

CITIES AS SUBJECTS OF INTERNATIONAL LAW?*

PREFACE

I am very pleased to be with you today, although I would have preferred to be closer to you, in Montreal, rather than in Trento in this moment.

Let me start by thanking McGill University for the kind invitation to attend the Graduate Law Conference and the Dean Maxwell & Isle Seminar on International Law. It is a privilege and an honor for me to be here.

I am very familiar with McGill University for many reasons but let me recall at least the strong links and scientific collaboration between McGill University and the University of Trento which started many years ago, and, on a more personal basis, the long friendship with one of your most renown Professors, David Lametti, today Minister of Justice and Attorney General of Canada, who was one of the most distinguished Visiting Professors of the Trento Law School. David was even more than a visiting professor since he moved to Trento with his entire family and he became “trentino” for a while...

Let me also thank *Alessia Zornetta*, an alumna of the Comparative, European and International Law course, at the Law School, who is now a student at McGill and kindly asked me whether I was available to participate in this conference, and *Miroslaw Sadowski*, the president of the organizing Committee, who formally invited me.

Today I am going to talk about the topic “Cities as Subjects of International Law?”. This is a topic I was studying when I was requested to intervene at the McGill’s Graduate Conference on *Cities and International Law* because I was preparing an article for a Symposium on this very same issue that was organized to celebrate the XXX volume of the *Italian Yearbook of*

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International Law. The text of my conference is mainly based on the research I was already doing at that time and it coincides with the article to be published on that Yearbook where a set of footnotes complements the text¹.

In the abstract of my intervention I sent to the organizers I wrote:

The active participation of cities and local authorities in international negotiations and their follow-up, and their creation of issue-specific coalitions, have suggested a reconsideration of the role of cities in international law and international relations. Could this lead to concluding that cities and local authorities are today subjects of international law?

This is, so to say, the research question that I propose for my intervention today.

INTRODUCTION

It is undoubtable that in the last thirty years cities have acquired a new role in crucial fields of international law such as, to name a few, climate change, human rights, migration, cultural heritage, sustainable development, economic cooperation, health security and foreign policy.

Among the various aspects regarding the new role of cities in international law, the legal status of cities and the legal impact of transnational cities networks in the law of international organizations appear to be interlinked and worth of attention.

The place of cities and their legal qualification under international law is fundamental, but this does not mean that it has been consistently addressed in the literature. It seems undeniable that in recent times cities' and TCNs' weight in international law and international relations has

¹ The article is now available as: Giuseppe Nesi, 'The Shifting Status of Cities in International Law? A Review, Several Questions and a Straight Answer' (2020) 30 *Italian Yearbook of International Law* 17.

significantly increased. This change is witnessed by both the cities' and TCNs' active participation in international fora where issues of local, regional, national and international concern are debated, negotiated and decided upon, and the increasing development of huge networks of cities and local authorities that negotiate themes that are of international concern (but are also crucial for cities and urban conglomerations, as recalled above). In several cases, States are called to implement international obligations and commitments deriving from international law - be it treaties, customs or, quite often, "soft law" instruments - through cities and local authorities. On certain occasions, on the contrary, cities decide to act against the position that their States take in international law matters; such as, the incorporation in cities' deliberations of international conventions that have not been ratified by their States, or the decision to implement international conventions notwithstanding the withdrawal of their States from those conventions, as it happened more recently in many cities in the United States with regard to the 2015 Paris Agreement on climate change. Some authors derive from these facts the idea that a new era has begun in which cities and local authorities have acquired a new *status* that cannot be ignored by international law. The interest of cities in participating in international meetings and international legal debates and their aspiration to build up relations with other, foreign cities and have their voice heard at the international level is not completely new. At the beginning of last century world associations of cities were created even before the first universal intergovernmental organization was settled and they were vocal in the international arena, but this phenomenon remained isolated. At that time cities' attitudes towards international law did not have a follow-up in their participation in international negotiations, and the phenomenon did not attract the attention that has been recently dedicated by international law (and other topics) scholars to the role of cities in international law and its potentials. Those who look at cities as protagonist of international relations do not hesitate to affirm that cities fill a gap in

representativeness and democracy in the international system characterized by the alleged lack of effectiveness and legitimacy of States. In this regard, the phrase by the then Mayor of New York, Michael Bloomberg, that “while States talk, cities act” became a mantra. These elements put the issue of cities in international law in a context in which even the most sceptical (and positivist) international lawyer cannot ignore that something (new) is happening and the issue cannot be underestimated. The traditional, maybe realist, view that cities do not have any standing in international law since they are simply administrative units of States does not seem to be satisfactory to some. By contrast, some authors have gone as far as to speak about cities as subjects of international law. Others emphasize the impact of changes that are happening, and argue that this may lead to cities becoming international legal persons, or maybe that even the concept of legal persons has to be reviewed in contemporary international law and cities will fit into this modified category. Expressions such as “actors”, “international legal authorities”, “non-party stakeholders”, “multi-stakeholders” or “agents” have been more frequently used to describe today’s standing of cities in international relations and international law. For some scholars, “the domestic legal relationship between cities and their states is itself a proper subject of international legal relationship” and this has led to the development of topics such as *international local government law*.

Witnessing this sometimes confusing and often nebulous debate on the position of cities in international law, one could wonder what cities are and what they do in contemporary international law. One could also wonder whether allowing cities to actively participate in the formation and implementation of international norms, as well as giving their active contribution – as cities or transnational city networks – in international multilateral negotiations on issues of global concern does really imply a change in their status in international law and in the relationship between cities, States and international organizations. Finally, one could wonder

“how” (this author would rather say “whether”) “international law is transformed through the growing role of cities”.

In the following pages I will review (and try to better understand) the different positions on the role of cities in contemporary international law with regard to the basic concepts of international legal personality and looking at the participation of cities in international relations.

I will examine (and briefly comment upon) some of the most recent doctrinal efforts to reconsider the status of cities in international law. In doing so, I will focus mainly on observations related to the incremental participation of cities in international affairs in recent years and the conclusions to be derived therefrom on the international legal standing of cities (Section 2). Then, the reasons why cities are not subjects of international law, or better, why in international law cities and local authorities still matter but only because they are part of a State, will be systematically assessed and, consequently, attention will be devoted also to the rise of transnational city networks in international law (Section 3). Some final remarks will be made on the prospects for cities, transnational city networks and States on the international scene (Section 4).

PART 1. A REVIEW OF THE DIFFERENT POSITIONS ON THE STATUS OF CITIES IN INTERNATIONAL LAW

As recalled above, in recent years, cities have been the subject of several studies by legal scholars, in both national and international law, and in other disciplines such as international relations, sociology, geography, demography, economics, politics and urban studies. Among these disciplines, in order to better understand the role of cities, local authorities and transnational city networks in contemporary international law it may be useful to first refer to a recent sociological study, or rather a study by two sociologists of human rights, that tackle (and criticize) the position of international law scholars towards the role of cities.

Oomen and Baumgärtel have noticed that recent behaviour of States and city representatives in international negotiations in the field of human rights indicates that, while States appear in crisis or unable to reach decisions, cities and local authorities have “increasingly asserted themselves as an alternative with greater legitimacy and more hands-on impact, and they are recognized as such by policymakers, scholars and international and regional organizations alike”. While social science scholars paid attention to this practice, the same did not happen with regard to international lawyers who were more focused on “how to integrate local authorities into static conventional frameworks firmly based on the premise of State sovereignty”. In other words, according to these authors, international law scholars show a certain interest in the activities of cities on the international scene, but they do so only in order to preserve the current state of affairs and the basics of their discipline, and not to acknowledge the alleged enhanced force of local authorities in international negotiations, including as a form of civil society network, as has been seen in the field of climate change and the negotiations that led to the Paris Agreement of 2015, as well as its follow-up, with the creation of huge networks of cities.

The “sins” of international law scholars in addressing the relationship between local authorities and States are first that they “have so far followed a predictable pattern that [...] is predisposed to accommodate rather than challenge conventional frameworks”; secondly, international law scholars have “sought to assess the relevance of these processes using established categories of international law”. As to the latter, Oomen and Baumgärtel stress that, in their opinion, the attempt was not successful since it ended up stressing the key role of domestic law in defining the competence of the local authorities and concluding that local authorities only make a “modest” contribution to the development of international law.

In the field of international responsibility, for example, they take note that according to Crawford and Mauguin “the prospect of bypassing the State is simply impractical”. Consequently, according to Oomen and Baumgärtel, international law scholars have tried to get around these difficulties by not addressing the “challenging issue of legal subjecthood right away”, but rather refocusing “on cities as the object of international norms”, and by stressing that cities’ activities “may count as ‘soft law instruments with some degree of international normativity””.

These attempts by international law scholars at answering some of the questions concerning the role of cities in contemporary international law are aimed at circumventing those questions rather than answering them, as recognized by the same authors cited here.

The failure to directly engage with the issue at a more fundamental level stems from concerns put forward by other authors and recalled in the same article: from those who think that elevating the status of cities and local authorities would lead to a world even more “unmanageable” than the current one; to those who warn about the intention of cities to affirm a more neo-liberal call for privatization; to those who have reservations about cities’ networks since they “reproduce hierarchies known from the State system”; or, finally, to those who warn against the “premature rejection and ‘demonization’ of the State, which could have detrimental political consequences [...]”.

The conclusion of Oomen and Baumgärtel is that, as regards international law scholars, they “have not so far shown the audacity to dream about ‘new horizons of possibility””.

Recent international relations studies have emphasized that in the last two decades cities have been entering the international political arena, notwithstanding some institutional, legal and political obstacles. According to those studies, cities have been acting on the international scene as independent actors from the States to which they belong and have been able to shape

and influence international negotiations. They have done so through different strategies, including: (1) coalescing together to form large networks, which engage in city or “glocal” (globalized-local) diplomacy; (2) allying with well-connected and well-resourced international organizations; (3) gaining inclusion in UN multilateral agendas; (4) mirroring state-based coalitions and their high-profile events; (5) harnessing the language of international law (especially international human rights and environmental law) to advance agendas at odds with their national counterparts; and (6) adopting resolutions, declarations, and voluntarily self-policed commitments – *global law* – that look strikingly similar to state-made international law.

The conclusion is that “using these six strategies, cities are piercing the states-only veil of international politics in ways arguably not seen in the post-Westphalian era”.

Looking at the standing acquired by cities on the international plane, one cannot but agree with this last observation. The fact that in the last two decades cities and their mayors have been able to construct solid inter-city alliances such as ICLEI-Local Governments for Sustainability, C40, Climate Leadership Forum, Metropolitan Mayors Caucus, the World Organization of United Cities and Local Governments (UCLG), International Union of Local Authorities (IULA), Mayors’ Organizations, World Federation of United Cities (WFUC), World Urban Forum, Global Metro City, and the Glocal Forum, and that through those alliances they have been able to participate actively in inter-governmental negotiations and make their voice heard on these occasions, is true beyond any doubt. However, the description of the ways and means (“the strategies”) used by cities to obtain these results does not necessarily imply that by doing so cities can be considered more than “actors” or that they become subjects of international law. Actually, what cities have been able to do with regard to their standing in international relations does not differ (too much) from what other alleged international “actors” have been able to do and to achieve in what I would call the “intergovernmental plus arena”, i.e. intergovernmental

negotiations open to participants other than States. Reference is made here to what coalitions of NGOs do in many fields, ranging from climate change to international criminal justice. More specifically, regarding the latter, the establishment of the International Criminal Court (ICC) would not have been possible without the constant presence and activity of the Coalition for the establishment of the ICC (CICC), an association of more than 2,500 NGOs that participated in all the phases of the negotiations that led to the establishment of the ICC and is still very active in this field. However, no one even thinks that by so doing the CICC has become a subject of international law, although it is clear that it has been, and still is, a “pervasive” actor in promoting international criminal justice.

Even more perplexities arise from a recent attempt to illustrate, now from a legal point of view, alleged changes in the international legal status of cities by one of the “pioneers” of international law scholarly studies on cities. After declaring the insufficiencies of what he calls the “intuitive approaches” to the question (those who reject international subjectivity/personality for cities and those who think that what matters is how cities function in reality, not whether they are conceptualized as subjects/persons), Blank “calls into question the denial of cities’ status in international law pointing to their growing importance as central actors on the international legal plane”.

According to Blank, cities are “becoming crucial actors” and are allegedly involved in international dispute settlement procedures, even if he admits that “this involvement still requires the consent of their state”. Furthermore, other changes in the position of cities in the field of foreign relations and in the formation of global networks would lead one to “call into question the rigid definition of what it means to be a ‘subject/person’ of the law, and the theory of the international legal system, that lies behind it”. Following this reasoning, Blank states that cities “are where international agreements are translated into real policies, and they are the ones

that decide what international rights and obligations actually mean”, and “where more authentic and participatory democracy is exercised”. The deep involvement of cities in the international sphere and their connection with international institutions indicates that cities, “although relying on their state’s agreement to perform these activities, are operating ‘as if’ they were international legal persons”. This final statement indicates that in real terms cities are not international legal persons. In explaining why cities should have international legal personality (i.e. they do not have it yet), and why this is desirable, the same author argues that cities’ international legal personality would not replace that of States, “but would rather complement it”. One could question whether this is any different than saying that cities, *per se*, do not possess international legal personality. However, in his opinion cities would be much better than States in promoting participatory democracy, combating populism, promoting cultural, religious, ethnic and linguistic pluralism, as well as economic efficiency, and in countering executive overreach through a different and more consistent “separation of powers”. Each one of these arguments would deserve several comments, although comments and criticisms are honestly presented by the same author (in the same text). As a concluding remark, he states that:

even if facilitating institutions such as the UN cannot be adapted to a world with thousands or even millions of international legal subjects, we can certainly think of an international law where cities are legal persons who bear international legal duties, who are capable of entering international agreements, and who are making international legal claims.

It seems that this assessment refers, maybe, to the international law of the future; it remains to be explained whether it is compatible with institutions and norms of contemporary international law.

Another attempt to single out the role acquired by cities in contemporary international law through their impressive participation in international negotiations was conducted by one of the most authoritative international law scholars on the topic, Helmut Aust, when he looked into what has recently happened in the field of climate change. In view of the difficulties arising in intergovernmental negotiations on this issue after Rio and Kyoto, cities and TCNs were very critical of States for the stalemate that preceded the conclusion of the Paris Agreement in 2015. The accusation that States only talked while cities acted was particularly harsh. The conclusion of the Agreement and its rapid entry into force in 2016 have demonstrated, according to Aust, that those criticisms were premature and that States still play a crucial and irreplaceable role in concluding international treaties. At the same time, looking at the complex content of the Agreement, it emerges that while States have kept their prerogatives in treaty-making power, cities are called upon to implement the Agreement, and strengthen their position at the international level. Therefore, after Paris, “no longer can it be argued that the inter-State system is dysfunctional [...] But the importance of the subnational level for this part of global governance can no longer be denied”. And Aust concludes that:

the growing role of cities in global governance – and increasingly also in international law – adds another layer of complexity to our understanding of these fields. This complexity is owed not least to the dual character of cities when they act at the international level. They remain State organs and hence represent to a certain extent their respective State. At the same time, the field of climate change governance exemplifies that cities frequently act globally precisely in order to pursue a policy which sets them apart from their home State.

Although this position provides a possible answer to the request for clarification of the role of cities in international law (by restating that they are part of their States), it seems to introduce a

sort of schizophrenia by cities, which are part of their respective State but also able to run against it globally. However, one could also say that if cities criticize their central governments – whether it happens at the international or at the domestic level – these criticisms do not change the cities’ nature as subnational units of the States to which they belong.

Interesting observations have been presented by Aust also with reference to TCNs and their place in international law. In this regard, he recalls that in recent times TCNs have shown dynamic attitudes in global affairs and “aim to establish themselves in a broader way as part of the relevant governance structure”. In order to explain what is happening, it is recalled that the city networks believe that they are efficient while States are dysfunctional; that cities are pragmatic and problem-solving; and that cities have democratic legitimacy, being the closest to the people. The reactions of international law to this development are, according to Aust, twofold: according to a traditional, positivist approach, city networks are not dealing with international law, cities are not subjects of international law and do not contribute to the formation of international law; on the other side, those who enthusiastically support a sort of progressive approach to the issue (“a contourless global law mindset”) would “welcome all activities of cities with open arms, stipulating that all boundaries between domestic and international law, between hard and soft law have collapsed”. According to Aust, “the former approach is as uninspiring and lacking imagination as the latter is falling short of law’s fundamental objective to provide for normative guidance [...]”.

Quite interestingly, he proposes a third way, inspired by the “works on transnational networks of civil servants, the global administrative law literature and recent work on ‘informal international law-making’.” However, this approach also does not seem to be satisfactory if Aust concludes that:

whether this turn to informality maintains flexibility and could thus help to turn cooperation between cities into a productive laboratory for societal change, it can also mean that existing power structures are reproduced on a different level.

In a further attempt to respond to “the traditional absence of cities from international law”, the same author has recently proposed including cities among the international legal authorities which, according to Aust, “seems to imply that international law is recognizing the authority of a given entity”, with the very important caveat that “the concept of authority goes beyond mere subjectivity”. Thus, in order to qualify cities as international legal authorities the first issue is to ascertain whether any rule of international law recognizes some regulatory power to cities; and then on which basis this authority is constituted. It follows that cities would be “a most peculiar form of international legal authority as the ground for their authority is hybrid: it follows from both international and domestic law”; furthermore, the position of cities and global networks of cities in international law is equated to that of international organizations. However, it is recognized that, because of the traditional view that international law is an inter-State law, cities are not listed among the subjects of international law in international law textbooks. A bottom-up process and a top-down phenomenon would indicate, according to Aust, that “this state of affairs is gradually changing”. The bottom-up process would amount to the global activities of cities and the active participation of cities and their associations in international meetings: this would imply that cities and their associations are today “relevant actors, addressing a governance gap created by the allegedly ineffective structures of the traditional system of inter-state diplomacy”. On the other side, and this is defined as the top-down process, States and international organizations “increasingly recognize that cities and subnational authorities are relevant actors and could thus be understood as international legal authorities”.

These processes are “complementary and jointly contribute to the shaping of an international legal authority for cities”. Aust affirms that this authority will develop “in the sense that States increasingly recognize the global aspects of local matters”, and would agree to cities going beyond their national competences in view of the achievement of their objectives. Therefore, a parallel is made with the theory of implied powers in the law of international organizations. Aust does not hide the difficulties of this theoretical construction and admits that the field of global city cooperation is still a “laboratory for experimentation” and that this field “will increasingly call for robust comparative law endeavors in order to understand more fully the framework conditions under which cities can implement their international legal authority”.

Another commendable effort to describe the role of cities and TCNs in contemporary international law has been recently made by Durmus by looking, once again, at the international engagement of cities in various fields of international concern. In this regard, phenomena such as the “pluralization of actors without established legal personality engaging in practices traditionally reserved for states”, and the preference for non-binding international norms “created through multistakeholder governance processes rather than binding treaties signed by states only” would imply “a move from multilateralism – referring to an inter-state governance system – towards multistakeholderism – referring to a system of norm generation and governance that involves many actors relevant to a subject matter”.

In particular, Durmus noted the engagement of cities and TCNs in international matters usually managed by States and the creation of institutions where local authorities engage, as such, in international law and global governance. This engagement paves the way to the formal recognition of cities and TCNs as actors in international law, “regardless of whether it takes a long time for any formal change of status to occur – if it occurs at all”. According to Durmus, the observation of the modalities through which, in the last thirty years, cities and TCNs have

interacted with international organizations may contribute to “a recognition of a limited kind of legal personality”, and this would amount for cities and TCNs to a recognition “if not as a ‘non-state actor’ then as ‘stakeholders’ in the multi-stakeholder processes of global governance”.

Durmus concludes that, while the novel, crucial role of cities and TCNs in international negotiations and more generally in contemporary international law should be recognized, cities and TCNs are not to be considered, *as such*, subjects of international law.

Finally, Bodiford has recently stated that, although “cities’ status in international law remains ambiguous, they are in a twilight zone in international law between sovereign and not sovereign”. Furthermore, that on the basis of their participation and the active role played in international negotiations, cities “are becoming emergent actors and subjects of international law”. In view of the direct engagement of cities in areas such as environment, transportation, housing, water, and planning, Bodiford argues that cities should even be considered “sovereign actors”. This strong support for “subjectivity” and “sovereignty” of cities in international law seems to collide with the exclusivity (monopoly) of States in foreign policy with regard to the example of the conclusion of agreements between cities belonging to different States. Leaving aside the fact that this type of agreement is concluded between sub-national territorial entities (i.e. by sub-entities of different States) in the framework of constitutional and legislative provisions, it is acknowledged that “the agreements which cities make with each other fall outside the scope of sovereign foreign policy”.

Lastly, underlining the differences between cities and “rural hinterlands” and claiming an alleged superiority of cities, Bodiford assigns to cities a central role between State and rural periphery. He argues that cities should, on the one hand, “challenge the parochial interest of a nation or a region” and, on the other, should conclude “an agreement which encompasses a patchwork of the world’s cities with the world’s highest GDP” in order to “drag even the greatest

geo-political troglodytes kicking and screaming into the twenty-first century.” I admit that it is unclear to me what the connection between this affirmation and the alleged subjectivity of cities in international law is.

Although I do not always see the rationale of some of these doctrinal reconstructions of the role of cities and cities’ associations in contemporary international law, the attempts at attributing to them a sort of legal personality/subjectivity based mainly on the observation that these entities are participating, as such, in international negotiations and have been recognized as active contributors in shaping and implementing international law (norms) cannot be underestimated. The openness shown by States and international organizations to the participation of cities and TCNs in international negotiations is also noteworthy. Finally, the fact that local authorities are called upon, in some areas of international concern, to replace States’ inability or unwillingness to act or even to counter their own States’ position regarding international obligations or commitments is something that deserves attention.

However, one could wonder whether these elements suffice to pave the way to a paradigm shift towards the recognition of cities’ and TCNs’ subjecthood in international law, and thus to encourage the insertion of cities among the (emerging) subjects of international law in future textbooks.

PART 2. CITIES AND TRANSNATIONAL CITIES NETWORKS IN CONTEMPORARY INTERNATIONAL LAW

The opinions expressed by scholars on the alleged international legal personality/subjectivity of cities in international law, as previously reviewed, have something in common: the position of cities in international law has deeply changed in the last 30 years and cities are today unanimously acknowledged as “actors” that participate in international negotiations, when issues concerning their areas of competence are at stake. The reasons why cities decide to

participate actively in international negotiations are diverse, ranging from the desire to be directly involved in debates and deliberations on issues of global and local concern, to an alleged lack of representativeness and inability of central governments to address those same issues. Thus, cities have been able to “sit at the table” and to affirm their crucial role, especially on these issues. Cities have almost always participated at the international level through TCNs which, legally speaking – as I will clarify later on –, are different from cities as such in contemporary international law.

This practice has allowed cities to be better informed, to share relevant international experiences and to make their voice heard at the international level, as well as to improve their local governance on issues of global concern. All these elements surely contribute to the recognition of cities and local authorities as being among the protagonists of international relations together with other entities such as NGOs and multinationals, although with some important “constitutional” differences since cities and local authorities are public, territorial entities within nation States. However, this does not imply that they are, as such, subject of international law, a qualification pertaining to the State to which they belong.

Without commenting further upon the various opinions and reconstructions made by scholars on this issue, let us be clear: to be a subject of international law still means to have international rights and duties, to participate in the formation of international customary and conventional norms, to be held responsible for internationally wrongful acts. Do cities, as such, possess these features? First, cities – in the absence of a uniform definition in international law and considering the difficulties arising when international law scholars attempt to devise one – are part of the State to which they belong. Being territorial units of their own State implies that international law is relevant for cities qua part of their State. Thus, the practice of cities and local authorities contributes as a manifestation of their nation State’s practice to the formation of customary international law, while they also give their contribution to the formation of treaties by attending and influencing the outcome of international negotiations (although they do not ratify international treaties, according to the Vienna Convention on the Law of Treaties) if their participation is allowed or acquiesced to by States and intergovernmental organizations. In the field of responsibility for internationally wrongful acts, if the acts or omissions of cities amount to violations of international obligations, those acts or omissions are attributable to their State, according to the Articles on the Responsibility of States for Internationally Wrongful Acts and to practice. Thus, one cannot but agree with one of the authors who is more convinced about the “rising role” of cities in international law when she writes that:

[...] cities remain disconnected from black letter international law except through the intermediation of States, and no amount of creative lawyering or interpretive gymnastics can change that fact, at least so long as the current international legal framework remains in place.

We could maybe discuss whether “the current international legal framework” is still viable or something has changed or will change in the short run. And one could consider various attempts

at widening the definition of international law, including a “global law variant” (even if the word “variant” is quite frightening in these pandemic times) according to which “these formal categories are obviously much less important”. But this is not the aim of this contribution, which, rather than foreseeing the international law of the future, attempts to clarify what is the status of cities in contemporary international law. In this regard, it seems that all those who have studied this issue, notwithstanding some attempts at making further steps towards new approaches, get to the same conclusion: cities matter at the international level because they are part of the States to which they belong, as is the case with all the various branches of the nation State according to international law. This also implies that since cities contribute to shape, through various means and in different forms, the position of States when the latter are called upon to express their positions at the international level, cities are having, and rightly so, “a seat at the table” as “actors”, “stakeholders”, “participants”, agents...

Defining the standing of the associations of cities or transnational city (or municipal) networks in contemporary international law is, in my opinion, a different issue than defining the standing of cities. As cities are parts of their nation State, and the international subjectivity of the latter is not debated, when cities decide to “act” on the international scene they do it in different ways, ranging from participating in international activities to belonging to TCNs that have been established for different reasons and attend, as associations of cities and local authorities, international meetings. One could also say that TCNs rather than cities as such are today the “real” representative of cities in the world of international relations since cities express their positions at the international level mainly through the TCNs.

While in international law cities are “invisible actors” since they are part of the nation State, TCNs can be defined as non-State actors similar to NGOs and other entities that participate in international relations but without being subjects of international law, thus not

possessing international legal personality, and similar to – *mutatis mutandis* – other associations of “public” entities of different States such as the Inter-Parliamentary Union, an international (yet, not intergovernmental) organization of national parliaments.

In conclusion, TCNs, “as innovative forms of governance [...] not losing touch with the established realities of international politics and governance”, are surely an expression of the common interests of cities and local authorities, and represent such interests in international negotiations. They do so on different topics and in different ways, implementing the decisions of their members. Participating in international negotiations, TCNs have shown that they are able to influence the content of international law instruments in fields such as environmental protection and human rights, and are able also to shape behaviour in these and other issues. They have been doing so as mediators of cities’ interests but not as subjects of international law.

CONCLUDING REMARKS

The role of cities and TCNs in contemporary international law does not depend on whether a “traditional” or “progressive” approach to international law is adopted, or whether one is sympathetic to one international law school of thought or another. At a time when international liberalism and multilateralism are under attack, international lawyers – while being open to any argumentation aimed at improving a better understanding of the features of international law – should reject any selective approach as regard to the basics of international law that could result in a further weakening of the system. And this holds true also for the alleged subjectivity of cities. Acknowledging cities’ international legal subjectivity would imply, *inter alia*, a tremendous proliferation of international subjects that would result in an untenable situation as regards not only international law but also the essential features of international institutions, as has also been observed by the supporters of such acknowledgment. Furthermore, one could wonder

whether being subjects of international law would add anything to cities' capability to participate in international relations and to have an impact on relevant aspects of international law. Here too, the right answer is given by the supporters of cities' subjectivity who do not attach so much importance to this issue.

Finally, recent developments such as the fast ratification and entry into force of the Paris Agreement on Climate Change, notwithstanding the withdrawal (now withdrawn by the Biden administration) of the United States, have shown that, despite their flaws and sometimes well-deserved criticisms, nation States remain at the centre of international cooperation. Are we sure that if we replace States with cities and local authorities as subjects of international law this will lead to increased representativeness, accountability, efficiency, and democratic decision-making in international relations? Cities and local authorities can certainly contribute, through inter-city cooperation and through a better dialogue with their central authorities, to find new ways to contribute to better decision-making by States, founded on citizens' interests. In this context one should look at cities as "actors" and "honest brokers" of the future in a world that, especially in certain activities affecting humankind, should reflect on the prospects of a "networked multilateralism" in some crucial fields of international as well as domestic law. If this result is achieved, one could say that cities have had a true impact on international law or even that they have transformed it.