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Legal Implications of the Non-Application of International Human Rights Law by Cities: Paying for Your Mistakes?

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1. Introduction

This paper seeks to provide an overview of the theoretical framework on the human rights responsibility and accountability of cities. It discusses what the international legal effects are when cities want to go beyond their state's human rights commitments but also when cities commit human rights violations. Both are issues where public international law has the potential, and perhaps the need, to develop.

There is a multitude of possible approaches to the issue of human rights implementation at the local level. The top-down approach departs from the frameworks imposed by public international law in general and international human rights law in particular. The paper employs the top-down perspective. Meanwhile, the bottom-up approach departs from the human rights-related actions of local authorities and focuses on how these contribute to shaping human rights law. This perspective often adopts a socio-legal or sociological point of view (e.g., Oomen and Durmus 2019) and tends to criticize the strong emphasis on legal considerations such as legal subjecthood of cities. It provides valuable insights into how localization of human rights, including cities' commitments to human rights law, can contribute to increased credibility and effectiveness of human rights (e.g., Durmus 2021), as well as the role played by local governments in international law-making (e.g., Tabashiba 2021; Aust 2020; Oomen and Baumgärtel 2018 and Levit 2007). Still, there is not much research from the public international law perspective on the accountability of cities for human rights violations, although authors such as Blank (2021), d'Aspremont, Nollkaemper, Plakokefalos and Ryngaert (2015) and Creutz (2021) have made important contributions. This paper builds on such existing literature.

In the following, I focus on legal (as opposed to political or administrative) accountability, which I understand as "…a process in which an actor explains conduct and gives information to others, in which a judgment or assessment of that conduct is rendered on the basis of prior established rules or principles and in which it may be possible for some form of sanction to (formal or informal) to be imposed on the actor" (Curtin and Nollkaemper 2005: 8).

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The paper mainly takes a European perspective. Throughout the world, there are a number of cities that have decided to place emphasis on human rights implementation. While the very first human rights city was Rosario in Argentina, an increasing number of European cities have caught on the trend of localization of human rights, declaring themselves human rights cities. There are also relevant organisations in Europe supporting localization of human rights. The EU Fundamental Rights Agency has been particularly active in supporting cities to strengthen their implementation of human rights, providing them with a framework for becoming human rights cities (EU Fundamental Rights Agency 2021). However, this practically oriented, non-binding framework does not (yet) address the issue of the legal effects of cities deciding to, or failing to, adhere to human rights. There are also other organisations which are dedicated to assisting cities in implementing human rights, such as the European Coalition of Cities against Racism.

Cities have dual functions as simultaneously subordinate domestic governments and independent legal actors. Due to the latter role, the domestic legal status of local governments is becoming an object of interest in international law, although there is not yet any fully developed code of international local government law (Frug and Barron 2006: 1). A city, or local government, is the lowest tier of public administration within a given state (UN Human Rights Council 2015: para. 8). They vary widely in terms of size, economy and competencies under national law. Blank has still identified certain common traits which cities often share. He finds that they are general-purpose, territorial governmental entities authorized to govern and regulate, in a defined territory, a wide range of matters, and that municipal citizenship usually depends on residency, not on birth. Furthermore, he submits, they are provided with relatively weak constitutional protection, making them exposed to strict control by the state (with constitutionally established local self-governing units forming a notable exception), they lack formal representation in national legislatures and many international organisations, and they are subject to redrawal of their geographical boundaries (Blank 2021: 105–106). The arguments presented throughout this paper in relation to cities apply in applicable parts also to municipalities and regions.

It has been suggested that local governments become involved with human rights not primarily because they regard themselves as being legally obliged to do so but rather because they expect human rights to enhance their capacity to govern the city (Grigolo 2017a: 68). Local employees of cities and municipalities are responsible for a wide range of human rights issues in their daily work, but this work is rarely perceived as human rights implementation by the authorities or the local population. Consequently, human rights remain distant as a frame of reference or analysis in most policies and practices at the local level (UN Human Rights Council 2015: para. 26). This is so

notwithstanding the fact that in numerous instances, cities in different countries have violated international human rights instruments ratified by their state with the consequence that their states have been found in breach of a convention. Such cases before the European Court of Human Rights (ECtHR) have concerned commonplace local decisions on issues such as transport of schoolchildren (*Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey* 2012), enforcement of local noise regulation (*Moreno Gómez v. Spain* 2014), urban waste disposal (*di Sarno and Others v. Italy* 2012), or provision of basic infrastructure such as drinking water and sanitation for residents (*Hudorovič and Others v. Slovenia* 2020), all of which have had profound effects on the lives of inhabitants.

The paper seeks to condense the prevailing views on cities' accountability for their actions under public international law and to propose ways in which cities could be held accountable for failures to implement international human rights law. It does not look at the myriad ways in which cities are involved in matters of public international law but focuses on the legal effects of such interaction on a general level. Section 2 provides an overview of existing research on the legal status of cities in international law as a background to Section 3, which throws light on the legal consequences of cities committing to implement international human rights law. Finally, Section 4 looks at possible forms of accountability for cities, including some national solutions.

2. Can cities carry international responsibility for their actions or omissions?

Historically speaking, cities have been prominent actors in international law during different periods and in different locations, notably when they were either considered as States in their own right or because they fell within the categories of internationalized territories or autonomous entities under a form of international protection, supervision or guarantees (Sossai 2021: 65). Today, the role of cities in international law is again increasingly pronounced. This gives rise to the question whether cities can be held internationally responsible for their actions or omissions in the human rights area.

A prerequisite for cities carrying international responsibility for violations of international law is that they can be regarded as possessing international legal personality. In international law, 'responsibility' does not refer to the duty itself but to the consequence of not satisfying a duty; a state that violates a duty is responsible for that violation (Hakimi 2015: 268). In order to assume such responsibility, cities arguably need to be subjects of international law.

In public international law, the key question for determining if cities are subjects in international law has long centred on the concept of international legal personality. There is no formal definition of legal personality in international law and the consequences of being considered to possess international legal personality are disputed (Portmann 2010). However, most experts rely on the authoritative statement by the International Court of Justice in the *Reparations for Injuries* case that an international person can possess international rights and duties and has capacity to maintain its rights by bringing international claims (*Reparations for Injuries Suffered in the Service of the United Nations* 1949). For example, Klabbers (2021: 74) finds that a legal subject under international law is an entity that enjoys direct rights or obligations under international law. In addition to states, international organisations and individuals (by means of international criminal law and international human rights law) are considered such subjects, but there is disagreement as regards other potential subjects. It should be noted that there are authors who conceive international personality not as a precondition for but a consequence of being addressed by a norm of international law, that is, legal norms create the subject rather than the other way around, which would open up the possibility for a degree of legal personality for cities (Sossai 2021: 65).

There is indeed growing debate on where to place cities in the context of international law. The traditional view is that states are the main subjects of international law, and they are bound by their international treaty commitments. Furthermore, the state is regarded as a single entity. Regardless of how it divides its administrative powers on a regional and local level, under general international law the State (as represented by the central government) is responsible for all acts of all its organs and agents (European Court of Human Rights, *Assanidze v. Georgia* 2004: para. 148). This follows from Article 27 of the Vienna Convention on the Law of Treaties, which stipulates that a State Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. By implication the state is responsible for any human rights violations by local authorities, even when contrary to national law, policies or procedures. This applies also if the violations are undertaken within a subject area which falls within the city's or municipality's competencies. According to this position, which is in line with Article 4 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, cities have international obligations only or primarily because they are to be considered organs of the state (International Law Commission 2001).

In line with this thinking, the UN has pointed out that it is the central government which has the primary responsibility for the promotion and protection of human rights, while local authorities have a complementary role to play by being obliged to comply,

within their local competences, with their duties stemming from the international human rights obligations of the state (UN Human Rights Council 2015: para. 21). However, at least in terms of soft law, in some thematic areas this view is becoming dated. It is today well accepted that some policy fields and subject areas are increasingly shaped by local governments, notably climate change governance, migration and human rights (Aust and Nijman 2021). What is more, the New Urban Agenda, a political declaration by the UN General Assembly, adopts a human rights-based approach to policymaking and service delivery as a path towards inclusive and sustainable urban development (da Silva 2018: 290). Remarkably, this non-binding soft law document acknowledges that local authorities are responsible for protecting, respecting, fulfilling, and promoting the human rights of the inhabitants. In legally binding, hard law, there is yet no commonly agreed position that this would be the case. However, it has been submitted that certain international human rights conventions such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities foresee responsibilities to protect human rights for all authorities, including local ones (Oomen, Durmus, Miellet, Nijman and Roodenburg 2023: 9).

The law of responsibility is an area in flux as concerns subjects other than states (Klabbers 2021: 153). The main view still remains that with the exception of international organisations and individuals, actors other than states cannot commit internationally wrongful acts that would give rise to international responsibility since they are not bound by primary norms of international law. For this reason, arguments regarding their responsibility largely centre on attributing their conduct to states (d'Aspremont, Nollkaemper, Plakokefalos and Ryngaert 2015: 54). This is also the most common way to approach the responsibility of cities for acts contrary to international law, although it is by no means established that they can be held to constitute non-state actors.

From the point of view of public international law, local authorities are thus still mainly confined to being objects, not subjects. This does not mean that local authorities could not claim subjecthood in particular in relation to soft law instruments, which they indeed have. After all, cities increasingly meet with international normative expectations of a soft law character on what it means to be a well-governed city (Aust 2020: 30). The view has been advanced that cities can possess 'soft legal status' (e.g., Blank 2021: 113). Some cities are indeed operating as if they were international legal persons, notably by committing to international conventions and participating in the drafting of soft law, creating what is sometimes called 'human rights in the city', such as the Global Charter-Agenda for Human Rights in the City (Blank 2021: 113). Scholars of different disciplines, including law, have meritoriously described the international

role played by cities in bottom-up international law-making (e.g., Levit 2007). It is still unlikely that cities would be able to draft binding international standards without the participation of states in the process (similarly Crawford and Mauguin 2002: 165). However, local authorities from different states may agree between them on soft law instruments. Until date, drafting also of soft law has been seen as a prerogative of the state, but this appears to be changing (compare Atapattu 2012: 203).

It is increasingly argued that the invisibility of cities in international law is ending, as international law more and more regulates the actions of local authorities in a direct manner. It has even been proposed that international law is beginning to treat the city as a distinct level of government that may be separately targeted for legal transformation and that this leads to a need to redefine the legal position of cities in relation to the nation state (Frug and Barron 2006). Frug and Barron (2006) see this change as being caused in part by a shift in international law towards increased attention to both supra-national and sub-national entities rather than simply nation states and in part by the efforts of cities themselves to be treated as independent international actors.

Aust, who investigates the development towards legal authority and international regulatory powers for cities rather than legal subjectivity as such, goes a step further in arguing that cities and their global associations are in a position comparable to international organisations. He suggests that they operate based on conferred powers but, contrary to international organisations, their powers do not emanate from an international legal agreement but from a combination of competences under domestic law and international recognition that cities are legitimate actors on the international level. States still retain the power to control the extent of the international cooperation of their cities (Aust 2020: 83; 86). Having regulatory powers is plainly not the same as possessing legal obligations under international law, and Aust does not argue that cities would possess such obligations. However, the parallel offers an intriguing vision of what the future status of cities might be in international law, should they be held to constitute non-state actors. Some authors see distinct advantages in having cities recognised as actors in international law. Oomen and Baumgärtel (2018: 613) describe the advantages of redefining cities from objects of international law to what they term a ‘frontier’ in international law, arguing that cities hold important potential to address the efficacy and legitimacy of international human rights law.

Regardless of the present formal lack of subjecthood, there can be little doubt about the concrete role that cities play in the everyday implementation of international law. The strong linkage between international human rights law and local authorities is demonstrated in numerous cases originating from international human rights bodies. For example, in a decision by the UN Committee on the Elimination of Discrimination

against Women (CEDAW Committee) regarding domestic violence and custody of a child in Finland, the national authorities failed to communicate the request for interim measures to the competent local authorities. The Committee stated: "The Committee notes with concern that the request for interim measures that it made, and reiterated, was never passed on to the local authorities and that no action was taken to protect E.A. from alleged violence by his father." Transferring this information would have formed part of the due diligence required from the state (*J.I. v. Finland* 2018). The case demonstrates that the Committee was very aware that human rights protection in concrete cases such as this might be largely within the hands of local authorities, while the role of the state might largely be to transmit a request from an international body.

Some human rights standards are indeed in practice primarily to be fulfilled on the local level, which is visible in the findings of international human rights bodies. There are for example so-called hard law normative expectations in the form of judgments of the European Court of Human Rights on certain aspects of local governance in terms of accommodation centres for asylum-seekers run by municipal authorities (*Tarakhel v. Switzerland* 2014), child protection (*Z and Others v. the United Kingdom* 2011), social housing (*Bah v. the United Kingdom* 2011), and mitigating serious risks to health or life posed by municipal waste collection sites or industry (*Öneryıldız v. Turkey* 2004; *Fadeyeva v. Russia* 2005). One might even see the occasional indication by the ECtHR of elements of good local governance, such as when the Court stated the following in relation to the local authorities' handling of protests against a minority political party: "The Court considers that the role of State authorities is to defend and promote the values inherent in a democratic system, such as pluralism, tolerance and social cohesion. In the present case, it would have been more in keeping with those values for the local authorities to advocate a conciliatory stance, rather than to stir up confrontational attitudes." (*Ouranio Toxo and Others v. Greece* 2005).

3. Legal consequences of cities committing to international human rights law

At times, cities will find the implementation of international human rights law by their state to be inadequate. However, in public international law cities and municipalities have been regarded as not having *locus standi* to bring cases to international human rights monitoring bodies against their own state for failure to live up to human rights obligations. This is due to cities being regarded as forming part of the state, a unitary body. A case in point is *Danderyds kommun v. Sweden*. In this ECtHR case, which concerned the amount of state subsidies that the municipality was entitled to, the municipality argued that although it did perform official duties on behalf of the state,

Swedish municipalities were independent legal persons that acted in their own capacity and that in this case the governmental authorities were in fact their counterpart. The municipality should therefore be entitled to make an application under Article 34 of the European Convention on Human Rights (ECHR). The Court held that the governmental organisation is composed not only of the central organs of the state, but also decentralised authorities that exercise public functions, notwithstanding the extent of their autonomy vis-à-vis the central organs. This is so even if the municipality is claiming that in a particular situation it is acting as a private organ (*Danderyds kommun v. Sweden* 2001).

At least in the European human rights system, regional bodies within states and other decentralised authorities that exercise public functions are also unable to bring cases against their state, regardless of the degree of autonomy these exercise in relation to the central government (*Gouvernement de la Communauté Autonome du Pays Basque c. Espagne* 2004; *Ärztekammer Für Wien and Dorner v. Austria* 2016). Public law bodies which do not exercise public functions or powers and are entirely separate from the state may be granted standing (*Holy Monasteries v. Greece* 1994). This includes state-owned companies. However, should a city want to challenge the lack of implementation by the state of a specific human right for example under the ECHR, it will not be able to do so using the avenues open to other parties, such as NGOs and private individuals. In some cases, cities have instead supported civil society organisations to bring cases challenging the actions of their state. This has been the case for example in relation to the European Committee of Social Rights (*European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands* 2014), as discussed by Oomen, Baumgärtel and Durmuş (2020: 264).

The question remains what local authorities are to do in such situations, particularly when national level authorities expressly direct them to act in contravention of international human rights law. After all, local action contrary to international human rights law will not only lead to the state potentially being found in violation of international treaties but to negative consequences felt tangibly by local authorities. At present, local authorities do not have an international legal obligation to step in where central government fails in the area of human rights. Nonetheless, some local authorities may well decide to act in accordance with international standards and disregard nationally set standards and policies. While it will depend on national law if there are legal consequences for such disregard, under international law cities are free to go further in protecting the rights of their inhabitants than national law or the state's commitments under international human rights law require. In other instances, local authorities may decide to take action to counter negative human rights developments on the national level. The commitments of cities to adhering to human

rights law can be *ad hoc* actions on specific issues or relate to implementation of certain human rights instruments or certain human rights norms more generally.

Although there is nothing novel about cities complying with their states' international obligations, nor with them complying with international norms at their own will, certain factors have turned cities into entities that are nowadays highly significant in the *de facto* implementation of international standards. Blank succinctly describes these factors: The expanding number of international agreements and the evolution of customary international law have led to more municipal obligations and duties emerging from international agreements and treaties, which cities formally comply with as national law while they in practice directly implement international obligations (Blank 2021: 108–110). Furthermore, due to decentralization, in some countries duties that were earlier performed directly by national governments have been delegated to cities. Finally, some cities choose to voluntarily adhere to international norms by becoming human rights cities, 'sanctuary cities', and so on (Blank 2021: 108–110). As Oomen and Baumgärtel (2018: 614) note, local authorities engage with international human rights law by committing to act as human rights duty bearers within the context of networks, as a consequence of which local authorities may invoke international human rights law to separate their policies from national policies.

What distinguishes human rights application on the national level and in the city is chiefly that in cities, human rights are redefined around the city (Grigolo 2017b: 12). Generally, cities approach human rights selectively, focusing on those most relevant to local contexts or political realities. Still, under public international law, any actions by local authorities can lead to their state being held to have violated human rights and for this reason cities reasonably be allowed to take a selective approach to which human rights standards applicable in their state they implement.

At present, the main view is that cities cannot carry direct international legal responsibility for their actions. Consequently, if cities voluntarily commit to respecting selected international human rights standards beyond the commitments of the state, this does not mean that they can formally be held responsible under hard international law if they fail to implement those standards. Nor would they be under an international legal obligation to continue to uphold them in the future.

Oomen and Baumgärtel ask the related question of how international human rights law should approach situations where local authorities exercise *de facto* control in certain domains on a more permanent basis, sometimes despite formal constitutional arrangements to the contrary. They point to the principle of effectiveness to suggest a need to include such local authorities in formal decision-making on international standards in the area concerned (Oomen and Baumgärtel 2018: 628). Also on the UN

level, support can be found for involving local authorities in relevant deliberations relating to the state's international commitments (UN Human Rights Council 2015: para. 77). However, even such inclusion will not bring with it any change in the international legal effects on local authorities, that is, local authorities are not formally and directly bound by those treaties (while the state is). The conclusion is thus that at present, cities are not held accountable under international law for failure to live up to international human rights standards. The next section will explore potential ways of introducing forms of accountability appropriate for cities.

4. Accountability models for cities

4.1. Shared responsibility between the state and the local authorities

Although the responsibility of states and international organisations remains the main form of legal accountability mechanism in international law, it is not necessarily the only one. At present, international human rights law foresees accountability for local authorities for their failure to implement human rights law, but only as agents of the nation state. By assigning states the responsibility for their cities' actions, international law indirectly and unintentionally leads to national governments having to consider that if they give local governments exclusive authority over certain matters, the state may become internationally liable for actions that, in accordance with national law, it cannot regulate (Frug and Barron 2006: 20).

It might already for this reason be seen as desirable to associate responsibility for human rights violations with the government level committing the acts or omissions in question. One solution proposed to achieve this is that of shared responsibility, a concept so far mainly explored in relation to harm caused by recognised subjects of international law (mostly states and international organisations), whether they act jointly or independently. Nollkaemper and Jacobs (2013) argue that one needs to abandon the idea of a uniform approach to all questions of shared responsibility and advance a model for a more differentiated approach to international responsibility that would better address questions of shared responsibility. Shared responsibility would entail that the *ex post facto* responsibility of two or more actors for their contribution to a particular outcome is distributed to them separately, rather than them carrying the responsibility collectively (Nollkaemper and Jacobs 2013: 368). Others have contemplated shared accountability. This notion refers to situations where several actors are held accountable for specific conduct even if this conduct does not necessarily give rise to responsibility in the sense of a formal violation of international law, implying that some form of accountability may arise based on standards that are not binding as a matter of international law (d'Aspremont,

Nollkaemper, Plakokefalos and Ryngaert 2015: 51). This would sit well with the fact that part of the standards that cities commit to abide by are not legally binding instruments. Subsection 4.2 will describe some possible softer forms of accountability for cities that could arise in the future.

There is also another take on this, which foresees a certain human rights responsibility for cities. One might argue that human rights of individuals are rights against public authorities, regardless of the level at which those authorities function, and if the national authorities have delegated or permanently transferred tasks to local authorities, an obligation to fulfil pertinent human rights ensues for the local authorities (Starl 2016: 202). In other words, the local government has "shared and complementary duties" with the state to respect, protect and fulfil human right (UN Human Rights Council 2015: 5). The state is responsible for monitoring whether local governments implement human rights but must also provide them with the means to fulfil their duties. It is conceivable that the central government is responsible for providing local authorities not only with funds but also with practical information about human rights, whether guaranteed by the constitution, other legislation or international conventions that the state is bound by (UN Human Rights Council 2015: para. 74). Furthermore, it could be argued that local authorities should be able to provide input into the monitoring of the state's international human rights commitments in terms of their implementation on the local level (UN Human Rights Council 2015: para. 77).

Should one envisage shared responsibility for cities, this would not by necessity need to encompass both positive and negative obligations but could be limited to instances where city officials themselves violate human rights, that is, violations of negative obligations. After all, cities generally rely on state funding for their function and should the state withhold the funds needed to ensure that positive obligations are fulfilled (such as preventive work against gender-based violence), the city might be unable to implement international standards even if it strived to. So far, the models of shared responsibility proposed by different authors seem to apply to both positive and negative obligations, and this might indeed be the preferable *de lege ferenda* approach. However, this model rests on the presumption that the matter of responsibility for human rights implementation is regulated at the national level. A UN report on local government and human rights finds that an explicit legal provision in national law obliging local governments to promote and protect human rights would be a suitable approach (UN Human Rights Council 2015: 7). Some constitutions indeed already contain a similar provision applicable to all levels of government (e.g., section 22 of the Constitution of Finland, which, while applying to all public authorities, does not explicitly mention local authorities). This would make local authorities aware of

their human rights responsibilities and the fact that any failure to comply with these responsibilities will entail their liability under national law as well as international responsibility for the state, possibly combined with some form of international scrutiny of local actions. What is more, such a domestic provision could impose a clear obligation on local authorities to apply a human rights-based approach in the provision of public services within their competences (UN Human Rights Council 2015: 25). Such national regulation might also be combined with provisions on compensation for violations being payable by the local level.

4.2. Direct but soft responsibility for cities

Creutz foresees that in concrete terms, shared responsibility may consist of state responsibility for the acts of cities, but softer accountability mechanisms directly for cities, mechanisms which may at a future point in time turn into hard law. Such softer mechanisms could include procedures for monitoring compliance with the agreed standards (Creutz 2021: 145). She suggests that if one emphasizes not the *ex post facto* punishment-linked aspect of responsibility but its preventative aspects, focus may be placed on the softer terms accountability and duties. These terms would encompass non-legally binding standards that cities commit to in voluntary unilateral declarations in an attempt to create legitimate expectations upon their conduct, at times accompanied by informal accountability mechanisms (Creutz 2021: 144–145). Softer forms of accountability could perhaps also be envisaged on their own, without being linked to shared responsibility with the state.

In Europe, accreditation of cities as human rights cities has recently been discussed on the EU level (EU Fundamental Rights Agency 2021). Even such accreditation does not entail any obligation under hard international law to adhere to the human rights standards that each city has opted to adopt. A duty of a soft law character of the type envisaged by Creutz (2021: 145) can perhaps be foreseen for cities' declarations as human rights cities, similar to that which has been proposed to arise when cities sign soft law instruments (compare Blank 2021: 113, who argues that one should not make a rigid difference between soft and hard legal status of different actors). Such soft law duties may be equally useful outside the human rights city context for cities having committed to human rights implementation by means of soft law instruments.

Some instruments also seem to have anticipated this. The European Charter for Safeguarding Human Rights in the City, being a foundational document of the human rights cities movement, foresees the establishment of a follow-up mechanism to monitor implementation in signatory cities. This could prove a very interesting development if put into practice. An obvious challenge is the potentially large number

of cities to be monitored by such mechanisms and the closely related issue of resources. A further question is whether cities would be more cautious in committing to human rights implementation through soft law instruments or declarations as human rights cities if this entails international scrutiny of their actions.

In a similar vein, Sorel (2010) has suggested the use of non-compliance procedures such as those foreseen under certain international instruments in the area of international environmental law as a way to ensure so-called soft responsibility, a term he wisely uses with caution and only in relation to soft law instruments. Creutz (2020: 144) has contemplated increased use of non-compliance procedures also for states and Sorel (2010) has pondered the need for soft responsibility in the context of international organisations. There seems to exist no reason these procedures could not be applied in some form also for local authorities. As such procedures have a consultative approach which aims at prevention rather than sanctions, they would seem particularly well suited for addressing the voluntary commitments of cities to human rights through soft law instruments. Such mechanisms on the international level could be set up for local authorities already at the stage of drafting new soft law instruments or be added in the form of later protocols. This could help ensure a more uniform application of human rights at the local level within a state and could complement local monitoring. In order for cities to commit to the procedures, they would in all likelihood have to be triggered by the local authorities themselves.

I will now turn to some examples of how the issue of the accountability of local authorities for lack of implementation of international human rights standards has been addressed at the national level.

4.3. Financial compensation for violations

Allocating some accountability to cities for local human rights violations fits well with the description of cities as “normative mediators between the world and the state” (Blank 2006: 868). This is sometimes done through civil society monitoring of local actions (Evaluation Périodique Indépendante (EPI) des droits fondamentaux à Genève 2019). However, the idea of holding local authorities responsible for violations has been taken even further. It has been suggested that central governments should have the possibility of recovering from local and regional authorities the financial costs of infringements by those authorities (Council of Europe 2016: para. 49).

Alternatively, a state may opt to ensure that when local authorities act contrary to international human rights law binding on the state, any compensation or damages are paid directly by those local bodies. Human rights conventions generally require violating states to compensate the victims of violations for the harmful consequences

of the violation (e.g., Article 41 of the ECHR). Under some conventions, such as the ECHR, the international monitoring body deciding on a complaint determines the appropriate amount of compensation, while for example the CEDAW Committee leaves the exact amount of the appropriate compensation up to the state. The international obligation to pay compensation thus rests with the nation state, which has ratified the convention. However, nothing hinders the state from adopting legislation to the effect that when a human rights violation originates from local authorities, these carry the cost of compensation. Nonetheless, the state will bear the international responsibility if the local authorities fail to pay compensation. In fact, in some states there exists national legislation requiring authorities on any level which violate the rights of the inhabitants to pay compensation to those individuals if certain conditions are fulfilled (e.g., section 118 of the Constitution of Finland).

Such compensation, at least for human rights violations, might also be conceivable in situations where the compensation issue is not regulated by national law. In 2009 (after which the law has been changed), the Swedish Supreme Court found that a municipality could be required to pay damages for breach of the ECHR if this was necessary for the state to meet its obligations under the convention, even without specific national legislation to this effect (Swedish Supreme Court 2009). It noted that the ECHR is silent on the issue of which authority is to pay damages for violations of the convention. The Supreme Court held that an important reason for requiring the municipality to pay damages was that in many cases where local authorities act in contravention of a convention, the individual victim of the violation would otherwise have to initiate a process against two parties, namely the municipality for negligence in performing its duty and the state for a violation of the convention. Obviously, this challenge of having to pursue several different avenues of redress for human rights violations may apply to other countries as well. A report by the Council of Europe Congress of Local and Regional Authorities interprets this finding as the local authorities being responsible for paying damages by virtue of some kind of 'polluter pays principle' (Council of Europe 2016: para. 77). In a case from Finland, the authorities of the autonomous region of Åland failed to implement a national court decision, which resulted in the ECtHR finding a violation of Article 6 of the ECHR (*Ekholm v. Finland* 2007). The region subsequently compensated the state for the majority of the amount of just satisfaction awarded by the ECtHR to the victim of the violation (Suksi 2010: 161). This is, however, not standard practice in Finland. A recent judgment by the Norwegian Supreme Court adopts the same approach as the Swedish Supreme Court, finding that even if the state is the entity liable for human rights violations under international law, this does not exclude that under national law the body committing the human rights violation will be held liable. The Supreme Court stressed that the ECHR is equally binding on the state and on the municipalities, and

that according to Norwegian tort law, it is the legal entity that has undertaken an act or an omission that will be held liable for damages (Supreme Court of Norway 2022). For this interesting approach to work more generally, it is foreseeable that certain conditions must be met. Most notably, in the case of positive obligations, these conditions might include the state providing the local authorities with the powers, means and resources to implement the human right that was violated on the local level, such as ensuring safe waste disposal. In the case of violations of negative obligations, such as discrimination of school pupils, one could envisage that the conditions for the city to be under a national legal obligation to issue compensation would be less stringent.

Somewhat similarly, in the United States, municipalities can be sued in Federal Courts for their policies, but they are not vicariously liable for all actions of their officials. A judgment from the US Supreme Court in 1980 points out the rationale behind this: "The knowledge that a municipality will be liable for all of its injurious conduct … should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights." "Furthermore, the threat that damages might be levied against the city may encourage those in a policymaking position to institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional rights." (*Owen v. City of Independence* 1980). As Ezer points out, in the federalist US, implementation of human rights to a large part rests with state and local bodies, whose action the federal government can only control to a limited extent, while international law is based on the presumption that countries are able to control the actions of sub-national entities (Ezer 2022: 105). Davis suggests that the US policy of introducing so-called federalism RUDs (reservations, understandings or declarations that divide responsibility for implementing treaties between federal, state and local level) when ratifying human rights conventions means that the federal government would violate its treaty obligations if it interfered with local human rights initiatives that further the objectives of treaties ratified by the US and which are within the purview of local actors (Davis 2018: 938).

The examples cited may well be isolated approaches: However, an increasing number of standards are to be implemented specifically on the local level. National arrangements whereby damages are ultimately to be paid by the government level where they occurred might be a useful incentive to ensure both knowledge and respect of international standards among local authorities.

5. Conclusions

Cities can violate international human rights law, but they cannot formally be held responsible under hard international law for their actions, with responsibility instead ensuing for their nation state. This paper finds that there are ways to render cities accountable for their actions under national law, and that there might even be potential for international mechanisms to do so. Pending the emergence of some form of shared or soft international accountability for cities, the author suggests that a first step towards accountability for cities could be nationally ensured financial consequences for cities violating human rights norms binding on their country. In other words, accountability might be held towards the nation state in which the city is located.

There are several arguments for contemplating making cities more accountable for acts or omissions which are not in resonance with the human rights standards applicable to their nation state. Creating some form of accountability for cities might prevent similar violations in the future better than reliance solely on state responsibility for local human rights violations, which at worst enables local authorities to continue violating rights in practice. This is demonstrated for example in the case *J.I. v. Finland*, where local authorities were not even made aware of the CEDAW Committee's request that they undertake interim measures. In some countries, the powers and competencies to implement human rights are to a large part placed on the local level, with the central government not necessarily being able to influence their actions or inaction. Furthermore, the expanding degree to which cities voluntarily commit to implement both hard law and soft law beyond the human rights standards that their nation state is committed to raises the question whether cities would also welcome the corresponding accountability for their actions not only on the national but also on the international level.

The author sees potential in the combined approach of an explicit legal provision in national law obliging local governments to promote and protect human rights and domestic regulation of compensation schemes whereby local authorities would on certain conditions be required to reimburse the state for damages caused by local human rights violations, or, alternatively, directly pay damages to victims of human rights violations. What those conditions might be could form the subject of further research. Accepting such accountability would both enable cities to show that they are serious in their commitment to human rights and be beneficial from the point of view of the right to compensation for victims of local violations.

In the future, solutions might also have to be found on the international level to respond to the willingness of cities to directly implement not only soft law but also

legally binding international instruments beyond the scope of the state's commitments. Cooperative and consultative monitoring procedures that focus on prevention rather than sanctions and are initiated by the cities themselves might be useful complements to the (nationally regulated) financial accountability for human rights violations suggested above.

An alternative solution is shared international responsibility for cities and their nation states. As Creutz points out, allocating (a degree of/shared) legal responsibility to cities could act as an incentive to realize that human rights entail legally binding obligations and to take precautions not to violate those international legal standards (Creutz 2021: 141). It would arguably be in the best interest of both cities and states as well as international law that the role of cities in implementing both hard and soft law is reflected in the setting up of some form of accountability procedure.

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