

# A CASE FOR THE INTERNATIONAL LEGAL PERSONALITY OF CITIES AND LOCAL SUB-NATIONAL GOVERNMENTS

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## *Abstract*

In 2008, with half of the world's population being comprised of *homo urbanus* (or urban dwellers),\* there was a growing realization that cities have become the most prominent sites for de-nationalization that goes in agreement with rising globalization.\*\* In fact, authors claim that even globalization has a defined focus, which is the city.\*\*\* Cities are reconfiguring their relations with other cities and global institutions in a bid to secure relevance. Cities are rapidly asserting their influence on the international legal order, which does not formally accept these entities as international persons. The paper advances a case for recognizing the international legal personality of these sub-national units, using different theoretical approaches to international personality, including human rights and sociological-constructivist theories. It also seeks to analyze the rights and duties of cities in international law, their *de facto* recognition in the international framework, as well as the development of international principles governing cities.

**Keywords:** cities, sub-national, recognition, rights

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\* Alex Awiti, "Building Cities for a Bulging World," *Urban Gateway* (n.d.). Available from: <http://www.urban-gateway.org/content/news/building-cities-bulging-world-analysis>

\*\* Saskia Sassen, *Territory, Authority, Rights. From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006), 31.

\*\*\* Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton: Princeton University Press, 2001), 324.

# UN ARGUMENTO PARA LA PERSONALIDAD JURÍDICA INTERNACIONAL DE LAS CIUDADES Y LOS GOBIERNOS LOCALES SUBNACIONALES

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## Resumen

En 2008, con la mitad de la población mundial compuesta por habitantes urbanos,\* hubo una conciencia creciente de que las ciudades se han convertido en el sitio más prominente para la desnacionalización que va de acuerdo con la creciente globalización.\*\* De hecho, los autores afirman que incluso la globalización tiene un foco definido: la ciudad.\*\*\* Las ciudades están reconfigurando sus relaciones con otras ciudades y con instituciones globales en un intento por asegurar la relevancia. Las ciudades están afirmando rápidamente su influencia en el orden jurídico internacional, que no acepta formalmente a estas entidades como personas internacionales. El artículo propone reconocer la personalidad jurídica internacional de estas unidades subnacionales, utilizando diferentes enfoques teóricos de la personalidad internacional, incluidos los derechos humanos y los enfoques sociológico-constructivistas. De igual manera, busca analizar los derechos y deberes de las ciudades en el derecho internacional, su reconocimiento *de facto* en el marco internacional, así como el desarrollo de los principios internacionales que rigen las ciudades.

**Palabras clave:** ciudades, subnacional, reconocimiento, derecho

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## Introduction

Sociologist Saskia Sassen coined the term ‘global city,’ which are concentrated hubs of global capital, goods, business, human resources, etc., and are increasingly influenced by global institutions and foreign corporations.<sup>1</sup> Thanks to her work it is now recognized how globalization has empowered cities and other localities to re-assert their global identity on a continuous basis, as national control seems to be waning. For the purposes of this paper, the term ‘city’ refers to any fully or partially self-governing urban locality.

Presently, cities have a non-status in international law, i.e. they are viewed as state organs and their actions are attributable to the state under Article 4 of the 2001 International Law Commission (ILC) Articles on State Responsibility. However, there have been instances of nations explicitly legislating to grant power to cities to act internationally. France, in 1992 and in 2007, allowed their local governments to engage in international cooperation and to enter into development cooperation agreements, respectively. Argentina and Belgium also explicitly granted their subnational units foreign policy powers.

Initiatives by a city on the international plane can be described as either collaborative or coalition actions. The former involves local governments collaborating with other subnational, national or global actors through agreements, Memoranda of Understanding (MoUs), etc. The latter includes activities by localities that exert pressure over national and global actors.<sup>2</sup> In both kinds of actions, cities are exceeding their existing traditional legal role, which causes an unusual dilemma—whether to treat cities as largely independent directly under international law, like city-states (Holy See, Singapore, or Monaco, etc.), or to treat them as indivisible from their nation. The resolution, however, lies in accommodating both extremes by treating localities as limited international actors.

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<sup>1</sup> Sassen, *The Global City*, 324.

<sup>2</sup> Joana Setzer, “How Subnational Governments are Rescaling Environmental Governance: The Case of the Brazilian State of São Paulo.” *Journal of Environmental Policy and Planning* 19, No. 5 (2017): 1-17, 1.

## 1. Reassessing the traditional concept of international legal personality

Without a formal list, legal doctrine, or well-developed *stare decisis* on international legal personality, scholars rely on the 1949 Reparation for Injuries Advisory Opinion given by the International Court of Justice (ICJ). Recognizing actorhood in international law, indicating that it is a progressive phenomenon that keeps pace with developments in the international plane, the Court stated:

The subjects of law in any legal system are not necessarily identical in their nature or the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of states has already given rise to instances of action upon the international plane by certain entities, which are not states.<sup>3</sup>

However, this opinion presents an interesting conundrum. The principle described by the ICJ can be summed up as “what (being an international person) means is that it is a subject of international law capable of possessing international rights and duties, and that it has the capacity to maintain its rights by bringing international claims.”<sup>4</sup> This implies that the international legal system through attribution of rights can provide legal personality. However, in reality, the definition is extremely circular—what comprises of international legal personality is what is, in fact, also an evidence of it. In Brownlie’s words, “(the definition is) unfortunately circular because the indicia referred to depend on the existence of a legal person.”<sup>5</sup> When the entire premise of the definition of international legal personality is dependent upon the bearing of rights and duties under international law, then such a personality is also inferred from the rights and duties borne by this actor, which makes the entire exercise an ‘ex-post qualification’ and purely a formal exercise.

Practically, it is unlikely that other actors get addressed within a framework of law that is created by and for states. Rather, a more dynamic outlook towards the

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<sup>3</sup> International Court of Justice. *Reparation for Injuries Suffered in the Service of the United Nations*. Advisory Opinion, April 11, 1949. Available from: <https://www.icj-cij.org/en/case/4>

<sup>4</sup> Ian Brownlie, *Principles of Public International Law*. 4<sup>th</sup> ed. (Oxford: Oxford University Press, 1990), 58.

<sup>5</sup> Ian Brownlie, *The Rule of Law in International Affairs. International Law at the Fiftieth Anniversary of the United Nations* (The Hague: Martinus Nijhoff Publishers, 1998), 35.

international legal personality would be revisiting the realist theory of real personality that grounds personality in social and factual realities. Factual realists claim that states can no longer be the sole principal actors on the international plane, nor can they be the sole source of granting legal personality to any other entity. Gierke opined that real existence is in fact the source of legal personality. He referred to this as ‘*Persönlichkeit kraft Daseins*,’ i.e. personality emerging from existence in fact (pre-legal factual circumstances determining behavior).<sup>6</sup> Dicey added another dimension of moral action in considering international legal personality by claiming that when men bind themselves in an organized group, they create a body that by the very fact of nature of that association differs from the individual personality of those constituting it. This means that every ‘person’ needs to be a responsible rights- and duties-bearing unit and an association like this should also be morally responsible.<sup>7</sup> All these authors suggest an internal and endogenous approach to legal personality, focusing on real characters of international legal persons vis-à-vis an external exogenous approach.

## 2. Progressive Development of International Law in relation to Cities

It is certain that there is a rapidly increasing interaction between cities and international law. A factual realist approach calls for changes in the international law framework traditionally created by states, to accommodate changed realities. Nijman states that “the identity and interests of the city are redefined by its global social interaction and direct relation with global norms, policies, and institutions; the internalization of the latter also reshapes the self-understanding of the city.”<sup>8</sup> Indirectly, international law has already recognized cities as subjects in fact, but not in formal law. Instances of *de facto* interactions can be broadly categorized as follows:

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<sup>6</sup> Otto von Gierke, *Deutsches Privatrecht*. Ester Band. Allgemeiner Teil und Personenrecht (Leipzig, 1895), 488-491.

<sup>7</sup> Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*. 5<sup>th</sup> ed. (London: Macmillan, 1897), 193-194.

<sup>8</sup> Janne E. Nijman, “Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors,” in *The Transformation of Foreign Policy: Drawing and Managing Boundaries from Antiquity to the Present* (Oxford: Oxford University Press, 2016), 209-239.

## 2.1 Enforcing international law at local levels: Rise of duties and rights of cities

Due to the decline of the nation-state in a globalized world, supra-national entities and sub-national units rush to fill the vacuum.<sup>9</sup> However, since local units are considered a part/agent of the larger nation-state, they ought to comply with international obligations undertaken by the state.

Though local governments cannot be parties to disputes before the ICJ, private individuals and other domestic entities have sued these governments in domestic courts, sometimes even on dereliction of their international duties, which arises as a result of agency with the state.<sup>10</sup> Petitioners in a 2002 case in the Israeli Supreme Court<sup>11</sup> claimed that the state and the city had a positive duty to use Arabic on street signs under the International Covenant on Civil and Political Rights (ICCPR). Notwithstanding that the Court allowed the appeal on different grounds, viz. discrimination, this case depicts how international duties can be enforced against cities.

In the *Town of Hudson Case*,<sup>12</sup> the Canadian Supreme Court ruled that the town had the right to enact by-laws for environment conservation, as it was consistent with international policy and the Canadian Cities and Towns Act. This is a substantial improvement over the principle of the American *Crosby Case* of 2000, where the Court upheld the supremacy of federal law and decided that the Massachusetts Burma Law, which restricted state entities from conducting transactions with companies doing business with Burma, was unconstitutional and threatened the “frustration of federal statutory objectives.”<sup>13</sup>

Many cities have also sought to enforce international law independently of the state. The Mayor of Seattle, unhappy with the US non-ratification of the Kyoto Protocol, started an initiative against pollution and climate change.<sup>14</sup> Similarly, the Child Friendly Cities Initiative (CFCI) has been very successful in internalizing international

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<sup>9</sup> Yishai Blank, “The City and the World,” *Columbia Journal of Transnational Law* 44, No. 3 (2006): 868, 879.

<sup>10</sup> Blank, “The City and the World,” 894.

<sup>11</sup> Adalah Legal Centre for Arab Minority Rights in Israel v. City of Tel-Aviv-Jaffa (July 25, 2002). Available from <http://versa.cardozo.yu.edu/opinions/adalah-legal-center-arab-minority-rights-israel-v-city-tel-aviv-jaffa>.

<sup>12</sup> Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241 (Can.).

<sup>13</sup> Crosby v. National Foreign Trade Council, 530 U.S. 363, 366 (2000).

<sup>14</sup> Janne Nijman, “The Future of the City and the International Law of the Future,” in Sam Muller et al. (eds.), *Law of the Future and the Future of Law*, 213-230 (Oslo: Torkel Opsahl Academic Epubisher, 2011), 222.

norms through the agency of cities, even in nations that have not ratified the Child's Rights Convention (CRC).<sup>15</sup> Due to the CFCI's success, international organizations recognized the value of striking at the local levels. Soon after, in 2004, the UNESCO also launched its International Coalition of Cities against Racism and Discrimination to inculcate local adherence to antiracism and anti-discrimination norms.<sup>16</sup>

Another route to internalize international law is direct incorporation in local law.<sup>17</sup> Even though the US did not ratify the UN Convention on the Eradication of Discrimination against Women (CEDAW), San Francisco City's 1998 Ordinance called for local implementation of the CEDAW.<sup>18</sup> Similarly, the North American Free Trade Agreement's (NAFTA) principles are reiterated in various MoUs between cities and private actors, the Universal Declaration of Human Rights' (UDHR) principles in the United Cities and Local Governments (UCLG) constitution, the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto's policies in agreements made by various city-networks, and so on.<sup>19</sup> It is safe to assume that Koh's hypothesis of "transnational norm entrepreneurs"<sup>20</sup> applies to cities and localities that play a pivotal role in the internalization of international law alongside other non-state actors. Cities do not necessarily need to rely on the nation to become a party to an international obligation.

## **2.2 Development of international law for cities: Growing informalization of international law**

On various issues there is a growing trend of progressive development of international law that targets cities. In the environmental agenda at least, agreements have explicitly recognized cities as major actors, whose cooperation and compliance is essential to the achievement of given objectives. Be it because of growing calls for increasing collaborative approaches to include cities in international action by city-networks like the UCLG,<sup>21</sup> or due to a growing realization that there exists

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<sup>15</sup> Child Friendly Cities Initiative. Available from: <http://childfriendlycities.org/> (accessed Nov. 1, 2017).

<sup>16</sup> International Coalition of Inclusive and Sustainable Cities – ICCAR. Available from: <http://www.unesco.org/new/en/social-and-human-sciences/themes/fight-against-discrimination/coalition-of-cities/> (accessed Nov. 1, 2017).

<sup>17</sup> Nijman, "The Future of the City," 221.

<sup>18</sup> San Fran. Admin. Code. §12K. Available from: <http://sfgov.org/dosw/cedaw-ordinance> (accessed Nov. 1, 2017).

<sup>19</sup> Nijman, "Renaissance of the City."

<sup>20</sup> Harold Hongju Koh, "1998 Frankel Lecture: Bringing International Law Home." *Faculty Scholarship Series*. Paper 2102 (1998), 647.

<sup>21</sup> Nijman, "The Future of the City," 224.

a necessity to provide a clear and legal basis for sub-national undertakings,<sup>22</sup> international agreements, like the Agenda 21, called for the decentralization of government services to local authorities and strengthening of mechanisms at the lowest appropriate level.<sup>23</sup> A similar remark regarding the necessity of inclusion of local governments was also made in Chapter 28 of the Agenda 21, because of which many states and supra-national regional organizations, like the EU, have stimulated regional and localized initiatives towards sustainable development.

International law is now delving into the state-locality relation, aiming to improve conditions of human rights, urban governance, international standard setting, and decentralization.<sup>24</sup> Specifically, the principle of subsidiarity<sup>25</sup> has emerged in current international jurisprudence, especially in EU regulations. It featured as a prime virtue of the Draft of the European Constitution and of the World Charter of Local Self-Governance.<sup>26</sup>

The UN has tried to reconfigure the state-city dynamic with the establishment of the UN Centre for Human Settlements (UN-Habitat) in 1996 with the prime motive of bringing localities within the purview of international policy by constructing a comprehensive set of rules that apply to localities in the interest of good urban governance, where city networks have been strategically pushing their agenda. The World Association of Cities and Local Authorities Coordination (WALAC) drafted the World Charter (1998) hoping it would transform into a UN Convention. The UN-Habitat resolution that approved the “Guidelines on Decentralization and the Strengthening of Local Authorities” was in fact encouraged and drafted by the UCLG to create an obligation to decentralize.<sup>27</sup> This intends to make international law more informal, calling for the law to be applied not merely because of formal consent, but because of its persuasive authority that would essentially result in the application of law directly to cities at their own volition, by-passing the requirement of formal state consent.

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<sup>22</sup> Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton University Press, 2004).

<sup>23</sup> UN Documents Cooperation Circles. “Agenda 21, Chapter 18. Protection of the quality and supply of freshwater resources.” Available from: <http://www.un-documents.net/a21-18.htm> (accessed Nov. 1, 2017).

<sup>24</sup> Blank, “The City and the World,” 889.

<sup>25</sup> Subsidiarity calls for the central government’s role being limited to that of a mere subsidiary, only when the local government concerned is unable to act.

<sup>26</sup> United Nations Centre for Human Settlements (Habitat) and World Association of Cities and Local Authorities Coordination (WALAC), *Towards a world charter of local self-government* (May 1998). Available from: [www.gdrc.org/u-gov/charter.html](http://www.gdrc.org/u-gov/charter.html) (accessed Oct. 15, 2017).

<sup>27</sup> Nijman, “The Future of the City,” 225.

## 2.3 Recognition and participation by cities in international relations and machinery

Foremost, it is important to see cities as global actors with their own transnational outlook distinct from federal foreign policy. Cities worldwide have established offices of international relations to handle transnational relations, like that of the Japanese city of Yokohama in Mumbai to manage its business interests in India.<sup>28</sup> Cities are also known to form their own foreign policy initiatives. The City Council of Venice threatened to break-off relations with St. Petersburg in response to their approving a legislation imposing a hefty fine on public activities promoting homosexuality, and further looked for an inter-state response to Russia in the European Court of Human Rights (ECHR).<sup>29</sup> Amsterdam took an active role in removing opposition by city and national officials to the organization of the first pride parade in Riga, Latvia, in 2006.

Cities formalize legal relationships through MoUs instead of bilateral treaties, which are non-binding, but have persuasive authority. Lacking legal capacity, cities cannot form global inter-city agreements, and hence MoUs are the only viable option.<sup>30</sup> Sometimes localities reach trans-boundary agreements even when no such consensus exists at the national level; for example, localities in Israel and Palestine reached cooperation agreement to solve issues related to a polluted water basin.<sup>31</sup>

Since sub-national units have an important role in the implementation of global decisions, it is only logical that over time they have garnered a role in creating policies and norms. Euro-cities, one of the oldest city networks, aimed to influence the European agenda considering the economic, social, and political realities of cities, and later an Asian Network of Major Cities 21 (ANMC21) was modeled on it. The Dutch G4 cities established their missions in Brussels with the same aim. A bigger international organization called UCLG was formed in 2004, aiming to expand city diplomacy with global institutions, strengthen their status, and promote autonomy at the global level.

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<sup>28</sup> The City of Yokohama Mumbai Representative Office. Available from: <http://www.yokohama-mumbai.com/> (accessed Oct. 15, 2017).

<sup>29</sup> Glennisha Morgan, "Venice to Cut Ties with St. Petersburg over Anti-Gay Law," *Huffington Post* (January 30, 2013).

<sup>30</sup> Nijman, "Renaissance of the City," 22.

<sup>31</sup> Eyal Benvenisti, *Sharing Transboundary Resources* (Cambridge: Cambridge University Press, 2002).

Secretary-General Kofi Annan composed the Cardoso Panel on UN-Civil Society Relations in 2004 for greater involvement of local governments and establishing an Elected Representative Liaison Unit to liaise with local authorities and their multilateral networks. Local Governments for Sustainability (ICLEI, comprising more than 1,200 local governments) has cooperated with the UN Environment Programme in the local government consultative process as an observer organization with the UN Framework Convention on Climate Change (UNFCCC).<sup>32</sup> During the COP15 (2009), it pressured negotiating states for active involvement of cities in the post-Kyoto agreement, which led to the formal recognition of cities in COP16 as governmental stakeholders.<sup>33</sup> Parallel initiatives by cities, such as the Global Cities Covenant on Climate (2010) drafted at the World Mayors' Summit on Climate (with over 140 parties), also explicitly model the document on and link it to the UNFCCC, the Kyoto Protocol, and developments in successive COPs.<sup>34</sup> A pivotal development for recognition of the role of cities came when Secretary-General Ban Ki-moon also appointed former Mayor of New York, Michael Bloomberg, as special envoy for Cities and Climate Change in 2014.

Even though there are many cooperative agreements between cities and international organizations, Nijman calls these 'soft-law' instruments and further stresses the lack of clarity on the status of the agreements formed between global organizations and local governments.<sup>35</sup> The answer is that these are informal normative instruments that form soft law, but nonetheless they induce obedience from the parties.

### 3. Approaching a Contemporary Real Theory of Personality

A novel personality theory needs to be devised to clarify when non-state entities can qualify as legal persons internationally. By way of interacting with international law—by making or taking international law, operating at the international plane, functioning within an international legal framework, and having capacity for intentional action and purposive communication in terms of international law—cities evidence how they should be identified as international legal persons.

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<sup>32</sup> ICLEI-Local Governments for Sustainability, *Submission of ICLEI-Local Governments for Sustainability on ways to enhance the engagement of observer organizations* (2010). Available from: [www.unfccc.int/resource/docs/2010/smsn/ngo/209.pdf](http://www.unfccc.int/resource/docs/2010/smsn/ngo/209.pdf) (accessed Oct. 15, 2017).

<sup>33</sup> ICLEI-Local Governments for Sustainability, *Submission*.

<sup>34</sup> The Mexico City Pact 'Global Cities Covenant on Climate' and the carbonn® Cities Climate Registry, "Local climate action the world can count on." Available from: [www.unfccc.int/files/conference\\_programme/application/pdf/mxcpect\\_cccr\\_final.pdf](http://www.unfccc.int/files/conference_programme/application/pdf/mxcpect_cccr_final.pdf) (accessed Oct. 15, 2017).

<sup>35</sup> Nijman, "The Future of the City," 225.

### 3.1 Sociological constructivist case for the international legal personality of cities

Vygotsky's sociological constructivist school considers human development and action as situated in a societal context, knowledge or ideational pattern that is constructed through interaction with others.<sup>36</sup> According to this, the social world is not constant and exists independently of thoughts and ideas of people within or outside of it, and hence it is almost impossible to apply scientific inquiry to the process of law creation as argued by the positivists. When applied to international politics, Wendt, Adler, Ruggie, and Onuf concur that world affairs are not constructed by rational behavior or choices by actors pursuing their own interests towards a utilitarian end, rather it is constructed through interaction/sharing of different ideas.<sup>37</sup>

It cannot be said that states are, by definition, the only subjects of international law because actorhood has to be socially constructed by exploring the identity that has been attributed by the actor to itself and the relations between it and the larger international law structure.<sup>38</sup> Secondly, constructivists believe that actors and structures are dependent upon and created by the other—almost replicating an agent-structure relationship. Finally, since the global system is dynamic and not static, the constitution of these structures and actors also entertains the scope of transformation, including the changing identity of these actors.<sup>39</sup> Wendt states that since actors partake in developing institutions and international norms, and in turn these institutions and norms contribute to defining and influencing actors, these institutions and actors can be redefined in the process.<sup>40</sup>

These relationships between actors and society are sociological constructions that take form over time and are not constant.<sup>41</sup> Therefore, the identity of these actors is inherently relational to other material objects and actors, and the relationship stems from the actor's self-understanding. Identities are the basis of interests and

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<sup>36</sup> Lev S. Vygotsky, *Mind in Society*. (Harvard University Press, 1978).

<sup>37</sup> Robert Jackson and Georg Sorensen, *Introduction to International Relations Theories and Approaches*. 3<sup>rd</sup> ed. (Oxford: Oxford University Press, 2006), 162-177.

<sup>38</sup> Ian Hurd, "Constructivism," in Christian Reus-Smit and Duncan Snidal (eds.), *The Oxford Handbook of International Relations* (Oxford: Oxford University Press, 2008), 299, 304.

<sup>39</sup> Hurd, "Constructivism," 309.

<sup>40</sup> Hurd, "Constructivism," 304.

<sup>41</sup> Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 1.

identities propel action.<sup>42</sup> Thus, when cities identify themselves as global cities, this identity only exists in relation to other actors on that plane. Shared ideas about the city, therefore, define the identity of the city as a global actor based on self-realization in cities and on interaction with other global actors.

Social structures are indispensable in the self-understanding of the agent's actions, and these structures may be internal or external. Cities' internal organization structure and governance machinery interacting with the larger ideational structure gives the city the capacity to understand and make relational decisions. According to Nijman, "cities are self-reflective goal-directed units of action," and hence qualify as agents or actors in relation to the ideational structure.<sup>43</sup>

As actors relate to the changing ideational structures, it means that when shared ideas guiding these actors change, the identities of actors and their relationships also change. In a dynamic society, the constitution of structures and actors also change and new actors do enter the plane. Thus, as the shared perception about cities changes and they are regarded as valuable, this recognition inevitably changes its inherent actorhood. When cities, on their own accord, regard international law and norms as affecting them, they change their self-understanding and identity as global actors. Thus, it can be seen that subnational units actually acquire international status by developing foreign policy, actions, and identity, which specifically connects them to international law, norms, and institutions.

### 3.2 Human rights approach to the international legal personality of cities

The changing understanding of human rights from state-centric to human-centric is based on the pillars of human security and development. The human-centric approach is reiterated in the panhuman law, which includes principles like universal, indivisible, and interdependent human rights, proscription of war, prohibition of the use of force, recognition of international crimes, etc.<sup>44</sup> The international human rights regime focuses on supervising respect for these rights by and 'within the

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<sup>42</sup> Alexander Wendt, "Anarchy is what States Make of it: The Social Construction of Power Politics," *International Organization* 46, No. 2 (1992): 391-425, 391, 398.

<sup>43</sup> Nijman, "Renaissance of the City," 18.

<sup>44</sup> Antonio Papisca, "International law and human rights as a legal basis for the international involvement of local governments," in Arne Musch et al. (eds.), *City Diplomacy: The Role of Local Governments in Conflict Prevention, Peacebuilding, and Post-Conflict Reconstruction*, 27-46. (The Hague: VNG International, 2008), 27, 31.

state' referring to all territorial articulation of the state, including cities and local governments.

Development of the norm of Responsibility to Protect (R2P) pursuant to the 2005 World Outcome Document establishes local governments as the hub of social services, by sharing the state's responsibility of protecting those who live within it. This development is also in line with the larger constitution of the renunciation of war and the right of peace and dignity of citizens.<sup>45</sup> Since a shift had occurred in the security debate "from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security,"<sup>46</sup> the concept of security cannot be so narrow so as to leave out the most legitimate concerns of security in peoples' daily lives. For this purpose, the concept of R2P should be linked to the larger picture of human security, for which the involvement of local governments is indispensable—sovereignty of states being not foundational, but only instrumental.<sup>47</sup>

Thus, there is a contemporary trend of international recognition and participation of these entities mainly by the European Charter of Local Self Government (1985), which entitled local authorities to cooperate and form consortia with other authorities to carry out common interests and be a part of associations of local authorities at the international level. The European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (1980) is another document in which member states undertake to foster cooperation between communities in their nation and those in others. The two protocols to this Convention specify the competencies and status of bodies formed by local governments under this arrangement. The most important move, however, has been the adoption of the European Community Regulation on a European Grouping of Territorial Co-operation (2006) that recognizes three types of cooperation between local governments, viz. cross-border, inter-territorial, and trans-national. Thus, at the regional level, the EU has played a pivotal role in providing basis for the actions of local governments and establishing an equal power dynamic between states and localities in the European grouping.

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<sup>45</sup> United Nations. "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," General Assembly Resolution 53/144, A/RES/53/144 (March 8, 1999).

<sup>46</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2011), 15.

<sup>47</sup> Papisca, "International law and human rights," 40.

One must look at Italy, where communes were allowed by a national legislation in 1991 to exercise greater autonomy in their statutes, which led to the formation of a multitude of statutes, the most important being the 'peace human rights norm,' according to which these units formally pledged support to the principles of the UN Charter and UDHR. Soon, most subnational units had established special human rights departments and strategies for peace education, and 700 of them finally came together to form the National Network of Local Governments for Peace and Human Rights.<sup>48</sup>

## Conclusion

The present day concept of cities as mere objects of international law does not necessarily explain their present-day position in the international legal system. Localities are front-runners in the independent voluntary acceptance of international norms, influencers in the development of international law, and have achieved formal relationships with international organizations. It is essential that entities operating with a degree of independence and influence in the political, economic, and social spheres also have some visibility in the international legal sphere. Such is the dichotomy between the *de jure* and *de facto* status of such entities.<sup>49</sup>

The international personality of cities positively impact global governance and the rule of law. Thürer argues that international law is changing due to a shift in power from state to sub-state and supra-state bodies, and a shift in power to private entities through globalization. The basic purpose of the state is to ensure virtues of justice and rule of law, which cannot be ensured by a weakening nation-state and hence the inclusion of other actors is vital for accountability and to act as counter-forces to unchecked power by the statist actors.<sup>50</sup> The Informal International Law Making (IN-LAW) approach does away with formalities linked to international law. The actions of cities do not give rise to formally binding agreements, but instead they organize themselves in informal alliances and the very nature of the cooperation

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<sup>48</sup> Papisca, "International law and human rights," 43.

<sup>49</sup> Janne Nijman, "Non-State Actors and the International Rule of Law: Revisiting the 'Realist Theory' of International Legal Personality," in Math Noortmann and Cedric Ryngaert (eds.), *Non-State Actors Dynamics in International Law: From Law-Takers to Law-Makers*, 91-124 (Farnham: Ashgate Publishing, 2010), 91, 94-95.

<sup>50</sup> Daniel Thürer, "The Emergence of Non-Governmental Organizations and Transnational Enterprises in International Law and the Changing Role of the State," in Rainer Hofmann (ed.), *Non-State Actors as New Subjects of International Law*, 37-58 (Berlin: Duncker & Humblot, 1999), 57.

is one that is not similar to that between formal states.<sup>51</sup> Thus, only informal cooperation that leads to a normative output enough to influence behavior can be considered as IN-LAW—something that city diplomacy has achieved. The best practices formulated may not be legally binding in a traditional sense, but they do shape behavior.

It is essential to move beyond the fiction theory of international legal personality in order to find a new concept of actorhood that can stand in the face of the latest political, social, and philosophical realities. The claim for the legal personality of cities hinges on the increasingly popular idea that an actor with factual power should also have legal standing.<sup>52</sup> The 1949 Advisory Opinion created the concept of limited international legal personality by stating that the UN did not have the same rights and duties as the state. Kelley applies this to the case of multinational corporations (MNCs), stating that a duty of an MNC to uphold selected human rights would be enforceable by states under international law without expanding its rights.<sup>53</sup> This argument can be applied to local governments as well, whose duties are multiplying in the development and human rights regime, along with certain rights of autonomy. This post-Westphalian notion of different entities getting rights and duties is the defining trend of *lex ferenda*.

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<sup>51</sup> Ramses A. Wessel, "Informal International Law-Making as a New Form of World Legislation?" *International Organizations Law Review* 8 (2011): 253-265, 253.

<sup>52</sup> Nijman, "Non-State Actors," 52.

<sup>53</sup> Glen Kelley, "Multilateral Investment Treaties: A Balanced Approach to Multinational Corporations," *Columbia Journal of Transnational Law* 39, No. 2 (2001): 482-532, 483.

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