Chapter 12
Accelerating Cities, Constitutional Brakes? Local Authorities Between Global Challenges and Domestic Law

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Abstract Increasingly, local authorities around the world invoke international law to tackle global challenges autonomously while distancing themselves from national laws and policies, sometimes stimulated by international authorities. This chapter addresses the relevance of national constitutional arrangements for the way in which the resulting conflicts are, or are not, resolved. More specifically, how do domestic courts respond to 'accelerating cities' invoking international law as they oppose policies of the national government? Discussing cases from Germany, Turkey, France,

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the Netherlands and Spain, we offer an initial exploration of how such cases have the potential to challenge the constitutional order in federal and unitary states alike. At the same time, 'accelerating cities' are confronted with 'constitutional brakes'—barriers in national constitutional and administrative rules. Our analysis suggests that national courts may permit harmless symbolic acts, but step down, or even create a 'backlash' in the case of more consequential actions. Given the potential in local engagement with international law, and the rise of the phenomenon, it is urgent to set up systematic and detailed investigations and comparisons of the dynamics of local government law in different countries and how they are shaped by an invocation of international law in general, and human rights law in particular.

Keywords Cities · Health care · International law · Local authorities · Multi-level constitutionalism · Undocumented migrants

12.1 Introduction

With cities emerging as important actors in addressing global challenges ranging from climate change to migration,[1] some of their local authorities have begun to invoke international law in order to distance themselves from national laws and policies. New York's city plan to implement the Paris Agreement that the United States withdrew from temporarily forms a case in point.[2] Predictably, such an invocation of international law by local authorities may result in a conflict with national governments. As local authorities are not recognized within international and European law as formal actors—and thus, for instance, lack standing with international monitoring bodies and the European courts—the consequence has frequently been a deadlock that has to be resolved nationally, for instance in the highest national courts.[3]

Against this background, this chapter explores the relevance of national constitutional arrangements for the way in which such conflicts are, or are not, resolved. How do domestic courts respond to 'accelerating cities' invoking international law in a conflict with the national government? We propose the term 'accelerating cities' as shorthand for a much wider range of local (and at times other subnational) authorities and regions that are considered lower levels of government in a wide variety of constitutional dispensations. What is at stake in such conflicts is substantial, as it concerns local governments pushing the boundaries of their competences and seeking to take a leading role by meeting internationally agreed standards and thereby addressing the global challenges of our times such as migration, inequality and climate change.

In order to explore this rather uncharted territory of 'international local government law', this chapter first sets out in detail what we understand to represent a rise

[1] See, amongst others, Acuto 2013, Barber 2013, and Blank 2006.

[2] See https://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/1point5-AligningNYCwithParisAgrmt-02282018_web.pdf, last accessed 30 August 2020.

[3] On the 'invisibility' of local governments internationally, see Nicola 2012 and Oomen and Baumgärtel 2018a.

of 'accelerating cities'.[4] Next, it shortly describes the explicit attention and support that a range of international institutions has recently given to both the responsibility of local authorities to implement international law and their autonomy to do so. Subsequently, we turn to the fundamental tension that arises when local authorities (seek to) comply with the international legal obligations entered into by their national governments, even if they cannot turn to international judicial institutions to resolve the deadlock that arises. On the basis of a number of specific instances, we inquire how constitutional set-ups and domestic legislation influence the degree to which local authorities are able to follow an interpretation of international arrangements that is different from the national stance. The basis for this exploratory study are five case studies from Europe—Germany, Spain, Turkey, France and the Netherlands—which have been chosen based on the prominence of the examples of diverging local authorities as well as their variance in terms of local government law, which reveals certain comparative insights even if these are preliminary in nature. We close this chapter with a critical discussion that formulates a number of hypotheses regarding the interplay between 'accelerating cities' and the 'constitutional brakes' which arise in various countries, thereby setting out a research agenda on the topic.

12.2 'Accelerating Cities' Using International Law to Address Global Challenges

Over the past decades, local governments all around the globe have started to claim a leading role in addressing global challenges such as those laid down in the Sustainable Development Goals. Whether it concerns migration management, the realization of human rights or strengthening sustainability, local authorities have started to develop their own agendas, with objectives that are sometimes (though not always) more ambitious than those held by the national government.[5] In other words, where national governments merely talk the talk, cities decide to walk the walk.[6] Such 'accelerating cities' come in many shapes and forms, and often adopt evocative labels ranging from Cities of Refuge, Fearless Cities, Solidarity Cities, Child Friendly Cities, Sanctuary Cities to Cities for Climate Protection, or simply Sustainable Cities. Despite the immense variety of such cities and their networks, it is still possible to offer some general observations on what causes cities to 'accelerate' and how they do so in a multi-level context.

Where it concerns cities specifically, part of the explanation for 'urban acceleration' lies in the fact that they *can* take the lead in addressing global issues. First, they

[4] The term is derived from Frug and Barron 2006.

[5] See, for instance, on local action in the field of human rights, Oomen et al. 2016; for local action in the field of migration, Bendel et al. 2019; Glorius and Doomernik 2017; Zapata-Barrero et al. 2017; and for climate change Aust 2015; Kern and Bulkeley 2009.

[6] It is important to keep in mind that cities are not necessarily more proactive or effective in tackling global challenges, as is discussed critically in Aust 2015.

can do so because of their size: in 2010, the world's urban population surpassed the rural population, and the UN estimated that by 2050 68% of the world would live in cities.[7] They often also have significant resources at their disposal: many of the world's global cities have budgets that equal those of small states, and access to both the information and the capital needed to steer their own course.[8] But even smaller local governments can act on global issues because they, likewise, increasingly have the formal competencies: since the 1990s, global decentralization efforts have left local authorities with a formal responsibility for many of the domains in which global challenges can be met, like housing, education and employment. In addition, an increasing number of local governments—big and small—*want to* take the lead on global issues. Spurred by publications such as Benjamin Barber's monograph *If Mayors Ruled the World*, their actions involve an implicit or explicit critique of national inability to act on pressing problems that require concerted action.[9] As such, accelerating cities do not only seek to undertake action locally but also nationally and internationally.[10]

Of course, some local governments will be more prone and able to accelerate than others, and a large part of the upcoming social science literature on this 'local turn' is concerned with explaining why some cities start moving while others do not. Sabchev, on the basis of literature that focuses on acceleration in the field of refugee welcome and integration, first emphasizes the importance of local institutional opportunity structures such as laws, policies, political parties, local and transnational networks.[11] Next, he sets out the non-institutional opportunity structures, and the relevance of civil society, local universities and private sector actors in explaining why some cities deviate and others do not.[12] In addition to these actors, there are also structural factors at play such as the amount of available funds, the labour and housing market conditions and the availability of necessary services.[13] A final and often forgotten set of explanatory variables lies in the discursive opportunity structure: the role of local identity, public imaginaries and the story that a city tells about itself.[14] A factor that is hardly addressed in this literature, however, is the issue at the heart of this chapter: how differing national constitutions and legislation and the formal division

[7] https://www.un.org/development/desa/en/news/population/2018-revision-of-world-urbanization-prospects.html, accessed 25 October 2019.

[8] See for a wider discussion Hudson 2010; Sassen 2006.

[9] Barber 2013.

[10] See, for instance, Marcenko's 2019 discussion of local support for introducing the Right to the City in the UN Habitat III.

[11] See Sabchev 2018, available from https://citiesofrefuge.eu/publications/comprehensive-relational-model-study-local-responses-arrival-and-settlement-forced. There is more and more literature on the relevance of such city networks, such as Caponio 2019; Davidson et al. 2019; and Oomen 2020.

[12] On the role of civil society, for instance, Triviño-Salazar 2018.

[13] See for instance Ambrosini and Van der Leun 2015 and Filomeno 2016, p. 6.

[14] See, for instance, Marchetti 2020 on the narratives employed by Italian cities concerning migration.

of power they entail facilitate or hamper cities that seek to accelerate in a drive to address global challenges.[15]

Here, it should be set out that such processes of acceleration can make use of a wide range of mechanisms, in which the law often only plays a minor role. Generally, cities can seek to advance discursively, in practice or in laws and policies, in all these cases, either individually or together with other cities—nationally and transnationally. A 'mere' discursive acceleration takes place when local leaders explicitly invoke global goals in speeches or demonstrate normative engagement with international issues by adopting non-binding local resolutions or in signing international declarations. The choice of many cities to speak of a climate emergency instead of referring to global warming is a case in point.[16] Such speech acts can, be need not, be coupled to more practical actions to work towards global goals. A next step is the adoption of actual laws and policies which explicate and refine the ambitions and provide them with a normative basis.

Such a normative basis can either be derived from *lex lata*, i.e. existing international law (the scope of this chapter) or resemble international law in form or substance. In terms of process, cities increasingly meet in virtual replicas of intergovernmental fora, which sometimes run parallel to them: during the 2018 Intergovernmental Conference to adopt the Global Compact for Safe, Orderly and Regular Migration, for instance, the Mayoral Forum on Mobility, Migration and Development met in the same town of Marrakech.[17] In such fora, networks of mayors and other city officials set standards and agree on monitoring mechanisms strongly following the form of international law. In terms of substance, they also replicate the language on international law in setting out new rights, such as the 'right to the city' discussed elsewhere in this Yearbook. This new right has by now been codified in a wide variety of local ordinances and regulations and is increasingly recognized nationally and internationally.[18]

Within this whole amalgam of soft law and hard law mechanisms for acceleration, this chapter zooms in on those cities using *lex lata*, existing and binding international agreements to decouple their policies from those of the national government as they, to keep with the metaphor, try to 'go the extra mile'.[19] In addition, we focus on the cases in which such decoupling results in a conflict with the national government. To be sure, this need not be the case: in many instances, local investment in meeting global goals is in line with local competencies and discretion. In many cases, the interests of local and national actors will also be aligned. In others, however, the multilevel context of decision-making generates a tension between the national government's understanding and implementation of its own international obligations and local

[15] See, however, Hirschl 2020 for a rare but critical discussion of these aspects.

[16] In October 2018, 188 jurisdictions in 18 countries had declared such an emergency: https://iclei.org/en/media/iclei-members-are-leading-the-climate-emergency-movement, last accessed 28 October 2019.

[17] Oomen 2020.

[18] See Chueca 2016.

[19] The term decoupling is derived from the public policy literature, most notably Scholten 2015.

governments' grasp of, and will to implement such obligations, often supported by international and supranational organisations.[20] In order to properly assess the role of these organizations, we now briefly turn to the way in which they have related to these accelerating cities.

12.3 International Support Fuelling the Rise of Accelerating Cities

As they seek to invoke international law to meet internationally agreed standards, local authorities have increasingly received support from international and supranational organizations. These have at times come to reach out directly to local authorities, and to stimulate the formation of local authority networks dedicated to specific global goals like children's rights, sustainable development goals or human rights in general. Moreover, they have drawn up a wide variety of resolutions, reports, policies and other forms of—mostly—soft law in which they stress the need for human rights *awareness* by local authorities, explicate their *responsibility* to act upon the relevant global goals, as well as, in the most progressive cases, their *autonomy* to act upon them. In order to show the degree to which 'the international' fuels local acceleration, this section reviews a number of these instruments.

Within the United Nations, the Human Rights Council formally started to consider the role of local government in the promotion and protection of human rights in 2013.[21] This resulted in a number of resolutions and reports, which have also increasingly emphasized the Sustainable Development Goals.[22] In 2015, an Advisory Committee stressed the need to develop guiding principles on local government and human rights, in order to clarify the role of various actors and institutions in human rights protection and promotion.[23] Additionally, in 2019, the Office of the High Commissioner for Human Rights issued a research-based report showing the wide variety of instances of local governments taking human rights initiatives and working towards the Sustainable Development Goals.[24] It emphasized the role of the UN as a 'convening power' to provide space for local government discussions

[20]The term multilevel government is derived from EU Studies, most notably Hooghe et al. 2001. It results in a situation of constitutional pluralism (Avbelj and Komárek 2012; Maduro 2009) of which the current topic of discussion is a manifestation.

[21]By means of UN Human Rights Council Resolution 24/2. Local government and human rights, A/HRC/RES/24/2, of 8 October 2013, which in turn built upon work by its advisory committee, with the mandate repeated by means of UNHRC Resolution 27/4 of 25 September 2014.

[22]UN Human Rights Council Resolution 33/8. Local government and human rights, A/HRC/RES/33/8, of 29 September 2016.

[23]UN Human Rights Council, Role of local government in the promotion and protection of human rights—Final report of the Human Rights Council Advisory Committee, A/HRC/30/49, of 7 August 2015.

[24]Local government and human rights Report of the United Nations High Commissioner for Human Rights, A/HRC/42/22, of 2 July 2019, as discussed in the Human Rights Council in September 2019.

on these themes.[25] It also pointed to the challenges faced by local governments in promoting and protecting human rights, such as the lack of autonomy, difficulties in liaising with other levels of government, financial constraints and changing agendas of national governments.[26] In conclusion, it held that central government might have the primary responsibility for the promotion and protection of human rights, but that 'local government has an important complementary role to play', subsequently calling for increased involvement of local government in human rights mechanisms and for strengthening their awareness of the themes at hand.[27] This emphasis on the importance of awareness, on local governments' responsibilities and on the need for autonomy is also found in the work of treaty monitoring bodies.[28] Likewise, UN special rapporteurs have not only come to meet with local governments, but to also address them directly.[29]

Specialized UN bodies have also begun to stress the importance of local authorities over the past years, providing them with platforms to meet and reaching out to them directly. Such interest comes out of an iterative process, in which local authorities strive to be recognized and to influence international processes of standard-setting. UN-Habitat, for instance, paid an unprecedented amount of attention to local governments in its 2016 New Urban Agenda and followed their input in recognizing the right to the city.[30] Whilst recognizing the role of countries' national legislation, it also committed for the first time to 'strengthening the capacity of subnational and local governments to implement effective local and metropolitan multilevel governance, across administrative borders'.[31] Concerning the climate crisis, the 2016 Paris Agreement recognized that 'adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions'.[32] In the field of migration, the 2018 Global Compact for Safe, Orderly and Regular Migration explicitly mentioned the role of local authorities as key partners.[33]

The UN interest in strengthening local government awareness, responsibility and autonomy in dealing with global challenges is relatively recent and builds upon efforts undertaken in Europe. In the Council of Europe (CoE), for instance, the Monitoring Committee of Local and Regional Authorities started to explicate the role of local

[25] *Ibid*., para 49.

[26] *Ibid*., para 51.

[27] *Ibid*., paras 61 and 65.

[28] See, for instance, the recommendations of the Committee on Economic, Social and Cultural Rights to Sweden in E/C.12/SWE/CO/6, para 8. Other treaty monitoring bodies have emphasized the need for participation of ethnic minorities, persons of African descent and women in local government; for an overview, see A/HRC/42/22 para 43.

[29] See, for example the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, A/HRC/28/62, 22 December 2014.

[30] (Habitat III, 2017), United Nations, Habitat III, New Urban Agenda, 2017.

[31] *Ibid*., para 90.

[32] United Nations, Paris Agreement, FCCC/CP/2015/L.9, as adopted 15 December 2015.

[33] UNGA, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, 19 December 2018, para 44.

and regional authorities in fields like education, housing, health, the environment and law and order in 2010, and the relevance of human rights to all these fields.[34] It called for awareness-raising, but also for the setting up of structures to review local human rights implementation.[35] This was followed by the development of indicators for considering human rights at local and regional level.[36] In 2019, it published a handbook depicting local authorities as 'important actors at the forefront of human rights protection' and setting out local responsibility in terms of non-discrimination.[37] Focused on obligations specifically, it highlighted that human rights are part of their competencies and that non-compliance 'can trigger national and international legal consequences'.[38] The process of explicating local responsibilities also takes place in EU bodies, such as the Fundamental Rights Agency (with its vision of 'Joined up Governance'[39]), the Committee of the Regions,[40] and in setting the EU's Urban Agenda. As international and supranational bodies emphasize the importance of local autonomy in attaining these goals, existing instruments such as the European Charter of Local Self-Government take on renewed importance.[41]

In short, there is a general trend in international and supranational organizations to not only stimulate an awareness amongst local authorities of their role in meeting global goals, but also towards explicating their autonomy to act upon obligations of international law. The next section will provide some examples of local authorities acting upon this trend in such a manner that it leads them to a conflict with the national government.

12.4 Accelerating Cities and 'Constitutional Brakes': Examples from Domestic Case Law

We will now consider a number of examples starting with a classic case that arose in Germany, a federal state, before turning to instances in Spain (as a quasi-federal country) and finally in more unitary states like Turkey, France, and the Netherlands. As stated, the choice for these specific countries in this explorative study is based on the prominence of the legal cases and the fact that they have therefore also been relatively well-documented in scholarship. Moreover, the states also display a significant variance in terms of their constitutional arrangements, which enables us to set

[34] See for an overview of the documentation, Congress of Local and Regional Authorities 2018.

[35] Council of Europe Congress of Local and Regional Authorities, Recommendation 280 (2010), as revised 2011, and Resolution 296 (2010) revised, at 5.

[36] Molin 2011.

[37] Council of Europe 2019.

[38] *Ibid*., p. 17.

[39] EU Fundamental Rights Agency 2012.

[40] See, for instance, Levarlet et al. 2019.

[41] Council of Europe, European Charter of Local Self-Government, ETS no. 122, 1985, as ratified by all Council of Europe member states.

out some interesting (albeit only preliminary) comparative observations. They also have a combined population of almost 300 million people, which illustrates the potentially broad impact of accelerating cities confronting constitutional brakes. Finally, it should be mentioned that there certainly are other examples that could not be covered due to the limited scope of this chapter. In Italy and Switzerland, for example, one can find similar struggles between sub-national entities and national governments, again with varying outcomes in national courts.[42]

12.4.1 Germany: Early Rulings Limiting the Competencies of Local Authorities

Controversies surrounding 'local foreign policy' (*Kommunale Außenpolitik*) in Germany show that local authorities have for a long time been confronted with constitutional barriers to their autonomy.[43] The potentially relevant constitutional provisions are in this context Articles 28(2) and 32 of the German Basic Law: the prior guarantees the right of municipalities (*Gemeinde*) to local self-government (*gemeindliche Selbstverwaltung*) whilst the latter establishes the conduct of foreign relations as a principally federal competency, with certain limited competencies for the *Länder*, of which municipalities form a legal part, insofar as it concerns consultation and their own power to legislate.[44] The resulting legal framework arguably provides a significant though nonetheless circumscribed space for local authorities to act at the international level, with two seminal decisions of the Federal Administrative Court (*Bundesverwaltungsgericht*) being crucial in setting out their constitutional dispensation.[45] Both shall be briefly accounted for at this point.

The two decisions both hail from 1990 and concerned to initiatives by the two cities of Munich and Fürth to join an international movement against nuclear weapons.[46] More specifically, the City of Fürth joined the international network 'Mayors for Peace' that the cities of Nagasaki and Hiroshima had created by the end of the 1980s. This decision was challenged by the government of Mittelfranken, which is a part of the *Land* Bavaria, as beyond the competencies provided by the German Basic Law. The Federal Administrative Court disagreed, clarifying that concluding inter-city partnerships, including at the transnational level, was an inherently municipal activity in character and thus within the scope of Article 28(2) of the Basic Law.[47] In addition, it could not be construed as falling within Article 32 of the Basic Law given the fact that local foreign policy was not generally considered to be a

[42] See Piccoli 2016 and Piccoli 2018.

[43] For a detailed recent analysis, see Aust 2017.

[44] Grundgesetz, Articles 28(2) and 31(1–3).

[45] Aust 2017, pp. 115–118.

[46] Aust 2017, p. 115.

[47] BVerwGE 87, 237, 238.

part of foreign policy,[48] which the provision construes rather narrowly as encompassing only the relations between the classical subjects of international law.[49] If this decision taken alone suggests a very broad competency for municipal authorities to engage internationally, it finds its limits in the decisions concerning City of Munich, which was handed down on the same day.[50] Here, the Court was confronted with the question whether Munich could declare itself a 'nuclear-free zone', which it answered in the negative: touching upon federal defence and foreign policy considerations, the measure required proof of a specific relation to local considerations that was not given in the present case.[51] Looking at both outcomes combined, Aust concludes that the resulting constitutional dispensation is characterized by 'a certain ambivalence' where the local level is equipped with potentially far-reaching authority regarding symbolic measures (such as entering into transnational networks) while it is far more restrictive as regards policies that would have tangible political consequences.[52] International law arguments were not put forward in these cases, which is unsurprising given their relatively early date and the fact that they did not raise any specific issues of international law.

Several other potentially relevant principles can be deduced from German doctrinal literature and case law: for example, local authorities as legal organs of the *Länder* are likely bound by principle of loyalty (*Bundestreue*),[53] which implies, for instance, that they cannot undermine foreign policy objectives formulated at the federal level.[54] At the same time, border localities in particular enjoy some constitutional latitude according to Article 24(1) of the Basic Law to delegate local competencies to institutions dedicated to the 'neighbourly' solution of cross-border problems.[55] To sum up, the German constitutional system formulates a broad set of relatively open principles that create some meaningful dispensations for local authorities especially where specifically local issues are at stake. Yet, it also circumscribes their role vis-à-vis the federal state, leaving a grey zone of potentially (but not necessarily) legitimate local action that federal courts will have to clarify if municipalities continue or even expand their engagement at the global level. It is noteworthy in this context that the German legal system does not know a political questions doctrine that would defer foreign policy matters to the executive.[56]

[48] Aust 2017, p. 240.
[49] Aust 2017, pp. 74–75.
[50] Aust 2017, p. 117.
[51] BVerwGE 87, 228, 231.
[52] Aust 2017, p. 118.
[53] BVerfGE 8, 122.
[54] Aust 2017, p. 127.
[55] Aust 2017, pp. 133–134.
[56] Folz 2011, p. 244.

12.4.2 Spain: Local and Regional Actions Pre-empted by the Constitutional Court

The German cases were related to the international activities of municipalities. Increasingly, however, local authorities also directly invoke international *law* to support desired local policies. One telling example is the semi-federal country of Spain, which saw a stand-off with a 'glocal' interpretation of international law on the one side, and a national interpretation seconded by courts on the other.[57] Here, the litigants were undocumented migrants and those representing them, and the right at stake in the Spanish disputes between the local and the national revolved around the right of access to health care. The issue became contentious with the passing of Royal Decree 16 of 2012, a piece of legislation that held that non-nationals needed to be registered in order to access health care. The Decree, an austerity measure responding to the country's fiscal woes, substantially redefined the earlier policy of universal access, limiting emergency care to pregnant women, children under 18, asylum seekers and victims of human trafficking.[58]

A number of subnational authorities and cities protested and continued to offer such care. In response to the Decree, 12 out 17 autonomous regions passed specific laws and departmental directives aiming to continue to provide universal access.[59] This decoupling can be understood against the Spanish background of a semi-federal State in which many subnational authorities (most notably the Basque country and Catalonia) have long sought to 'decouple' their policies from those of the national government in a wide variety of fields. Barcelona might well be the most famous instance of this, as one of Europe's first and most active human rights cities with clear progressive policies on migration and integration.[60] In Barcelona and elsewhere, the continuation of access to health care for undocumented migrants was thus founded on the basis of international human rights law.

As in the other countries discussed, the disputes between local and subnational authorities and the State eventually made it to the Constitutional Court. This Court, for one, nullified Basque legislation in which the Autonomous Region guaranteed access to health care for those excluded by the 2012 Decree, in particular undocumented migrants, and paid for this from its own budget.[61] A divided Court ordered that it

[57] In this context, the term 'glocal', as a combination of global and local, seeks to signify the way in which citizenship in a given locality and the rights that it has to offer become shaped in the permanent interplay between international, national and local authorities. It highlights that developments at the local level are constitutive of what happens globally, and the relationship between the global and the local is dialectical rather than unidirectional (Bauman 1998; Oomen 2018; Papisca 2011; Randeria 2003).

[58] Peralta-Gallego et al. 2018.

[59] CESCR 2017. Peralta-Gallego et al. 2018 offers a full overview of the mitigating legislation passed, in the end, in 15 out of Spain's 17 autonomous regions.

[60] On Barcelona as a human rights city, see Grigolo 2011. More specifically on Barcelona's policies towards migrants: Agustín and Jørgensen 2019; Gebhardt 2016.

[61] Constitutional Court (Spain), 134/17, judgement of 16 November 2017, published in Boletin Official d'Estado, 20 December 2017, 15179.

was the exclusive competency of the State to regulate basic rights in order to ensure the equality of all Spaniards, and that the Autonomous Region was not allowed to expand these rights following the international interpretation. In a separate case, a decree passed by the Valencian Community was also nullified.[62]

This, in turn, led to concern with the CESCR, which, in its Concluding Observations on Spain, responded by emphasizing that 'decentralization and autonomy can encourage implementation of the Covenant' and that it remained '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'. In addition, it highlighted 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, finally adding that '[u]niform, 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'.[63] Whereas the Constitutional Court had implicitly cautioned against 'accelerating cities' in emphasizing the importance of equal treatment of all Spaniards, the CESCR made the opposite argument in urging Spain to 'reduce unjustifiable inequalities between the autonomous communities with regard to the enjoyment of economic, social and cultural rights, by improving the enjoyment of those rights in disadvantaged regions, while not impeding the efforts of individual autonomous communities to provide, by means of their own resources, fuller protection for certain rights within their territory'.[64]

Here, as in many such cases, the stand-off remains, pushed into the realm of pragmatic solutions, unseen actions, and unclear policies. To the detriment of the people concerned, it has not been fully resolved.

12.4.3 Turkey: Local Authorities Litigating the Right to Water

Of course, Germany is a federal state, and Spain is characterized as semi-federal. Over the past years, however, instances of local authorities invoking international (human rights) law have come up in many unitary States, such as Turkey. Here, the case revolved around the right to water. In the municipality of Dikili, a local government representing a town of 44,000 in the province of Izmir, leading officials were charged with 'abuse of power' by a prosecutor in April 2008 following the complaint of an auditor of the Court of Cassation regarding the distribution of the first 10 tons of tap water per household free of charge, a 50% discount for local government employees, and a city council decision to forgive citizens' debt in interest

[62] Constitutional Court (Spain), 145/17, judgement of 14 December 2017.

[63] UNCESCR, Concluding Observations on Spain, E/C.12/ESP/CO/6, of 25 April, para 11 in referring to Articles 2(1) and 28 of the ICESCR.

[64] *Ibid*., at 12, in also referring to a previous recommendation (E/C.12/ESP/CO/5, para 9).

rates for unpaid water bills.[65] The decisions of the municipality were based on the one hand on an understanding of water as a human right, along with many other socially progressive decisions such as free public transport, cheap bread produced by municipality-owned bakeries, as well as medical examinations for 1 Turkish Lira (0.15 Euro-Cents) at the Municipal Health Care Centre.[66] On the other hand, the municipality sought to encourage households to use no more than 10 tons of water per household, in an attempt to combat climate change and water insecurity in the region.[67]

The case in the Dikili Criminal Court of First Instance was against the then Mayor Osman Ozguven, the former Mayor Yuksel Ucar, as well as 18 former and current city council members, and continued for two years.[68] The legal dispute concerned two pieces of domestic legislation that (a) set a minimum profit rate of 10% as a standard for municipal service provision, and (b) prohibited public bodies to make discounts or provide free services unforeseen in the law.[69] Throughout the legal proceedings, the left-wing Mayor and his colleagues employed a discourse of water as a human right, and invoked the European Charter of Local Self-Governance, which Turkey has ratified with a number of limitations, as well as international legal instruments containing the right to water.[70] In addition to this, the accused made public statements throughout the process that local governments were public institutions and not businesses, so their main rationale in decision-making should be public benefit.[71] A claim that the prosecution was a violation of the constitution and a request for it to be seen before the Turkish Constitutional Court was also brought forward and rejected. The municipal officials argued that the national government was transgressing into the jurisdiction and autonomy of local government competencies, violating multiple clauses of the Constitution, including the provision that the Turkish Republic is a "Social State", Article 127 of the Constitution on local government competencies, as well as the European Charter, which, being a ratified treaty, according to the Turkish Constitution has the status of law, and cannot be challenged on constitutionality.[72] All of those charged in the case were acquitted by the Court in 2010 upon the Prosecutor's request, where the latter stated that "no practice undertaken for public good can be considered a crime".[73]

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[65] Gultekin 2008.

[66] Gultekin 2008.

[67] Gultekin 2008.

[68] Cumhuriyet 2010.

[69] Cangi 2011, p. 66. The Domestic Legislation are the Law Nr. 2560 titled "İstanbul Su ve Kanalizasyon İdaresi Genel Müdürlüğü Kuruluş ve Görevleri Hakkında Kanun", Article 23; and Law Nr. 4736 Kamu Kurum Ve Kuruluşlarının Ürettikleri Mal Ve Hizmet Tarifeleri İle Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun, Article 1, adopted 19 January 2002.

[70] Cumhuriyet 2010; Gultekin 2008.

[71] Bakircay 2008.

[72] Bakircay 2008; Constitution of the Republic of Turkey, Articles 2, 5, 90 and 127.

[73] Cumhuriyet 2010.

As cases before courts of first instance are not published in Turkey, we do not have access to the full decision of the Court. However, from a summary of the decision, we understand that the Court based its decision for acquittal on (a) the non-materialisation of the elements of the crime, such as the intention to harm the public or the objective to acquire personal gain; as well as (b) the principle of equality in the Constitution,[74] based on which providing discounts and free services for the general public could not be criminalised as long as the law permitted for such free or discounted services for some vulnerable groups.[75] There is no indication that the Court engaged in any of the arguments relating to international law.

The Mayor, former Mayor and city councillors as well as their attorneys made public statements after hearings as well as following the acquittal, in which they stated that they considered the case to set a legal precedent—nationally as well as internationally—confirming the right to water as a human right, and encouraged municipalities all around the world to follow their lead.[76] The case has indeed found attention, at least in domestic debates, about the right to water as an international right, as demonstrated by the references by Turkish academics and practitioners to the case and interviews conducted with the Mayor of Dikili during the International Symposium on the Right to Water organized by the Social Change Association in Diyarbakir.[77] The case made national and local news, and gathered significant sympathy for the local government's cause for social municipalism.[78] It is significant in this case that the local government of Dikili sought to realise the right to water through a policy more progressive than those of the national government, and sought the support of international law both with regards to the substance and existence of the right to water as a positive right in international law as well as the formal question of the autonomy of local governments, which was brought forward by reference to the European Charter of Local Self-Governance.[79]

12.4.4 France: Communes Invoking International Law to Strengthen Social Justice Locally

Many cases in which municipalities invoke international (human rights) law concern undocumented migrants, as was the case in Spain. In another unitary State, France, the rights of undocumented migrants also formed a reason for local authorities to resort to references to international law to decouple their local policies from those of the national government. One successful instance of such local invocation of

[74] Constitution of Turkey, Article 4.

[75] See the summary of the decision provided in a paper prepared for the International Symposium on the Right to Water by the defence attorney in the case Arif Ali, Cangi 2011, p. 67.

[76] Cumhuriyet 2010.

[77] International Symposium on the Right to Water 2010.

[78] Gultekin 2008.

[79] Bakircay 2008.

international law was that of Grande-Synthe, a small *commune* of 22,000 inhabitants to the North of Dunkirk and close to Calais.[80] Here, over the past years, over a thousand of migrants have set up camp hoping to migrate to the United Kingdom. In 2018, the French government and the urban community of Dunkirk started to evict the persons concerned, a number of whom quickly moved back to a nearby wood. In response, and in opposition to the government, the *commune* decided to enable 200 migrants to take shelter in the gym, the youth hall and the centre of popular culture: a number which quickly grew to 700.

In addition, the *commune* joined a lawsuit drawn up by nine NGOs, in which it called for setting up an adequate emergency shelter, stopping the expulsions of the homeless people into the woods, setting up showers, taps and sanitary services, providing food to the homeless and informing people of their rights.[81] In June 2019, the Conseil d'Etat granted part of the claim, ordering the prefecture to set up showers and sanitary services and to inform migrants of their rights. Concerning adequate emergency shelter for all, the Council pointed at the distinction between asylum applicants and those whose application had been rejected—the latter would only have right to such shelter in exceptional circumstances.[82] It held that it was up to the State to decide on measures for shelter, provided that these would comply with the principle of human dignity as codified in the French Constitution, and the prohibition of cruel, inhumane and degrading treatment. Where it concerned the evictions it also held that these were permissible given that the applicants could benefit from emergency shelter and that, in any case, the material conditions in the camps were bad.[83] In response to the ruling, the mayor indicated that he would demand for compensatory action to be taken by the state.[84]

The background to this local action, as so often, can be found in a mayor and a community with a strong commitment to human rights. At the 2018 New Year's reception, for instance, the mayor explained why he opened emergency shelters for those living in the woods nearby, in stating that Grand Synthe was a place of the future, solidarity and courage, calling upon the French government to honour both the French Déclaration des Droits de l'Homme but also the Universal Declaration of Human Rights, of which the 70th anniversary was celebrated in the village.[85] In Grande Synthe, he held, the social services (CCAS) ensure that no one slept outside, whilst the responsible authorities did nothing. 'The law', according the mayor, 'obliges us to do the minimum', 'even if it means taking on the highest authorities'.[86] The same willingness to invoke international law to strengthen social

[80] See Conseil d'Etat, Le Juge des Référés, Ordonnance du 21 Juin 2019, No 431115, at 1.

[81] *Ibid*.

[82] *Ibid*., at 11.

[83] *Ibid*., at 20.

[84] Le Monde and AFP 2019.

[85] Discours de la cérémonie des vœux du maire, Damien Carême, 13 Janvier 2018, https://www.ville-grande-synthe.fr/2019/01/14/discours-de-la-ceremonie-des-voeux-du-maire-damien-careme/, accessed 7 November 2019.

[86] La loi nous oblige à faire un minimum/Et ce, même s'il faut affronter les plus hautes autorités.

justice locally and to hold the State accountable was apparent in another lawsuit lodged by the same municipality: the first claim against the French government for climate inaction.[87]

12.4.5 The Netherlands: Questions of Local Authority Reach the European Level

The Netherlands, as a decentralized but unitary state, has also had its share of local authorities invoking international law. As we have described extensively elsewhere, a Dutch coalition government of Liberal Democrats and Social Democrats in 2012 led to a governmental policy of prohibition of emergency shelter for undocumented migrants.[88] Municipalities, for both principled and pragmatic reasons, opposed these policies and opted to—in open contravention of the governmental position—offer what came to be called 'bed, bath, bread'—emergency shelter. As one of these municipalities, the human rights city of Utrecht was closely involved in starting two lawsuits that eventually were heard by the European Committee on Social Rights (ECSR), which—generally formulated—concluded that the Dutch policies formed a violation of human rights obligations.[89] On the basis of this 'international explication that can then be taken back to the locality' the Utrecht court, not much later, referred extensively to these rulings in setting out that Article 8 ECHR put a positive obligation upon the State to provide undocumented migrants with shelter, food and clothing, irrespective of their cooperation with their expulsion.[90] This, in turn, offered the municipality of Utrecht a formal basis to continue its humanitarian policies.[91]

The national government was less pleased with the ruling, and first tried to evade its consequences by stating that ECSR decisions were non-binding and that the Netherlands had excluded non-nationals from the application of the European Social Charter.[92] This led to a partially legal, partially political tug-and-pull in which the CoE Council of Ministers endorsed the decision, and other human rights bodies also emphasized how a non-conditional right of access to shelter constitutes a human

[87] Le Monde 2019.

[88] See Baumgärtel and Oomen 2019; Oomen and Baumgartel 2018; and Oomen 2014, Chapter 7.

[89] ESCR, *European Federation of National Organisations working with the Homeless (FEANTSA)* v. the Netherlands, judgment of 9 July 2014, Complaint No. 86/2012, and ESC, *Conference of European Churches (CEC)* v. the Netherlands, judgement of 1 July 2014, Complaint No. 90/2013, both published 10 November 2014.

[90] The quote comes from an interview with the lawyer that put the case forward, mr P. Fischer, 20 May 2011.

[91] The Hague Aliens Court (seat: Utrecht), 201500585/1/V1, judgement of 23 December 2014, ECLI:NL:RVS:2016:581.

[92] House of Representatives II, Parliamentary proceedings 2014–2015, 1937–1940, *Brief van de Staatssecretaris van Veiligheid en Justitie*, 18 December 2014.

right.[93] In 2017, for instance, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern at the government's threat to sanction municipalities that continued to provide shelter to undocumented migrants, and reiterated that the ICESCR did not allow the Netherlands to make access to food, water and housing conditional on an individual's willingness to return to his or her country of origin.[94] With increased politicization of the issue the Dutch State also, in international fora, stated that it did offer emergency shelter, be it at a number of centralized locations.[95] Municipalities did not agree with this position, accusing the government of 'living in a paper reality' and ignoring the fact that they were confronted with homeless undocumented migrants in their streets.[96]

This stand-off between a number of municipalities and the national government also took the form of a number of disputes, on which the two highest Dutch administrative courts ruled on the same day. One case concerned the question as to whether undocumented migrants in Amsterdam had an unconditional right to shelter, a question answered affirmatively by the Amsterdam District Court at an earlier stage. The Central Appeals Tribunal, however, held on appeal that the municipality of Amsterdam could refuse such applications and refer migrants to central locations, where the State would have the discretion to put conditions (like cooperation with return) upon access to shelter.[97] This understanding—in line with that of the Dutch government, and opposed to that held by both international human rights bodies and local authorities—was reiterated by the Administrative Appeals division of the Council of State, which ruled that Articles 3 and 8 ECHR only oblige the State to offer shelter to that undocumented migrants in 'special circumstances'.[98]

[93] See Commissioner for Human Rights, 'Report by Niels Muiznieks Following His Visit to the Netherlands from 20–22 May 2014', (Strasbourg: Council of Europe, 2014), 126–29; Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the human rights of migrants, NL 1/2016, 25 February 2016.

[94] UNCESCR, Concluding Observations on the Netherlands, 23 June 2017, E/C.12/NLD/CO/6, paras 39 and 40.

[95] See European Court of Human Rights, *Hunde v. the Netherlands*, judgment of 5 July 2016, 17931/16, para 5.

[96] Dutch Association of Municipalities, Letters to the chair of the parties in parliament, 28 April 2015, ECSD/U201500740.

[97] Central Appeals Tribunal, cases 14/4389 WMO, 15/5095 WMO, 14/4382 WMO, 15/5094 WMO, 14/4387 WMO, 15/5093 WMO, 26 November 2015.

[98] Appeals Division of the Council of State, case 201500577/1/V1, 26 November 2016. Because of the focus of this chapter, we refrain from discussing the subsequent steps, such as the *Bestuursakkoord*, also because this did not address the fundamental tension in the interpretation of human rights obligations between the national government and local authorities.

12.5 Discussion: Researching Local Authorities Invoking International Law before Domestic Courts

The foregoing set of cases portrays a legally diverse and dynamic field of engagement that includes federal, quasi-federal and unitary states. Whilst it is commonplace by now to claim that local authorities act in an increasingly assertive manner at the international stage,[99] we can discern another trend: they may even be willing to pick legal battles against 'superordinate' levels including the national government. This is no coincidence given the (essentially legal) processes of devolution and decentralization that have taken place in many countries and the growing attention that international actors pay to their functions and responsibilities. As we have argued elsewhere, cities in particular have become a new 'frontier' in international law, their involvement in law-making processes providing a chance to reinforce the effectiveness and the legitimacy of norms that have come under pressure in recent times.[100] The growing international interest in local processes is, in turn, likely to 'pull in' municipal authorities and other sub-national actors. As they are trying to cope with newly found tasks and competencies, they begin to recognize that new opportunities await them at the international level. Taken together, the novel linkage and changed domestic contexts reinforce emergent tendencies of a 'decoupling' of local from national policies, with confrontation turning into a viable strategy.[101]

The examples discussed here point towards two general trends. The first lies in the observation that such legal stand-offs are not only merely a theoretical possibility but already an empirical reality. Cities like Utrecht in the Netherlands, the Spanish regions, or Grande-Synthe in France contest more or less openly policies that derive from 'superordinate' levels, defending their interest even when it is possible or even likely that they will pay a political price. In some cases, such 'defiance' seeks to achieve systemic change,[102] with different cities joining forces against the national government; again, we can point to the Netherlands as a relevant example. Moreover, we see nascent trends of increased invocation, where relevant, of international law and more specifically international human rights law to challenge the legal permissibility of national policies rather than only their political rationale. With law being potentially both a shield and a sword,[103] local authorities in cities such as Dikili in Turkey have also discovered them as tools for defending their own local policies vis-à-vis actors that disagree with them. Put simply, a recourse to international law promises to give sub-national authorities the chance to put constitutional order on its head even where they do not, from the perspective of local government law, enjoy any specific competencies.

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[99] E.g. Acuto 2013, Barber 2013, Aust 2015.

[100] Oomen and Baumgärtel 2018a.

[101] Oomen 2020.

[102] *Ibid*.

[103] Handmaker 2019.

The second finding marks a counterpoint to the first one. Our examples show that cities and other sub-national authorities are still confronted with very real barriers to their ambitions in national constitutional and administrative rules. This is not a new insight even when it comes to their rise at the international law. Frug and Barron stress that 'cities… can exercise power only within the legal frameworks that others have created for them', which 'largely determine the legal status of cities, and… have a major influence on both the experience of city life and the practice of local self-government'.[104] We certainly agree. Even the most proactive cities like Utrecht or Barcelona have to live with constitutional constraints to their local authority. The mere fact that these are increasingly trying to overcome those limits does not automatically decrease the latter, which remain very palpable.

A few more far-reaching conclusions can be drawn from our study of the examples especially when combined with more general theoretical and doctrinal considerations. A look at the older German cases on nuclear-free zones shows that domestic judiciaries are well-placed to use the law as a filter for local government policies, making a distinction between 'harmless' symbolic acts that are within their competences and more consequential actions that, arguably also for that reason, are held to infringe upon competency areas of the national state. Such rulings that are deferential to the national government are to be expected even international human rights law is being invoked, with the Netherlands being a point in case. Moreover, due to the lack of standing of sub-national authorities before international tribunals, the exhaustion of local remedies equates to an exhaustion of all remedies.[105] As seen in the cases concerning emergency shelter for undocumented migrants in the Netherlands, reaching that next level then requires a completely novel and separate legal claim by a different actor, normally an individual or NGO. In such a case, the recalcitrance of local authorities becomes a costly and essentially redundant detour, at least legally speaking. Such strategic considerations are salient especially in constitutional settings where judiciaries are known to be more accommodating to national governments.[106] More generally, it would be premature to assume that any domestic court is by default the ally of a local administration when the contrary could just as likely be the case.[107]

Such considerations bring us to related questions of legal culture. Though admittedly an elusive concept, it is undeniable that local authorities are partially guided by 'relatively stable patterns of legally oriented social behaviour and attitudes'[108] that one can find in any given legal system. While we posit that international organizations and other actors could gradually be altering the self-perception of municipal governments, it is safe to assume that hierarchical conceptions of the organization of the state and legal authority remain very present in many minds including those

[104] Frug and Barron 2006, p. 1.
[105] Baumgärtel 2021.
[106] Spijkerboer 2007.
[107] Cf. Resnik 2007.
[108] Nelken 2004, p. 1.

of domestic judges. This, yet again, does not immediately change with the addition of human rights law and discourse into the equation—after all, local authorities engaging with human rights is itself a rather recent phenomenon.[109] And if constitutional and administrative brakes are at the same time also mental barriers, then we must ask ourselves how much it would take to tear them down. The examples discussed here are simply too few to suggests that this will be an easy task, leaving us with the unanswered question where, in general, we currently stand in such a process. Then again, recent European legal history is no stranger to tectonic shifts in legal ordering as the introduction of the doctrines of direct effect and supremacy in EU law highlights. In fact, the European Court of Justice explicitly affirmed that the direct effect principle is also applicable to municipal administrative authorities,[110] effectively turning them into agents of EU law in terms of implementation. However, the Court also proceeds on an assumption of non-intervention in 'internal matters' based on the valorisation of the constitutional identities of EU Member States; this fundamental principle, though undoubtedly important, can lead to ambiguous outcomes since it not only (by default) favours national governments in state-local disputes but also renders invisible potentially legitimate local public policy concerns that may arise, amongst others, in the process of the implementation of EU law.[111]

Finally, there are normative complications that need to be addressed. Even if we believe that greater involvement of local authorities as human rights actors would be generally positive,[112] it may lead to unintended consequences. The most salient one, not unknown to the literature, is backlash. As Blank argued more than a decade ago, 'local governments that may try to overreach their powers… might encounter some problems from the state that will preempt, curb, and use its internal power to weaken the rebelling city'.[113] In such a case, an accelerating locality would not only be slowed down by constitutional 'gears' but possibly brought to a complete halt. It is important to be mindful here of the inherent inequality of the struggle, with the central authority always being in a formal position to alter the constitutional dispensation while sub-national actors are not. While such a dependency should not be overstated given the complications that come along with administrative and especially constitutional reform, it remains an option that legal analysts must not discount. Another consequence, well visible already, is an increase in inequality between municipalities: large and small, urban and rural, well equipped to engage internationally and much less so. Here, the emphasis on equality put forward by the Spanish Constitutional Court in the cases pertaining to the right to health can well be understood and appreciated. Accelerating cities, from a normative point of view, are to be welcomed only where they serve to speed up the rest of the peloton in the

[109] Oomen and Baumgärtel 2014.

[110] European Court of Justice, *Fratelli Costanzo SpA v Comune di Milano*, Case 103/88, judgment of 22 June 1989, ECR 1989, 01839.

[111] Nicola 2012, p. 1309.

[112] Oomen and Baumgärtel 2018a.

[113] Blank 2006, p. 928.

direction of the objectives of international law, and not if they serve to create further in-country divisions.

There are, in short, serious objections to be made against the claim that local authorities are (or could be, or even should be) extending their constitutional dispensations by relying on international human rights law. It is a completely open question in our view, with this chapter merely scratching the surface of this development. Our most important finding is therefore that there is an urgent need for more legal and empirical studies.[114] More concretely, future research will have to investigate and compare in detail the dynamics of local government law in different countries and how they are shaped by an invocation of international law in general, and human rights in particular. Based on our explorative study, we can deduce a number of relevant questions which such studies could tackle. In how far has there been an increase in legal stand-offs between national and local governments? What kind of cities, towns and regions are involved in such cases and what is the role of politics in these processes? To what extent are outcomes seen to be pre-determined by various local government laws? How 'open' are the latter in different places to arguments that are based on international law including human rights law? Does it make any difference whether these confrontations involve questions of constitutional or administrative law? Are domestic judiciaries willing and able to defend the position of local governments? In this respect, what is the role of legal culture and the culture within the judiciary? Can we see a breaking point for national governments where they start clamping down on overly recalcitrant local authorities? Without more specific information of such kind, it will not be possible to determine whether constitutional norms are merely gears that local authorities could shift in the future or actual brakes that will determine the end of the road.

References

Acuto M (2013) City Leadership in Global Governance. Global Governance 19(3):481–498.

Agustín Ó G, Jørgensen M B (2019) Solidarity Cities and Cosmopolitanism from Below: Barcelona as a Refugee City. Social Inclusion *7*(2):198–207

Ambrosini M, Van der Leun J (2015) Introduction to the special issue: Implementing human rights: Civil society and migration policies. Journal of Immigrant & Refugee Studies 13(2):103–115

Aust H P (2015) Shining Cities on the Hill? The Global City, Climate Change, and International Law. European Journal of International Law 26(1):255–278

Aust H P (2017) Das Recht der Globalen Stadt: Grenzüberschreitende Dimensionen Kommunaler Selbstverwaltung. Mohr Siebeck, Tübingen.

Avbelj M, Komárek J (2012) Constitutional Pluralism in the European Union and Beyond. Hart Publishing, Oxford

Bakircay (2008) Dikilide Su Davasi, 12.07.2008. Accessible at https://www.bakircay.com/dikilide-su-davasi-4791h.htm

Barber B (2013) If Mayors Ruled the World: Dysfunctional Nations, Rising Cities. Yale University Press, New Haven

Bauman Z (1998) Globalization: the human consequences. Columbia University Press, New York

[114] A valuable start in this direction has been made by Hirschl 2020.

Baumgärtel M (2021) International Dispute Settlement. In: Aust HP, Nijman JE (eds) Research Handbook on International Law and Cities. Elgar, Cheltenham
Baumgärtel M, Oomen B (2019) Pulling human rights back in? Local authorities, international law and the reception of undocumented migrants. The Journal of Legal Pluralism and Unofficial Law 51:172–191
Bendel P, Schammann H, Heimann C, Stürner J (2019) A Local Turn for European Refugee Politics: Recommendations for Strengthening Municipalities and Local Communities in Refugee and Asylum Policy of the EU. Available at https://www.researchgate.net/publication/332511460
Blank Y (2006) The City and the World. Columbia Journal of Transnational Law 44(3):875–939
Cangi A A (2011) Dikili Ornegi ve Suya Erisim Hakki, Suyu Hapseden 'HES'ler, Korumayan Yasalar. In: International Symposium on the Right to Water, Diyarbakir, 5–6 November 2010, (Conference Book). Social Change Association, Istanbul, https://www.suhakki.org/wp-content/uploads/2011/03/dybkrsempweb.pdf
Caponio T (2019) City Networks and the Multilevel Governance of Migration. Policy Discourses and Actions. Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2019/08
CESCR (2017) Spanish Court restricts autonomous communities' power to expand universal healthcare [Press release]. Retrieved from https://www.cesr.org/spanish-constitutional-court-restricts-autonomous-communities-regulatory-power-expand-universal
Chueca E G (2016) Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanisation. In: Oomen B, Davis M, Grigolo M (eds) Global Urban Justice: The Rise of Human Rights Cities. Cambridge University Press, Cambridge, pp 132–155
Council of Europe (2019) Human Rights Handbook For Local and Regional Authorities (Vol. 1). Council of Europe, Strasbourg
Council of Europe, Congress of Local and Regional Authorities (2018) Promoting human rights at local and regional level. Council of Europe, Congress of Local and Regional Authorities, Strasbourg
Cumhuriyet (2010) Dikili'deki Su Davasi Saniklari Beraat Etti. 26 March 2010. Accessible at: https://www.cumhuriyet.com.tr/haber/diger/131408/Dikili_deki_su_davasi_saniklari_beraat_etti.html
Davidson K, Coenen L, Acuto M, Gleeson B (2019) Reconfiguring Urban Governance in an Age of Rising City Networks: A Research Agenda. Urban Studies 0042098018816010
EU Fundamental Rights Agency (2012) Bringing rights to life: The fundamental rights landscape of the European Union. Publications Office of the European Union, Luxembourg
Filomeno F A (2016) Theories of Local Immigration Policy. Palgrave MacMillan, Cham
Folz H-P (2011) Germany. In: Shelton D (ed) International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion. Oxford University Press, Oxford
Frug G E, Barron D J (2006) International Local Government Law. The Urban Lawyer pp 1–62
Gebhardt D (2016) Re-thinking urban citizenship for immigrants from a policy perspective: the case of Barcelona. Citizenship Studies 20:1–21
Glorius B, Doomernik J (2017) Special Issue Introduction: Refugee Migration and Local Demarcations: New Insight into European Localities. Journal of Refugee Studies 29(4):430–439
Grigolo M (2011) Building the "city of rights": The human rights policy of Barcelona. In: United C, Local G (eds) Inclusive Cities Observatory
Gultekin T (2008) Baskana Su Davasi. Hurriyet Newspaper. 15 April 2008. Accessible at https://www.hurriyet.com.tr/gundem/baskana-bedava-su-davasi-8697634
Handmaker J (2019) Researching legal mobilisation and lawfare. ISS Working Paper Series/General Series 641
Hirschl R (2020) City, State: Constitutionalism and the Megacity. Oxford University Press, Oxford
Hooghe L, Marks G, Marks G W (2001) Multi-level governance and European integration. Rowman & Littlefield, Lanham
Hudson C (2010) Global Cities. In: Turner BS (ed) The Routledge International Handbook of Globalization Studies. Routledge, New York, pp 429–446

International Symposium on the Right to Water (2010) which took place in Diyarbakir, 5-6 November 2010, (Conference Book). Social Change Association, Istanbul https://www.suhakki.org/wp-content/uploads/2011/03/dybkrsempweb.pdf

Kern K, Bulkeley H (2009) Cities, Europeanization and Multi-Level Governance: Governing Climate Change Through Transnational Municipal Networks. Journal of Common Market Studies 47(2):309–332

Le Monde (2019) Grande-Synthe dépose un nouveau recours contre l'inaction du gouvernement face au changement climatique. *Le Monde*, 6 March 2019. Available at https://www.lemonde.fr/planete/article/2019/03/06/grande-synthe-depose-un-nouveau-recours-contre-l-inaction-du-gouvernement-face-au-changement-climatique_5432126_3244.html

Le Monde, AFP (2019) A Grande-Synthe, la préfecture du Nord condamnée à des mesures sanitaires pour les migrants. Le Monde, 21 June 2019. https://www.lemonde.fr/societe/article/2019/06/21/a-grande-synthe-la-prefecture-du-nord-condamnee-a-des-mesures-sanitaires-pour-les-migrants_5479949_3224.html

Levarlet F, Alessandrini M, Celotti P (2019) A Territorial Approach for the Implementation of the SDGs in the EU – The Role of the European Committee of the Regions. European Union Committee of the Regions, Brussels

Maduro M P (2009) Courts and Pluralism: Essay on a Theory of Judicial Adjudication in the Context of Legal and Constitutional Pluralism. In: Dunoff J L, Trachtman J P (eds) Ruling the World? Constitutionalism, International Law and Global Governance. Cambridge University Press, Cambridge, pp 356–380

Marcenko M (2019) International Assemblage of Security of Tenure and the Interaction of Local Politics with the International Normative Processes. The Journal of Legal Pluralism and Unofficial Law (first online)

Marchetti C (2020) Cities of Exclusion: Are Local Authorities Refusing Asylum Seekers? In: Ambrosini M, Cinalli M, Jacobson D (eds) Migration, Borders and Citizenship: Between Policy and Public Spheres. Palgrave MacMillan, Cham, pp 237–264

Molin L O (2011) Developing indicators to raise awareness of human rights at local and regional level. Congress of Regional and Local Authorities of the Council of Europe, Strasbourg

Nelken D (2004) Using the concept of legal culture. Australian Journal of Legal Philosophy 29:1–26

Nicola F (2012) Invisible Cities in Europe. Fordham International Law Journal 35:1282–1363

Oomen B (2014) Rights for others: the slow home-coming of human rights in the Netherlands. Cambridge University Press, Cambridge

Oomen B (2018) Human Rights Cities: The Politics of Bringing Human Rights Home to the Local Level. In: Handmaker J, Arts K (eds) Mobilising International Law for Global Justice. Cambridge University Press, Cambridge, pp 208–232

Oomen B (2020) Decoupling and Teaming Up: The Rise and Proliferation of Transnational Municipal Networks in the Field of Migration. International Migration Review 54:913–939

Oomen B, Baumgärtel M (2014) Human Rights Cities. In: Gibney M, Mihr A (eds) The Sage Handbook of Human Rights. Sage, London, pp 709–729

Oomen B, Baumgärtel M (2018) Frontier cities: The rise of local authorities as an opportunity for international human rights law. European Journal of International Law, 29(2):607–630

Oomen B, Davis M, Grigolo M (2016) Global Urban Justice: The Rise of Human Rights Cities. Cambridge University Press, Cambridge

Papisca A (2011) Relevance of human rights in the glocal space of politics: how to enlarge democratic practice beyond state boundaries and build up a peaceful world. In: De Feyter K, Parmentier S, Timmerman C, Ulrich G (eds) The Local Relevance of Human Rights. Cambridge University Press, Cambridge, pp 82–108

Peralta-Gallego L, Gené-Badia J, Gallo P (2018) Effects of undocumented immigrants' exclusion from health care coverage in Spain. Health Policy 122(11):1155–1160

Piccoli L (2016) Left out by the state, taken in by the region? Explaining the regional variation of healthcare rights for undocumented migrants in Italy, Spain, and Switzerland. NCCR, Neuchatel

Piccoli L (2018) The politics of regional citizenship: explaining variation in the right to health care for undocumented immigrants across Italian regions, Spanish autonomous communities, and Swiss cantons (PhD). EUI, Florence.
Randeria S (2003) Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India. Current Sociology 51(3-4):305–328
Resnik J (2007) Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism. Emory Law Journal 57:31–92
Sabchev T (2018) Comprehensive Relational Model for the Study of Local Responses to the Arrival and Settlement of Forced Migrants. Paper presented at the ECPR General Conference, Hamburg
Sassen S (2006) Territory, Authority, Rights: From Medieval to Global Assemblages. Princeton University Press, Princeton
Scholten P (2015) Between National Models and Multi-Level Decoupling: The Pursuit of Multi-Level Governance in Dutch and UK Policies Towards Migrant Incorporation. Journal of International Migration and Integration 17:973–994
Spijkerboer T (2007) Zeker weten: Inburgering en de fundamenten van het Nederlandse politieke bestel. SDU Uitgevers, The Hague
Theuns T (2019) A Comparative Report on the Legal Rules and Practices Regulating the Exercise of the Right to Vote (Eligibility and Representation) in Local, National and EU Elections of Marginalised Groups. Report of the ETHOS Project funded by the EU. https://ethos-europe.eu/sites/default/files//docs/d3.4_website_report_complete.pdf
Triviño-Salazar J C (2018) The politics of immigration locally: Alliances between political parties and immigrant organizations. Ethnic and Racial Studies 41(9):1728–1746
Zapata-Barrero R, Caponio T, Scholten P (2017) Theorizing the 'Local Turn' in a Multi-Level Governance Framework of Analysis: A Case Study in Immigrant Policies. International Review of Administrative Sciences 83(2):241–246

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