The Role of Cities in International Law

Preliminary Report

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I. Mandate of the Study Group

Until recently, cities were a non-issue in public international law. They were regarded as administrative sub-units of their respective state. Apart from special cases such as experiments with “internationalized” cities such as Danzig or Tangiers, cities were absent on the map of international law, at least if international law is understood in a modern, post-Westphalian sense. Of course, in earlier times, cities were important actors on an “international” level if we think of the Hanseatic League, the foreign policy of Italian city republics or, going back even further in time, the association of Greek city states. In the way that international law has been understood at least since the 18th century, however, cities did not enjoy a legal role of their own properly so speaking.
In recent years, this has begun to change. Globalisation, urbanisation, and decentralisation are three global trends that contribute to the internationalisation of the city. International and transnational activities of cities take various forms. First, cities set up associations amongst themselves which go beyond traditional forms of twinning or well-meaning globalist emanations of local grassroots politics. In groupings such as the ‘C40 – Climate Leadership Group’ cities aspire to contribute in a meaningful way to processes of global governance. This development has taken place most prominently in the climate change context, but also extends to other subject areas such as security cooperation, global health governance or the enforcement of human rights.

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

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

There is a growing attention to the roles that cities and other sub-national authorities have to play in law-making processes as well as in the application and enforcement of international law, for example.

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

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

II. Progress Report

1. Meetings

a) First Informal Meeting of the Study Group, November 2017

On 30 November 2017, a first informal meeting of the Study Group took place at the Asser Institute in The Hague. The Chairs and Rapporteur Anouche Beaudoin met with Professor Saskia Sassen and three other researchers of the Asser Institute, Miha Marcenko, Lisa Roodenburg, and Geoff Gordon to discuss possible avenues for research on cities and international law. The exchange with Professor Sassen, the world-leading scholar on the sociology of global cities, proved to be particularly valuable and inspiring for setting up the work of the Study Group.

b) ILA Biennial Conference in Sydney, August 2018

Launch and closed working session

The Study Group was launched formally at the Biennial Conference in Sydney on the 21st of August 2018. A closed inaugural working session was held with Chairs Aust and Nijman, Rapporteur Jolene Lin as well as members Markus Beham, Yukiko Takashiba, Markus Gehring and Mirko Sossai in attendance. After a round of mutual introductions, the present members discussed possible ways forward for the work of the SG. A common concern which emerged in the discussion was the lack of a solid empirical basis for research on the global activities of cities, creating the risk of scholarly analysis on the basis of anecdotal evidence. The discussion triggered the idea of setting up a repertoire of city reports on different forms of local engagement with international law (see for further details below).

Panel at the conference

At the same conference, the Study Group organised a very well-attended open panel on ‘Cities at the Frontiers of International Law and Governance’, with presentations by Janne Nijman, Jolene Lin, Yukiko Takashiba and Helmut Aust, chaired by Paul Dubinsky. The panel examined how in both global governance and international law cities are emerging actors. Presentations
focused on cities at the UN level (Nijman), cities in the global climate change regime (Lin),
cities and migration (Takashiba), as well cities and human rights protection (Aust).1

c) Informal meeting of the Study Group in Berlin, December 2019

On 10 December 2019, the Study Group met for an informal working meeting in Berlin. Present
were the following members: Helmut Aust, Markus Beham, Axel Berg, Janne Nijman, Mirko
Sossai, as well as Lisa Roodenburg. The focus of the meeting was the progress of the ongoing
city reporting (see immediately below).

2. City Reports

The discussions of the Study Group in Sydney generated the insight that there is an urgent need
for a more empirical basis on the international law-related practices of cities. The scholarship
of international law has a long tradition of assembling and systematising practice. Historically,
this was of course done first and foremost with respect to the practice of states which is collected
in different publications, some focused on the practice of a given state, others focusing on
specific topics. In recent years, also the practice of other actors has been systematically
collected and presented, as for instance in the case of the ICRC studies on customary
international humanitarian law. The discussions in Sydney spurred the idea of building on the
well-established format of country reports which are regularly used to elucidate the practice of
states in a given field. To a certain extent, the city reports can be seen as a continuation of such
an endeavour, while also being playful and creative with respect to the collection of practice of
actors which are to date often overlooked in international law.

After initial internal deliberations, the Study Group launched its city reporting project in the fall
of 2019. An ongoing call for contributions was circulated, among members of the study group
and beyond, to collect reports at an ongoing basis.

The city reports will shed light on city practices, in particular of local governments, in relation
to international law, on cities’ engagement with other cities, international organizations and/or
global governance mechanisms. With regard to city practices one could think of the activities
of self-declared ‘human rights cities’, the role of SDGs in city-to-city cooperation, cities’
participation in UN processes such as the New Urban Agenda, the incorporation of international
law in local legislation and institutional arrangements such as a local human rights department
or sustainability office.

The SG is collecting these city reports with the aim to make them available for the deliberations
of the study group at the ILA Kyoto conference in 2020. The SG also anticipates to present the

1 For more information on the panel see https://www.asser.nl/global-city/news-and-events/cities-at-the-frontiers-
association/ (last visited 9 April 2020).
reports at a dedicated website in order to make them accessible to the ILA membership and beyond.

The study group is further anticipating to hold an open session at the conference where a selection of these reports will be presented to ILA members. In a second step, the chairpersons of the study group will be curating a collection of city reports based on the ILA reporting process with a view to publication.

Thus far, the study group has accepted abstracts on the following cities:

- Vienna, Austria
- Mombasa, Kenya
- Graz, Austria
- York, UK
- Delhi, India
- Toruń, Poland
- Lagos, Nigeria
- Abuja, Nigeria
- Cities for CEDAW, US
- Mogale, South Africa
- Johannesburg, South Africa
- Pact of Free Cities, Budapest, Warsaw, Prague, Bratislava

3. Events related to the activities of the Study Group

Individual members of the Study Group also pursue further activities which are independent of the work of the SG, yet contribute to its work in various ways. In particular, the Chairs are in the process of editing an *Elgar Research Handbook on International Law and Cities* which is due for publication in late 2020/early 2021. It will include 36 chapters from scholars and practitioners and will provide an overview of the state of the art of the scholarship on cities and international law. It is to be expected that this volume will spur further interest in the topic and the work of the Study Group.

Among the more than 40 authors of the volume, a significant number of members of the SG are contributing. In connection with the preparation of the publication, the Chairs held two workshops in The Hague (14 and 15 March 2019) and Berlin (10 December 2019). The workshop in The Hague also featured a public keynote lecture by Professor Yishai Blank (Tel Aviv University) who was one of the first scholars to publish on cities and international law in the year of 2006.

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III. Outlook and next steps

On the basis of the formal and informal meetings held so far, the Study Group has concluded that the broad research agenda needs more concretisation. An important first step is the collection of more data through the city reports.

The 2020 ILA conference in Kyoto will be a crucial moment in the life of the SG, in particular with a view to discussing further on how to build on the city reports with a view to preparing the final report of the SG for the 2022 conference.

The final report will reflect on the current state of research on cities and international law. It will be able to draw on both the city reports and the publication of the Research Handbook. In particular, it will ponder the feasibility of continuing the work of the SG in the form of a Committee. A Committee would in particular have more legitimacy to reflect on guiding principles for cities and other actors, an outcome reflected on in the initial mandate of the SG.