

# A typology of local governments' engagement with human rights: Legal pluralist contributions to international law and human rights

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## Abstract

Local governments around the world have been engaging with international law and policy at an exponential intensity, with prominent engagement in climate change, migration and more recently human rights. This engagement cannot be adequately understood within the terms and framework of positive international law alone. This contribution aims to map and create a grounded typology of local government engagement with human rights, encompassing both activities within their localities and outside - at national, international or transnational scales. The article introduces local governments' engagement in the Formation of Human Rights, Implementation of Human Rights, Defence of Human Rights, Coordination of Human Rights, Dissemination of Human Rights and the Contestation of Human Rights as empirical ideal types that have emerged from data through grounded theory. Analysing this engagement from the perspectives of both positive international law as well as legal pluralism, with specific focus on the New Haven School of Law, the article argues that local governments are now at the core of a newly formed norm-generating community. Local governments engage with local and international actors and processes both within the rules of inclusion of contemporary international law-making - seeking to expand these norms to include local governments themselves - but they also contest and challenge the very rules of the game in the first place, and resort to creating "human rights in the city" as a body of norms parallel to international human rights law. Whether we accept a pluralist understanding of international law to include local governments and their human rights engagement, or whether we consider these developments to be outside international law, forming a parallel normative order in the legal pluralist sense, local government engagement with human rights has already succeeded in reaching and influencing many established international actors and has already infiltrated recent instruments of positive international law.

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## Keywords

Local governments, cities, human rights, localisation of human rights, new haven school of law, norm-generation, non-state actors

## I. INTRODUCTION

Cities in Northern Europe founded the Hanseatic League in the 12th century to facilitate regional economic, diplomatic and military cooperation, ‘rather autonomously from the Holy Roman Emperor or the Electors or princes to which they were formally obliged’.<sup>1</sup> Nijman explains how the executive organ of this League, the Hansetag, ‘adopted rules on trade and safe navigation routes [which] then bound all member-cities; these rules influence[d] the development of the maritime law of nations’.<sup>2</sup> Transnational norm-generation by cities existed before the notion of the (nation-)State became the primary lens through which we understand the world and international law. While cities have long predated the existence of States, today’s positive international legal order considers local governments to be nothing more than administrative units within a State’s internal organisation, and as such no more than ‘State organs’.<sup>3</sup>

In contrast to this categorisation in positive international law, local governments historically, and today with a renewed proactivity upon globalisation, urbanisation and decentralisation, have been engaging with the development of international norms. Human rights, facing difficult times, have been a field which local governments have increasingly taken ownership of.<sup>4</sup> Local governments, defined by the UN as the lowest tier of general public administration within a State,<sup>5</sup> have long stepped out of the boundaries of competence they were thought to be confined in.<sup>6</sup> They engage in foreign relations autonomously from the State in whose territory they are located,<sup>7</sup> establish transnational city networks to facilitate international cooperation and representation,<sup>8</sup>

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1. Janne Nijman, ‘Renaissance of the City as a Global Actor – The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors’, February 2016, Asser Institute Centre for International and European Law Research Paper Series, 7.
  2. *ibid* 11.
  3. International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts* (2001), Article 4; *ibid* 8.
  4. Barbara Oomen, Moritz Baumgaertel, ‘Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law’ (2018) 29(2) *European Journal of International Law* 339.
  5. Human Rights Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, UN Doc. A/HRC/30/49, 7 August 2015, para 8. The United Nations uses the term ‘local authority’ as a synonym for local government. Some civil society groups, such as the Habitat International Coalition, reject the notion of tiers of government as diminutive and talk about spheres of government, in addition to advocating for the inclusion of a public-election-condition for the term ‘local government’ while ‘local authorities’ may include both elected and appointed officials. Interview with Habitat International Coalition – Housing and Land Rights Network officials, 20 August 2019.
  6. Yishai Blank, ‘Localism in the New Global Legal Order’ (2006) 47 *Harvard International Law Journal* 263.
  7. Nijman (n 1).
  8. Barbara Oomen, Moritz Baumgaertel, Elif Durmuş, ‘Transnational City Networks and Migration Policy’, Report presented to the Mayor’s Migration Council, March 2018, <<https://citiesofrefuge.eu/sites/default/files/2018-12/Policy%20brief%20Dec%202018.pdf>>.

set standards and sign charters,<sup>9</sup> declare themselves human rights cities, symbolically ratify international human rights treaties,<sup>10</sup> report to the UN on their progress on the SDGs,<sup>11</sup> and take public positions opposing their national governments on issues of international law.<sup>12</sup> The city network C40, named in reference to its State-counterparts G6 and G20, has been engaging with international institutions as prominent as the World Bank, with whom it has special funding agreements setting minimum standards for cities wishing to join in, exercising ‘a form of legislative function’.<sup>13</sup>

With insights from international legal theory, legal pluralism, and the original and ‘New’ New Haven School of International Law, this article argues that local governments around the world have today become the core of a ‘*norm-generating community*’ in Berman’s terms.<sup>14</sup> This article offers a typology of city engagement with human rights (understood in a broad sense, including practice and discourse along with international human rights law), grounded in empirical research. The empirical desk research included social media analysis and a close reading into normative documents created by city networks and international organisations on the issue. Field research consisting of 5 months included participant observation in meetings of international organisations and city networks, and twenty four interviews with officials of ten local governments (in Turkey, Brazil and South Korea), officials of transnational city networks, international organisations, civil society organisations, and with academics. The resulting typology explicates local governments’ engagement in the *Formation of Human Rights, Implementation of Human Rights, Defence of Human Rights, Coordination of Human Rights, Dissemination of Human Rights, and Contestation of Human Rights* (Table 1). Local governments engage with human rights both *within* the systemic rules of inclusion of international law, seeking to expand these rules to allow official participation of local governments, but they also engage *with* these rules of inclusion, in contestation of them. If an observer of such engagement has a conservative understanding of the international legal system, only few instances of engagement (those that play out *within* the rules of the system), will be taken into account. Most of this vast engagement will then be considered outside the realm of human rights, developing a body of normative engagement that can be called ‘*human rights in the city*’. This body of norms and practices are inspired by, but develop *in parallel* to established international human rights law (as a result of local governments’ general exclusion from international legal processes), nevertheless interacting with and influencing the latter through a dissemination of their elements amongst local, national, and international actors. These parallel orders would reflect the classical sociological definition of legal pluralism. Alternatively, with the New Haven School approach, understanding the international legal system as a larger, more inclusive, pluralist system surpassing traditional State-centricism, it is possible to reflect more freely on the complete range of

9. See for instance the work of the European Coalition of Cities Against Racism (‘ECCAR’), the European Charter for Safeguarding Human Rights in the City, and the Global Charter-Agenda for Human Rights in the City.

10. See Section 5.2 below.

11. Nicole Javorsky, ‘Why New York City Is Reporting Its Sustainability Progress to the UN’ (*Citylab*, 13 July 2018) <<https://www.citylab.com/environment/2018/07/why-new-york-city-is-reporting-its-sustainability-progress-to-the-un/564953/>>, accessed 20 December 2019.

12. See Section 5.3 below.

13. Helmut Phillip Aust, ‘Shining Cities on the Hill? The Global City, Climate Change, and International Law. Review of Michele Acuto, *Global Cities, Governance and Diplomacy. The Urban Link*; Benjamin Barber, *If Mayors Ruled the World - Rising Cities, Declining Nation States*; Sofie Bouteligier, *Cities, Networks, and Global Environmental Governance*; Spaces of Innovation, Places of Leadership; Simon Curtis (ed.), *The Power of Cities in International Relations*’ (2015) 26(1) *The European Journal of International Law* 255, 263.

14. Paul Schiff Berman, ‘A Pluralist Approach to International Law’ (2007) 32 *Yale Journal of International Law* 301.

engagement conducted by local governments with the system and norms of international law. In an iterative process, depending on how ready international law will be to consider the contestation created by local governments, the international legal system will either further pluralise to accommodate the challenges and critique posed to it, or remain restrictive and push local governments into their parallel alternative normative order. Regardless of outcome, local governments have developed into a norm-generating community in international law, furthering pluralism, with their ultimate influence on positive international law to be evaluated in the coming years.

To explicate these findings, this article first provides a brief overview of varying understandings of legal pluralism that are relevant for this analysis (Section 2), followed by an introduction to the critiques of human rights and the relevance of the rise of local governments to these critiques (Section 3). Section 4 offers a picture of the status of local governments in the current international legal system, as State organs as well as non-State actors ('NSAs'). Section 5 introduces a typology of their engagement with international law, while Section 6 provides an analysis of this engagement.

## 2. LEGAL PLURALISM AND THE NEW HAVEN SCHOOL OF THOUGHT

The term legal pluralism has been developed and used throughout the last decades in many different understandings within different disciplines, such as anthropology, sociology, political science, and law.<sup>15</sup> As the most efficient way to distinguish between different conceptualisations, Twining suggests asking the question: 'The plurality of what?'<sup>16</sup>

The most dominant conceptualisation of legal pluralism, rooted in the anthropology and sociology, has been that of 'a situation in which two or more legal systems coexist in the same social field'<sup>17</sup> or, 'the coexistence of different normative orders within one socio-political space'.<sup>18</sup> Thus, under this notion, there is a plurality of normative (or legal) orders applying to a given space and time. 'Law' under this conception covers normative orders outside the 'official' or 'State' legal system,<sup>19</sup> which is considered only one type of normative order among many others (official or positive legal systems; customary normative systems; religious normative systems; economic/capitalist normative systems; functional normative systems and community/cultural normative systems).<sup>20</sup>

Although earlier literature focuses primarily on the coexistence of, and interactions between State and at least one type of non-State law, recent literature has also taken up the legal pluralism between different *official* legal orders. The development of the notion of 'constitutional legal pluralism' for instance, has evolved from the study of the *sui generis* legal order within the European Union, with its multiple national and supranational constitutional systems coexisting

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15. William Twining, 'Normative and Legal Pluralism: A Global Perspective' (2010) 20 *Duke Journal of Comparative and International Law* 473.

16. *ibid* 511.

17. Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) *Law and Society Review* 869, 870.

18. Franz von Benda-Beckmann, 'Citizens, Strangers and Indigenous Peoples: Multiple Constructions and Consequences of Rights, Resources and People' (1997) 9 *Law & Anthropology (International Yearbook for Legal Anthropology) Special Edition: Natural Resources, Environment and Legal Pluralism* 1, 1.

19. Twining (n 15) 485.

20. Brian Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global?' (2008) 30 *Sydney Law Review* 375, 397-400.

with varying degrees of success in cooperation, coordination and coherence.<sup>21</sup> A further conceptualisation, ‘international legal pluralism’<sup>22</sup> refers to the proliferation of NSAs and the emergence of new sub-fields of international law that might apply collectively to a given situation.

Staying with international law as our subject of study, the New Haven School has gone a step further, to look beyond different categorisations of sub-fields, and to observe a complex system of intertwined norm-generating communities contesting over alternative imaginations of the law, which in turn have different levels of persuasive power and authority.<sup>23</sup> This process is very similar to Koh’s ‘transnational legal process’, which is non-traditional (discarding distinctions between the public/private and domestic/international), non-Statist, dynamic and normative.<sup>24</sup> Norms are created, interpreted, challenged and enforced – travelling, as they change, among different international actors and governance levels – within a constant multi-directional process.<sup>25</sup>

The original Cold War-era New Haven School understood pluralism in the field of political science as a ‘theory which opposes monolithic State power and advocates instead increased devolution and autonomy for the main organisations that represent man’s involvement in society’.<sup>26</sup> Led by Myres McDougal, Harold Lasswell, and Michael Reisman, the New Haven School, along with some legal pluralist writings of Robert Cover, articulated that law’s normative power does not solely flow from coercive power, but that law is ‘constantly constructed among various norm-generating communities’.<sup>27</sup> Today’s reality of State and non-State communities generating norms demonstrating varying degrees of formality, coercive power, and persuasive authority reflects the world these scholars have described.<sup>28</sup> Normative claims brought forward by actors, whether international legal persons or not, have the capacity to open up a debate on the articulation of legal norms, and in most successful cases, these norms can be incorporated into positive, official legal systems.<sup>29</sup> This pluralist process offers higher chances for error correction, and brings a wider field of legal imagination and articulations to the attention of other actors.<sup>30</sup> Berman argues that ‘international human rights are now an important element of global legal consciousness, [...] because of a long process of rhetorical persuasion, [...] and other forms of ‘soft law’ slowly changing the international consensus, not because of positivist decree’.<sup>31</sup>

Levit, in an example of ‘New’ New Haven scholarship,<sup>32</sup> demonstrates ‘bottom-up international law-making’ *inter alia* through the example of Berne Union’s ‘General Understanding’ on export credit insurance being adopted as binding by the WTO.<sup>33</sup> More recently, the development of the right to housing has been successfully pushed forward by urban actors, particularly by United

21. Neil Walker, ‘The Idea of Constitutional Pluralism’ (2002) 65(3) *Modern Law Review* 317.

22. William W. Burke-White, ‘International Legal Pluralism’ (2004) 25 *Michigan Journal of International Law* 963.

23. Berman (n 14).

24. Harold Hongju Koh, ‘Transnational Legal Process’ (1996) 75 *Nebraska Law Review* 181.

25. *ibid.*

26. Twining (n 15) 477-8.

27. Berman (n 14) 302.

28. *ibid.* 303.

29. *ibid.* 319.

30. *ibid.* 303.

31. *ibid.* 308.

32. Harold Hongju Koh, ‘Is There a “New” New Haven School of International Law?’, (2007) 32 *Yale Journal of International Law* 559.

33. Janet Koven Levit, ‘Bottom-up International Lawmaking: Reflections on the New Haven School of International Law’ (2007) 32 *Yale Journal of International Law* 393, 401.

Cities and Local Governments ('UCLG') (world's largest city network) and the Habitat International Coalition (a coalition of urban civil society organisations). Marcenko describes how local governments became a central actor, together with the UN Habitat programme as well as the UN Special Rapporteur on the issue, in assembling the right to housing and the concept of security of tenure.<sup>34</sup> The Preamble of 'Cities for Adequate Housing: A Municipalist Declaration' reflects a perfect example of local governments' educated engagement in these normative processes:

Building on the milestones of the New Urban Agenda of Habitat III (Quito, 2016) and the momentum of 'The Shift', a global initiative on the right to housing, the signatory cities below take part in this High-Level Political Forum of the United Nations to follow up on Sustainable Development Goal 11 [...], with the support of UCLG [...], the Office of the High Commissioner for Human Rights, and Leilani Farha, UN Special Rapporteur on the right to housing.<sup>35</sup>

This demonstrates how alternative imaginations of the law can travel in different directions to affect the legal consciousness of different actors, to finally possibly influence the dominant norm. Berman, terming the process 'global legal pluralism'<sup>36</sup> explains,

[L]ocal' norms are always contested, even within their communities, and 'local' actors may well invoke 'non-local' norms for strategic or political advantage. In addition, local actors deploying or resisting national or international norms may well subvert or transform them, and the resulting transformation is sure to seep back 'up' so that, over time, the 'international' norm is transformed as well.<sup>37</sup>

The analyses in this article will be guided by the classical definition of legal pluralism as 'coexisting normative orders' and the (New) New Haven School conceptualisation addressing the inclusive and pluralist processes of norm-generation. The most important difference between these two definitions lies in individuation, a foundational question of the general theory of norms.<sup>38</sup> While the anthropological conception assumes a plurality of distinct normative orders (albeit interacting in many ways), the pluralism of the New Haven School assumes *a single* complex normative order which is pluralist in its actors, sources and norm-generating processes.

### 3. LOCAL GOVERNMENTS AND CHALLENGES AGAINST HUMAN RIGHTS

Since their codification following World War II, human rights have faced criticism from many different groups, which could be briefly summarised in the following list:<sup>39</sup> Criticism against their

34. Miha Marcenko, 'Global Assemblage of the Right to Adequate Housing: Security of Tenure and the Interaction of City Politics with the Global Normative Discourse', (2019) 51(2) *Journal of Legal Pluralism and Unofficial Law* 151.

35. 'Cities for Adequate Housing – A Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City', signed 16th July 2018 in New York, <<https://citiesforhousing.org/#section-0>>.

36. Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (CUP 2012).

37. Berman (n 14) 311.

38. Twining (n 15) 479.

39. David Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15 *Harvard Human Rights Journal* 101; Barbara Oomen, 'Introduction', in Barbara Oomen, Martha F Davis, and Michele Grigolo (eds.), *Global Urban Justice: The Rise of Human Rights Cities* (CUP 2016).

roots in liberal Western ideology,<sup>40</sup> their claim of universality (led primarily by cultural relativists),<sup>41</sup> their legalistic nature, being too technical – or abstract and aspirational rather than practical and close to the people,<sup>42</sup> their individualistic and adversarial character, rather than a community-based approach,<sup>43</sup> their State-centric shortcomings in addressing privatisation in service-provision,<sup>44</sup> and their effectiveness, (failing to protect those most in need of it).<sup>45</sup>

Much of this criticism is linked to the State-centric and top-down image of human rights law, especially through arguments that human rights do not accommodate local community values and cultural differences and thus lack ownership and effectiveness. According to these critics, over-reliance on the State, its institutions and on legal incorporation of treaties into domestic law as the primary tool for rights realisation proves ineffective when other actors or norms have higher local legitimacy than the State and human rights.<sup>46</sup> This state-centric and legalistic approach neglects the potential of NSAs in communicating and realising rights in culturally appropriate ways and creating ‘grassroots support for rights’.<sup>47</sup> In this perceived clash between the public and the private, the State and non-State actors, local governments constitute an ideal bridge between (and fitting into) the two notions,<sup>48</sup> simultaneously demonstrating the shortcomings of the distinction. The preamble of the European Charter on Safeguarding Human Rights in the City (signed by more than 400 local governments), for instance, elaborates:

Why, on the threshold of the 21st century, a European Charter for Human Rights in the City? The Declaration of Human Rights (1948) is universal. [...] The European Convention (1950) offers what we call a legal guarantee. However, there exist many rights which are still not ‘effective’ and the citizens find it difficult to see their way through the labyrinth of legal and administrative procedures. How to give a better guarantee? How to act more effectively? [...] This is where the City comes in.<sup>49</sup>

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40. Andreas Follesdal, Johan Karlsson Schaffer, and Geir Ulfstein, *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (CUP 2013).
41. Abdullahi Ahmed An-Na'im, 'Universality of Human Rights: Mediating Paradox to Enhance Practice,' in Midrag Jovanovic and Ivana Krstic (eds), *Human Rights Today – 60 Years of the Universal Declaration* (Eleven International Publishing 2010) 29; Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context' (1999–2000) *New York University Journal of International Law and Politics*; Michael Freeman, 'Universalism of Human Rights and Cultural Relativism', in Scott Sheeran and Sir Nigel Rodley (eds.), *Routledge Handbook of International Human Rights Law* (Routledge 2013).
42. Kennedy (n 39) 111. See also Laurence Helfer, 'Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights' (2002) 102 *Columbia Law Review* 1832; Julie Fraser, 'Challenging State-Centricity and Legalism: Promoting the Role of Social Institutions in the Domestic Implementation of International Human Rights Law' (2019) 23(6) *The International Journal of Human Rights* 974, 978.
43. Kennedy (n 39) 113; Eileen Babbitt and Ellen Lutz (eds.) *Human Rights and Conflict Resolution in Context* (Syracuse University Press 2009).
44. Koen de Feyter, *Privatisation and Human Rights in the Age of Globalisation* (Intersentia 2005).
45. Michael Ignatieff, *Ordinary Virtues* (Harvard University Press 2017); Hafner-Burton and Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (2005) 110 *American Journal of Sociology* 1373; Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013); Michael Goodhart (ed.), *Human Rights – Politics and Practice* (OUP, 2nd ed., 2013.); Eric A. Posner, *The Twilight of Human Rights Law* (OUP 2014).
46. Fraser (n 42) 977.
47. *ibid.*
48. See the next Section.
49. European Charter for Safeguarding Human Rights in the City, Preamble, at 1, signed in Saint Dennis, 18 May 2000. < [https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera\\_FINAL\\_3.pdf](https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_FINAL_3.pdf)>.

In social sciences, the city, or rather the ‘global city’ has attracted wide academic interest since the 1990s, famously led by Saskia Sassen.<sup>50</sup> Through the trends of urbanisation, globalisation and decentralisation,<sup>51</sup> cities in many countries have grown in population and economical power, while at the same time being bestowed upon with new legal obligations – especially in the realisation of social and economic rights – within their own national settings.<sup>52</sup> Diverse, economically strong metropolitan cities have characteristically adopted more liberal political views.<sup>53</sup> Two global issues on which nation-States have particularly disappointed the international community have been primary playing fields for cities: climate change, and migration.<sup>54</sup> Localities in the US have been implementing parts of the Kyoto Protocol locally, without federal government ratification.<sup>55</sup> More recently, when President Trump pulled out of the Paris Climate Agreement, many regional and local governments, including New York and San Francisco, have made public commitments to uphold the Paris commitments to their utmost power.<sup>56</sup> The Sustainable Development Goals have also seen strong advocacy and support among local governments, with New York City becoming the first local government to report its progress to the UN, a duty envisaged for States alone.<sup>57</sup>

Local government engagement could provide a response to critiques of human rights in many ways. Local governments are argued to be uniquely placed to localise human rights<sup>58</sup> and bridge the gap between the universality and cultural relativism poles. They are actors often able and willing to travel between physical and discursive spaces of the local and international levels, and offer hands-on experience on the realisation of human rights, relevant for the international community when codifying human rights norms capable of tangible protection. With their pragmatic perspectives,<sup>59</sup> they also might bring together different actors and segments within localities (*Coordination of Human Rights*), and establish human rights as a normative basis for co-habitation in the city, diffusing its adversarial rights-holder vs duty-bearer nature. Of course, none of this positive potential negates the flip side of decentralisation and localisation, namely that local governments can also opt to use their competences and abilities to take regressive stances against the requirements of human rights.<sup>60</sup> However, considering the lack of scholarship mapping the positive potential of local engagement with and for human rights, regressive

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50. Saskia Sassen, *The Global City* (Princeton University Press, 1990, 2nd Ed, 2001).

51. See Nijman (n 1) 12.

52. Michele Acuto, *Global Cities, Governance and Diplomacy: The Urban Link* (Routledge 2013).

53. Michele Acuto, ‘City Leadership in Global Governance,’ (2013) 19 *Global Governance: A Review of Multilateralism and International Organizations* 481.

54. See, Porras, ‘The City and International Law: In Pursuit of Sustainable Development’, (2009) 36(3) *Fordham Urban Law Journal* 537.

55. Levit (n 33).

56. Audrey Comstock, ‘US Cities and States Want to Implement Paris Climate Accord Goals. It’s Not That Simple.’ (*Washington Post*, 13 June 2017) <<https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/13/u-s-cities-and-states-want-to-implement-the-paris-climate-accord-goals-its-not-that-simple/>> accessed 20 December 2019.

57. Javorsky, (n 11).

58. Simon Hoffman, ‘The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales’ (2019) 23(3) *The International Journal of Human Rights* 374, 376.

59. Benjamin Barber, *If Mayors Ruled the World - Rising Cities, Declining Nation States* (Yale University Press 2014).

60. Chiara Marchetti, ‘Cities of Exclusion: Are Local Authorities Refusing Asylum Seekers?’ and Maurizio Ambrosini, ‘The Local Governance of Immigration and Asylum: The Policies of Exclusion as a Battleground’, in Maurizio Ambrosini, Manlio Cinalli, David Jacobson (eds.), *Migration, Borders and Citizenship: Between Policy and Public Spheres* (Palgrave Macmillan 2019).



policies of local governments will be outside the scope of this article. Regardless, any human rights violations by local governments would fall under *Implementation* (which includes the element of responsibility), while any alternative imaginations of human rights that seem detrimental to its essence would constitute *Contestation of Human Rights*.

#### 4. THE STATUS OF LOCAL GOVERNMENTS IN INTERNATIONAL LAW: THE DUAL SUB-STATE AND NON-STATE CHARACTER

From an international legal perspective, local governments' engagement with international law consistently reflects the unique nature of local governments as both (sub-)State and non-State actors, the positions constituted in each case by varying proportions of these two identities.<sup>61</sup> Their classification as (sub-)State actor is based on the law on state responsibility, where actions and omissions of *State organs* can be attributed to the State.<sup>62</sup> What constitutes a State organ is determined according to the internal organisation of the State.<sup>63</sup> Local governments, while possessing varying degrees of autonomy from central governments, are considered State organs in the constitutions of modern nation-States.<sup>64</sup>

This classification, while insufficient in explaining all normative engagement of local governments with international law, offers nevertheless some venues to understand the relevance of local government practice. As discussed under *Formation of Human Rights* in Section 5, local governments could be considered to contribute to the development of State practice and *opinio juris*, elements of customary international law under Article 38(1)(b) of the Statute of the International Court of Justice ('ICJ').<sup>65</sup> Some literature on the topic discusses the possibility of sub-State actors producing State practice.<sup>66</sup> A thorough analysis of local governments' possible contributions to the development of State practice and/or *opinio juris*, is yet to be made. Whether other primary sources of international law, treaties and general principles of law, would ever recognise local governments' contributions from a positive legal perspective, is another question only time and further research can answer. Also worthy of future research is the position of local governments with special status, such as some Belgian cities with capacity to enter into international treaties<sup>67</sup> and City States (such as Berlin, Hamburg, Geneva, Zurich, Singapore).<sup>68</sup>

61. Nijman (n 1).

62. Aust, 'Shining Cities' (n 13); ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Article 4.

63. *ibid* ILC, Article 4(2).

64. United Nations Human Rights Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, UN Doc. A/HRC/30/49, 7 August 2015, para 42.

65. Statute of the International Court of Justice, Article 38(1), 1945.

66. Although some scholars have argued that State practice could only be created by State organs responsible for foreign relations (primarily the Foreign Ministry) (Karl Strupp, 'Les règles générales du droit de la paix' (1934) 47 *Recueil des Cours* 257, 313-315; Dionisio Anzilotti, *Cours de Droit International* (trans. Gidel) 74-75) it is widely accepted today that this is a far too restrictive approach (Maurice Mendelson, *The Formation of Customary International Law* (Martinus Nijhoff 1999), 198). A more modern understanding includes practice of all State organs relevant for the subject-matter of the international norm created (economy, aviation, environment etc).

67. Belgian Constitution, Article 167(1). See also Quentin Pironnet, 'Treaty Making Power in Belgian Constitutional Law: The Case of CETA', presented in "'Understanding Federalism" Swiss, Belgian & EU Perspectives on Federalism Trainee to Trainee Event', 12 June 2018, Brussels, Belgium <<https://orbi.uliege.be/handle/2268/225000>> accessed 28 December 2019.

68. UN HABITAT, *The Challenge of Local Government Financing in Developing Countries* (2015), 65-75.

Coming to the concept of the ‘non-State actor’ (‘NSA’), despite the multi-actor and pluralist roots of international law and relations,<sup>69</sup> State-centric positivism, referencing the infamous ‘Westphalian Order’ (forgetting that the Treaty of Westphalia was signed by cities as well) has long accepted States as sole subjects, and other entities as objects of international law.<sup>70</sup> The conception of international legal personality as State-exclusive has however changed at the latest with ICJ’s *Reparations for Injuries* Advisory Opinion, establishing that the UN enjoyed a limited kind of *international legal personality*, in order to fulfil its obligations in accordance with the needs and functioning of the international order.<sup>71</sup> Following international organisations; individuals, peoples, multi-national companies, armed non-State groups, and NGOs have been considered for their role and status in international law, and referred to, collectively, as *non-State actors*.<sup>72</sup> Without entering into the discussions regarding the shortcomings and the State-centricity of the term itself,<sup>73</sup> this article utilises it for the purposes of foregrounding the autonomous activities of local governments as opposed to their activities as a State organ (their sub-State character). Parallel to the pluralisation of actors in international law, the last decades have also witnessed a decline in the usage of traditional forms of law listed in Article 38(1) of the ICJ Statute as sources of international law, and an increased preference for non-binding commitments, guidelines, or so-called ‘soft law’.<sup>74</sup> International law-making capacity, once accepted as a prerogative of States, is now hesitantly considered to be shared, at least by other recognised subjects of international law, such as international organisations.

Local governments have fallen largely outside the literature on NSAs, most probably due to their position within the organisation of the State, as opposed to the other actors mentioned above. However, their engagement with international law and human rights cannot be explained by their (sub-)State character alone, and parallels the engagement of other, more familiar NSAs. Local governments have for instance been creating normative commitments that bridge the realms of policy, discourse and law, while using the format and language of international law to varying degrees. The European Charter for Safeguarding Human Rights in the City,<sup>75</sup> the Global Charter-Agenda for Human Rights in the City,<sup>76</sup> the 10 Principles of the European Coalition of Cities Against Racism,<sup>77</sup> the Belfast Declaration/Charter of Healthy

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69. Nijman (n 1).

70. Noemi Gal-Or, Cedric Ryngaert, Math Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place* (Brill 2015) 371; Cedric Ryngaert (ed.), *Non-State Actors in International Law: from Law-Takers to Law-Makers* (Routledge 2010); August Reinisch, Cedric Ryngaert, Math Noortmann (eds.), *Non-State Actors in International Law* (Hart 2015).

71. International Court of Justice, *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1948.

72. See (n 70).

73. Philip Alston, ‘The “Not-A-Cat” Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?’ in Philip Alston (ed.), *Non-State Actors and Human Rights* (OUP 2005). Andrew Clapham, ‘The Use of International Human Rights Law by Civil Society Organisations’ in Scott Sheeran and Sir Nigel Rodley (eds.) *Routledge Handbook of International Human Rights Law* (Routledge 2013).

74. Prosper Weil, ‘Towards Relative Normativity in International Law’ (1983) 77 *American Journal of International Law* 413.

75. European Charter, (n 49).

76. Global Charter-Agenda for Human Rights in the City, adopted in Florence, December 2011 by the UCLG World Council <<https://www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda>>.

77. ECCAR, ‘10 Points Action Plan. Toolkit for Equality: City Policies Against Racism’, February 2017, Graz, Stockholm, Potsdam <[https://www.eccar.info/sites/default/files/document/1\\_Toolkit-en\\_10PointsActionPlan.pdf](https://www.eccar.info/sites/default/files/document/1_Toolkit-en_10PointsActionPlan.pdf)>.

Cities,<sup>78</sup> The Mayors' Marrakech Declaration adopted in parallel to the Global Compacts for Migration and Refugees,<sup>79</sup> Cities for Adequate Housing: The Municipalist Declaration for the Right to Housing and the Right to the City,<sup>80</sup> the Manifesto of the Forum of the European Local Communities Engaged in Refugees' Welcoming and First Inclusion,<sup>81</sup> and the Global Green New Deal endorsed by C40 in collaboration with the Fridays for Future Movement and other stakeholders for climate,<sup>82</sup> constitute only a fraction of norms generated by local governments and their networks. Some of these normative documents entail the language of rights and obligations, discuss their own legal value and bindingness, and foresee internal and external monitoring mechanisms for the tangible commitments they entail.<sup>83</sup> This parallels the proliferation of codes of conduct and principles of good governance produced by transnational companies ('TNCs') and major international NGOs.<sup>84</sup> Similarly, local governments are enjoying a recent, gradual inclusion into mainstream State-centric law-making mechanisms, as discussed in *Formation of Human Rights*, similar to the processes of the slow inclusion of actors such as IOs, TNCs and NGOs, at least as stakeholders, in negotiations and adoptions of international norms. Both the autonomous norm-generation and the inclusion in state-centric law-making mechanisms allow local governments to participate in the contestation and development of international norms in a general sense. The contestation and development however concerns not only the creation of norms but also their realisation, as local governments develop and adopt non-legal means of realisation and implementation through various innovative means,<sup>85</sup> just as civil society contributes to the localisation of international norms and the creation of ownership among local communities.<sup>86</sup> Additionally, just as accountability of TNCs and armed opposition groups was the main entry point for discussion of such actors in international law,<sup>87</sup> the more conservative international organisations such as the UN Human Rights Committee ('UNHRC') started to look at local governments first from the prism of their human rights obligations.<sup>88</sup> Whether local governments could ever obtain international legal personality, which would entail the capacity to hold independent rights, obligations, as well as the prerogatives of law-making and law-enforcement (legal standing

78. Belfast Charter for Healthy Cities <[http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0008/384614/belfast-charter-healthy-cities.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0008/384614/belfast-charter-healthy-cities.pdf?ua=1)>.

79. Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees, adopted at the 5th Mayoral Forum on Human Mobility, Migration and Development, 8 December 2018, presented at the Intergovernmental Conference to adopt the Global Compact for Safe, Orderly and Regular Migration (10-11 December 2018) and at the UNGA (17 December 2018), <<https://www.iom.int/news/global-mayors-unite-support-human-mobility-migration-and-development>>.

80. Cities for Adequate Housing, (n 35).

81. Manifesto, Forum of the European Local Communities Engaged in Refugees' Welcoming and First Inclusion, Pandpas Project, Ljubljana 14-15 February 2019.

82. C40, Press Release, 'Mayors Announce Support for Global Green New Deal; Recognize Global Climate Emergency' <[https://www.c40.org/press\\_releases/global-gnd](https://www.c40.org/press_releases/global-gnd)>.

83. For instance, the European Charter for Safeguarding HR in the City discusses its own legal value and obliges internal and external monitoring mechanisms to be set up and utilised, the Global Charter Agenda includes a framework of short-term and mid-term steps to be taken in realisation of the Rights enshrined, and the member cities of the Coalition of Cities Against Racism are monitored by the transnational network in regular internal on their compliance with the principles of the Coalition.

84. August Reinisch, 'The Changing International Legal Framework for Dealing with Non-State Actors', in Philip Alston (ed.), *Non-State Actors and Human Rights* (OUP 2005), 50-55; Clapham, (n 73).

85. Oomen et al (n 39).

86. Fraser (n 42) 975; Reinisch (n 84) 67.

87. Gal-or et al (n 70).

88. HRC (n 64).

before courts), and how this question is dependent on different constitutional dispensations and local government competences around the world, are questions worth tackling, attracting increasing and well-deserved attention by international and constitutional lawyers.<sup>89</sup>

## 5. A TYPOLOGY OF LOCAL GOVERNMENT ENGAGEMENT WITH HUMAN RIGHTS

Following a grounded data collection process from desk and field research (consisting of 24 interviews with officials of 10 different local governments in Turkey, South Korea, and Brazil, of NGOs, international organisations and city networks, as well as participant observation in 5 major meetings of city networks and international organisations) this typology has been created with an intention of offering a systematic – albeit non-exhaustive – mapping of the rich normative engagement of local governments with human rights and international law. This data was collected as part of the Cities of Refuge project exploring the role of human rights as law, praxis and discourse in the reception and integration of refugees by local governments in six European countries and in transnational fora.<sup>90</sup> Desk research was conducted into international organisations' resolutions on local governments and human rights, publications and social media activity of transnational city networks, and of policies and legislation of local governments involved. Qualitative data collected through field research does not claim any generalisability, nor is it based on a representative sample of local governments. Instead, the grounded theory approach allows for the deduction of certain ideal types from the data, followed by theoretical sampling to achieve a saturation point in which no new types of engagement were emerging from new data.<sup>91</sup> As is the limitation of typologies in general, this typology will not be able to cover every form of city engagement, and will resort to some degree of simplification. Nevertheless, such a mapping can arguably contribute to the research on cities and international law by offering scholars a contemporary overview of the normative engagement of local governments.

Frug and Barron pioneered scholarship mapping local government relationships with international law, focussing somewhat conservatively on the subject-object distinction in international law, placing cities as objects regulated by the law, and stressing the dangers of a possible recognition of their actorhood.<sup>92</sup> Aust on the other hand, in his dissertation 'Das Recht der Global Stadt' identified three general forms of internationalisation of local governments' activities: horizontal networking between local governments, vertical cooperation between local governments and international organisations, and the reference in local politics and legislation to international norms.<sup>93</sup> Marx et al. presented the different functions of local governments in localising fundamental rights within EU system, as rule-maker, rule-intermediary, service provider, policy supporter and policy coordinator.<sup>94</sup>

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89. See the upcoming Special Issue of the European Yearbook on Constitutional Law, Volume 2 (2020) on 'The City in Constitutional Law'.

90. [www.citiesofrefuge.eu](http://www.citiesofrefuge.eu).

91. Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (SAGE 2006).

92. Frug and Barron, 'International Local Government Law', (2006) 38 *The Urban Lawyer* 1.

93. Helmut Aust, *Das Recht der Globalen Stadt* (Mohr Siebeck 2017), 8-12. While Aust makes clear that his intention is not to create a typology as it would do injustice to the vast variety of local engagement with international law, he nonetheless presents three empirical ideal types as a general way of organising this engagement.

94. Axel Marx, Nicolas Hachez, Katrien Meuwissen, Pierre Schmitt, Jakub Jaraczewski, Tamara N. Lewis, Kolja Raube, Joanna Roszak, Klaus Starl, Dolores Morondo Taramundi, Anna-Kaisa Tuovinen, Amy Weatherburn, 'Localizing

Looking into previous literature on localisation of human rights, though not necessarily the role of local governments, Merry famously coined the term ‘vernacularisation’ in understanding how international norms travel and are made familiar to local contexts by ‘translators’ or middle-(wo)men familiar to both the local and international social fields.<sup>95</sup> De Feyter explored the success of the language of rights (over alternative discourses) in shifting domestic power balances and the role of these local struggles in reconstituting global human rights norms.<sup>96</sup> Hoffman, discussing the relationship between decentralisation, legislation and the realisation of the Convention on the Rights of the Child, linked a normative approach regarding domestic implementation of international treaties to the concept of localisation of human rights.<sup>97</sup> He argued that a normative rather than regulative approach to legal integration, in the context of decentralisation, would enable ‘interpretative communities’<sup>98</sup> and help create a ‘cultural acceptance’ of the norms avoiding over-reliance on individual judicial claimants, improving overall realisation.<sup>99</sup>

This typology will contribute to the existing debates in a number of ways. First, as local governments’ engagement with international law and human rights is expanding exponentially, this typology will be able to present a more up-to-date picture of the complexity and reach of the engagement. This typology will also opt out of the subject-object discussion and the rigid focus on the form (legislation, discourse etc) and fora (local vs international etc) of engagement, and look instead into what the engagement constitutes substantively for human rights. In mapping only local government activity, the typology does not cover how the locality serves as an ‘arena’ or ‘hub’ for human rights localisation,<sup>100</sup> where local actors interact with each other and contest the meaning of human rights without the direct engagement of the municipality.

**Table 1.** A Typology of Local Government Engagement with Human Rights.

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A Typology of Local Government Engagement with Human Rights

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*Formation of Human Rights*

*Implementation of Human Rights*

*Defence of Human Rights*

*Coordination of Human Rights*

*Dissemination of Human Rights*

*Contestation of Human Rights*

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Fundamental Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?’ (2015) 7(2) *Journal of Human Rights Practice* 246.

95. Sally E. Merry, ‘Transnational Human Rights and Local Activism: Mapping the Middle’ (2006) 108(1) *American Anthropologist* 38.

96. Koen De Feyter, Stephen Parmentier, ‘Introduction: Reconsidering Human Rights from Below’, in Koen de Feyter, Stephen Parmentier, Christiane Timmerman, and George Ulrich (eds.), *The Local Relevance of Human Rights* (CUP, 2011).

97. Hoffman (n 58), 378.

98. John Tobin, ‘Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation’ (2010) 23 *Harvard Human Rights Journal* 1; cited in Hoffman (n 58) 378.

99. Hoffman (n 58) 377.

100. Barbara Oomen, Elif Durmuş, ‘Cities and Plural Understandings of Human Rights: Agents, Actors, Arenas’ (2019) 51(2) *Journal of Legal Pluralism and Unofficial Law* 1 <<https://doi.org/10.1080/07329113.2019.1596731>>.

## 5.1. FORMATION OF HUMAN RIGHTS

The *Formation of Human Rights* entails the incidents in which local governments have sought opportunities to directly contribute to official processes of law-making at the international level, joining States and international organisations. Normative formulations by local governments in fora not including central governments are included under the category *Contestation of Human Rights*. Perhaps the most significant of events demonstrating *Formation* were the processes leading to the codification of the content of the Right to Housing.<sup>101</sup> In the Habitat conferences, the Global Campaigns for Secure Tenure and Urban Governance, and in other formal and informal processes, local governments played a significant role in co-creating the positive legal content of the right to adequate housing.<sup>102</sup>

Less self-evident and more difficult to track, local governments could potentially be contributing to the development of customary international law, through the production of (sub-)State practice as well as *opinio juris*, as discussed in Section 5. Instances falling under *Defence of Human Rights*, of local governments pushing back on national policies regressing human rights sometimes gain international attention and response, which could constitute *opinio juris* when analysed retrospectively.

The incorporation of SDG 11 in the Agenda 2030 and the Sustainable Development Goals, as well as the lobby for and the subsequent inclusion of the role for local governments in both the Global Compacts for Migrants and Refugees are examples worth mentioning, although they may constitute soft law created through State-centric processes rather than binding law. Local governments' *Formation of Human Rights* only mirrors and adds to their efforts and successes in other fields of international law, such as international environmental law, with their success of incorporating the role of local governments in the text of the Paris Climate Agreement,<sup>103</sup> in addition to being a driving force behind its adoption process as a whole.<sup>104</sup>

## 5.2. IMPLEMENTATION OF HUMAN RIGHTS

Perhaps the least controversial and most ubiquitous engagement with human rights concerns local governments implementing human rights. *Implementation* here, aligning with the sub-State character of local governments, refers to the efforts to realise established positive international (rather than domestic) legal norms created in a State-centric manner.

Some of the most significant examples of this engagement are those relating to the practice of so-called 'Human Rights Cities' with prominent trailblazers such as Rosario, Buenos Aires, Utrecht, Graz, Barcelona and Gwangju.<sup>105</sup> Many cities, large and small, have symbolically ratified international treaties, and even created local enforcement policies which have been much more successful than national ones.<sup>106</sup> San Francisco for instance, has incorporated CEDAW into one of

101. Marcenko (n 34).

102. *ibid.*

103. C40 Blog, 'From Paris to Quito, Mayors are Leading on our Sustainable Future', (14 October 2016) <[https://www.c40.org/blog\\_posts/from-paris-to-quito-mayors-are-leading-on-our-sustainable-future](https://www.c40.org/blog_posts/from-paris-to-quito-mayors-are-leading-on-our-sustainable-future)>.

104. Parlementaire Monitor, 'COP21: Success of Climate Change Agreement Rides on Empowering Local Government' (14 October 2015) <[https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjy64l0yy5zy?ctx=vg9hm2g38wdd&tab=1&start\\_tab0=60](https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjy64l0yy5zy?ctx=vg9hm2g38wdd&tab=1&start_tab0=60)>.

105. Oomen et al. (n 39).

106. Oomen and Baumgaertel, (n 4) 2.

their local ordinances, implementing the Treaty within its jurisdiction ever since.<sup>107</sup> Graz has adopted the CRPD, and made institutional changes including the establishment of a council responsible for its implementation. This council has made a call for recommendations on this issue, collecting hundreds of recommendations from the citizens of Graz, which were analysed, categorised, and brought together in a local implementation plan of the CRPD for the city of Graz.<sup>108</sup> The Human Rights Cities project in Turkey led by the Raoul Wallenberg Institute and the Association of Municipalities of the Turkic World guide local governments in conducting human rights-sensitive strategic planning and budgeting.<sup>109</sup> Local ombudspersons, anti-discrimination offices, or simply enacting local policies and legislation with reference to (international) human rights law, are all different forms in which implementation can take place.

Local governments' human rights obligations were also in the agenda of important international bodies such as the Council of Europe Congress of Local and Regional Authorities, which created a set of human rights indicators at the local level;<sup>110</sup> and the United Nations Human Rights Council (UNHRC) adopting resolutions on the role of local governments in the promotion and protection of human rights.<sup>111</sup> The latter confirmed that local governments do indeed have obligations under international human rights law and that 'any failure to comply with these responsibilities will entail their liability under national law as well as international responsibility of the State as a whole'.<sup>112</sup> As such, the Council emphasises the sub-State character of local governments, reminding that 'the State is one single entity, regardless of its unitary or federal nature and internal administrative division'.<sup>113</sup> The Council holds that only the State can enter into international obligations, be brought before international courts, and submit reports on their progress to treaty bodies; although States and local governments possess 'shared and complementary duties',<sup>114</sup> which requires local governments to enjoy the 'necessary powers and financial resources' in order to realise the State's international obligations that fall within their constitutional competences, while the State retains primary responsibility.<sup>115</sup>

As can be expected, this implementation also entails varying degrees of interpretation of international norms. When local governments give content to rights, it can at times be difficult to distinguish *Implementation* from *Formation of Human Rights*, especially when it comes to the development of the customary content of the norm. The development of customary international law and the interpretation of treaty obligations are both dialectic processes in which the implementation (in a certain way) or non-implementation of a norm can *ex post facto* be considered an alteration of that norm or the crystallisation of another.

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107. Martha Davis, 'Cities, Human Rights and Accountability: The United States Experience', in Oomen et al (eds.) *supra* note 40; Haidi Haddad, Presentation in ACUNS Conference, Rome, July 2018.

108. Based on information provided by Klaus Starl and municipal officials of the City of Graz during a Seminar on Human Rights Cities – The Swedish and Austrian Experiences in March 2018, Graz.

109. International Conference on Human Rights Cities, Istanbul, 23-24 November 2018.

110. Council of Europe, Congress on Local and Regional Authorities, Resolution 334 (2011) adopted on 20 October 2011, Annex 'Explanatory Memorandum', Lars O. Molin, <<https://rm.coe.int/168071933b>>.

111. HRC (n 64).

112. *ibid* para 25.

113. *ibid* para 17.

114. *ibid* Section 3.

115. *ibid* paras 21-23.

### 5.3. DEFENCE OF HUMAN RIGHTS

At times, local governments engage with human rights not in their capacity as an administrative State organ, but in their particular local identity (non-State, rather than sub-State). This can be observed best when cities take rebellious stances towards national governments and their policies, in *Defence of Human Rights*. Such defensive positions arise both within local government competences in a certain domestic constitutional context and extra-legally.<sup>116</sup> Local governments may act in a space of legal ambiguity or silence, using it strategically in their favour to stand up for human rights;<sup>117</sup> stay within their explicit legal competence but go out of their way to make a pronounced stance in *Defence of Human Rights*; or even step outside their legal constitutional competences in order to take a stance. To clarify, this typology considers an act as *Defence of Human Rights* when the stance taken is public, political, and aims to stand against any law, policy or discourse considered to be in violation with human rights. Whether this stance then reaches success in altering that law, policy or discourse, or whether it is within the local government's constitutional competences to react in such a way, is not of consideration.

In the area of refugee reception and integration, local governments have taken proactive stances, such as Utrecht in the 'Bed, Bad & Brood' discussion with the Dutch national government. When in 2012 the national government prohibited municipalities to provide services to undocumented migrants, many Dutch municipalities including Utrecht protested against this decision,<sup>118</sup> leading to the European Committee on Social Rights to decide in 2014 that this practice would violate Netherlands' obligations under the European Social Charter.<sup>119</sup> Utrecht is also prominent for protests it hosted and organised when the Dutch government declared Afghanistan a safe country and started planning deportations of Afghani persons in the country.<sup>120</sup>

When the former Italian Minister of Interior Affairs Salvini declared that Italy would not accept any further boats carrying migrants and refugees rescued in the Mediterranean sea, southern Italian cities such as Palermo, Naples, Messina and Reggio Calabria expressed protest and defied the policy, saying that they were 'ready to disobey Salvini's order and allow Aquarius [the migrant rescuing ship] to dock and disembark in their sea ports.'<sup>121</sup> The Mayor of Palermo, Leoluca Orlando stated:

116. Barbara Oomen, Moritz Baumgaertel, Sara Miellel, Elif Durmuş, Tihomir Sabchev, 'Strategies of Divergence: Local Authorities, Law and Discretionary Spaces in Migration Governance', submitted to the Journal of Refugee Studies as part of a Special Issue on Uncertainty, expected publication in 2020.

117. Such as local governments in Turkey interpreting Article 14 of the Law on Local Governments as allowing them to provide services to Syrians under temporary protection, when the law is highly ambiguous.

118. VVD and PvdA, 'Bruggen Slaan: Regeerakkoord VVD – PvdA', 29 October 2012, <http://www.parlement.com/9291000/d/regeerakkoord2012.pdf>, at 30 (accessed 22 July 2017). For extensive background see Pelle de Meij, 'Het Recht Van Vreemdelingen Op Een Menswaardig Bestaan En De Rol Van De Rechter', (2015) 90 *Nederlands Juristenblad*; PICUM (ed.), *Book of Solidarity: Providing Assistance to Undocumented Migrants: Belgium, Germany, the Netherlands, the UK* (De Writter 2002).

119. ESCR, *European Federation of National Organisations working with the Homeless (FEANTSA) v the Netherlands*, Complaint No. 86/2012, published 10 November 2014. See also ESCR, *Conference of European Churches (CEC) v the Netherlands*, Complaint No. 90/2013, published 10 November 2014.

120. See European Charter (n 49).

121. Patrick Wintour, Lorenzo Tondo and Stephanie Kirchgaessner, 'Southern Mayors Defy Italian Coalition to Offer Safe Ports to Migrants' (*The Guardian*, 11 June 2018), <<https://www.theguardian.com/world/2018/jun/10/italy-shuts-ports-to-rescue-boat-with-629-migrants-on-board>> accessed 28 April 2019.



Palermo in ancient Greek meant ‘complete port’. We have always welcomed rescue boats and vessels who saved lives at sea. We will not stop now. [...] Salvini is violating the international law. He has once again shown that we are under an extreme far-right government.<sup>122</sup>

This last stance was an example of defiance through an attempted extra-legal step, such as opening the ports to migrant ships, whereas this required the cooperation of the Italian Coastguard, which is under command of the central government. The cities’ statements thus had no direct practical effect, however, these statements made news both in traditional and social media, and continued to raise awareness and protest about the situation, contributing to the efforts of civil society and international organisations in condemning Salvini’s policy.

#### 5.4. COORDINATION OF HUMAN RIGHTS

A type of engagement with human rights that is quite ubiquitous, though not necessarily as public as *Defence*, is the local *Coordination of Human Rights*. Local governments, in times of decentralisation, privatisation and globalisation are often in the difficult position of being responsible for the provision of more services with less resources, struggling in a competitive market in its commercial activities. However, the local government’s unique proximity to and likely awareness of the locality’s and citizens’ needs, as well as its potential to be well connected with local actors such as businesses, civil society, national institutions’ local offices, hospitals, schools, universities and vulnerable persons provide invaluable tools to overcome the challenges of human rights realisation for the local government.<sup>123</sup>

In line with the principle of good governance, local governments often consult stakeholders before developing policies in response to complex situations relating to human rights. While *Implementation of Human Rights* refers to local governments’ more traditional legalistic role as duty-bearers; the *Coordination of Human Rights*, in line with the notion of *governance* rather than *government*, focusses on local governments’ role as leaders, facilitators, and collaborators, where rights realisation is a shared duty of the community. Sometimes, local governments initiate or facilitate the creation of ‘horizontal governance structures’<sup>124</sup> by bringing a large variety of local stakeholders together in a series of meetings, such as was the case of the Danish city of Odense, for the purposes of developing strategies and partnerships towards the realisation of refugees’ fundamental rights and their integration into the city.<sup>125</sup> Whether decentralisation is a result of official legislative and administrative steps or a simple practical reality, such *Coordination* of human rights can be an efficient way of addressing multiple issues holistically. In Turkey, while local governments are not officially assigned responsibilities on the realisation of human rights of refugees<sup>126</sup> situated in their territories, municipalities nevertheless find themselves in situations in which large numbers of refugees are in need of urgent protection of their rights, with the national government

122. *ibid.*

123. Hoffman (n 58) 376.

124. Romana Careja, ‘Making Good Citizens: Local Authorities’ Integration Measures Navigate National Policies and Local Realities’ (2018) *Journal of Ethnic and Migration Studies* (Special Issue: Migration Governance in an Era of Large Movements).

125. *ibid.*

126. Turkey has ratified the Geneva Convention on the Status of Refugees only with a reservation upholding a geographical limitation, which means that the country does not legally offer asylum to persons coming from outside Europe. The Syrian displaced people in Turkey have been under a temporary protection regime for the last 8 years.

unable to provide all necessary services. Consequently, local governments team up with international, national and local actors, to create projects of service provision for refugees.<sup>127</sup> For instance, the International Organisation for Migration has partnered with Kecioren, Adana Metropolitan and Sanliurfa Metropolitan Municipalities, in order to fund and staff ‘one-stop shops’ for refugees and migrants in town, within the premises of the municipality.<sup>128</sup> Here, staff hired by IOM register, assist and guide applicants to specialised municipal bureaus, possible employers, schools, specialised organs of the central administration represented in the town.<sup>129</sup> The ultimate objective of the project is for the municipality to take over the one-stop shop at the end of the project, and continue its services. This way, guidance for refugees and migrants, a function previously unfamiliar to the municipality, is introduced to the bureaucracy, and in the meantime essential services are provided. Ankara Metropolitan Municipality on the other hand leads a project funded by UNHCR, in which the municipality, after consulting local businesses on the current needs and priorities of the job market, has built a large facility aimed to provide Turkish language education followed by vocational training with certification to around 500 refugees and locals at all times.<sup>130</sup> The facilities include classrooms, day care for the children of the attendees, psychological support, conference rooms (that are open for public use of the locals), and modern machines to be used in technical vocational training.

In some instances, municipalities are less active in direct provision of services to refugees and thus realisation of human rights, but they cooperate with local NGOs who have organically developed to fill that void in earlier stages. In Sisli (a district municipality of Istanbul), two primary NGOs provide services to refugees and migrants while the municipality provides free basic healthcare, a welcoming environment and general oversight.<sup>131</sup> In another prominent example, Sultanbeyli Municipality in Istanbul – in order to avoid problems with regards to the legal competences of the municipality for providing services to refugees, and to work around the general trend for foreign funding in Turkey to be given to NGOs instead of administrative entities – has created an ‘Association for Refugees’ based in two large facilities run by international as well as local funding; providing healthcare, language education, psychological care, legal support, vocational training and childcare.<sup>132</sup> The centre functions under an administration consisting of municipal officials and persons hired independently, and runs with the concerted efforts of international organisations, the national government, charities, chambers and other stakeholders.<sup>133</sup>

## 5.5. DISSEMINATION OF HUMAN RIGHTS

The *Dissemination of Human Rights* points at how local governments are key actors in spreading the norms, values, practices, the essence of human rights and rights-based thinking. This happens

127. See also Colleen Thouez, ‘Strengthening Migration Governance: the UN as “Wingman”’ (2018) *Journal of Ethnic and Migration Studies*, DOI: 10.1080/1369183X.2018.1441604; UN, ‘Report of the Special Representative to the Secretary-General on Migration’, 3 February 2017, UN.Doc.A/71/728.

128. Interviews with staff of the Kecioren Migrant Service Centre and the IOM Coordinator of the projects were conducted in February 2019 in Ankara.

129. *ibid.*

130. A focus group with the staff of the centre in Ankara in January 2019.

131. Interview conducted with the Sisli Migration Office Staff in January 2019.

132. Multiple interviews and field visits conducted with Sultanbeyli Municipality and staff of the Association for Refugees in December 2018.

133. *ibid.*

both within their territory and also in interactions with other actors of the international community, especially other local governments, which will be discussed in turn.

When engaging with actors *outside* their territory such as other local governments and city networks, local governments use their unique hands-on experience to provide persuasive and practical guidance on how to best create fair, sustainable, inclusive communities. Much of the engagement within city networks consists of the exchange of best practices, peer-to-peer learning, and networking, during which agendas and priorities compete. Here, local governments previously unaware of their role in human rights realisation – for instance those working with concepts such as good governance or sustainable development – become exposed to and sometimes won over by the concept of human rights in the city. Elements of human rights in the city, as well as conceptions of the role of cities in international law thus travel within and among spaces of interaction for local actors, and gain ground depending on the persuasiveness and persistence of the advocacy. Barcelona and its presence in city networking is a perfect example for this engagement. With more than 30 years of experience in implementing a human rights policy, Barcelona is an honoured guest at any meeting of transnational city networks, and often an initiator, organiser and/or a host.<sup>134</sup> Municipal officials of Barcelona share their experience, strategies, and conviction that human rights are a hard obligation for local governments and not just a matter of taste.<sup>135</sup> Expressing this firm belief and backing it up with successful practices, Barcelona becomes a role model for upholding human rights in the city for other local governments with less resources and experience.<sup>136</sup> Gwangju's role, as the first human rights city in South Korea, is similar within the Korean and Southeast Asian context. Hosting the World Human Rights Cities Forum for eight consecutive years and lobbying with the national government as well as other local governments, Gwangju has contributed significantly to Seoul and other Korean cities becoming human rights cities, and the government of South Korea sponsoring the role of local governments to be included into the agenda of the UN Human Rights Council.<sup>137</sup>

There are countless examples of this *Dissemination of Human Rights*, in its essence, values, usefulness for the local administrations and its feasibility in practice, which can be observed in any international meeting in which local governments advocating human rights are present. *Dissemination* gains its power from being an identity and interest building process.<sup>138</sup> Through interactions with other actors, local governments may adopt human rights as part of their values forming their identity, and start seeing human rights realisation as being in their interest. As such, *Dissemination* directly contributes to the *Contestation of Human Rights* by local governments.

*Dissemination within* the territory of the local government refers to localising and increasing ownership of human rights within the local administration and among the citizens of the locality. Providing specialised training or conducting focus groups with different departments of the administration, as is the case in cities such as Barcelona, Vienna, Maltepe and Cankaya can, for instance,

134. Participant observation conducted in the World Human Rights Cities Forum in Gwangju, October 2018, the Fundamental Rights Forum organised by the EU FRA in Vienna, September 2018 as well as the 'Cities for Rights' Conference organized in Barcelona in December 2018.

135. *ibid.*

136. *ibid.*, where representatives of local governments from Nepal, Indonesia and India expressed admiration for Barcelona and an intention to follow through with Barcelona's example.

137. Interview conducted with the International Relations Advisor to the City of Gwangju as well as observations in the World Human Rights Cities Forum, both in October 2018.

138. Koh, 'Transnational Legal Process', *supra* note 25, 199-205.

increase awareness and ownership among personnel on the human rights implications of the policies they implement.<sup>139</sup> Steps like these are often essential if a local administration aims to achieve sustainability of a human rights policy and the rights-based approach in the administration.<sup>140</sup>

Local governments can however contribute to the creation of a culture of human rights within their locality, amongst citizens. Some cities such as Vienna and Graz provide human rights education for their citizens, sometimes for those as young as nursery aged children.<sup>141</sup> Local acceptance and ownership of human rights become especially important when human rights require local governments to take unpopular decisions such as allowing and protecting a gay pride parade in Gwangju,<sup>142</sup> or accepting and providing essential services to refugees from Syria in Gaziantep (Turkey). Expressing ideals akin to human rights in a culturally-sensitive language, the Mayor of Gaziantep Fatma Sahin, stated in an interview that ‘as [a matter of] humanity, as [a matter of] the rights of neighbours, we cannot be expected to be indifferent to it, to ignore it when there is a fire with our neighbours, when there is a tragedy of humanity’.<sup>143</sup> Using the concepts of humanity and the Islamic and ancient Turkish value of ‘rights of neighbours’ the Mayor reaches out to her constituency in concepts that are familiar and sacred to them, contributing to a localised understanding of human rights.

## 5.6. CONTESTATION OF HUMAN RIGHTS

The final type of local engagement with human rights constitutes *Contestation of Human Rights*. Local governments, individually and in cooperation with other actors, contest elements of established international law and positive human rights law as they stand. *Contestation* focuses most of all on (1) the State-centricity of international law-making concerning human rights, (2) the specific content of the positive human rights norms, (3) the State-centricity in the prerogative to enter into human rights obligations, and (4) the State-centric notion of citizenship which conditions the protection of individuals’ rights on being documented, registered and lawfully present in a State’s territory. This contestation may be explicit and outspoken, in opposition to a dominant actor’s more regressive policy, in which case it might also constitute *Defence of Human Rights*, though not all *Defence* will bring into question the established system of international human rights law. Pronouncements on how the local government has a right to regulate a human rights issue, at times surpassing domestic competences of the local government, can constitute ‘jurisdictional assertions’ as Cover terms, competing for authority with other claims of jurisdiction, challenging

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139. Interviews conducted with Sisli, Cankaya and Maltepe Municipalities in November 2018-January 2019 and speeches of Barcelona representatives in the World Human Rights Cities Forum, October 2018. Presentation by Vienna Human Rights Director in Istanbul during the International Human Rights Cities Conference, 23-24 November 2018. Presentations during Human Rights Cities Workshop, Graz, March 2018.

140. Interviews with officials of the Sao Paolo (Brazil), and Barcelona, both done in October 2018 in Gwangju, in which they that work on human rights of refugees and undocumented migrants in the city and the continued existence of the Human Rights Departments in the cities were ensured by institutional changes done previously following a legislation on human rights.

141. Vienna (n 139).

142. Which took place despite massive conservative protests and direct pleas to the municipality to ban the parade, in October 2018.

143. Fatma Sahin, ‘Gaziantep Gonlunu ve Kapilarini Suriyelilere Acti’,(2016) 813 *Iller ve Belediyeler* 3, 5 (author translation).

dominant (State) assertions on human rights.<sup>144</sup> Local and regional governments in Spain implementing universal health care policies covering undocumented migrants despite national government and Constitutional Court efforts to illegalise such efforts arguing on inequality and an unconstitutional stretch of local competences, have for instance succeeded in gaining a pronouncement by the CESCR that Spain may not impede with local governments realising human rights to a higher extent than the national average.<sup>145</sup>

When authors of a *Contestation* wish to persuade the international community and achieve a change in (a part of) the dominant understanding of human rights, they may interact with other actors and *disseminate* their understanding. But *Contestation* can also be a quiet one, such as a quiet resistance in refusing to follow national government policies violating human rights, within the territory of the locality, such as the practice of Sanctuary Cities in the US refusing to cooperate with national policies requiring them to provide information on undocumented migrants that could lead to their deportation, which constitutes a contestation based on the premises that persons without documentation deserve protection and that local authorities have a say in determining and providing such protection at times against the central government position.<sup>146</sup>

Other examples of contestation of (1) the State-centricity of human rights law-making are for instance the drafting, signing and ratification by local governments of the European Charter for Safeguarding Human Rights in the City, the Global Charter-Agenda for Human Rights in the City, the Cities for Adequate Housing: A Municipalist Declaration on the Right to Housing and the Right to the City, the Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees and numerous other normative documents created and adopted by city networks and local governments.<sup>147</sup> Formulated in a manner demonstrating deliberate and advanced legal drafting techniques, and imitating a form of inter-State law-making, the creation of these documents arguably reflect local governments' frustration with their lack of access to the scene of international law-making. Second, (2) local governments, in creating these documents, generate new human rights norms and alternative contestations of existing ones. For instance, the European Charter mentioned above enshrines a 'General Right to the Public Services of Social Protection', the 'Right to the Environment', the 'Right to Harmonious and Sustainable City Development', the

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144. Robert M Cover, 'The Uses of Jurisdictional Redundancy: Interest, Ideology, and Innovation' (1981) 22 William and Mary Law Review 639.

145. UN Economic and Social Council, Concluding observations on the sixth periodic report of Spain, 25 April 2018, E/C.12/ESP/CO/6, para 11: 'Notwithstanding the fact that decentralization and autonomy can encourage implementation of the Covenant, the Committee remains concerned at the persistence of certain unjustifiable disparities between the different autonomous communities, which impede the full enjoyment of some Covenant rights by persons in some of those communities. The Committee is also concerned that certain Constitutional Court decisions prevent the autonomous communities from granting, by means of their own resources, fuller protection for Covenant rights than that provided at the national level. Uniform, national solutions are welcome when they promote the progressive realization of economic, social and cultural rights, but are of concern to the Committee when they hinder such progressive realization (Articles 2 (1) and 28)'. See also: 'Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of Spain's 6th Periodic Report at the 63 rd Session', March 2018, Executive Summary, 15 February 2018, <<http://www.cesr.org/executive-summary-joint-submission-un-cescr-spain-review-march-2018>>.

146. Oomen et al. (n 116).

147. For a more detailed analysis of norm-generation by local governments, see Elif Durmuş and Barbara Oomen, 'Transnational City Networks and Their Contributions to Norm-Generation in International Law' submitted to Local Government Studies as part of Special Issue on Transnational City Networks and Migration Governance. See Cities for Adequate Housing (n 35); European Charter (n 49); Global Charter-Agenda (n 76); Marrakech Declaration, (n 79).

Right to Movement and Tranquility in the City’ and the ‘Right to Leisure’ all of which are new to positive international human rights law.<sup>148</sup> Third (3) local governments also commit, in even the most official means available to them, to international norms that their respective States have not chosen to be bound by, contesting that entering into international obligations are a State-exclusive prerogative. Local governments in the United States symbolically ratifying the CEDAW convention when the US has not ratified it, and adopting the Convention into their local legislation, is one such example.<sup>149</sup>

On a last note (4) local governments also contest the State-centric notions of citizenship linking rights to lawful presence within State borders and nationality. The Global Charter-Agenda states

[a]ll Charter-Agenda provisions apply to all city inhabitants, individually and collectively, without discrimination. For purposes of this Charter-Agenda, all inhabitants are citizens without any distinction. [...] A city inhabitant is any person that lives within its territory even if without fixed domicile.<sup>150</sup>

Contestation of citizenship through the advocacy of a city-citizenship (or ‘cityzenship’<sup>151</sup>) based on residence or even presence in the locality is also reflecting in the actions of New York, Barcelona, Zurich and other cities providing city identity cards to undocumented migrants present in their territory, so that they may benefit from municipal services. Additionally, *registering* vulnerable undocumented migrants for the purpose of local service provision, when they are not registered elsewhere in a national system or when their status normally excludes them from benefitting from those services, are also steps that local governments take in contestation of a State-centric (nationality-based) and legalistic understanding of citizenship and belonging.<sup>152</sup>

## 6. HOW LOCAL GOVERNMENT ENGAGEMENT PLURALISES INTERNATIONAL LAW AND HUMAN RIGHTS

How do we understand such vast and complex engagement of local governments with human rights? First, it is fit to make an empirical observation. The introduced types of local government engagement with human rights relate to the system of international law in and challenge it in different ways. While some forms of engagement could be considered to communicate with the system of international law within its own terms, they nevertheless seek to pluralise that system, and upgrade the status of local governments in it to establish them as internationally relevant

148. European Charter (n 49) Articles XII, XVIII, XIX, XX and XXI.

149. Davis (n 107) and Haddad (n 107).

150. Global Charter-Agenda (n 76), General Provisions, B. Scope of Application, 9.

151. Barbara Oomen, ‘Cities of Refuge: Rights, Culture and the Creation of Cosmopolitan Cityzenship’, in Rosemarie Buikema, Antoine Buyse, Ton Robben (eds.), *Culture, Citizenship and Human Rights* (Routledge, 2019).

152. Kecioren Migrant Service Centre, Sultanbeyli Association for Refugees (administered by local officials) and Bagcilar Municipality register persons under temporary protection in their local registries, in order to better plan for, prioritise, provide services and realise the rights of persons otherwise invisible from the data available to local governments. Additionally, Southern Italian cities register refugees when explicitly prohibited by national government to avoid Dublin obligations. There is a vast amount of social science literature on the contestations of citizenship that is impossible to include in this paper. See Maurizio Ambrosini, Manlio Cinalli and David Jacobson (eds.), *Migration, Borders and Citizenship* (Palgrave Macmillan 2019); Willem Maas (ed.) *Multilevel Citizenship* (UPP 2013); Rose Cuisson Villazor, ‘Sanctuary Cities and Local Citizenship’ (2010) 37 *Fordham Urban Law Journal* 573.

actors<sup>153</sup> with the possible future implication of international legal personality. Some kinds of engagement on the other hand challenge the very fundamentals of international law, such as its State-centricity, rules concerning inclusion, exclusion and participation of actors other than the nation-State, and its systemic rules on sources and law-making. Most engagement with human rights falls somewhere in a spectrum between the two poles of accepting a State-centric international legal system and contesting its very fundamentals.

To offer a few examples of local governments' engagement *within the rules* of the traditional international legal system; local governments engage in the *Implementation of Human Rights* as State organs, implementing States' human rights obligations within their local jurisdiction, and in the *Formation of Human Rights*, by contributing to the accumulation of State practice and *opinio juris* as internal elements of the State. They may however also foreground their autonomy and non-State character by seeking a separate seat at the table when international agreements are negotiated in State-centric law-making processes as part of *Formation*. They may also pursue *Implementation* of norms that their States have not expressed consent to be bound by, that were however established in traditional State-centric ways. These latter two attempts will often go unnoticed by the conservative international lawyer.

There are many types of engagement that substantially challenge the fundamentals and functioning of international law, creating *alternative or complementary understandings* of what human rights and international law are, and how they should be realised. For instance, in the *Contestation of Human Rights* local governments challenge the State-centricity of law-making and the capacity to enter into obligations, the State-centric understanding of citizenship, as well as the overreliance on the legal status of individuals for the protection and realisation of their human rights. Accordingly, some local governments and networks of local governments have produced serious amounts of norms<sup>154</sup> in order to protect and realise human rights in their localities to a better extent than national governments. Though State-dominated processes such as the work of UNHRC have addressed this engagement in passing, there is yet no thorough unpacking of what the quasi-legal norm-creation and commitments by local governments means for legal theory.<sup>155</sup> Local governments engaging with human rights will often not choose between the two strategies but instead resort to both seeking involvement in traditional international legal processes and also to creating their parallel body of practice on 'human rights in the city' – focussing more on the latter when there is higher frustration and impatience regarding the expectation towards the State-centric system to recognise and include them.

Second, how the international lawyer interprets local government engagement will depend on the observer's subjectivity. If the observing international lawyer has a more traditional or conservative understanding of the international legal system, some few forms of engagement may catch this observer's attention, who might at most consider such questions as legal personality or human rights accountability for local governments. Most local government engagement will however be pushed outside the strict borders of international law under this observer's perception, and will develop *in parallel* to international law, perhaps even into a separate normative order that could be titled 'human rights in the city'. As discussed in Section 2, legal pluralism has different conceptualisations in different disciplines. While the common definition with its sociological roots refers

153. Term used by Aust in 'Das Recht der Globalen Stadt' (n 93).

154. See Sections 4 and 5.6 above for a fraction of these norms.

155. HRC (n 64) also see Durmuş and Oomen (n 147) for a forthcoming analysis.

to the parallel existence of more than one normative order in a given space and time, scholars of international law and relations, such as the New Haven Scholars have also used the term to describe a single normative order – the international legal order for instance – that was nevertheless pluralist in its nature. Excluding local government engagement from the scope of international law would thus reflect the classical, sociological definition of legal pluralist describing multiple parallel normative orders. An international lawyer understanding the ‘international legal system’ as more inclusive and pluralist however, may prefer the New Haven School approach, recognising that local governments (together with city networks, local NGOs and other actors working on the relationship between local governments and international law) have become a norm-generating community. This article supports this second approach, as then the complete array of local government engagement with international law can be taken into account as opposed to being dismissed as too radical or ‘non-law’. Even seemingly radical contestations of human rights carry important and valid criticism for international law. Additionally, even if the observer considers current local human rights engagement to fall outside the scope of positive international law, there are already instances in which local government activities have seeped into more mainstream international legal processes and the work of central international organisations.<sup>156</sup>

## 7. CONCLUSION

While mapping city engagement with human rights is challenging, it is nevertheless not as challenging as attempting to provide a summary representing of all possible implications of and perspectives of analysis for this engagement. Many important questions remain unasked or unanswered. Empirical inquiries into how much human rights influence local government behaviour, or into the extent to which local governments’ engagement with human rights improves effectiveness of rights realisation on the ground are both highly topical. One could also scrutinise the imbalance of legal, financial and political power among different local governments and their capacity to engage with and influence the development of the growing body of norms which can be called ‘human rights in the city’, discuss whether (state) consent in international law is decaying<sup>157</sup> and local governments’ contribution to it, or the significant role of academia and civil society in influencing the choices of action and eventual commitments of local governments.

The clearest lesson to be taken away by scholars of human rights and international law following this article is the following: local governments have become actors relevant and important for the protection and promotion of human rights. When they engage with human rights, they pose a critique to traditional international law and human rights, whether this is done by seeking to engage with this normative system by participating within its own terms, or by challenging the norms of belonging and norm-generation in the first place. Whether we take a stricter legal positivist perspective when looking at this engagement, or a broader socio-legal lens, local engagement with human rights has implications for both the content of human rights – in the creation of a body of norms that could be called ‘human rights in the city’ – and also for participation in international

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156. HRC (n 64); CESCR (n 145); Participant Observation in the World Human Rights Cities Forum, October 2018, Gwangju, in which an official from the Secretariat of the Advisory Committee of UNHRC stated that ‘a lot of the input was drawn’ from the former outcome documents of the World Human Rights Cities Forum, for the 2015 report that the Committee drafted on the role of local governments in the promotion and protection of human rights.

157. Nico Krisch, ‘The Decay of Consent: International Law in an Age of Global Public Goods’ (2014) 108 *American Journal of International Law* 1.



law. Even if the growing body of norms and practices making up ‘human rights in the city’ is not considered international law, there have already been instances of their influencing traditional international legal processes and thus positive international law, such as the content of Human Rights Council resolutions, the right to housing codifications and CESCR Country Reports.<sup>158</sup>

Local governments engaging with human rights are best understood as a norm-generating community as Berman of the ‘New’ New Haven School describes, creating norms and jurisdictions, with or without official authority to do so, to contest both their position in the system of international law and also the content and creation of the norms at stake. The complex pluralism in normative engagement ‘poses a particular challenge for law because law often seeks certainty and tends to assume fixed boundaries between those who are within and those who are without.’<sup>159</sup> However, norms in the international legal system have always been challenges and propositions at some point in time, put forward by persons or entities falling within or outside the body of the ‘State’. As such, discarding the norms, practices and principles that constitute ‘human rights in the city’ will keep hidden from eyes the factors, processes and actors behind the development of international law, as well as the contestations that fail to become the dominant position in the law. It will be highly interesting to continue observing what influence this normative engagement by local authorities will have on the general development of human rights and international law.

### **Author’s note**

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158. See (n 156).

159. Berman, *Global Legal Pluralism* (n 36) 323.