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Cities' international law-shaping or making and the normative value of its effects

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Abstract

This paper aims to answer whether cities are emerging as international lawmakers or shapers in human rights law, which is connected with the normative value of the results of such law-making/shaping. After a short introduction, an example of international agreement between cities, the European Charter for the Safeguarding of Human Rights in the City will be examined and compared to the European Convention on Human Rights and the European Social Charter (both inter-state treaties). The former is part of the emergence of cities as international lawmakers/shapers and part of the global and multi-level governance architecture. Then, the paper will present the case study of Barcelona, focused primarily on Barcelona's implementation of the European Charter for the Safeguarding of Human Rights in the City. Finally, the paper will provide the answer to the above question with some concluding remarks.

Keywords: cities, international law, normative value, soft law, informal international law making, European Charter for the Safeguarding of Human Rights in the City, European Convention on Human Rights

1. Introduction

The forms in which cities increase their participation in international affairs and processes of global governance are multiple and varied. They may include activities within inter-city bilateral (sister city) or multilateral (city networks) diplomacy as well as the development of external relations aimed at promoting political stability and developing trade. Participation can include implementing international treaties on cities' initiative, even if this contradicts the official position of the central government by challenging the traditional notions of internalization and domestic implementation of international law.[1] Importantly for this paper, cities not only implement international law but are also emerging as inter/transnational law makers/shapers.

Traditionally speaking, the term international law is employed to explain the body of rules and principles that regulate the legal relations between nation-states. Since the establishment of the so-called Westphalian order in the mid-17th c., States have long been deemed to be the only holders of legal personality, and as a consequence, the only entities with the capacity to have rights and to bear duties and to make and enforce the law.[2] However, today such approach no longer reflects the reality. The international legal order became much more complex in the 1950s as new subjects of international law emerged, namely international organizations. Today, the commonly accepted subjects of international law include states, international organizations, the Holy See, the Sovereign Order of Malta, insurgents, national liberation movements and individuals.[3] With different degrees of impact, these various actors have joined and begun to create 'a fragmented body of rules and practices'.[4]

In the early 2000s Yishai Blank pointed out that the issue of extending international law to such non-state entities as humans, minorities, transnational corporations and civil society organizations had been much discussed but these discussions so far had not included cities. Recently, however, much has changed.[5] As Gerald E. Frug and David Barron state, "[c]ities have entered into a new phase in history. Their orientation has become external rather than internal. Their associations have become global rather than domestic" which points to the growing role of cities in international relations and decision making processes. Generally, from the perspective of international law as well as internal law of every state, the city has been constructed from within a national legal order; it has been regarded as a part of the state.[6] At

[1] Lin 2018, 45.
[2] Cassese 2005, 3; Warbrick 2003, 206.
[3] Cassese 2005, 71-150.
[4] Durmus and Oomen 2021, 3; Wouters 2019, 246.
[5] Blank 2006, 871.
[6] Frug and Barron 2006, 8.

the very beginning one remark must be made: cities can be regarded as territorial non-state actors,[7] sub-national actors,[8] sub-state actors, non-state actors or 'state related actors'.[9] In the latter character, cities enjoy some degree of independence. As such – Helmut Philipp Aust argues – cities can be viewed as "a particular form of non-state actors in international law: they are parts of states, but also bring their own political identity to the international level which transcends this characteristic of belonging to 'the state'".[10]

This paper aims to explore the emerging role of cities as international law-makers or shapers in the realm of human rights law and assess the normative value of their contributions. After a brief introduction and a review of relevant international law literature, the article examines the European Charter for the Safeguarding of Human Rights in the City (ECSHRC) alongside the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). The analysis includes a case study of Barcelona's implementation of the ECSHRC. Finally, the paper offers insights into the normative implications of international agreements formed by cities, followed by concluding remarks. This study involves comparing European inter-state and inter-city agreements, exploring their practical implementation, and addressing challenges associated with them. By juxtaposing state and city agreements, this article contributes to a deeper understanding of cities' role in human rights governance. It offers valuable insights for scholars in international relations, beyond the realm of international law.

The research methods used include formal-legal analysis focusing on legally binding and non-binding documents and includes examination of the content documents such as ECSHRC, ECHR and Barcelona's International Relations Master Plan 2020-2023, comparative analysis with reference to ECSHRC and ECHR together with ESC, case study with reference to Barcelona, and critical analysis of the literature.

2. Literature review

This brief literature review can by no means be exhaustive. It merely signals the most important trends, moments in time and terminological propositions connected with cities' role in international law-making/shaping. So far, international law textbooks hardly mention this aspect of cities at all, although cities' role in developing and implementing international law as well as their say in the realm of international relations is growing. In legal research, the change

[7] Van der Pluijm and Melissen 2007, 7-8.
[8] Koo-hong 2016; Acuto 2013, 8; Roberts 2017; Sassen 2002, 1; Aoki et al. 2008, 457; Curtis 2016, 4.
[9] Amen et al. 2011, 38.
[10] Aust 2015, 270.

came in 2006 with the first studies of cities as legal entities capable of taking international actions.[11] As contended by Frug and Barron, international legal rules and international organizations increasingly influence the extent of local authorities' powers. The scholars explored cities' actions connected with international law as well as creation and participation of cities in international city networks, which empowered the former to act more energetically in the international arena and, notably, act beyond and independent of their States. In the same vein, Blank points to four key "modalities" which make cities 'prominent actors on the world stage': turning them into entities with international powers, duties and rights; becoming important objects of international regulation; their increasing enforcement of international law; and forming worldwide city networks.

Research on the normative activities of contemporary cities offers further evidence that the meaning of international law is no longer limited to the rights and obligations of co-existing states and that there is a variety of theoretical approaches to conceptions of international legal order.[12] This in turn is connected with a claim made by Jolene Lin that cities today cooperate actively within multi-actor and multi-level partnerships that rise above the traditional binary divide between public and private or domestic (internal) and international (external) matters. Lin also points to the fact that the state has reconfigured itself over recent decades, as evidenced by cities' transnational governance activities, from a unitary and separate monolith to a variegated, flexible entity existing within the global system populated by a plethora of networks consisting of different state components.[13] The era of classic international law is drawing to a close and will probably give way to a hybrid system in which the traditional actors, institutions, and processes will mix and merge with a variety of transnational ones.[14]

Apart from that, publications on cities and international law in are rather scarce the world literature, including mostly articles and book chapters. At present a book that may be termed fundamental in the field is the *Research Handbook on International Law and Cities* (2021), edited by Aust and Janne Nijman, who claim in the introductory chapter that cities are subject to international norms and to decisions made by international institutions, yet they also influence global-level developments on their own or jointly, as parts of a city network or in cooperation with international intergovernmental organizations.[15] This statement is in full

[11] Blank 2006; Frug and Barron 2006.
[12] Lin 2018, 20.
[13] Lin 2018, 16-17.
[14] Sari and Jachec-Neale 2018, 35.
[15] Aust and Nijman 2021, 6.

accordance with the arguments on cities' increasing influence in international relations advanced in this article.

Other, earlier texts that should be mentioned here include a chapter by Auby (2011) and a review essay by Aust (2015). The first points to the emergence and subsequent rise of global cities which impact the international governance and international legal order. In his review essay Aust regards cities as "internationally relevant actors", especially in the climate change context, and highlights the need to examine cities in the context of international law, inviting at the same time international lawyers to take a fresh approach to international law by taking into account the sub-national scale, a government level so often overlooked by the international law. The above mentioned *Research Handbook* in a way constitutes a brilliant and successful answer to this invitation.

In the context of international law-making/shaping, one should take a special note of the book by Lin.[16] There she examines 'the emergence of cities as actors that are producing and implementing norms, practices and voluntary standards that transcend state boundaries' in the framework of transnational climate change governance. To put it in other words, cities can act as jurisgenerative actors. Several years earlier, Wexler (2006) also clearly pointed to the possibility of cities enforcing international human rights and environmental norms.

The most current publications important for the subject of cities and international law include Oomen and Baumgärtel (2018); Swiney (2020) and Eslava and Hill (2020). Swiney (2020) and Eslava and Hill (2020) proposed new terms (such as global law and international urban law, respectively) to better accommodate the increasingly important and influential position of cities in international relations. Swiney's article is particularly important as she examines forms of cities' participation in international relations, including cities increasingly implementing international law. As to Barbara Oomen and Moritz Baumgärtel's article, they argue that cities hold the potential to contribute to addressing challenges e.g. in the realm of human rights – in fact, cities have already contributed effectively to dealing with such challenges. The authors examine how relevant and legitimate it is to use human rights as a discourse of governance in the urban context; what consequences domestic constitutional provisions may have on the enforcement of human rights law; and what legal personality means (and how it may change), particularly when a state fails. The human rights discipline is especially pertinent: engagement in this field gives local governments an opportunity to

[16] Lin 2018, p. 6.

reinforce their position within the host State, and to assert national and international prominence.

An article that is of relevance to this paper is the one by Elif Durmus (2020), where the author proposed a complex, six-fold typology of cities' contributions to international human rights law: formation of human rights, implementation of human rights, defence of human rights, coordination of human rights, dissemination of human rights, and contestation of human rights. This typology will be recalled later on in this paper. One of the recent attempts to examine and explain the role of cities, and more precisely transnational city networks, in general international legal norm-generation is an article by Durmus and Oomen where the authors explore how and why transnational city networks 'engage in *jurisgenerative* (norm-generating) practices in the governance of migration that resemble international legal practice'.[17] Another important point of reference is a chapter in the *Research Handbook on International Law and Cities* on sources and law making written by Yukiko Takashiba (2021). Actually, the third part of the *Research Handbook on Cities and International Law* discusses the ways in which cities "reshape" or impact various areas of international law; the crux of the matter is that the "normative value" of cities' actions is highly context-dependent. Also, at present the many aspects of legal subjecthood/personality of cities have been meticulously analysed in literature (an overview can be found in chapter 9 of the Research Handbook).

3. European Charter for the Safeguarding of Human Rights in the City: an example of law-making?

A very important case of an international/transnational law or, more broadly, transnational regulations being initiated by cities is the European Charter for Safeguarding Human Rights in the City (2000) whose current number of signatories exceeds 400.[18] This agreement deserves special attention as it is a comprehensive document that aims to foster at local level the respect for human rights, ensure their protection and the right to enjoy them. The preparatory work for this Charter began in Barcelona in 1998 as part of the conference Cities for Human Rights, held as a commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. Mayors and other political representatives of local governments that attended the conference unanimously appealed for greater recognition and political acknowledgement of cities' crucial role in the area of human rights in the increasingly urbanised

[17] Durmus and Oomen 2021, 2.
[18] Swiney 2020, 267.

world.[19] This document is similar to inter-governmental human rights conventions and expressly refers to them (to the Universal Declaration of Human Rights, 1948; the European Convention on Human Rights, 1950; the European Social Charter 1996; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966). In a way, it serves as a complementary tool to the general human rights conventions concluded by states. In the preamble to the role of cities is presented as facilitating a better implementation of human rights recognised in inter-state agreements, which it found unsatisfying, and creating "the right conditions for the personal wellbeing of everyone."[20] Among the reasons for adopting a separate Charter are the worldwide urbanization and the related phenomenon of accelerating rural-urban migration and the belief that the city is "where the future of mankind lies."[21] Another interesting aspect of ECSHRC, apart from implementation, is the issue of establishing new human rights in the city. Does the ECSHRC create new rights not envisaged in ECHR? (ECSHRC, ECHR and ESC are compared in Table 1).

Table 1. Comparison of the European Charter for Safeguarding Human Rights in the City, European Convention on Human Rights, and European Social Charter

Rights/freedoms	**European Charter for Safeguarding Human Rights in the City 2000**	**European Convention on Human Rights 1950**	**European Social Charter 1996**
Obligation to respect human rights	-	Art. 1	Art. A, part III (possibility of selecting obligations)
Right to life	-	Art. 2	-
Prohibition of torture	-	Art. 3	-
Prohibition of slavery and forced labour	-	Art. 4	Art. 1 (paragraph 2)
Right to liberty and security	-	Art. 5	-
Rights to a fair trial	Art. XXV	Art. 6	-
No punishment without law	-	Art. 7	-
Right to respect for private and family life	Art. X	Art. 8	Art. 16 (The right of the family to social, legal and economic protection)
Freedom of thought, conscience and religion	Art. III	Art. 9	-
Freedom of expression	Art. VIII.3 (within the right to political participation)	Art. 10	-
Freedom of assembly and association	Art. IX	Art. 11	Art. 5
Right to marry	Art. X.3 (within the right to respect for private and family life)	Art. 12	-
Right to an effective remedy	-	Art. 13	-

[19] European Charter… 2000, 6; European Charter…, 2010.
[20] ECSHRC 2000, 8-9.
[21] Durmus and Oomen 2021, 9.

Prohibition of discrimination	Art. II	Art. 14	Art. 20
Right to the city	Art. I	-	-
Right to cultural, linguistic and religious freedom	Art. III	Art. 9	-
Protection of the most vulnerable groups and citizens	Art. IV	-	Art. 7 (the right of children to protection); Art. 15 (persons with disabilities); Art. 19 (migrant workers); Art. 23 (elderly)
Right to political participation	Art. VIII	Art. 3 of Protocol I	-
Right to information	Art. XI	-	Arts. 21, 29
General right to public services of social protection	Art. XII	-	Arts. 12, 13
Right to education	Art. XIII	Art. 2 of Protocol I	Art. 7
Right to work, to just conditions of work and fair remuneration	Art. XIV	-	Arts. 1, 2, 3, 4
Right to culture	Art. XV	-	-
Right to housing	Art. XVI	-	Art. 31
Right to health	Art. XVII	-	Arts. 11, 3
Right to the environment	Art. XVIII	-	-
Right to harmonious city development	Art. XIX	-	-
Right to movement and tranquility in the city	Art. XX		-
Right to leisure	Art. XXI	-	-
Consumers' rights	Art. XXII	-	-
Protection of property	-	Art. 1 of Protocol I	-

The three documents begin with rights that may be termed fundamental: the right to the city, the right to life and the right to work, respectively. The right to the city is "a new concept in international law: a collective right that considers cities as commons for the realisation of all human rights including environmental rights."[22] There is an overlap or interaction between human rights and the right to the city: the former constitute an important element of the right to the city while the right to the city constitutes an important element of the municipal human rights agenda.[23]

Even though the ECSHRC has no express obligation to respect human rights (equivalent to Art. 1 of the ECHR), it does not mean that cites-parties are not so obliged. First, one may argue that the principle *pacta sunt servanda* (agreements must be kept) applies to cities. Secondly, each of the documents contains an implementation mechanism (section II on the European Court of Human Rights in ECHR and part IV of the ESC). Hence, also, in the case of the ECSHRC there is an implicit obligation to respect rights contained therein. Moreover, the final provision of the ECSHRC obliges cities-parties to integrate the principles, regulations, and assurance mechanisms outlined in the Charter into their local laws and explicitly cite them to support their official actions.

[22] Durmus and Oomen 2021, 8.
[23] Davis 2021, 230.

With reference to the implementation mechanism, inter-state human rights conventions have been extensively analyzed in the legal literature, hence a few words of comment are required on ECSHRC. In 2008 the most dynamic and active cities-parties to ECSHRC (Barcelona, Saint-Denis/Plaine Commune, Lyon, Geneva and Nantes) decided to assign its promotion to the most renowned city network, United Cities and Local Governments (UCLG) via the UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights.[24] The text of ECSHRC also provides for some instruments of its implementation – part V mentions local administration of justice (local courts and extra-judicial means of resolution of civil, criminal, administrative and labour disputes), local police, mediators and human rights or people's ombudsman as well as taxation and local budgets.

New rights are marked in bold in Table 1. "New" in this case means rights that can be found only in an international agreement concluded between cities. Some other rights, e.g. consumers' rights, are recognized for example in the EU Charter of Fundamental Rights, which is part of the Treaty of Lisbon (2012, Art. 38). An analysis of the human rights recognized in the Charter leads to a conclusion that "urban life requires, on the one hand, rights to be *redefined within the urban context*, such as is the case with employment and mobility, and on the other hand, *for new rights to emerge from the urban context*, such as a respect for the environment, the guarantee of sound food, tranquillity, possibilities of social interchange and leisure."[25]

ECSHRC contains two generations of human rights (civil and political rights in the city – part II; economic, social and cultural rights in the city – part III) and a novel category of rights termed 'rights relative to democratic local administration' (efficiency of public services – Art. XXIII and principle of transparency with reference to the administrative process – Art. XXIV). The Charter also envisages a duty of mutual solidarity in its Art. V, a duty encumbered on the local community but supported by local authorities. In international human rights law, Art. 29 (1) of the Universal Declaration of Human Rights mentioned the duties that everyone has to the community, but this never turned into a binding law. The Declaration as such is a UN General Assembly resolution and as a consequence not binding in itself but supposed to reflect customary international law. ECSHRC (Art. V), as opposed to the Declaration, states that this duty is conferred upon the local community and is owed to its own members. This "duty of solidarity" also means the local governments should promote 'the development and quality of public services'. Moreover, according to Art. VI on International Municipal Cooperation, cities 'undertake to cooperate with regional and local authorities from developing countries in the

[24] European Charter… 2000, 6.
[25] Durmus and Oomen 2021, 9.

areas of infrastructure, protection of the environment, health, education and culture, and to involve the maximum number of citizens' and encourages "financial agents as well as the population at large to participate in cooperation programmes, with the purpose of developing a feeling of solidarity, eventually achieving full equality between peoples, which transcends urban and national frontiers". As Durmus and Oomen state, duties of solidarity and cooperation in the locality and outside of if (crossing its borders) are expressed and specified in a more detailed manner compared to international human rights law.[26]

Overall, the European Charter constitutes "the most well-recognised and influential quasi-legal normative document drafted autonomously by local governments, characterised by its solid legal structure."[27] The Charter does not simply copy or endorse in the same wording a right that is already recognized in international human rights law. Rather, each article in the Charter attempts to progressively develop human rights and their implementation mechanisms so that they are better protected and better reflect the urban specificity. In other words, human rights contained in the European Charter are accorded to all people living in the city, including migrants. It is also worth noting that in contrast to international human rights law which addresses rights of vulnerable groups separately (in separate conventions), the Charter combines in one single document rights of women, consumer rights, rights of migrants, refugees and foreigners, rights of the disabled, rights of nomads and other groups.[28]

As local governments have drafted, signed and ratified the ECSHRC (or similar documents like the Global Charter-Agenda for Human Rights in the City, 2011 or the Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees, 2018), this can be seen also as cities contesting the central position of states in human rights law-making. The documents created at the local level deliberately employ advanced techniques of legal drafting and are clearly modelled on the forms of inter-state law-making; it can be argued that local authorities demonstrate in this way their frustration with their inability to participate in international law-making. Moreover, such documents contain new, locally generated norms of human rights and/or contest the existing ones by providing alternatives. For example, as mentioned, new elements of positive international human rights law the "Right to Harmonious and Sustainable City Development", the "General Right to the Public Services of Social Protection", the "Right to Movement and Tranquility in the City", the "Right to the Environment" and the "Right to Leisure" are all enshrined in the ECSHRC. There are also examples of city governments making

[26] Durmus and Oomen 2021, 11-12.
[27] Durmus and Oomen 2021, 6.
[28] Durmus and Oomen 2021, 12, 17.

official commitments to international norms which their central governments have chosen not to adopt. Cities thus contest the assumption that only states are capable of entering into international obligations, which may be termed as cities bypassing states, as in the case of the *Convention on the Elimination of Discrimination of Women*, which was not ratified by the US but was symbolically ratified by a number of American cities and adopted into many local legislations.[29]

The above analysis shows that very often, cities infuse international legal regulations with real content. Cities regarded as politico-legal institutions (namely as local governments) implement international agreements though their policies and practices.[30] This also shows that "the novelty of the contemporary legal landscape drives in part from the fact that certain regimes and institutions at the sub-, supra-, and transnational levels can create new obligations, rights, and duties that bind states, individuals and other actors even in the absence of hierarchically ordered means of enforcement."[31]

4. The case study of Barcelona

Barcelona City Council adopted ECSHRC on 21 July 2000. In fulfilment of the incurred obligations, Barcelona began to incorporate the Charter's provisions on substantive rights and guarantee mechanisms into local laws. As part of this process, the Barcelona Charter of Rights and Duties (2010) was issued. It was intended to be an educational tool used to promote, disseminate, and ultimately ensure respect for human rights. The aim of its dissemination and promotion was also to raise awareness of rights among the city population and also local authorities.[32] Consequently, Barcelona created its own model of rights, which emphasizes and embraces inclusiveness, diversity, respect, protection, and guarantee of human rights, all necessary to enable sustainable human and social development.[33] Its normative or legal context and a point of reference is on the one hand ECSHRC and on the other an idea that encompasses gender and intercultural attitudes. These two inspirations fit well into the rights approach.[34] Hence, the intent to implement ECSHRC is expressed directly.

Practical implementation of the Charter includes setting up several institutions to safeguard human rights, such as the Office for Non-Discrimination, the LGBT Council, the Office of

[29] Durmus, 2020, 50-51.
[30] Blank 2021, 113.
[31] Fraundorfer 2016, 3; Isiksel 2013, 169.
[32] City of human rights… 2018, 29; Carta de Ciutadania…, 2010.
[33] City of human rights... 2018, 5.
[34] City of human rights… 2018, 6.

Religious Affairs, a Discrimination Observatory and an ombudsman.[35] With reference to some practical implications of Barcelona's human rights implementation or policy efforts, for example in reaction to allegations of discrimination (based on various criteria), in 2021 the main actions carried out by Barcelona City Council included the following:

• The process of integrating the Catalan law on equal treatment and non-discrimination has been initiated by several entities, with the Barcelona City Council participating in several working meetings.

• A debate on incorporating information about racial or ethnic origin in studies and surveys has been organized by the City Council.

• Workers of institutions receiving cases of discrimination are provided with a training and awareness strategy by the Barcelona Discrimination Observatory in order to reduce under-reporting, while the Office for Non-Discrimination (OND) has commenced an antenna project to help neighbourhood entities detect and report discrimination.

• The TMB (Transports Metropolitans de Barcelona) transport networks has launched a protocol for preventing, detecting and intervening in cases of LGTB-phobia between the Observatori Contra l'Homofòbia and the TMB Social Responsibility, Women and Diversity Area.

• A protocol for cases of race-based discrimination has been established between the OND and a number of anti-discrimination organizations.

• The II Plan for gender justice 2021-2025 has been presented by the Barcelona City Council.[36]

Barcelona's example confirms that the role of cities in the field of human rights is crucial. This role is enhanced by the fact that cities, being part of the state structure, not only implement provisions emanating from international human rights law but are also the level of government closest to the citizens.[37] One of the achievements of Barcelona's human rights model is that it introduced the use of human rights language at the city level. Implementation of the model, including ECSHRC, contributed to the raising the awareness of people from the Civil Rights Department of the City Council and other departments and institutions, awareness of the meaning of human rights.[38] Such activities match what Durmus described as dissemination of human rights within the territory of the local government. This means localisation and increased ownership of human rights within the local administration and the population of the locality.

[35] Oomen and Baumgärtel 2018, 616; Grigolo 1995, 11.
[36] Barcelona Discrimination Observatory Report 2021, 15.
[37] Reds-Solidarity Network for Social Transformation 2019, 19.
[38] Grigolo 1995, 7.

This can be facilitated by offering specialised training or running focus groups with different departments of the administration, as it is done e.g. in Barcelona.[39]

Barcelona implements, disseminates but sometimes also contests the human rights policy of Spain. Barcelona experiences some tension, for example with reference to migration policy, but not an express confrontation with the state. Overall, there is no need for a city bypassing the state because the state is a party to international agreements, and Barcelona participates in their implementation. When asked about the possibility of cities bypassing states, Felip Roca Blasco said that Barcelona would probably do so and formulated it very eloquently that when states (like the US) do not ratify international treaties such as the UN *Convention on the Elimination of Discrimination of Women* but cities are implementing it, it is not cities that bypass states but states that bypass the global community.[40] Thus it can be said that when states abandon the values of the international/global community, cities often work towards rectifying this situation or making states return to this community of values.[41]

Taking into account the above remarks on the implementation of human rights by Barcelona, it is interesting to note that we are actually dealing with double implementation, which means that by implementing ECSHRC Barcelona also implements or contributes to implementation of ECHR and ESC to which ECSHRC expressly refers. Adopting the ECSHRC and becoming a human rights city have improved human rights in Barcelona, if only for the fact of providing city inhabitants and local government with entities and instruments to be used in order to monitor respect for human rights and detect their violations.

It is interesting that Barcelona's human rights commitments are implemented not only in its municipal policy but are also promoted in its international relations. In 2020, Barcelona's city council adopted the *International Relations Master Plan* that is "a commitment to a transformative international relations policy that promotes and defends a city model based on social progress, human rights, technological humanism, climate justice and feminism."[42] The objectives of the current Master Plan (2020) directly connected with human rights include the promotion of human rights protection, diversity, and feminism as part of the City Council's international actions, which in turn contribute to European and international agendas and spaces that support relevant issues and strive for recognition of new climate and digital rights; and protection of the city's and its inhabitants' interests. The ideals envisaged in the Barcelona

[39] Durmus 2020, 48.
[40] Interview with Felip Roca Blasco, the director of the *Department of International Relations* of Barcelona, 31 August 2021.
[41] Szpak 2022, 37.
[42] International Relations Master Plan 2020, 3.

Master Plan include social progress, human rights, technological humanism, climate justice and feminism. These ideals can all be placed within people- or human right-centered approach. In particular, the City Council led by the current Mayor Ada Colau has been working since 2015 on international promotion of its policies, specifically highlighting those that concern fighting against climate change, protection of social rights, social economy and the right to affordable housing. The work of the Council provided favourable conditions for transferring to international city networks the human rights approach to modern worldwide challenges as a model to use in the networks' activities towards international institutions.[43]

Notably, in its International Relations Master Plan Barcelona undertakes to implement human rights and goes even further by promoting new constructs in this field such as new digital and climate rights. Here, the overarching concept of technological humanism in a way binds these rights together.[44] As to new rights, the Barcelona Master Plan shows that local governments can act and respond to new challenges and social needs more quickly; there is no inertia characteristic for many states. Informal commitments with new human rights can be adopted and informal structures built relatively quickly.

What are the practical implications of these developments? In other words, has adopting the ECSHRC and becoming a human rights city improved human rights in Barcelona? The answer to this question is positive. By implementing the ECHRC and creating various institutions and procedures, Barcelona ensured its citizens the tools to claim respect for their human rights. For example, the Office for Non-Discrimination promotes and raises awareness of rights, offers legal advice, acts as a mediator, and, as such, offers an alternative for resolving disputes between natural and legal persons other than legal proceedings.[45]

Further elaborating on this example, upon receipt of a potential hate or discrimination crime report, the Office for Non-Discrimination is legally required to pass on the report to the specialized division within the Public Prosecutor's Office. Should the Prosecutor's Office choose to initiate or close an investigation, it must notify the Office for Non-Discrimination. If the Prosecutor's Office does not initiate an investigation, the Office for Non-Discrimination might contemplate initiating strategic legal actions. Regardless, the Office for Non-Discrimination must consistently inform the complainant about the specific steps it takes based on the complaint (Ajuntament de Barcelona 2017, 11).

[43] Barcelona International Relations Master Plan 2020, 6; Szpak 2022, 26-27.
[44] International Relations Master Plan 2020, 12; Szpak 2022, 26.
[45] Ajuntament de Barcelona 2017, 13.

The possible measurement standard is complicated as the number of claims and reported incidents may not necessarily mean the worsening of the human rights situation. For example, the Office for Non-Discrimination reported that though data is limited, it can offer some insights into discrimination in Barcelona. The reported incidents in 2015 notably increased the recorded crimes compared to previous years: 232 in the Province of Barcelona, up from 195 in 2014 and 166 in 2013, marking a 19% rise. However, confirming whether this increase reflects more incidents, better reporting, or increased public awareness is complex. The Prosecutor's Office highlighted many unreported incidents, suggesting that the spike in reports might not mean a surge in hate or discrimination crimes.[46]

5. The normative value of cities' international agreements

When thinking of cities as subjects of international law and their capability of international law-making, Blank argues that discussion on this issue reveals a "status quo bias" meaning that international lawyers have no problem with justifying the legal personality of states despite huge differences between them (take for example San Marino and Canada), while cities are treated as entities indeterminate and too loose to be such legal persons, actually without justifiable explanation.[47] Blank even claims that in the future, cities will be separate legal subjects of international law, enduring central and ultimate control from the state. Other approaches mention cities' "soft" legal status, meaning that cities informally participate in international law-making and the outcome of such actions is "soft law."[48] Cases of cities concluding international agreements like the one between the city of Rio de Janeiro and the World Bank give rise to theses that cities are, if not full, then partial subjects of international law.[49] In the same vein, Jean-Baptiste Buffet, Head of the Policy team of the United Cities and Local Governments in an interview conducted by the author claims that cities are not yet subjects of international law, but it will come at a later stage.[50] The concept of international personality could result in heightened engagement of cities within international and global institutions. This involvement may not necessarily grant them full membership status; instead, they might serve as non-member observers or consultants, particularly regarding issues pertinent to their interests.[51]

[46] Ajuntament de Barcelona 2017, 11-12.
[47] Blank 2021, 104.
[48] Blank 2021, 105, 113.
[49] Riegner 2021, 255.
[50] Interview with Jean-Baptiste Buffet, Head of the Policy team of the UCLG, 4 October 2021.
[51] Blank 2021, 115.

One way to overcome the hurdles of classifying cities as either subjects or objects of international law (from which results their ability or inability to create binding international obligations) would be to adopt the New Haven School's approach to international law. This approach eschews the dichotomy of subjects and objects, considering instead that there are only participants i.e. entities formally given the competence to decide (e.g. judges), as well as actors who are able to influence decisions despite lacking formal competence. The New Haven School recognizes that states are by no means the only actors capable of participating in international law-making, thus ending the debate whether cities should be perceived as a class of actors in international law and how to confer recognition on this.[52] However, this school does not offer an alternative approach to international legal personality, focusing instead on developing a more holistic academic perspective on the discipline.

Here, the pluralistic concept of law may be helpful where the law should include statements and guidelines that formally are not international law but could be regarded as a part of a broader legal process. Lin argues that as cities establish and enforce norms, practices, and voluntary standards through transnational city networks, they effectively participate in the creation and execution of international law.[53] In other words, various norms created by states and non-state actors, norms of varying persuasive power and normative validity, "travel among international actors and governance levels in a constant multi-directional process that influences, challenges, counters and alters them […]. This process, in turn, informs the identities and perceived interests of the actors in a community […], i.e., by 'socialising' them into following the norms."[54] According to other views, international personality is not perceived as a precondition for being addressed by international legal norms but as its consequence.[55]

Trans/international activities of cities including adopting inter-city agreements fit in the notion of transnational legal process which may be treated as synonymous with transnational law (the former devised by Harold Hongju Koh).[56] Within this concept, not only states but also other public and private international or transnational actors have a role to play. Such actors also include cities. Transnational legal process is based on the underlying idea that international law no longer regulates or addresses only states or national governments. According to the author of this notion, Koh, these various actors "make and remake transnational law – the hybrid law that combines domestic and international, public and private law – by generating

[52] Lin 2018, 178.
[53] Lin 2021, 211-212.
[54] Durnus and Oomen 2021, 4.
[55] Sossai 2021, 65.
[56] Koh 1996, 181-207; Koh 2017, 415.

interactions that lead to *interpretations* of international law that become *internalized* into, and thereby binding under, domestic […] law."[57] Transnational legal process may be characterised by enumerating its four features: (1) It is nontraditional, as it breaks down with the two traditionally prevalent dichotomies – between the domestic and the international, the public and the private. (2) It is nonstatist, meaning that its primary actors are not only states, but also non-state entities. (3) Transnational legal process is dynamic (as opposed to static), which encompasses constant changes of transnational law and its penetration back and forth bottom-to-top and top-to-bottom, through all levels, between the private and the public. (4) It is normative as it leads to creation of new rules of law which are afterwards subjected to interpretation, internalization and enforcement starting a fresh cycle of the process.[58]

International law-making processes and the sources of international law (the latter listed in Art. 38 of the ICJ Statute) are being deformalized and diversified[59]; this is already evident and will be even more so in the future. Consequently, the term "international law" does not signify exclusively or even primarily the law governing states' rights and obligations, and that the international legal order can be represented by a range of theoretical conceptions. If recognized, these schools of thought can enrich international legal scholarship, which ought to move away from focusing on state-centred law-making as well, as it hinders developing creative and effective solutions to problems like climate change that require collective global action.[60] According to Nijman, the future of international law will shift away from being solely state-centric to a more complex landscape influenced by bottom-up processes involving global public cities. This urbanization of international law encompasses not only an increase in "soft" law generated by cities or city engagement but also a transformation of "hard" international law to be more urban-centric.[61]

Another useful concept is that of "informal international law-making". It was introduced by Joost Pauwelyn, Ramses A. Wessel and Jan Wouters and defined as "[c]ross- border cooperation between public authorities, with or without the participation of private actors and/ or international organizations, in a forum other than a traditional international organization (process informality), and/ or as between actors other than traditional diplomatic actors (such as regulators or agencies) (actor informality), and/ or which does not result in a formal treaty

[57] Koh 2017, 415; see also Koven Levit 2005, 180-182.
[58] Koh 1995, 184.
[59] Sari and Jachec-Neale 2018, 9.
[60] Lin 2018, 179.
[61] Nijman 2011, 229.

or traditional source of international law (output informality)."[62] Cities' international-law making can be termed informal. Here informal law-making includes agreements concluded by actors that do not participate in formal law-making (such as cities). Nonetheless, "output must be normative in that it steers behaviour or determines the freedom of actors."[63] In terms of actors involved, especially pertinent here, international law-making can be informal in the sense that it does not engage states but sub-federal entities such as municipalities.[64]

Cities themselves are increasingly aware of their rising position and their emancipatory power to conclude international agreements that are regarded as binding and are implemented by signatory cities. The result of such activities is enhanced and effective implementation of human rights. For example, ECSHRC states in its final provisions that "2. The signatory cities will incorporate into their local ordinances the principles, regulations and guarantee mechanisms laid down in this Charter and refer to them expressly in justification of their official activities. 3. The signatory cities recognize the irrefutable legality of the rights stated in the Charter and undertake to reject and terminate all legal transactions, particularly municipal contracts, the consequences of which would militate against the implementation of those rights. They resolve to act in such a way that all other legal entities will also recognize the legal significance of these rights."[65]

But how is this possible if cities (and their local governments) do not have international legal personality with formal law-making capacity? According to traditional international law, the list of its legal subjects is determined once and rarely changes, yet it does not prevent actors not recognized from "generating their own norms, with just as much *jurisgenerative* intention."[66] This fits into legal pluralism which is also a characteristic feature of transnational legal process mentioned above.[67] Clearly, while non-states' participation in international or transnational law-making is not an entirely new phenomenon, over the last decades such *ratione personae* pluralization of international law-making has reached entirely new levels. Unquestionably, today's international law-making processes involve a multitude of actors, not only the formal holders of the rights and obligations. Normative authority is no longer a prerogative of a closed circle of state officials, but instead it has become an aggregation of complex procedures which also increasingly involve cities. Thus, public authority at the

[62] Pauwelyn 2012a, 12; Wouters 2019, 249; Meyer 2021, 60-61.
[63] Pauwelyn 2012a, 16.
[64] Pauwelyn 2012a, 19.
[65] ECSHRC 2000, 18.
[66] Durmus and Oomen 2021, 15.
[67] See also Dellavalle 2020.

international level is exercised today in many informal ways, as demonstrated by cities.[68] This may be consonant with another approach according to which there is a distinction between being law and having legal effect. The crucial consideration lies in the normative commitments of communities rather than the formal status of these commitments. When a set of norms becomes ingrained within a population over time, it carries significant binding force, sometimes even surpassing that of formal laws backed by state enforcement. Consequently, rather than solely examining who possesses formal authority to articulate norms or the power to enforce them, it is more beneficial to conduct empirical research on which statements of authority are treated as binding in practice and by whom.[69] It demonstrates that normative value or authority may take many shapes.

Within the rules of inclusion of contemporary international law-making, there are two ways in which local governments can engage with international actors and processes. One involves attempting to expand these norms so that they include local governments themselves; the other means contesting and challenging the rules of the game by developing "human rights in the city" that is a set of local norms parallel to international human rights law. International law can be understood in a pluralist way as including also the human rights engagement of local governments; alternatively, such developments can be seen as located outside international law, as a parallel normative order in the legal pluralist sense. Still, the engagement of local governments with human rights has already impacted a number of influential international actors and penetrated the more modern instruments of positive international law.[70]

6. Conclusions

This paper shows how cities are becoming increasingly important actors in international law-making/shaping, even if this process is termed "informal". As clearly shown by the example of Barcelona, international agreements between cities are not substantially less effective than binding international agreements between states. Still they are rather international law in form, but not in function. Overall, they have some normative value or some legal effect, which is a normative value of their own but they are not binding *stricto sensu*. The European Charter for the Safeguarding of Human Rights in the City and its implementation by Barcelona examined in this paper suggests that actors other than states engage in international norm-

[68] d'Aspremont 2011.
[69] Berman 2007, 323.
[70] Durmus, 2020, 30.

making processes in manners that exhibit certain resemblances to norm-making activities among states.[71] This specific bindingness is reflected by the fact that cities adopt language and form of international law but still have not taken over its function. The precision of obligations or the implementation mechanism are also relevant in this context. As Pauwelyn, Wessel and Wouters argue, "[t]he universe of norms is larger than the universe of law."[72] Hence, the notion of international law can encompass a wider interpretation, encompassing statements or guidelines that may not strictly qualify as legal provisions but nonetheless carry legal implications or align with a broader legal or normative framework.[73] Or it is law-making that may be understood in a broad sense, encompassing not only treaty-making but also the making of international agreements between cities. Inter-city international agreements like ECSHRC may not be binding according to traditional international law but definitely have legal effects as they steer the behavior of cities, such as for example Barcelona. The crucial factor here is the conviction of cities that such inter-city legislation is binding as stated in ECSHRC: if the perception of an obligation exists, an actual obligation exists. In the end implementation of such law serves all the city citizens. Such inter-city legislation also definitely reflects "norms of aspiration" meaning "pointers for the direction of programmatic aims". In this way they may contribute to the future development and innovation in legal regulations.[74] Takashiba gives an example of a resolution issued in 2017 by a city network Mayors for Peace – "Special Resolution Requesting the Early Bringing into Effect of the Treaty Prohibiting Nuclear Weapons" (see also the resolution available on the website of the Mayors for Peace).[75] The Treaty entered into force on 22 January 2021.

In the future, cities will not only implement international law but increasingly participate in law-making. It is already happening and signals cities' growing internationalization as well as urbanization of international relations and law. These two trends are deeply connected. One can foresee that in the future international law will be more layered and less state-centric, and it will be made through formal and informal bottom-up processes in which global public cities will be significantly involved. Apart from the expanding quantity of "soft" international law produced by or with cities, such urbanisation of future international law will also contribute to urbanizing "hard" international law meaning that such law will become more urban as a consequence of the fact that the interests of cities will increasingly define the interests of the

[71] Meyer 2021, 60.
[72] Pauwelyn, Wessel and Wouters 2012, 6.
[73] Pauwelyn 2012a, 21.
[74] Takashiba 2021, 126.
[75] Takashiba 2021, 125-126.

their states.[76] In this context, "soft law" created by cities constitutes a valuable complement to "hard law"; the former can enable experimentation across various levels and sites of governance, foster knowledge exchange (such as sharing good practices), cultivate trust, and shape norms. Additionally, soft law and hard law not only reinforce each other but their interplay can lead to a broader expansion of governance and authority overall.[77] All of this is very important as through cities international legal norms reach individual people.[78] Janet Koven Levit suggests that the strict division between "hard law" and "soft law" fails to accurately represent the extensive scope, complexity, and evolution of modern international law-making. Hence, rather than adopt a formalistic approach to international law-making, it is more appropriate to use a functional one as it includes in the notion of law all the rules regarded as authoritative and binding and, consequently, impacting the behavior of rules' addressees.[79] Accordingly, ultimately, the international legal system seems to be a multifaceted, evolving network of connections involving both hard and soft law, where legal norms are assigned varying degrees of importance, encompassing national and international regulations, alongside diverse institutions striving to uphold the rule of law. Within this framework, the concept of relative normativity appears to serve significant and diverse functions.[80]

It is also worth noting that cities and international city networks do not simply use the language of international law but their joint statements, declarations, action and policy plans, covenants and commitments show remarkable similarities to international intergovernmental legal agreements. Just like states have to accept such agreements, cities have to do the same in order to conclude international inter-city agreement. Similarly to states, agreements adopted by cities are normally valid only if signed by competent authorities (such as mayors or other city officials of a high rank) and then formally deposited with an authorized entity or agency (e.g. the agreement's promoter). Such agreements – similarly to states – are monitored, and reports in some form are submitted and examined (as shown by the example of Barcelona).[81]

The international legal order presented in this paper may be described as "fragmented", "transnational" or "pluralist". This "rising pluralism of the international legal system" is well reflected by the increasingly active participation of cities in international law-making/shaping.[82] Consequently, from mere objects of international regulations, cities are progressively

[76] Nijman 2011, 229.
[77] Lin 2018, 130.
[78] Curtis 2021, 327.
[79] Koven Levit 2005, 189, 191; see also Galbraith and Zaring 2014.
[80] Shelton 2003, 171.
[81] Swiney 2020, 265.
[82] Galbraith 2017, 1688, 1690.

transforming into subjects and actors in the sphere of international law-making/shaping. Answering the question posed in the beginning, the examples given in this paper, including the case study on Barcelona, show rather cities participating in transnational inter-city agreements that do not have the binding force of traditional international law. Inter-city legislation may be regarded as a separate body of parallel law relating only to cities, or it may fit into transnational law or transnational legal process notions with the specific bindingness mentioned above. As such and at present, cities are closer to shaping rather than to making international law. The difference is subtle, but it is there. For now, there are no indications that the challenges cities face connected with legal personality and sources of international law can be overcome soon. On the other hand, in pondering cities' position in international relations and law, the question arises: Is it necessary to confine cities within the conventional boundaries of international law, including its concepts of legal identity and law sources? Nesi questions whether granting "international legal status" would truly enhance cities' ability to engage in global affairs and influence international law.[83] However, regardless of their legal designation, cities actively participate in shaping and upholding international law. By shaping international law cities try to influence states as evidenced by Barcelona's *International Relations Master Plan*, but they cannot enforce anything on them. Inter-city agreements are binding to their signatories. This, however, does not detract from the fact that cities' role in international decision-making processes is growing. As mentioned, cities sometimes even bypass their own states and adopt regulations that implement international human rights conventions not binding on their host states.

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[83] Nesi 2020, 35.

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