org/uclg/upload/template/templatedocs/ENG_Mill_Decl.pdf)

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Authorities should develop *concrete and measurable targets* that are tailored to their local circumstances, pursuant to their jurisdiction and on a fully voluntary basis.”³⁸

To cut a long story short, this brief exploration of the cities’ trajectory within the UN demonstrates that cities have developed from ‘addressees’ of to ‘partners’ in the implementation and development of global policy processes. Today, in this empowered status, they are not only granted an increasingly autonomous role within global institutions, they now also *claim* it.

Cities jointly claim this global role most notably by means of the UCLG. It is an international NGO established by cities and local governments which aims to expand cooperation with global institutions, to strengthen the influence and formal status of local governments within these organisations (most notably, within the UN and its agencies), and to promote globally the political values of local autonomy and democratic self-government. The *Agreement of Cooperation* between UN-Habitat and UCLG demonstrates that global institutions such as the United Nations and World Bank recognise UCLG in this role of important local government partner. It develops initiatives to ‘localise’ global policy objectives, such as the MDGs, women’s rights, and good urban governance, it goes to great length to strengthen the autonomous position of cities world-wide and in its pursuit of an enhanced status within the United Nations. With quite some success, considering that the 2004 Cardoso report on relations with Civil Society proposes the UCLG to become an “advisory body on governance matters” to the United Nations. It spares no trouble or expense in its claim to an official “observer status” for local government within the UN General Assembly.³⁹ These efforts of cities and UCLG in particular to claim a new position in the global setting are paying off. Cities – and local governments generally – are increasingly explicitly welcomed as ‘partners’ and accommodated in their new more autonomous role within the global order.

Former UN Secretary-General Kofi Annan, for instance, has confirmed this need for close cooperation with regard to the UN, when he addressed mayors and other local government officials at the September 2005 *United Cities and Local Governments* summit at the UN Headquarters in New York City:

Ultimately it is in the streets of your cities and towns that the value of what's decided here [in de VN] will be tested. It is there, in the daily lives of your citizens, in their safety and security, in their

³⁸ Emphasis added.

³⁹ UN-ECOSOC Development Cooperation Forum (2 juli 2008). See also, Recommendation 1, UCLG Local Government Recommendations to the United Nations High-level Panel on UN System-wide Coherence, www.cities-localgovernments.org (partners / UN relations).

prosperity and sense of opportunity, that our progress will be most visible, and our setbacks felt most keenly.⁴⁰

He recognised the United Nations and cities to have a common political responsibility: what is decided at the UN must be given effect in the streets of the world's cities. Annan did not merely address national governments, traditionally the appropriate thing to do for a UN SG, but he appealed directly to local governments, to the mayors of the cities:

Global and local matters are more intertwined than ever before. Where once many problems were the sole domain of national governments, today they can be tackled only by partnerships that involve central governments, the private sector, civil society and local authorities – and often international institutions, too. So we will need you to do your part both as local managers and as some of your country's most influential politicians. We will also need your national leaders and governments to give you the space to act. A state which treats local authorities as partners, and allows public tasks to be carried out by those closest to the citizens, will be stronger, not weaker.⁴¹

This is a recognition of the important role cities have to play in solving our global problems, Annan strengthens their autonomous position vis-à-vis the State and includes them as actors on the global stage. Annan's statement includes also a normative statement. States are advised by the UN to treat their local authorities as partners and a plea for decentralisation is made here as in many other UN venues.

In short, United Nations and other international organisations understand cities no longer as a mere site of (global) problems, but as part of the multilevel governance structure to solve these problems.

City governments have united in UCLG, an international NGO, to be represented jointly within the global institutions. Increasingly local governments thus participate within these institutional structures and are recognised as partners of these institutions.

This is an interesting strategy, sub-state actors use a non-state entity to strengthen autonomy and influence and to enhance their status within the global order. Cities use the possibilities of an international NGO to have their voice heard directly within the global institutions circumventing the traditional state-centric structures. Obviously, this raises questions of legitimacy. States are the traditional global actors to represent local government voice on the global stage, yet this is countered by the emphasis on local democracy and the emerging norms of good urban governance. The UN-HABITAT-led Global Campaign on Urban Governance has identified as the universal norms that characterise *good urban governance*: sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship, and security.

⁴⁰ Secretary-General Kofi Annan, Statement to "United Cities and Local Governments" Summit at UN Headquarters in New York, 8 September 2005 (SG/SM/10081).

⁴¹ Ibidem.

3. Cities and international law

In their new, more autonomous role on the global stage, cities develop new, more direct interaction with international law. Different functions: (i) cities implement international legal norms directly, (ii) cities increasingly participate in global law making processes, and (iii) sometimes incorporate directly international legal norms in local legislation. Gradually, an (idea of an) international law of local government starts to emerge in order to regulate this new position of cities within the global legal order.

(i) Direct implementation/effectuation of global norms

Over the past 10–15 years, ever more explicitly, global institutions call upon local governments to implement the global norms locally. On a variety of global policy issues, both cities and relevant global institutions argue that global objectives cannot be reached without active involvement of local governments and communities and their efforts to effectuate these norms locally.

Since in Rio the ‘localization’ of sustainable development by way of the Local Agenda 21 has been provoked, the ‘localization’ of *global policy plans* followed. We have seen how “Localizing the Millennium Development Goals” is identified as an objective in the UCLG-UN-Habitat Agreement of Cooperation. In their Millennium+5 Summit Declaration, cities (within the UCLG framework) have emphasised their crucial role in implementation of the MDGs. The implementation of human rights such as the human right to water and sanitation is equally understood as a global objective that requires active local government involvement. The *City Diplomacy* project of the UCLG in cooperation with a number of UN programmes and agencies is a similar process, built on the understanding that the implementation of such core global values as peace-building and human rights protection require direct local action and the active participation of local communities. The recently adopted Hague Agenda on City Diplomacy may be read as a document evidence of the commitment of cities and local authorities to ‘localise’ the global value of human security.⁴² There are more examples of global institutions seeking direct cooperation with cities to give local effect to policy objectives. They often support the establishment of global city networks. The World Health Organisation cooperates e.g. with the Europe Healthy Cities Network; the UNESCO has created UNESCO Creative Cities Network, which envisions an important role for (local) in the development of cities and urban areas in both rich and poor countries. The World Bank – UN initiated Climate alliance network.

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Cities also unite in networks in order to improve the local effectuation of international human rights law. For example, the *Child Friendly Cities Initiative* (CFCI) is a global city network established to implement the United Nations Convention of the Rights of the Child norms directly in their cities.⁴³ It has a Secretariat at the UNICEF seat in Florence which works on a database of best practices and other information relevant to the protection of children's rights. The participating cities have agreed to guarantee the children's rights within their jurisdiction and to adapt local policies and administrative structures so as to be in conformity with the rights of the Convention.⁴⁴

The *UNESCO International Coalition of Cities against Racism and Discrimination* is another global city network, it was launched last year and conjoins UNESCO's coalitions of cities against racism and discrimination from all regions of the world.⁴⁵ It aims to give direct effect to anti-racism and anti-discrimination norms as included in international treaties, customary law (the prohibition of racial discrimination is *jus cogens*), and resolutions and declarations of international organisations and their organs in the cities involved. This initiative is part of accumulating evidence that international organisations consider direct relations with cities and local authorities of quintessential importance to the *actual* implementation of the global values and norms these organisations are obliged to promote globally. Without direct and active involvement of local authorities this can hardly be done.

In order to give actual and direct effect to human rights norms, to principles of sustainable development and human security, international organisations and city governments increasingly seek cooperation to give direct effect to global norms within the local constituencies. Cities increasingly take up the direct, effective implementation of global norms.

(ii) cities increasingly participate in global (soft) law-making processes

The natural step following the involvement of local governments in the implementation of global norms and policy objectives is their involvement in the global decision-making processes on new norms and objectives. Since they are granted such an important role in the implementation of global norms and policy objectives, they should have a role in the creation of these norms and objectives. This role is gradually recognised, also beyond the obvious example of the UCLG within the UN-Habitat and general UN context.

⁴³ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; *entry into force* 2 September 1990, in accordance with article 49.

⁴⁴ The emergence of this global city network also testifies of the increasing direct interaction between the global and the local, the initiative draws on a resolution adopted at the 1996 Habitat Conference and as such in the context of the Habitat agenda it is also connected to other global institutions like UNICEF, UNESCO, and UNEP.

⁴⁵ The UNESCO Coalition was launched at the 3rd World Forum on Human Rights: From Universal Principles to Local Action, Nantes, 30 juni–3 juli 2008.

Leaving the European context again aside – which provides some obvious examples: major European cities (e.g. Dutch G4) and regions are directly represented with their own offices in Brussels in order to influence EU policy and legal decision-making. City networks like *Eurocities* aim to influence Brussels decision-making. In line with the EU philosophy of subsidiarity, local and regional governments are represented within the EU decision-making processes by way of the Committee of the Regions. -

For instance, in case of *ICLEI – Local Governments for sustainability*, which aims to be the “sustainable development and environmental agency for local governments.” It cooperates with UNEP and participates in the local government consultation process, which is part of global decision-making in the United Nations Framework on Climate Change context.⁴⁶ This cooperation can also result in agreements for the successful implementation of the objectives. [PM]

A most notable example of cities involvement in global law-making processes is however the role they played in the creation of an international soft law instrument on decentralisation. The promotion of decentralisation has become a core element of the good governance strategy of the UN and UN-Habitat in particular. Initially, inspired by the *European Charter of Local Self-government*, UN Habitat and UCLG were involved in the drafting of a *World Charter of Local Self-Government*.⁴⁷ This Charter was meant to implement one of the items on the Habitat-agenda: the transfer or decentralisation of authority and means to the local level. The Charter had to establish an international normative framework on the basis of local autonomy and democratic local self-government. The draft was however never adopted, some states argued it would conflict with their domestic constitutional system.

The UCLG (lobby) to strengthen local autonomy took a new turn and together with the UN-Habitat and the Advisory Group of Experts on Decentralisation,⁴⁸ the *Guidelines on Decentralisation and the Strengthening of Local Authorities* were drafted.⁴⁹ This document run a much more successful course. It has been adopted in April 2007 by the Governing Council of UN-Habitat, which is a subsidiary organ of the UN General Assembly.

(iii) Direct incorporation of international legal norms in local legislation and policies

An innovative development in the relation between the global level of governance and the local level of governance is the direct incorporation of international legal norms into local legislation and policies. Some cities have started to ‘internalise’ directly global norms on their

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⁴⁹ UN-Habitat Governing Council Resolution 21/3, 7th plenary meeting 20 April 2007.

own initiative, giving local effect to international law even if the State is not legally bound by these norms. This is significantly different from cities which implement directly international treaties or global policy plans with the consent of the State of which they are a part. Here, it concerns cities which incorporate international human rights norms into their local legislation even though they are not obliged to in their capacity of being an organ of the State.

New York City has adopted a NYC Human Rights law and established its own Commission on Human Rights in order for universal human rights, the principle of non-discrimination in particular - to have actual meaning in relations between the city and its citizens with respect to working and living (housing) in the City.⁵⁰ This NYC law can however still be explained within the traditional state-centric paradigm. This is no longer the case for the step taken by the City and County of San Francisco.

In spite of the fact that the United States have not ratified the UN Convention on the Eradication of Discrimination against Women (CEDAW), the city adopted an Ordinance in 1998 on the “Local Implementation of the UN CEDAW” in order to implement the CEDAW principles.⁵¹ It explicitly refers to the aim of implementing this international human rights treaty rather than that it drafted local legislation on the issues without mentioning the Convention. The City’s Commission on the Status of Women (COSW) develops policies on the basis of the CEDAW principles and it monitors complaints about unequal treatment of women. This local ‘internalisation’ of international law is in a way a radical decision, since it bypasses the federal government level so blatantly. It falls within a more general trend by which domestic authorities accept the authority of international norms even if strictly speaking, these norms are not binding upon them. Another example of this trend can be found in the way domestic judges accept the ‘persuasive’ authority of international law and use it to interpret national law, passing beyond the traditional divide between national and international law.⁵²

Another great example – outside the realm of human rights law – of the increased autonomy of cities with respect to international law is the initiative of the Mayor of Seattle, Greg Nickels, in the fight against environmental pollution and climate change. Unhappy with the fact that President George Bush did not ratify the Kyoto Protocol, the Mayor of Seattle called upon other cities in 2005 to give effect to the Protocol at the local level and implement the Kyoto emission reduction norm (7% under the 1990 level in 2012) locally. Hundreds of cities responded positively, the US Mayors Climate Protection Agreement counts more than

⁵⁰ *The New York City Human Rights Law* is Title 8 of the *Administrative Code of the City of New York*. Chapter 1 of Title 8 establishes the *Commission on Human Rights*. Title 8 is available online <http://www.nyc.gov/html/cchr/html/hrlaw.html>.

⁵¹ San Francisco CEDAW Ordinance (No. 128-98), *Local Implementation of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)* (Chapter 12K), is available online at: http://www.sfgov.org/site/cosw_page.asp?id=10849.

⁵² Janne Nijman and André Nollkaemper, *New perspectives on the divide between national and international law*, OUP, Oxford, 2007.

800 participating cities. By incorporating this international norm into their local legislation and policy plans, these cities give effect to international law where the US refuse to be bound. International law – whether human rights law of environmental law – here plays a role in the self-identification of the city as a local actor which takes account of its responsibility within the multilevel governance of our global challenges. These cities bypass the State which withheld its consent to be bound, they give effect to this international norms due to the substantive or persuasive authority it holds to local governments. Another example of the process of de-formalization, international law is not a formal source of normativity yet still relevant to global governance. The global value of sustainable development incites local government to ignore the formal boundary between the domestic and international legal order.

In conclusion, in line with the growing direct interactions between local and global level of governance, there is growing interaction between urban local governments and international law. In the early stages of global – local cooperation, international organisations addressed local government directly to secure local implementation rather than that this cooperation sought some sort of global-local partnership. Gradually, this type of transnational relations has developed and today, cities, united in global networks, are increasingly included in the global (UN) processes of (soft) law creation on issues relevant to city life – independent of the member-states in which they are located. Without their involvement in the development of norms and policies, implementation would be hindered. If we look at cities in today's global setting, we may conclude that they operate increasingly outside the structures of the state on the global stage and increasingly interact directly with international law, both on their own initiative or collectively through global city networks. Giving effect to global norms irrespective of the consent to these norms by the State may point at an emerging value that good local governance may sometimes require direct interaction with the global normative order.

4. Cities as emerging international legal persons?

Traditionally, international law is the law between sovereign states. State governments create international law and the State as a whole is bound by its obligations through consent. Within the traditionally state-centric international legal order, local governments have no real role to play. They were hidden behind the mask of the state, which shields of the domestic order from the international legal order. This doesn't mean that international law is irrelevant to cities in this outlook. The developments of human rights law caused gradual permeation of

the domestic legal order with international legal norms. Human Rights law binds the state as a whole, in other words, sub-state actors like cities are also bound by human rights obligations as incorporated in international conventions as the IVBPR and EHRC. Citizens can then appeal to these international treaties vis-à-vis their city. See, for example, most recently in the *Tatar vs Romania* case before the ECHR.⁵³ But within the international legal order, only states possess rights and duties and can be held responsible for violations on the international plane. Traditionally, only states exist 'in the eyes of international law'.

This traditional state-centric picture of the international law is rapidly changing. The veil of sovereignty between the international and domestic domain is pierced in multiple ways. The internal life of the state is no longer invisible to the eyes of international law. In turn, international law or global policy objectives are no longer turned a blind eye by judges or local governments, even when the state has not expressed its consent to be bound. The direct interaction between local and global level of governance and in particular between the global and local legal acts establish a radical change from the past.

Cities, local governments, seem to come 'into sight' of international law. Does this mean that they are now emerging as an international legal person? This is the radical argument made by Antonio Papisca at the City Diplomacy Conference in The Hague last summer (2008),⁵⁴ and less explicitly in his written contribution to the Conference's volume.

Papisca's claim is accompanied by a photo of the judges of the International Court of Justice (ICJ), the principal judicial organ of the United Nations. The message is clear: Papisca is to make a serious claim. And indeed, his claim concerns the foundations of the international legal order. International legal personality is indeed the qualification that indicates an entity exists 'in the eyes of international law', traditionally only states have ILP and international organisations derived from the member-states.

And yet, this same ICJ has already taken up a rather open and flexible approach to international legal personality in an Advisory Opinion in 1949, when it observed:

The subjects of law in any legal system are not necessarily identical in their nature or the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of states has already given rise to instances of action upon the international plane by certain entities which are not states.⁵⁵

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⁵⁴ Antonio Papisca, International law and human rights as a legal basis for the international involvement of local governments, A. Musch et al (eds), *City Diplomacy: The role of local governments in conflict-prevention, peace-building, post-conflict reconstruction* (The Hague, 2008), at 27-44.

⁵⁵ *Advisory Opinion on Reparation for Injuries suffered in the service of the United Nation Case*, 1949 *ICJ Rep.*, at 178.

Does this mean that cities are to be included in the international (legal) community as new international legal persons? Papisca is right that the essence of ILP is legitimate participation,⁵⁶ however, is it legally possible – let alone desirable – to grant cities with ILP in order to legitimize their enhanced role within the global legal order?

The argument is based on a mixture of *lex lata* and *de lege ferenda*, or what Papisca conceives of as being the universal international law of the (near) future. This ‘new’ universal law is no longer based on sovereignty and state-centrism, it is human-centric and based on the paradigm of human rights. Papisca is not the first scholar who has thought through the fundamental transformation international law has gone through with the development of positive international human rights law.⁵⁷ However, to find a basis for the international legal personality of local governments in international human rights law is very bold. He identifies two sources for the legitimization of international participation of cities: 1. their ‘responsibility to protect’ the internationally recognized fundamental rights of all those living in a municipality; and 2. their increasing participation, legally argued, in a global governance agenda of human development and human security.⁵⁸ Both are problematic within existing international law.

First, in international human rights law it is now widely accepted that in relation to each human right the State has three duties: the duty to respect, to protect and to fulfil (the particular right).⁵⁹ In other words, local governments – being part of a State that is bound by international human rights conventions – are under an obligation to protect their urban population against violations of their human rights as well as under an obligation to respect these rights. This is *not* an obligation *independent from* the State, it is an obligation *because* local governments are *part of* the State bound by international human rights law. To guarantee international human rights law within the city is a normal activity of the State in the capacity of its local governments. Papisca challenges this well-established approach in a very creative manner: starting from a human-centric approach, he derives the international legitimization of local governments from the rights of the urban population. Since urban citizens have a human right to positive peace (art 28 of the Universal D.H.R.)⁶⁰ and since this is the other side to the coin of international peace, city governments are “legitimized to act to build positive peace as defined by article 28 starting at the local community level and extending to include the worldwide sphere and solidarity with other local governments of the

⁵⁶ Janne E. Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (2004).

⁵⁷ Lauterpacht,

⁵⁸ Papisca, at 29.

⁵⁹ Mombray

⁶⁰ This is the human right to ‘a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized’.

world.”⁶¹ To stretch the duty incumbent upon the State so far as to include a duty for city governments to take up an enhanced role at the global stage, and thereby legitimizing the independent international participation of cities within the international legal order is however pushing things too far. For now, international (human rights) law *as is* can not provide a basis for an enhanced international legal role of local governments independent from the state to the extent of granting ILP. However, this is not to say that human rights are irrelevant to enhancing the role of local governments in the international legal order, or that an enhanced international role cannot exist at all; moreover, a human-centric understanding of international law not necessarily results in the fragmentation of the legal unity of the state in international law. I will come back to this.

Second, next to the argument of human-centric international law undermining unity of the State, Papisca develops a line of argument based on cities’ *actual participation* in international politics, which is in a process of “de-territorialization.” By which he means that international politics is no longer the domain of territorial sovereigns only. In his view, “the city can actually claim due legal recognition for the role it is playing in the decision-making processes of global governance, both at regional and world level.”⁶² Papisca identifies three types of roles for local governments within the international political system: 1. participation in programmes of international organizations (see for examples of UN programmes above); 2. formal representation in the decision-making and thus functioning of international organizations (in the capacity of an NGO ‘consultative’ or ‘observer’ status at the UN and other IGOs, or as participant in the UN Advisory Committee of Local Authorities); 3. autonomous management of programmes through their associational structures. Indeed, we have illustrated the strengthening role of cities on the global stage above. Papisca seems to approach the status of local governments through the non-state actors lens. However, this holds only truth for the NGOs that cities have formed as a vehicle for international participation, but not for the role of cities individually. Papisca’s argument that in the ‘new’ international law (i.e. international law based on the universality of human rights) international legal personality will no longer be rooted in state sovereignty, but rests originally with the human subject leads him to conclude that local governments too can have international legal personality soon. However, “claiming due legal recognition” may be a legitimate objective of city governments, but recognition is indeed something for which one depends on others, i.e. in casu, the international legal order. If cities are endowed directly, independent of the state of which they are part, with international rights and obligations, only then can we start thinking about the ILP of cities.

⁶¹ Papisca, at 29.

⁶² Papisca, at 32.

And yet, Papisca is right in point out that the international role of local governments on the global stage and within the international order is changing. Cities do exist in the eyes of international law. But this is because international law is starting to have eyes for the multi-level nature of governance. This is a very significant development, indeed. But it is not necessary for the legitimization of the intensifying interaction between the global and the local level of governance to grant ILP to cities.

On the contrary, this can have as an important negative consequence that in the important field of international human rights law, States may hide behind the international legal personality of cities and decline their responsibility for human rights protection.

If cities today do not have international legal personality, does this mean that international law cannot be considered the legal and normative framework within which these local actors function? No!

In response to the growing, international (more autonomous) role of cities on the global stage and within the international legal order, it may be desirable that international law develops legal instruments, which are specifically geared to these local actors.

The expansion of the influence of cities within global governance institutions conjoined with the commitment cities have to local autonomy, self-government, and decentralization of responsibilities and decision-making authority, challenges international law to adapt as a legal and normative framework to the global reality of multi-level governance. For example, by developing the notion of ‘good urban governance’ – so as to include, the fundamental values of the international law of human dignity – and to include safeguards against e.g. the infringement of ‘balancing of interests’ and solidarity beyond the city borders with other parts of the country.

5. Final remarks, questions, and propositions:

The state is no longer the sole ‘billiard ball’ actor it used to be. The divide between the national and international legal order is closing and globalization affects not only many human lives, it also empowers non-state and sub-state actors within the international society. Cities take up an increasingly important role in international life and in turn global institutions often empower cities in this role. On the one hand, cities are challenging the global institutional and legal structures and, on the other hand, these structures change urban governance. International law has to adapt to the global reality of multi-level governance, within which cities play an increasingly autonomous role.

However, it is important to underscore that bypassing the State by cities this strategic employment of global institutional structures also holds risks. The advancement of this new, increasingly autonomous, international role for local governments has to be questioned.

Will further decentralisation infringe the complex balancing of interests at the national level? Will more local autonomy mean more or less effective implementation of international norms and global policy objectives? Are there (minimum or maximum) limits to the size of the constituency suitable for self-governance?

[PM]

Propositions:

✓ **The cities' pursuit of more autonomy, authority, and responsibilities vis-à-vis the State and on the global stage, requires a normative response.**

✓ **Taking into account that the new, increasingly autonomous position of cities within global multi-level governance requires a normative response, it is desirable that international law develops legal instruments, which are specifically geared to these local actors.**

✓ **Decentralisation can only be a valuable and effective counterpart for globalisation, if the UN-Habitat, UNACLA, and UCLG couple their pursuit of decentralisation and increased local autonomy and self-government with a comprehensive and powerful conceptualisation of and campaign on good urban governance – as a bundle of norms which includes apart from sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship, and security, also fundamental human rights norms.**

✓ Good urban governance adheres to the ideal of the 'inclusive city,' which means urban governance based on the 'inclusive' understanding of international law of human dignity.

✓ Arguably, a new norm is emerging which holds that good global governance requires the active involvement and engagement of local government and, closely connected herewith, good local governance seems to require increasingly cities to take up a pro-active role on the global stage and with regard to global policy and international law norms.