

LOCAL SELF-GOVERNMENTS IN THE INTERNATIONAL SYSTEM: IS THERE A NEED FOR NEW INTERNATIONAL AND CONSTITUTIONAL REGULATION?

ABSTRACT

Local self-governments are increasingly striving to assert themselves in the international system, showing their active participation in international relations. Every indication point to the growing tendency of their active presence in the global arena. Against this backdrop, the questions arise as to what status do local self-governments hold in international law, and whether their increasing role necessitates reconsidering the legal/constitutional framework concerning their status.

This article highlights the recent trends of growing participation of local self-government bodies in global processes, and examines the need for revisiting a legal/constitutional dimension of municipalities' involvement in international relations.

I. INTRODUCTION

Advancement of local self-government entities in the international system is a growing trend. Against this development, the questions arise as to what status do local self-governments hold in international law, and whether their increasing role necessitates reconsidering the legal/constitutional framework concerning this status.

The article aims at reviewing recent trends of the advanced role of local self-government bodies in international relations as well as exploring the need for revisiting a legal/constitutional dimension of municipalities' involvement in international relations.

II. INTERNATIONAL LEGAL FRAMEWORK CONCERNING THE SUBJECTS OF INTERNATIONAL LAW

From the perspective of international law, local self-governments are not recognized as its independent subjects. According to common understanding, a subject of international law is entitled to: "1. establish norms of international law, 2. have rights

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and obligations stemming from these norms, 3. modify, transfer, or terminate these rights and obligations, 4. ensure their balanced application.”¹

Local self-government bodies do not have the signs peculiar to the subjects of international law, starting from a very basic one - the authority to uphold the rights and obligations under international law independently, in their own name.²

At the same time, it is important to note that when analyzing the recent advancements of local self-government bodies in the international system, some academic researchers argue that municipalities are increasingly becoming holders of international rights, obligations, and authority. Likewise, they are more frequently seen as objects of international regulation, and their contribution to implementation/enforcement of international obligations becomes increasingly notable.³

Local self-government in international relations is as a state-associated structure. Thus, any international activity undertaken by self-governing units is attributed to the states, the part of which they represent. This is explicitly mentioned in the “Draft Articles on Responsibility of States for Internationally Wrongful Acts”; namely, as the Article 4, paragraph 1 of the Resolution states: “The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.”⁴

The given reality is a direct consequence of the Peace of Westphalia. The Westphalian settlement established sovereign states as monolith, unified structures, laying foundation of state-centric system of international relations.

The Westphalian interstate system is strongly backed by present-day international law and its fundamental principles. Consequently, any attempt to undermine the integrity of

¹ David Pataraiia, *International Public Law*, Book one (Ivane Javakhishvili Tbilisi State University Press 2023) 201 (in Georgian).

² It should be noted that the activities of local self-governing bodies are brought into the focus of international regulation (UN Sustainable Development Goals, in particular 11th goal and the New Urban Agenda can be cited as examples), however, due to their non-binding character, the regulations do not entail any obligations for municipalities. Helmut Aust, ‘Cities As International Legal Authorities – Remarks on Recent Developments and Possible Future Trends of Research’ (2020) 4 (1) *Journal of Comparative Urban Law and Policy*, *Festschrift II in Honor of Julian Conrad Juergensmeyer on the Occasion of His Retirement: International Perspectives on Urban Law & Policy* 85.

³ Yishai Blank, ‘Localism in the New Global Legal Order’ (2006) 47 (1) *Harvard International Law Journal* 263; Yishai Blank, ‘The City and the World’ (2006) 44 *Columbia Journal of Transnational Law* 875; Barbara Oomen and Moritz Baumgartel, ‘Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law’ (2018) 29 (2) *European Journal of International Law* 611.

⁴ Article 4, paragraph 1, Draft Articles on Responsibility of States for Internationally Wrongful Acts developed by the UN International Law Commission (General Assembly Resolution 56/83 of 12 December 2001).

the state as a subject of international law shall be seen as an effort to alter the foundations of the Westphalian system and the principles of international law that uphold the latter. Such tectonic shifts would require consensus of the entire international community. Now, the question arises: how strong is the tendency towards changing the foundations of applicable international law and shaping local self-government as independent legal entity separate from the state?

III. LOCAL SELF-GOVERNMENT BODIES IN INTERNATIONAL RELATIONS

The last decades show the advancement of local self-government units in global arena; and while participating in international relations, they replicate many forms and practices of interaction traditionally used by states. Specifically, the local self-government bodies: (1) create international networks; (2) cooperate with international organizations, primarily the United Nations; (3) form international coalitions and organize international sessions; (4) use international law as the basis for advocating their own agendas and interests as well as for decision-making in their daily operations; (5) adopt non-binding international resolutions, enter into agreements, and establish mechanisms for political accountability.⁵

International activities of local self-government bodies are particularly intense in the fields of environmental protection and international human rights law. In these areas, local governments increasingly play the role of indispensable actors and according to the growing shared opinion, are more effective in addressing contemporary challenges than national governments.

Discussions on rising significance of local government bodies are not limited to academic sources only; their pivotal role is also recognized in international political and legal instruments. Considering a growing contribution of local governments to promoting environmental protection and human rights, it is not surprising that international instruments adopted in these fields highlight the prominent role of local self-governing bodies and emphasize that the global governance and policymaking should be conducted in close collaboration with, and participation of local governments.⁶

⁵ Chrystie Swiney, 'The Urbanization of International Law and International Relations: The Rising Soft Power of Cities in Global Governance' (2020) 41 (2) Michigan Journal of International Law 243.

⁶ The significant role of local governments has been recognized in major international legal instruments in the field of environmental protection, such as the Paris Agreement on Global Warming, the Sendai Framework for Disaster Risk Reduction, and the UN Sustainable Development Goals (SDGs). Anel Du Plessis, "Climate Change and Sustainable Development" in Helmut Philipp Aust and Janne E. Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar Publishing Limited 2021) 189. Similarly, the critical role of local governments in the protection of human rights has also been acknowledged in international instruments such as the New Urban Agenda (NUA), adopted under the aegis

Moreover, the municipalities themselves are increasingly aware of their importance in the fields of environmental protection and human rights, which is not surprising given that cities are major sources of environmental pollution and key drivers of climate change. In addition, cities are usually the front lines for addressing critical human rights issues, especially those related to migration and associated crises.

As a result, it can be concluded that the cities hold the key to solving problems related to environmental protection and migration. This gives municipalities a strong basis for asserting their ambition to play an active role by engaging in discussions held both at national and global level and aiming at concrete measures to be implemented in order to address the challenges.

Moreover, cities are striving to position themselves on the international stage as equally important actors alongside national governments, and in some cases, as vocal and progressive accelerators of the decisions made in the fields of environmental protection and human rights.⁷ For example, when the United States under the President Trump withdrew from the Paris Agreement, ten US states and several hundred cities and communities announced that they would independently adhere to the Agreement's obligations in order to achieve the goal to halve the US emissions by 2030 and net-zero emissions by 2050.⁸

Similar behavior is observed in the field of international human rights law. For instance, several US cities voluntarily undertook the obligations prescribed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), provided that the United States did not ratify the Convention.⁹ The European cities showed the similar commitment by declaring the Convention on the Rights of Persons with Disabilities as binding.¹⁰ Another example is the European Coalition of Cities against Racism (ECCAR), which adheres to and is guided by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹¹ It is notable that the concept of *Human Rights Cities* has emerged in international discourse - a term coined by

of the United Nations, explicitly assigning responsibility for protection of human rights to local authorities. For detailed analysis of the role and responsibilities assigned to local governments by the New Urban Agenda, see Karina Gomes da Silva, 'The New Urban Agenda and Human Rights Cities: Interconnections between the Global and the Local' (2018) 36 (4) *Netherlands Quarterly of Human Rights*. The impact of local governments on the international policy documents such as UN Global Compact for Migration and the UN Global Compact on Refugees is also noteworthy. For more details, see Colleen Thouez, 'Cities as Emergent International Actors in the Field of Migration: Evidence from the Lead-up and Adoption of the UN Global Compacts on Migration and Refugees' (2020) 26 (4) *The Global Governance*.

⁷ Du Plessis, *supra* note 6.

⁸ "We Are Still In" <<https://www.wearestillin.com/>> [last accessed on 10 October 2023].

⁹ Oomen, *supra* note 3.

¹⁰ *ibid*, 617.

¹¹ *ibid*.

the cities to reflect their self-perception as champions and protectors of human rights.¹²

In addition to striving to support the implementation of international intergovernmental treaties, local self-government bodies do also contribute to further strengthening the international legal order by drafting and adopting the instruments similar to international treaties.¹³ Some authors argue that such practices represent a unique form of international norm-making that, while diverging from the traditional form of law-making, still create a certain international legal order.¹⁴ This indicates that local government bodies have both the interest and the ambition to participate in international norm-creating processes.

As a result, the practice of local governments' international relations shows a growing number of international agreements concluded, which do not necessarily have a legally binding nature and, consequently, a legal effect, but nevertheless serve as a basis for undertaking certain formal commitments by local governments to fulfill. The Green and Healthy Streets Declaration adopted by the global network of cities "C40" is one of the examples of the afore-mentioned, requiring from signatories to fully shift to purchasing zero-emission buses by 2025 and ensure the major portion of their cities be emission-free 2030.¹⁵ Similarly, the C40's Zero Waste Declaration requires cities and regions to reduce the per capita waste generated by 15% by 2030.¹⁶ Numerous other agreements of the same nature can be found, concluded in the framework of the international inter-city relations.¹⁷

Other agreements can be listed as well, through which the local governments aim to replicate, at local level, the norm-making activities typically carried out at the international intergovernmental level. The Chicago Climate Charter is one example of those, described by one author as "the most inclusive and formal "contractual" document signed by mayors, aimed at [...] expanding cities' responsibilities in the field

¹² For the brief history of developing the concept of human rights cities see Martha F. Davis, 'Finding International Law, 'Close to Home': the Case of Human Rights Cities' in Helmut Philipp Aust and Janne E. Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar Publishing Limited 2021). A Declaration was adopted in 2011 at the World Human Rights Cities Forum held in Gwangju (Republic of Korea), which defined a human right city as "both a local community and a socio-political process in a local context where human rights play a key role as fundamental values and guiding principles". <https://www.uclg-cisd.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf> [last accessed on 10 October 2023].https://www.uclg-cisd.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf [last accessed on 10 October 2023].

¹³ Katherine Schroeder, 'Cities in International Law: the New Landscape of Global Governance' (2020) 61 *Virginia Journal of International Law* 397.

¹⁴ Jolene Lin, *Governing Climate Change: Global Cities and Transnational Law Making* (Cambridge University Press 2018).

¹⁵ Swiney, *supra* note 5, 265-266.

¹⁶ *ibid*, 265-266.

¹⁷ For other specific examples see Swiney, *supra* note 5, 265-269.

of environmental protection.”¹⁸ With the adoption of this Charter, local governments sought to initiate the process at the municipal level parallel to the Paris Agreement since, as stated the ex-mayor of the New York City Michael Bloomberg “The efforts carried out by cities to reduce emissions is critically important [...] for fulfilling the obligations set by the Paris Agreement.”¹⁹ This explicitly demonstrates the efforts of local governments to replicate intergovernmental relations.

A similar aspiration can be observed in the growing phenomenon of transnational municipal networks, which are formed in order to be engaged in global environmental governance.²⁰ Local governments have begun actively uniting and coordinating their efforts to gain bigger value at the global level and make their own contribution in the process of shaping international policies.

In this context, it is worth noting the above-mentioned C40 network, which strives to participate in global governance of environmental issues. United Cities and Local Governments (UCLG), ICLEI - Local Governments for Sustainability, Eurocities as well as the EU-supported Covenant of Mayors are another examples of international intercity alliances. In addition to striving for access to processes that shape global environmental policies, international associations of local governments aim to develop their own accountability mechanisms to help implement policies and commitments undertaken internationally at local level. For instance, C40, ICLEI, and Eurocities signed the UN Cities Mayors Compact, in the framework of which a mechanism was developed to ensure that the city networks and members of these networks maintain greenhouse gas emissions at set levels, by providing a respective annual reporting.²¹

The Covenant of Mayors for Climate and Energy is worth mentioning as well - an alliance of cities and local governments that ensures that the cities and local self-governments determine the level of greenhouse gas emissions within their territorial boundaries. For this purpose, the local governments committed to draft comprehensive environmental action plans and formulate concrete measures to be implemented, with producing regular monitoring reports on the progress achieved.²²

It is noteworthy that, to formalize the aforementioned mechanism, the alliance member local governments were required to submit official documents, declaring these

¹⁸ Schroeder, *supra* note 13, 398.

¹⁹ *ibid.*

²⁰ Jennifer S. Bansard, Philipp Pattberg and Oscar Widerberg, ‘Cities to the Rescue? Assessing the Performance of Transnational Municipal Networks in Global Climate Governance’ (2017) 17 (2) *International Environmental Agreements: Politics, Law and Economics* 231.

²¹ Helmut Philipp Aust, ‘Shining Cities on the Hill? The Global City, Climate Change and International Law’ (2015) 26 (1) *European Journal of International Law* 263.

²² Swiney, *supra* note 5, 265-266.

commitments, generated in compliance with established procedures and signed by an authorized representative.²³

The international activities of local governments have not gone unnoticed by the actors of the international intergovernmental system. As stated, “Urbanization has become an integral part of strategic discussions on the sustainability of our planet. Agenda 2030 for Sustainable Development - the UN’s roadmap for achieving sustainability - has recognized urbanization as a driving force for development and prosperity. The New Urban Agenda (NUA) adopted at the Third United Nations’s Conference *Habitat III* in Quito, outlined a clear action plan for advancing development through urbanization.”²⁴

As a result, local governments are actively involved in the work of international intergovernmental institutions. As early as 1992, at the UN Conference on Environment and Development (UNCED), local authorities were recognized as key partners. Similarly, local governments were invited as stakeholders and valuable allies in addressing environmental challenges at the very first Conference on Climate Change.²⁵ The UCLG’s engagement in various UN platforms and its collaboration with numerous international intergovernmental organizations also noteworthy.²⁶ Moreover, C40 participates in the activities carried out by the intergovernmental conferences held under the United Nations Framework Convention on Climate Change (UNFCCC) and collaborates with the World Bank for elaborating international standards in the field of environmental protection, which the Bank is guided by, when making decisions on funding of local governments.²⁷

Furthermore, local governments actively approach international intergovernmental organizations to advocate their interests. For example, in 2018, local governments used the UN High-Level Political Forum to advocate the declaration on housing.²⁸

All these developments clearly demonstrate that local governments do take steps to establish their stance within international intergovernmental processes. They aim to present themselves as global actors by mirroring the foreign policy, international relations, and law-making efforts made by the states and international organizations within the international system.

²³ *ibid.*

²⁴ Aisa Kacyira, ‘Urbanization: Emerging Challenges and New Global Urban Agenda’ (2017) 23 (2) *Brown Journal of World Affairs* 87.

²⁵ *ibid.*

²⁶ Swiney, *supra* note 5, 246-249.

²⁷ Aust, *supra* note 21, 263.

²⁸ Janne E. Nijman, ‘The Urban Pushback: International Law as an Instrument of Cities. Proceedings of the Annual Meeting’ (2019) 113 *American Society of International Law* 123.

IV. WHAT IMPLICATIONS THE ADVANCEMENT OF LOCAL GOVERNMENTS CAN HAVE FOR INTERNATIONAL AND CONSTITUTIONAL LAW?

As the examples provided above illustrate, local self-governments unfolded an extensive network of connections and developed a big range of diverse activities within the international system. Local self-governments are involved in the international processes traditionally monopolized by states; and as a result, in such cases states no longer appear in international relations as unified, monolith entities, presenting one unified national position on the matter.

As a result of these developments, a question arises: does a rapid advancement of local self-governments in the global arena dictate the changes in existing international and constitutional legal frameworks? More specifically, do local self-governments acquire a certain status under international law? and consequently, does their legal stance require rethinking within the frame of constitutional law?

Professor Helmut Philipp Aust states that for those who adhere to the traditional understanding of international law, the international activities of local self-governments fully align with the existing international legal constructs.²⁹ As he points out, from the perspective of traditional approach, all activities carried out by local self-governments are attributed to the state, the part of which they are. Therefore, local self-governments should be regarded simply as state bodies, and any of their actions should be qualified as actions of the state, for the purposes of international law.³⁰ In other words, municipalities' international activities do not *per se* require reconsidering the status of the subjects of international law or adapting to the new reality of international law do face.

However, the aforementioned traditional approach does not answer a question: how should the international action of a local self-government entity be qualified when these actions are not aligned with the policies and actions of the central government?

As illustrate the cases discussed above, a local self-government entity acts under the aegis of its own interests, aspirations, and positions in today's international system, and while doing so, it may compete with central government, and even openly contradict the policies and positions of central authorities on certain issues. Usually, the local self-governments explicitly express such divergence, striving to lead their own course both in international relations and at the local level. For example, there have been the cases in international relations, when the central government of a certain state refused

²⁹ Helmut Philipp Aust, 'Cities in International Law from Outsiders to Insiders? Proceedings of the Annual Meeting' (2020) 114 *American Society of International Law* 269.

³⁰ *ibid.*

to ratify an international treaty, while the local authority of the same state has, on its own initiative, implemented the standards and obligations provided for by the treaty, at the local level.

Acknowledging these trends, Philipp Aust argues that that the role of cities in international law (as a minimum, in informal processes) cannot be neglected³¹ and concludes that local self-government entities already “have stepped one foot in the door of international law.”³²

Elif Durmuş’s opinion also differs from those belonging to the conservative school of international law. Specifically, she argues that participation of local self-governing bodies in international relations is unquestionably reflected on the substance and practice of international law.³³ Irrespective of whether the local self-governing bodies have gained formal recognition, they take firm steps to secure their own niche in global processes that in turn has its impact on international law.³⁴

In any case, the fact of local self-government bodies engaging actively in international relations is a present day reality. Consequently, “the principle of efficiency, which is based on the idea of normative power of factual reality”³⁵ requires giving due consideration to the given reality and reflecting the latter, with some substance and form, in international law.

The truth is that municipalities cannot “make” an international law of their own as they cannot conclude international agreements or contribute to creating international customs by their actions. Yet they are capable, while acting in the framework of international system, to make an impact on the subjects of international law (states, international organisations) and with this, play significant role in the process of international law-making. This is important since the international actors produce new global or regional regulations often as a response to the requirements of local self-governing bodies for the first place.³⁶ Hence, it can be concluded that municipalities have gained a “soft power” in international relations; likewise, the legal acts concluded among local self-governing can be attributed to the “soft law”.³⁷

It is well-known fact that in modern world the subjects of international law increasingly apply the above-said mechanisms of “soft power” and “soft law” in their practice in

³¹ *ibid.*

³² *ibid.*, 270.

³³ Elif Durmuş, *Cities and International Law: Legally Invisible or Rising Soft Power Actors?* (2021) 46 <https://www.cidob.org/en/articulos/monografias/global_governance/cities_and_international_law_legally_invisible_or_rising_soft_power_actors> [last accessed on 10 October 2023].

³⁴ *ibid.*, 51.

³⁵ Patarai, *supra* note 1, 90.

³⁶ Swiney, *supra* note 5, 269.

³⁷ *ibid.*, 269-273.

order to advance their international agenda. Accordingly, the power and potential that municipalities hold today should not be underestimated, since their less visibility on the radars of international law does not mean that the local self-governing bodies are inactive. To the contrary, the processes with active involvement of local self-governing bodies are underway within the international system that in the near future will require a reassessment of their status under international law.

The activities that municipalities carry out internationally are versatile; and while operating, they replicate nearly all the actions conducted within the framework of intergovernmental international relations.³⁸ At the same time, it should be noted that municipalities act in their own name, trying to distance themselves from the states, the part of which they represent.

Against this backdrop, some academic authors argue that it would not be unreasonable or unexpected that at some point in near future the local self-government entities will be recognized as the subjects of international law.³⁹ They contend that historically, cities have always been the subjects of international law, including since establishment of the Westphalian system, and based on the principles of international customary law, they retain this status till today.⁴⁰

As Durmuş states, if modern trends do not yet confirm the local self-government entities' operation in the international system as of the subjects of international law as an accomplished fact, those trends at least indicate that the local governments do follow the trajectory, which will ultimately lead them to the acquisition of a certain status within the system of international law.⁴¹

The given situation leads us to the next set of questions: in which form the local self-government bodies might get the status within international law; how autonomous this status might be, and what impact it could have on the status of the state in international law? For instance, some academic scholars argue that local self-government entity has the signs of both - the state and non-state body.⁴² In case this concept is accepted, could it lead to disintegration⁴³ of state as a unified and indivisible subject of international law?

³⁸ Swiney, *supra* note 5.

³⁹ Andrew Bodiford, 'Cities in International Law: Reclaiming Rights as Global Custom' (2020) 23 (1) *City University of New York Law Review* <<https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1489&context=clr>> [last accessed on 10 October 2023].

⁴⁰ *ibid.*

⁴¹ Durmuş, *supra* note 33, 51-52.

⁴² Janne Nijman, 'Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors' in Andreas Fahrmeir, Gunther Hellmann and Miloš Vec (eds), *The Transformation of Foreign Policy: Drawing and Managing Boundaries from Antiquity to the Present* (Oxford University Press 2007); Durmuş, *supra* note 33, 46-47.

⁴³ Graf Vitzthum, 'Aulgenpolitik der Gemeinden' in Albrecht Randelzhofer and Werner Süß (eds), *Konsens und Konflikt - 35 Jahre Grundgesetz* (1986) 75; Aust, *supra* note 21, 268.

What potential outcomes and risks might such developments entail?

Although these questions belong to the domain of international law, they are equally important from the perspective of constitutional law; since the unfolding processes involving local self-government entities' operation in international system will inevitably have implications for the constitutional law as well.

Therefore, the above-mentioned issues should be duly acknowledged and professionally discussed not only within academic circles but also among practicing specialists of the constitutional and international law. Such engagement is necessary to ensure that these processes do not evolve chaotically to the detriment of the established global legal order.

V. CONCLUSION

Local self-government entities are increasingly making their presence visible and vocal within the international system.

However, their status under international law is ambiguous. On the one hand, local self-government bodies do not represent subjects of private law, and on the other hand, while being affiliated with the state for the purposes of international law⁴⁴, they do not participate in international relations on behalf of the state. Over the last three decades, a trend emerged showing “the cities acting in parallel to national governments in the fields in which they hold competencies”.⁴⁵

The fields such as environmental protection and climate change, migration, human rights, gender equality, etc. are the fields, in which local self-governments are recognized as valuable, and arguably indispensable, partners for development of international policies and normative regulations.

The current international law does not recognize local self-governments as subjects of international law. However, the increasing activity of local self-governments in international relations is so profound that it creates an impression that contemporary international law either fails to keep pace of the latest international developments and adequately reflect the existing reality, or is evolving irreversibly towards the situation, where the global actors will have to face the self-governing entities' gaining the certain status within the international legal system.

The given state of affairs requires a proper legal analysis conducted from the perspective of both the international and the constitutional law. There is already a need of putting in place the legal frameworks that could enable, on the one hand, the active involvement

⁴⁴ See note 4 supra.

⁴⁵ See note 39 supra; Bodiford, supra note 39, 6.

of local self-governing entities in international relations and maintaining all positive outcomes associated with this, while, on the other hand, examine all concerns and risks associated with this advancement and take measures for their prevention.