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LOCAL GOVERNMENTS ON THE GLOBAL STAGE. TERRITORIAL NON-STATE ACTORS, CITY DIPLOMACY AND INTERNATIONAL LEGAL ORDER(S)

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1. Introduction

Local governmental bodies as well as territorial public authorities at the sub-state level, as both political-administrative authorities and democratically elected bodies delegated to represent territorial civil communities, implement an autonomous system of trans-local foreign relations. Such a model, widely known among scholars in international relations as *city diplomacy*¹, has gradually established itself as a growing alternative to the classic model of intergovernmental international relations.

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¹ This study is primarily to foster the debate among the Jurists about Territorial Non-State Actors' action on the global stage. For a first overview of the vast and complex world of city diplomacy and its practices (mainly from the International Relations perspective), see for a first overview M. ACUTO, (ed), *City Diplomacy*, in CONSTANTINOU, C.M., et al. (edited by), *The SAGE Handbook of Diplomacy*, New York, 2016, p. 519 and seq. CURTIS, M. ACUTO, *The Foreign Policy of Cities*, in *The RUSI Journal*, 163(6), 2018, pp. 8-17. Among the most in-depth monographs, see M. ACUTO, *Global Cities, Governance and Diplomacy: The Urban Link*, London, 2013; M. AMEN, N.J. TOLY, P. MCCARNEY, K. SEGBERS, (eds.), *Cities and Global Governance - New Sites for International Relations*, London, 2011; R. TAVARES, *Paradiplomacy: Cities and States as Global Players*, New York, 2016; D. CRIEKEMANS, (ed.), *Regional Sub-State Diplomacy Today*, Leiden, 2010; L. KIHILGREN GRANDI, *City Diplomacy - Cities and the Global Politics of the Environment*, New York, 2020; R. MARCHETTI, *City Diplomacy - from City-States to Global Cities*, Ann Arbor, (forthcoming, 2021); F. AMIRI, E. SEVIN, (eds.), *City Diplomacy - Current Trends and Future Prospects*, New York, 2020.

With a strong focus on cities (as its name suggests), city diplomacy has for years been the subject of extensive debate among scholars of urban sociology and international relations. However, the attention paid by law scholars to the implications of international law posed by this particular category of non-state actors has not been so widespread.

While the relevance of trans-local relations has become increasingly prominent on the global scene, a parallel loss of effectiveness of the traditional channels of international dialogue, accompanied by a certain disillusionment concerning the effectiveness of international organizations, has led more than one author to argue about international gridlock and the subsequent decline of the Westphalian international law model. However, the apparently insurmountable obstacle, namely the lack of legal subjectivity of international law for local or sub-state authorities, should be taken into account.

Whether related to polemical aspects towards the nation-State or not, this model sees local governments, or any territorial local authority of a lower level than the state, facing and overcoming the traditional model of an exclusively state-centred foreign policy.

These territorial non-state actors tend to create an original and self-managed foreign relations system on their own, in order to build connections abroad with their peers or even, as previously mentioned, with *pleno jure* international law/international relations actors (states, international organizations, etc.).

According to the definition officially adopted by the Council of Europe, as previously elaborated in one of the first systematic contributions on the subject², City diplomacy involves the institutions and processes by which cities engage in relations with actors on an international political stage with the aim of representing themselves and their interests to one another³.

On behalf of their local civil communities, these actors can engage in bilateral or multilateral interactions, with the aim of creating benefits either primarily for one of the two parties (the solidarity approach), or for both (the utilitarian approach).

Although city diplomacy's historical recipients and key players were once cities, nowadays the use of the term "city" does not imply any exclusive reference to the *municipality*: despite its formal denomination, this model can be applied to any kind of local territorial government below state level (from federated states to regions, counties, provinces, etc.), provided that its representatives have been democratically elected by a civil community to implement, protect and represent its own interests⁴.

Therefore, as a first key point of the associative / cooperative model carried out by sub-state rank governments, one could consider the heterogeneity of those involved, as well as their capacity to establish stable and equal partnerships abroad, irrespective of their constraints under respective domestic law.

However, two different aspects characterize this phenomenon, namely:

² R. VAN DER PLUJIM, J. MELISSEN, *City Diplomacy: The Expanding Role of Cities in International Politics*, Clingendael - Netherlands Institute of International Relations, 2007, as well the bibliography therein mentioned.

³ COUNCIL OF EUROPE - Center of Expertise for Local Government Reform, *Toolkit on City-to-City Cooperation*, 2015, pag. 6; R. VAN DER PLUJIM, J. MELISSEN, *op. cit.*

⁴ To confirm the general validity of the model, the all-inclusive term of *Localities* has been introduced by BLANK, Y., *The City and the World*, in *Col. Jour. Trans. Law*, Vol. 44, No. 3, 2006, pp. 868 et seq. Such term is deliberately and with good reason to mean local governments of any type at the sub-state level, from cities to federate states. Since the phenomenon is here examined under a juridical perspective, it requires organic treatment and a uniqueness of approach from which to draw general and abstract legal principles.

- the relational and sociological aspect, that is, methods and practices through which sub-state governments carry out their own foreign policy: which is what *city diplomacy* is strictly referred to.

- the legal aspect, necessary to hypothesize sub-state territorial actors' subjectivity, essence, capacity, rights and obligations when these are facing the world stage: assuming city diplomacy as a driver of trans-local foreign policy, also requires outlining how subjects by their very nature not endowed with a specific legal status under international law can act in foreign relations.

This study aims to offer some guidelines in that regard, moving from the observation of trans-local and foreign practices enacted by local governments in their network associative forms to the field of the human rights protection, at the same time analysing some legal perspectives potentially adaptable to them in order to define their nature, subjectivity, and reasonable means of legal guardianship that should be granted to them in international *fora*.

Far from providing answers, this study moreover intends to help stimulate the debate between jurists and public sector practitioners on the classification and subjectivity of sub-state governments in light of the current systems of international law, transnational law and international relations.

2. *Reasons for city (and locality) diplomacy*

It is certainly difficult to identify when and how the first models of foreign relations acted by cities and local governments historically appeared on the international relations scene.

In this regard, dealing with foreign activities of sub-state bodies, whether they be cities, regions, federated states, etc. in any case implies that these entities are in some way framed within a state system. Only the latter is recognized as endowed with full sovereignty, thus with the prerogative of *superiorem non recognoscens*.

For this reason, historical experiences as city-states, municipalities of Renaissance northern Italy (*Comuni*), etc., although crucial to other areas of study dealing with this subject, should be downsized in framing under a rigorous juridical approach the trans-local phenomenon here under consideration. All those models, even though chronologically preceding the Westphalian theoretical system of international law, actually embodied all the characteristics of an embryonal full "sovereignty" (according to its modern definition) over their territories, irrespective of the fact that they were members of complex *ante litteram* supranational aggregations (confederations, leagues, etc.)⁵.

⁵ An evidence of those particular entities (which nowadays would be considered as subjects of international law) remains in the so-called small states, or according to other definition, micro-states (e.g., Singapore, Andorra, Monaco, Vatican City, San Marino, etc.), the main characteristic of the which is the tendencial coincidence between the State and the City of which it is composed. V. BLANK, Y., *id.*, pp. 882 et seq. On the other hand, the historical example of the cities of the Hanseatic League could be considered more closely reflecting the contemporary trans-local scenario. Although formally acting under subjects in various capacities superordinate, those cities had been implementing in the Baltic and Northern European area their own commercial foreign policy system in full autonomy. V. NIJMAN, J., *Renaissance of the City as Global Actor - The role of foreign policy and international law practices in the construction of cities as global actors*, in *The transformation of foreign policy - drawing and managing boundaries from antiquity to the present*, New York, 2016, p. 215 et seq.;

The essence of the trans-local relations actually lies in its peculiar alterity to the state-centric system of international relations, regardless of the fact that such alterity, as we will see, takes the form of a competitive, a conflictual, or a cooperative model between local and national government(s).

Notwithstanding the fact that at the beginning of the twentieth century some structured forms of city networks had appeared, (and in particular the network the *International Union of Local Authorities* – IULA, in 1913), the *White House Conference on Citizen Diplomacy* on 11th September 1956 represents a conceptual stage that marked the trans-local model's conceptual evolution towards wider scenarios.

On that occasion, President D.D. Eisenhower gave a historic speech to promote and support a renewed organic model of people-to-people "*alternative diplomacy*", which would have seen citizens and their local governments as its key players⁶. Eisenhower's vision was based on two axioms: on the one hand, local governments would embody the role of *bulwark of freedom*, and on the other, dialogue between peoples and cities would contribute to strengthening world peace.

The local governments' long path on the global stage has been constantly unfolding throughout the twentieth century and progressively growing throughout its challenges, from the contemporary war scenarios, to the rise of transnational terrorism, globalization, climate change, migration flows, etc.

Since the mid-2000s, a growing attention has been paid on two key concepts:

- a) in the globalized world, states seem to have lost their domestic and international monopoly over social, economic and political duties and responsibilities, because of the rise of several transnational (or, in some cases, supranational) orders: any distinction between the national and international political sphere, hence, gradually decreases;
- b) the division of responsibilities between the State and its internal sub-state actors has been reshaped too, since the latter began to grow in the global scenario, in inverse proportion to the above-mentioned downsizing of the state's responsibilities and functions⁷.

New models and centres of power, not only at the supra-national but also at the sub-national level, began to develop while the loss of power at national/domestic level was progressively growing. Cities and other local governments were starting to override their national institutions to become an integral part of the new global scenario⁸.

This not only as players, but also as receptors of globalization: regions, federated states and cities were seeing their "internationality" increased by growing migratory flows, or new ways of mutual interconnection thanks to technological progress, or because these local actors were being directly or indirectly influenced by monetary and fiscal policies, or by territorial development and planning projects promoted by supranational institutions (under

⁶ D.D. EISENHOWER, *Remarks at the People-to-People Conference*, Washington, 1956, available on *Eisenhower Presidential Library, Museum & Boyhood Home*. The postulate on which Eisenhower's vision was laid was as simple as it was irrefutable: people refuse war, since they aspire to peace. It was therefore necessary to affirm and enhance the role of people from all over the world, as well as of cities, to satisfy a strongly felt and shared need since the early stages of post- second world war: contributing to create stable world peace conditions through constant dialogue from below, so that such a catastrophe could not be repeated in the future. See also MUELLER, S. L., *The nexus of US public diplomacy and citizen diplomacy*, in SNOW, N. & NICHOLAS, J. (eds.), *Routledge Handbook of Public Diplomacy*, 2020, p. 112

⁷ BLANK, Y., *id.*, pp. 878 et seq; VAN DER PLUJIM, R. - MELISSEN, J., *id.*, p. 8

⁸ SASSEN, S., *Local actors in global politics*, in *Current Sociology*, Vol. 52, No. 4, Monograph 2, 2004, p. 649 et seq.

the innovative concept of “sustainable development”), or even because ever increasing quantities of goods from abroad were pouring into their territories, etc.⁹

Consistent with one of the best known and earliest systematic definitions (Van Der Plujim - Melissen, 2007), *city diplomacy* has reframed traditional intergovernmental diplomacy characteristics for cities and local governments rather than depicting a new, different kind of inter-local or trans-local diplomacy. The scope of city diplomacy is not to replace traditional inter-state diplomacy, but rather to use its models and practices to implement, at a "micro" level, economic, political and cultural collaboration between territorial communities both near and far.

By virtue of the proximity-representativeness criteria, any local *community* is able to become a persuasive force towards its local *government* to a far greater degree than it could exercise upon the national government¹⁰. It is therefore the territoriality in its various economic, political and cultural expressions which, thanks also to the proximity of local governments to their communities, becomes the main or the exclusive beneficiary of this micro-diplomatic environment.

However, it is essential to bear in mind that localities' diplomatic activities, in the proper sense, are government-based activities: city diplomacy properly defined, therefore, is a phenomenon developing at institutional level¹¹.

3. *First overall framework about city diplomacy: the early six dimensions*

In a first attempt at a categorization, Van Der Plujim-Melissen defined six main “dimensions” or areas, in which city diplomacy has been mostly implemented, namely:

a) *Security and Peace building*

This area has seen cities and local governments involved, since the end of the Second World War, playing an active role in the maintenance and consolidation of world peace and in post-war reconstruction, perhaps even more than the states themselves and international organizations.

This is also because war events and war actions generally affect urban sites of the countries in conflict, and only other local governments and cities retain the necessary know-how for an effective restoration to “normality” for a territory damaged by war.

Furthermore, obviously being devoid of any military level, the military option is radically extraneous (as well as precluded) for local governments: their diplomatic support action therefore will tend to strengthen the efforts for a peaceful solution of any disputes. It should be noted, moreover, that local governments are by definition neutral, as well as tendentially indifferent to those ideological and utilitarian superfetations, typical of the equilibrium between nation-states, which are often the main cause of armed conflicts.

⁹ BLANK, Y., *id.*, pp. 886 et seq.

¹⁰ VAN DER PLUJIM, R. & MELISSEN, J., *id.*, p. 11 and p. 15.

¹¹ Management at a governmental/institutional level does represent the main difference between city diplomacy and other alternative diplomacy models (citizen diplomacy, celebrity diplomacy, goodwill ambassadors, etc.). For a useful overview of other alternative diplomacy models, see the aforementioned CONSTANTINO, C.M., *et al.* (ed.), *The SAGE Handbook of Diplomacy*, New York, 2016, and in particular p. 435 et seq.

One of the most pivotal examples can be drawn from the inter-citizen and trans-local relations specifically focused on conflict prevention, peace building and post conflict reconstruction activities, as better defined in The Hague by the First World Conference on City Diplomacy in 2008¹².

On that occasion, it was suggested that local governments could aid areas affected by conflict by fostering three main objectives: lobbying, planning and implementation of dialogue. These objectives, in turn, can be articulated into two main lines: a) *global action*, aimed at coordinating and raising awareness towards other actors of the international community (lobbying for the respect of human rights, for the promotion of peace agreements, for the active involvement of other local governments, etc.); b) *local action*, specifically responsible for interventions on the community affected by the conflict (partnerships with local governments of the areas in conflict, reconstruction plans, sending of its officials for administrative support, etc.).

Local governments and their networks, in such cases, directly and operationally intervene on the ground (not simply through financial grants) to help other local governments or civil communities to rebuild what one or more states have destroyed.

Although inspired by noble solidarity principles, it should be noted how this approach necessarily presupposes an implicit will from the head of the acting local government to dissociate itself from the position of the states causing that conflict as well as its related damage.

In this sense, the well-known case of the *Municipal Alliance for Peace in the Middle East - MAP*, a network between Israeli and Palestinian municipalities founded in November 2005 (based on long and troubled local negotiations) to promote intra and inter-social cohesion, had been deeply emblematic.

This initiative was promoted by the *Association of Palestinian Local Authorities (APLA)* together with the *Union of Local Authorities of Israel (ULAI)*, and the support of the UCLG, as well the Association of Netherlands Municipalities (VNG), the European Network of Local Authorities for Peace in the Middle East (ELPME), the Federation of Canadian Municipalities (FCM), the Cities of Hamar, Rome, Barcelona, Cologne, and the UNDP's Program of Assistance to the Palestinian People (UNDP / PAPP, which also held the network's secretariat). But the cooperation between Israeli and Palestinian local authorities has also been implemented on the initiative of several individual municipalities, outside of structured networks.

Among other most prominent examples, the 2009 urban rehabilitation project of the city of Gaza's Al-Nasser district, carried out by the governments of Tel-Aviv, Gaza, Barcelona, and by the Comunidad Catalana, with the external support of APLA, should be mentioned. This project was to foster and rehabilitate urban and environmental conditions of the District and, consequently, the residents' quality of life, assuming that a better urban environment would help to defuse or prevent potential outbreaks of urban violence¹³.

¹² See A. SIZOO, A. MUSCH, *City diplomacy - the role of local governments in conflict prevention, peace-building and post-conflict reconstruction*, The Hague, 2008, p. 7 and ss.

¹³ See Municipalidad de Barcelona, *Urban Rehabilitation of the Al-Nasser District Gaza City, Occupied Palestinian Territories*, in *UCLG Position Paper on Aid Effectiveness and Local Government*, Barcelona, 2009, p. 63.

b) *Support to develop other communities*

This variant intercepts the more properly “social” and solidarity function of city diplomacy: it can materialize in economic aid plans for developing local communities, aimed at the eradication of poverty and social inequality, or to provide technical and operational aid to civil communities affected by disastrous natural events, or even, in socio-cultural actions dedicated to providing active support to under-developed democracies, or democracies in crisis, etc.

c) *Development of the local economy*

On the other hand, utilitarian function of city diplomacy is to attract global capital and large stable investments¹⁴ or episodic events of worldwide relevance (such as the Olympics¹⁵, Expo, etc.). For these purposes, cities and local governments also foster robust public diplomacy and city / place branding strategies.

In this regard, a critical aspect of cities’ foreign policy practices has emerged over the last few decades: the ever growing competition between few Global Cities to attract (or even prey on) high level investments or global events, so causing a relevant gap between some dozens of worldwide “strong” cities and all the other “weak” local governments, and putting the latter in serious difficult in attracting international investments crucial for their growth.

d) *Culture*

Cultural diplomacy has long been a heritage acquired through ordinary strategies used in transnational dialogue: a local or national area shows and represents itself by its own national or cultural identity, as well as its contemporary art and culture, before one or more foreign communities¹⁶.

The range of reasons underlying cultural diplomacy is very wide: it goes from mere propaganda purposes, to the noblest ideals of transnational dialogue between peoples and the cultures of the world. In any case, whatever its fundamental motivation, cultural diplomacy can help communities (even if “represented”, in that case, by their government authority¹⁷) to enhance their prestige, visibility and reputation towards other foreign communities.

¹⁴ Among the others, see B. LEFFEL, M. ACUTO, *Economic Power Foundations of Cities in Global Governance*, in *Global Society*, Volume 32, 2018 - Issue 3.

¹⁵ A particularly emblematic case is represented by how the planning of a sporting mega-event has been woven into London’s international role as a global ‘green’ leader, see M. ACUTO, *World Politics by Other Means? London, City Diplomacy and the Olympics*, in *The Hague Journal of Diplomacy*, 2013, 8(3-4), pp. 287-311.

¹⁶ Cultural diplomacy is one of the five components of *public diplomacy*, according to CULL, N.J., *Public Diplomacy: Taxonomies and Histories*, in *The Annals of the American Academy of Political and Social Science*, March 2018.

¹⁷ For the case in which, however, there is no intervention by public authorities, but diplomatic relations are established exclusively at the base level, which means between territorial communities of one and the other party (e.g. international cultural associations, clubs, etc.), the definition of *citizen diplomacy* is currently adopted. See M. CONLEY TYLER, & C. BEYENRICH, *Citizen Diplomacy*, in CONSTANTINO, CM., *et al.* (ed.), *op. cit.*, p. 521.

Therefore, if considered as a subset of public diplomacy, cultural diplomacy also embodies a *soft power* model, meaning the ability to create consensus through cultural persuasion, and not coercion, in international relations¹⁸.

Furthermore, the strengthening of exchanges in the cultural sector contributes to creating new jobs, to urban redevelopment and social inclusion, and to sensitizing communities on key issues concerning local resources (both tangible and intangible)¹⁹.

The pervasive nature of culture in everyday life finally implies that the related initiatives are by their nature intended to involve different targeted social groups.

e) *Networking*

The last two dimensions defined by Van Der Pluijm-Melissen, networking and institutional representation, do not represent local government actions on the transnational level, but rather are two different ways that such actions can unfold.

In this regard, networking spreads across the horizontal plane of trans-local relations, while institutional representation develops on the vertical plane of the direct relations between local governments and supranational or international subjects.

Networking consists therefore, in the capacity of local governments acting together to pursue joint objectives through associative groups, usually established as NGOs. Moreover, these inter-institutional groups are usually endowed with their own autonomous governance, bodies, agencies, etc.

These are the so-called trans-local networks, which embody for cities and local governments the same stable and mutual cooperation model that the states usually implement through the international organization. Analysis of the structure and purposes of these networks would require a specific study²⁰, given the enormous heterogeneity of their organizational models. Here, we will limit to a few hints at what is considered the greatest and the most representative among them, the *United Cities and Local Governments – UCLG*.

UCLG, originally founded by only cities and local governments, is aimed at general purposes. It was created in Paris, by the *Constituent General Assembly Act* of 5 May 2004²¹, from the merger of two previous networks: the (already mentioned) International Union of Local Authorities – IULA, and the World Federation of United Towns and Cities (UTO, founded in 1957)²². According to the Preamble and to articles 2 and 4 of UCLG Constitution, its general mission is to create a new unified world organization of local governments, aimed

¹⁸ J. NYE, *Soft Power: The Means for Success in World Politics*, New York, 2004. Again, says Nye, the soft power of a country is based on its resources of culture, values and policies. A smart power strategy combines hard and soft power resources, conveyed through public diplomacy which, in turn, is an important tool in the arsenal of smart power. It requires, however, adequate understanding of the roles of credibility, self-criticism and civil society. NYE, J., *Public diplomacy and soft power in The Annals of American Academy of Political and Social Science*, Vol. 616, n. 1, 2008.

¹⁹ COUNCIL OF EUROPE - Center of Expertise for Local Government Reform, *id.*

²⁰ For both qualitative and quantitative analysis, see M. ACUTO, M. MORRISETTE, A. TSOUROS, *City Diplomacy: Towards More Strategic Networking? Learning with WHO Healthy Cities*, in *Global Policy*, Vol. 8, Issue 1, February 2017, pp. 14 and ss., and M. ACUTO, B. LEFFEL, *Understanding the global ecosystem of city networks*, in *Urban Studies*, 1-17, July 2020.

²¹ Subsequently amended by an act of the Extraordinary General Assembly which met in Chicago on April 26, 2010, and by an act adopted by the General Assembly on October 3, 2013, following the session held in Rabat.

²² The UCLG Constitution, among other sources, expressly refer to the 1957 UTO charter, the 1985 IULA worldwide declaration of Local Self-Government (ratified by the UTO in 1994), and the final declaration of the World Assembly of Cities and Local Authorities, adopted in Istanbul in 1996.

towards developing trans-local relations and to strengthen, in general, the role and relevance of local governments in the world, inheriting and fostering the policies hitherto pursued by the two networks from which it originated.

Given its general aim, UCLG provides for an internal articulation into departments, committees and commissions focused on specific fields of action, and/or specific regions of the world. As for its subjective basis, according to Articles 7-11 UCLG Const. participation is allowed to local governments, regional governments, their internal associations to the country of origin, their international associations, and a vast audience of collective and individual subjects different from local and regional governments, but interfaced with them for various reasons: from NGOs to universities, to individual researchers or even to some state agencies (but not to states as such).

f) *Institutional representation*

Moreover, cities and local governments have also developed their own ability to establish organic relationships with several key players of international relations (that is the *pleno jure* subjects of international law) to represent themselves and their interests before the “international” community properly said. Further insights will be below developed.

Of course, given the cities and local governments ability to respond and adapt to global evolution, as new global challenges arise worldwide, countless new city diplomacy “dimensions” have been emerging over the past decade: environmental policy and global warming, climate change, migratory flows, resilience, sustainable development and public health to mention but a few.

In this regard, Kihlgren Grandi (2020) has recently reframed the fields of action city diplomacy is engaged in, by introducing the «*seven key concepts*» of development cooperation, peacekeeping, economy, innovation, environment, culture, and migration. Moreover, consistent with the Author, a value-based city diplomacy is supposed to implement or advocate goals as prevention of conflicts and reconciliation; development aid and solidarity; cooperation in addressing global challenges such as climate change; migrations, gender equity, violent extremism, and urbanization; regional integration and solidarity²³.

4. *Territorial NSAs and globalized world: vertical projection of domestic actors or birth of new international subjects?*

Local governments and sub-state territorial authorities, despite the fact they have neither juridical subjectivity nor the ability to act under international law, are often taken into consideration by several sources of international law, albeit in a rather limited way and, in general, in their quality as third-party beneficiaries of binding agreements concluded between other international actors.

Among the many cases, one could think of the Madrid European Framework Convention on the cross-border cooperation of local communities and authorities of 21st May 1980, by which the signatories undertake to facilitate and promote cross-border cooperation between the local authorities depending on their jurisdiction, and local

²³ L. KIHILGREN GRANDI, *id.*, p. 9 and seq.

authorities or territorial authorities depending on the other states' jurisdiction. As is evident, acts such as the Madrid Convention always refer to the states as signatories and recipients as for the related rights and obligations

Furthermore, local governments and cities, if considered in their capacity as a part of the state's internal law system, in turn do have their own legal orders; they develop and exercise authoritative powers, over a clearly defined territory and towards the community inhabiting those territories; again, they are endowed with regulatory or, in some cases, legislative power as well. Furthermore, these subjects are both expression and embodiment of the principles of *democracy*, since their representatives are freely elected by the community, and of *representativeness*, since their purpose is to take care, directly and without intermediation, of any specific interests of the territorial community that elected them. In addition, the local one represents the government level closer to the local communities.

These aspects, which are pivotal points of strength for the trans-local system, seem to counterbalance one of the most relevant criticisms of the international state-centric system, namely the democratic and representativeness deficit. All the more so in trans-local networks, where "local" interests cease to be local, and to merge, like many bricks, into joint and coordinated actions on the global scenario.

A look at the current state of international cooperation can now be useful to better frame the dynamics underlying the trans-local phenomenon, where valued in its essence as a Territorial NSAs phenomenon.

In last decades, International Organizations seem to be enveloped into a growing institutional stalemate (or *gridlock*, according to Hale *et alii*, 2013²⁴), as the result of a progressive gap between the need to detect global solutions to global issues on the one hand, and the International Organizations' effectiveness at satisfying these needs on the other. In the same time, the "general" NSAs have increasingly been assuming a greater role and weight becoming active players, if not of international law, certainly of the new globalized world.

Hale *et alii* (2013) again noted in this regard how the rise of the NSAs could in turn cause potential problems of fragmentation and institutional overlapping²⁵, but at the same time it could also expand political debate and decision-making platforms at any level²⁶: cosmopolitan democracy leading to a "world government" could be the answer. By the other hand though, according to Dan Koon-hong Chan (2016), the way should be to connect local citizens to global public policy, and move towards cosmopolitan democracy through cities: this should be based on the two "building blocks" of democracy at the global level, namely equal participation and popular control²⁷.

²⁴ T. HALE, D. HELD, K. YOUNG, *Gridlock: Why Global Cooperation is Failing When We Need It Most*, Cambridge, 2013.

²⁵ The phenomenon of institutional overlap also occurs at the level of trans-local relationships, given the hyperproliferation of networks of cities and local governments which often pursue the same goals. For an accurate analysis of the phenomenon, see M. ACUTO, M. MORRISSETTE, A. TSOUROS, *id.*, and M. ACUTO, & B. LEFFEL, *id.*

²⁶ T. HALE, D. HELD, K. YOUNG, p. 298. Moreover, it seems reasonable to support the attitude of the networks of cities and local governments to be able to fill that institutional gap, thanks to their ability to operate through highly complex "hybrid" (public-private) governance agreements and according to innovative cooperation methods between cities and local governments as substate actors, see M. ACUTO, & S. RAYNER, *City network: breaking gridlocks or forging (new) lock-ins?*, in *Int. Aff.*, 92 (5), 2016.

²⁷ DAN KOON-HONG CHAN, *City diplomacy and "glocal" governance: revitalizing cosmopolitan democracy*, in *Innovation: The European Journal of Social Science Research*, Volume 29, 2016 - Issue 2

In several cases, the NSAs are formally recognized and embodied within the International Organizations' or Agencies institutional set-up, generally for both consultative and active cooperation duties. So for instance in the case of UNESCO, which, pursuing art. XI, par. 4 of the Convention of London of 16th November 1945, has been fostering advisory and cooperation activities with non-governmental organizations dealing with issues within its competence for a long time²⁸.

The prevalent strategic role of NSAs within the processes of evolution and production of positive international law is mainly linked to their propulsive function (i.e. where they do have any impulse and initiative power), as well as to their participatory/advisory functions for binding agreements²⁹. This is a legally relevant phenomenon, but quite removed from the full consecration of the NSA among the international community's "legislators", namely States, which directly or through mediation of third and independent international organizations, still remain the key-actors within a purely state-centric decision-making model (D'Aspremont, 2010).

Whether territorial or general, the NSAs, in substance, could at most aspire to playing the role of influential pressure groups or lobbies: but any final decision, any exercise of the volitional act that creates (or recognizes) the international law rule, will remain precluded to them. At most, they could be considered as subjects of *Transnational law*, according to the conceptual category defined by Jessup (1956) who, moving from a decisive criticism to the same definition of "international" law, assumed the existence of a super-legal system which also incorporates, but goes further than what is commonly called *international law*³⁰.

In fact, the evolution of transnational law theory in the decades following its formulation, in addition to confirming the accuracy of Jessup's original intuition, led the scholars³¹ to the further step of a systematic distinction between a *transnational legal ordering*³², and the various individual *transnational legal orders* on which the former is supposed to be articulated³³.

The first definition regards the overall phenomenon of general regulatory production in particular areas of transnational relevance (which could also be defined as the *actual* general transnational legal order), while the second refers to complex mandatory and positive rules granting the effectiveness and compliance of the transnational legal ordering within every national/domestic jurisdiction, through structures endowed with authoritative powers at national or sub-national level³⁴.

²⁸ For other cases and examples, cf. E. SUZUKI, *Non State actors in International Law in policy perspective*, in M. NOORTMAN, A. REINISCH, C. RYNGAERT, *Non State actors in international law*, Portland, 2015, p. 37 and following

²⁹ See, for a historical perspective, J. D'ASPROMONT, *International Law-making by Non-State actors: changing the model or putting the phenomenon into perspective?*, in M. NOORTMAN, C. RYNGAERT, *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers*, London, 2010, p. 175.

³⁰ JESSUP, PH., *Transnational Law*, Yale, 1956. As known, this super-system of regulations would affect and regulate any action and event developing beyond the domestic level, for any reason and regardless of the nature of the actors involved: this system is articulated on three pillars, namely public international law, private international law, and all the "other rules".

³¹ See for all, G. SHAFFER, C. COYE, *From International Law to Jessup's Transnational Law, From Transnational Law to Transnational Legal Orders*, in *Irvine School of Law & Legal Studies Research Paper Series*, No. 2017-02.

³² G. SHAFFER, *Transnational Legal Ordering and State Change*, Cambridge, 2013.

³³ TC. HALLIDAY, G. SHAFFER, *Transnational Legal Orders*, Cambridge, 2015.

³⁴ As for the transnational legal orders, the authors report the examples of the TRIPS agreements on intellectual property of 1995, with regard to some aspects related to the protection of minority rights (with reference to the Mayan ethnic groups in Belize and Ainu in Japan), G. SHAFFER, C. COYE, *id.*

Given the question in these terms, therefore, cities, local governments and their representative networks, as territorial NSAs are participating in a specific new transnational order, since their role is intended to produce lasting effects beyond national borders. This is also with reference to the impulse, consultative and participatory roles, typical of the NSA, in the creation of international law rules, since such roles usually represent one of the most relevant characteristics of the local government networks.

In this sense, among numerous examples, it is worth mentioning the United Nations Program for Human Settlements-UN Habitat, which gets a participatory scheme extended to the Territorial NSAs as well. In particular, the United Nations Local Authorities Advisory Committee-UNACLA at UN-Habitat should be mentioned, an advisory body established by the UN Resolution 17/18 of the Habitat Governing Council, with the aim, among others, of "*strengthening the dialogue of the UN System with local authorities from all over the world involved in the implementation of the Habitat Agenda*". To date, UNACLA is co-managed by UN Habitat and UCLG (which has the right to appoint 10 of the 20 members that make up the Committee).

5. *Citizen Protection of Human Rights: from the Right to the City to the Rights of the City*

According to Papisca, even though with main focus on cities, the legitimacy of the action of Territorial NSAs in the transnational scenario derives from their immanent responsibility for the protection of internationally recognized fundamental rights, first of all those relating to the security and development (in all possible meanings of these two terms) of those who in any capacity live within the relative territory.³⁵ "Protection" mainly concerns people's lives, and TNSAs are closer to people's lives and their essential needs more than any other public institution at state level; the individual lives, trains, works, and exercises his rights in urban settlements, not generically "in the territory of a state". Mutually, it is the city that finds itself "at the forefront" of the individual and not just (and not so much) the generically understood state.

In general, speaking of "human" security and development also means shifting the focus of the traditional conception of security and development from the territory to the person and, by vertical extension, to the local authorities under whose jurisdiction the life of the person takes place daily.

The protection and personal preservation of an individual consequently derives not only from the protection of the state as a political unit but also from the effective guarantee that the former can access adequate means of satisfaction of his needs and aspirations. This includes the right to housing, health, education, professional and economic achievement, and so on. Alongside the fundamental rights of the individual, there is also a "right to the city," that is to say, the global right to exercise all the rights recognized by current international law and which establish a true universal citizenship—the mother of all individual citizenships (national, local, European, etc.)³⁶.

³⁵ A. PAPISCA, *International law and human rights as a legal basis for the international involvement of local government*, in *City Diplomacy - The role of local governments in conflict prevention, peace-building, post-conflict reconstruction*, The Hague, 2008, pag. 22 et seq.

³⁶ In a certain sense therefore the right to the city as formulated by Papisca also seems to reframe and modernize into the trans-local or global perspective the original concept of Henry Lefebvre's *right to the city*. See LEFEBVRE, H. *Le droit à la ville*, Paris, 1967. Also published in *L'Homme et la société*, n. 6, 1967, pp. 29-35

For these reasons, the Author concludes that local governments, since they are closest to the Individual, should therefore be considered as the first guarantors of international human rights law.

In this regard, mention should be made of so-called “*sanctuary cities*”. In terms of migration policy on a transnational scale, sanctuary cities are characterized by a policy of non-collaboration with federal/central governmental authorities that is enacted through extensive “boycotting” of the relative deeds and measures *in subjecta materia*³⁷.

In most cases, passive resistance is associated with the administrative measures of the local authority, and it aims to prohibit officials from applying contested federal/central governmental discipline. It is not at all a phenomenon connected with the emergence of new globalization scenarios: apart from some cases in Europe in the aftermath of the Second World War, of particular interest is the well-known case of the Los Angeles Police Department’s Special Order no. 40 (1979), which prohibited police officers from investigating illegal immigration.

Papisca again remarked that the right to the city is moreover consecrated, both expressly and implicitly, in trans-local or transnational soft law³⁸ as well as in sources relevant to international law.

However, it should be considered that, how Ronen (2013) thoroughly stressed, the limited practice that exists with respect to human rights obligations of territorial NSAs does not substantiate a claim that such obligations constitute customary international law at present, also considering the lack of their uniform application at a sub-state level³⁹.

6. *Global administrative law and the global projection of local governances*

The local government authority, however, also is and remains an administrative authority within a national order. So, how can this essential aspect be related to the global dimension of its actions?

It has been recognized that forms of transnational governance can be useful as possible forms of public administration to which, at least in theory, institutions and conceptual schemes of administrative law apply. This is one of the fundamental guidelines underlying global administrative law theory.⁴⁰ According to this theory, public administration, as a

³⁷ For an organic overview of this topic and a list of reference cases (limited to US cities only), see L. COLLINGWOOD, B. GONZALEZ O'BRIEN, *Sanctuary Cities: The Politics of Refuge*, New York, 2019.

³⁸ In this sense, for example, the Author reports the case of the *European Charter for the Protection of Human Rights in the City*, approved in Saint Denis on 18th May 2000 and signed by 354 European Cities (it should be noted for completeness, mostly Italian and Spanish). A. PAPISCA, *id.*, p. 28. The *Gwangju Guiding Principles for a Human Rights City*, adopted in occasion of the World Human Rights Cities Forum held in the Korean city in May 2014, and the *Global Charter Agenda for Human Rights in the City*, adopted by the World Council of United Cities and Local Governments at the Florence session of 2011.

³⁹ Y. RONEN, *Human Rights Obligations of Territorial Non-State Actors*, in *Cornell Int. Law Journ.*: Vol. 46: Iss. 1, Article 2, 2013.

⁴⁰ For a general overview, see B. KINGSBURY, M. DONALDSON, entry *Global Administrative Law*, in *Max P. Enc. Pub. Int. Law*, 2011, and related bibliography, and S. CASSESE, *Research Handbook on Global Administrative Law*, 2016. See also N. KRISCH, B. KINGSBURY, R.B. STEWART, *The Emergence of Global Administrative Law*, in 68:3 *Law Cont. Prob.*, 2005, pp. 15-61. Of course, the vast and complex theme of global administrative law goes beyond the aim of this study.

general concept, can be defined relative to the nature of the activity carried out, or for the general purpose of this activity, to the nature or type of entity that performs these activities.

Based on these criteria, therefore, the positive basis of a particular administrative law could be identified as international and understood as a system of legal principles which form the basis of one or more “global” public service hypotheses. Cassese points out that whereas the administrative apparatus of internal law develops from and around a centre, namely the state, global administrative institutions instead develop through connections that are reciprocal to peripheral points⁴¹.

Summing up, we start from the assumption that there is a central core state and, with the development of a sunburst around it, an indefinite number of public administrations on which it is articulated. Alongside this classic model, a second one develops which sees these public administrations as related to one another horizontally. They fall into that second model—even “international” organizations, local governmental authorities, or public bodies of a sub-state level—and this occurs regardless of their origin and their structure (spontaneous, derivative, etc.).

However, Cassese postulates a coexistence between the vertical state/local governmental authority relationship and the direct horizontal relationship between local governmental authorities. Starting from the assumption that in a global administration system states share some of their tasks through entities and bodies operating at levels different from their own, the interrelationship between local governmental authorities could be detected only as an expression (one of many) of the sharing of powers that are decentralized but still derived from the states.

In other words, the aspect of prior decentralization, or delegation of functions by the state (depending on the peculiarities found in the respective national systems) to the underlying hierarchically subordinate levels of government should be considered crucial, as the basis of sharing in the trans-local and transnational relations of the authorities’ “lower” governments consists mainly of delegated powers.

In this way, the making of specific decisions and the positivization of general rules in these *fora* by local governments would not undermine their nature as authorities carrying out essentially administrative functions, provided that these activities remain subsidiary or, at most, are focused on implementation. Strictly speaking, the creation of general rules or the making of decisions which are not subsidiary or delegated in any way by the state should be understood as a real decision-making activity on an original and non-derivative basis—a limit beyond which, by definition, talking about administrative action should not be allowed.

In a wide range of cases, however, Territorial NSAs’ initiatives seems to be far from being configured as administrative activities, at least in intent.

In this sense one could think of the UCLG Constitution, the mission’s programmatic declarations of which expressly and repeatedly refer to art. 21, pt. 3, of the Universal Declaration of Human Rights, so tending to legitimize UCLG’s action in the light of the principle that “*the will of the people*” is the basis of *any* authority of government.

The Organization does therefore aspire to act as the bearer of primary decision-making power directly borrowed from international Human Rights law, that is not derivative and is neither subsidiary nor subordinate to other authorities of a hierarchically higher level⁴².

⁴¹ See S. CASSESE, *Administrative Law without the State? The Challenge of Global Regulation*, in *NY. Univ. Jour. Int. Law*, n. 37, 2005, pp. 663-665.

⁴² Among other remarkable statements in this regard: «Recognising: § the vital role of local government as a force for sustainable development, good governance, sustainable urbanisation and promotion of the rights of

Moreover, such an authoritative appeal is also accompanied by fervent *consideranda* on the fundamental inability of the state to continue facing and managing the challenges of the new global panorama of economic, technological, demographic, environmental, and social changes⁴³. As further proof of this, it is useful to remember how the Organization has self-constrained, in full and free self-determination, to act directly in compliance with and under the rule of international law as well as the United Nations resolutions on the recognition of states and other related matters (art. 5, UCLG Const.).

The state level is therefore largely bypassed, and the international level has been directly drawn on several fronts: it is therefore well understood how the multifaceted phenomenon of trans-local and international relations of local governmental authorities stems roots even beyond the GAL models.

Models that are nevertheless crucial for the complete definition of latitude and extension of the subjectivity and transnational capacity of local governments, since they define the *quid pluris* with respect to the other categories of non-state actors, i.e., the nature of administrative authority and the consequent ownership of authoritative executive powers. In this regard, it should be considered that local governments, in their very capacity as administrative authorities, are to be implicitly considered relevant as bearers of obligations directly descended from numerous sources of international law: the reference cases are decidedly numerous, and we can *ex multis* cite the example of the New York Convention of 20 November 1989 on the Rights of the Child and Adolescent, whose art. 3, par. I, expressly states that in all decisions relating to children, including those of public institutions and *administrative authorities* (i.e. *any* administrative authority, including city authorities, local governments, etc.), the best interests of the child must be a paramount consideration.

7. The breakdown of state sovereignty, triadic subjectivity, and the theory of social constructivism

The difficulty of framing the complex phenomenon of interaction between the local authority and the rest of the world between the extremes of pure subjectivity of both international and domestic law is mainly the result of the traditional dual-track model, which sees on the one hand the world-state relationship and on the other the state-local government relationship.

Based on this model, any potential mutual interaction would seem as impossible or, in any case, extremely difficult, since the two tracks are by definition destined to run parallel to each other. It should therefore be inferred that the progressive imposition of the system of

the citizen; § the vital role of local government as a force for promoting Human Rights -civil and political, social and economic - as recognised, codified and endorsed by the United Nations; § local government's responsibility to take an active role in responding to the challenges facing humanity; to fight strongly against poverty, ignorance, intolerance, discrimination, exclusion, insecurity, environmental degradation and cultural levelling; § the vital role of local government as a force for peace and solidarity between peoples; [...] Emphasising: § that strengthening local government in any country strengthens the entire nation and the world community by ensuring more effective and democratic public policies; [...]», The Constitution of the UCLG, Preamble.

⁴³ «Considering: - that the world is being reshaped by changing economic, technological, demographic, environmental and social forces; - that the traditional role of the State is profoundly affected by the above trends and that States cannot centrally manage and control the complex integrated cities and towns of today and tomorrow; [...]», The Constitution of the UCLG, *id.*

“international” relations by local governmental authorities should end up generating a third track consisting of the relationship between the local authority and the world.

In this perspective, the subjectivity of the local authority / local government engaged in the global scenario tends to be described thusly:

- As a sort of avatar of the nation-state and its prerogatives, to which descend directly from above the juridical positions of international law, especially in the field of human rights.
- As an administrative authority which, moving from below and going up the umbilical cord that binds it inextricably to the state, crosses its national borders to relate to and interact with other homologous foreign administrative authorities, thus giving rise to a global hyper-administration.

And this does not in the least diminish the intrinsic value of these models, each of which is destined to offer a fundamental contribution to the topic under consideration.

On the one hand, the affirmation of "international" importance in the proper sense of the local authorities contributes to filling the singular vacuum left by international law between the two poles of the subjectivity of the nation-state and the subjectivity of the individual.⁴⁴

In turn, the focus on global administrative action provides the tools necessary to implement uniformly, at every level of government, the obligations and responsibilities that affect all or almost all the international community.

The key point, therefore, is to understand that the local governmental authority, when acting on the global scene, is each of these things and more. Blank echoes this line and, starting from the sociological observations of J. Habermas and S. Sassen, relates the two phenomena of deterritorialization (or denationalization) and globalization on the one hand, and the disaggregation of nation-state sovereignty into the separate and functionally distinct parts of which the latter is composed as a result of extensive decentralization policies on the other.⁴⁵

From this framework of profound complexity, to which we can only briefly refer, the Author reaches the conclusion that to the system of opposing pairs of world-state (regulated by international law) and local-state authority (regulated by internal public law), rather than adding a third local-world authority relationship (regulated either by the “descent” of international law at the sub-state level or by the “rise” of administrative law at the global level), a new and original triad of egalitarian world-state-local authority has been introduced.

But equality seems to be only tendential at the moment. In fact, the Gordian knot of the imposing paradox remains associated on the one hand with the emergence in the international panorama of binding rules that directly involve local authorities in various capacities, both in their essence as sub-state territorial governments and in their more general quality as administrative authorities, and on the other hand with the persistent legal marginalization of these entities from a positive international law which is stubbornly state-centric. Only the state can be part of an international treaty pursuant to art. 1 of the Vienna

⁴⁴ To this end, it seems not to be superfluous to remember how these "local" bodies and authorities, especially the so-called global cities, often exceed (and not a little) in terms of territorial size, number of residents, socio-economic characteristics, and other factors, most of the sovereign states full members of the international community properly said. Just for hint, one could consider that, among the non-capital cities, as of 2018, New York City (not taking into account the urban agglomeration of its Metropolitan Statistical Area) had a population greater than that of at least 84 of the UN member states.

⁴⁵ Y. BLANK, *id.*, pp. 868 et seq., and bibliography cited there. For the theory of state disaggregation, cited by the Author, see A.M. SLAUGHTER, *A New World Order*, Princeton, 2004.

Convention based on the law of the treaties of 1969, and only the state can apply to the International Court of Justice pursuant to art. 34, co. I, of the CIG Statute of 1945, etc.

Blank identifies robust reference guidelines that define, both in practice and in mandatory legislation, the development of this particular triadic model. In particular, local governments (or *localities*) may find themselves committed to the global scenario as:

1. Responsible for the concrete implementation of the rules of international law, formally binding only for states, according to the cases already seen previously. It is in this hypothesis that the models of global administrative law are most valued.

2. Beneficiaries or direct recipients of the rules of international law, formally binding only for states, according to a scheme which closely resembles that of the private sector contract in favour of a third party.

In such cases, the purpose of international treaties between states or actions of international organizations (or their agencies), which are an expression of states, is to implement particular disciplines of domestic law that are intended for their local governments or to define internal relations between the state and local government.

In this sense, the author mentions the experience of the United Nations Program for Human Settlements - UN Habitat to highlight its action in urging states to adopt policies related to broad political-administrative decentralization, implementation of the principle of subsidiarity, and other related aspects.⁴⁶

3. Active players voluntarily participating in the implementation of binding rules and practices of international or supranational law, regardless of the action of the states. Especially in matters of protection of human rights, this can peacefully take place through the forms of so-called substantial transposition only if the local government independently issues its own regulatory acts whose content corresponds, in whole or in part, to that of the international standard.

Moreover, this model is particularly appreciated by local governments (generally, through the associative model of the thematic networks) for its ability to compensate for policies of inertia or prejudicial refusal by the respective national governments in fulfilling international obligations.

4. Active players in the creation and implementation of non-binding agreements or international or supranational soft law, regardless of the action of the states. This is the elective sector into which a large part of the overall action of city diplomacy is poured, and in which the local authorities give rise to their own peculiar transnational legal orders to a great extent.

In conclusion, the profound interaction of the triad state-world-local authority is an effective reality, and the rise of this very peculiar category of NSA (endowed with a public nature, defined territoriality, and with authoritative powers over its own associated companies) does not necessarily presuppose or postulate any corresponding collapse or gridlock of international organizations, or a corresponding sunset of the nation-state. In fact, the observation that the identity and interests of the city and local governments are redefined by their global social interaction and by their direct relationships with global policies and institutions is also consistent with this reading.

In these terms, as Nijman (2010) remarked, it is undeniable that indirectly "living" international law has already recognized cities and local governments as its subjects even as they continue to remain extraneous to formal international law. But an international actor

⁴⁶ Y. BLANK, *id.*, p. 900.

with a *de facto* power (social, economic, or political) should itself be endowed with a legal "visibility" that can be effectively formalized through the instrument of the legal personality of international law. This, therefore, is identified as a set of (pre-legal) skills that are based on a social, political, and/or economic reality.⁴⁷

8. Conclusions

a) Beyond "city" and "diplomacy"

Practices and culture of city diplomacy itself, beyond the formal aspect of its denomination, certainly play a strategic role in framing the global action of local governments as territorial non-state actors. However, these are not sufficient to exhaustively define the overall legal reality here under consideration.

In fact, some limits clearly emerge, including the almost exclusive focus on cities as an object of investigation as well as the robust declination on the purely relational aspect of diplomacy.

The centrality of Cities in the historical development of diplomatic practices at sub-state level is certainly undeniable, as well as its validity as a general model, given that cities exist and have always existed in every part of the world with their own well-defined identity, unlike other intermediate level local government models, extremely heterogeneous between the various state systems and changing over time.

Nonetheless, enhancing the trail already traced by Blank, the legal focus should be now oriented to identify and define a common *plafond* of characteristics Localities do express. To achieve this, the first unavoidable step should be to overcome the usual dualism city-other local governments (more-than-a-city and less-than-a-state), which sees the latter gravitate in an ancillary position to the former.

Within such general system, then, one should primarily invert the terms of the question: Cities should be reconsidered as a systemic sub-group (even if the most representative) with its own characteristics and peculiarities, as well as needs that are objectively different from those of other local governments of different rank (think of housing, urban transport, etc.).

The analysis of the subjectivity and capacity of TNSAs - Localities in relation to the global context, therefore, rather than based on quantitative criteria (eg lesser or greater "strength" or ability to maintain foreign relations, smaller or larger resident population, territorial, financial capacity, etc.) should shift towards qualitative benchmarks. Among the others, the following may be suggested:

a) Presence of a government freely and democratically elected by the civil community, as well as fully representative of it, also in accordance with the provisions of art. 21 UDHR and along the lines of what has already been consolidated, for example, by UCLG Const. This is because in their global action these authorities should be considered in their capacity as exponential bearers of interests, rights and prerogatives of the communities they represent;

⁴⁷J.E. NIJMAN, *Non-state actors and the international rule of law: revisiting the 'realist theory' of international legal personality*, in M. NOORTMAN, C. RYNGAERT, *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers*, London, 2010, p. 175.

b) Capability to impose its own decisions over the community of individuals under its jurisdiction and over its own territory, by virtue of authoritative powers legally provided for by its internal state system, whether they are primary powers or delegated by the state. In other words, these entities should also be able to be considered and identified in their essence as political-administrative authorities.

Another critical aspect is that of the excessive focus on purely foreign relational aspects, which on the other hand constitute the founding basis of city *diplomacy* by definition.

It is necessary to consider that in fact cities and local governments can assume the role of TNSAs even in the absence of any specific trans-local activity or activities led outside national borders. Think of the hypothesis in which, without any “foreign” activity in the proper sense, cities and local governments within the same state join forces to bear and implement international law by themselves. Even against the contrary will of their national government.

An emblematic case can be helpful to better define the issue.

On 1st June 2017, D. Trump announced that the United States were going to withdraw from the Paris Agreement on climate change. The US would have furthermore stopped any funding to the United Nations' Green Climate Fund.

After that, the former mayor of New York City, Michael Bloomberg, and the governor of California, Jerry Brown, have just launched *America's Pledge*, both a programmatic declaration and a network project aimed to gather US federated states, cities, private companies, and other subnational actors into an ambitious joint plan/commitment to reduce greenhouse gas emissions. All those cities, local governments, non-state actors, private stakeholders a.o. would have voluntarily adopted internal practices and rules in compliance with the objectives of that same Paris agreement just refused by the Federal Executive⁴⁸.

We Are Still In, the *America's pledge* memorandum of understanding, had been signed by approximately 2,900 leaders, including mayors and county executives of 280 US cities and counties, governors of 10 states, heads of nine Native American tribes, as well as representatives of 346 colleges and universities, 2,147 investors and representatives of enterprises, spiritual leaders of 38 religious groups, 47 cultural institution, and 27 health organizations⁴⁹. The signatories also declared their willingness to further implement the commitment of each involved group, irrespective of any divergent foreign and internal policy adopted by the U.S. Federal Government in this regard.

In such case, thus, a relevant group of sub-state rank local governments (as well as private stakeholders, communities, universities, etc.) were gathering to transpose and implement by themselves international obligations, even though they were genetically intended to be addressed to subjects under international law, namely states. Moreover, those local governments were strongly contradicting their own national government in matters directly related to foreign policy issues.

⁴⁸ The Founders have given the program an emblematic mission, which needs no comment: «In the wake of the Trump Administration's decision to pull out of the Paris Agreement, an unprecedented number of U.S. cities, states, businesses, and universities have reaffirmed their commitment to helping America reach its Paris climate goals».

⁴⁹ This was the *We Are Still In* main statement: «in the absence of leadership from Washington, states, cities, counties, tribes, colleges and universities, health organizations, businesses and investors, which represent a considerable percentage of the US economy, will pursue ambitious climate goals, collaborating to take energetic action and ensure that the United States remains a global leader in reducing emissions». In 2020, the network had gathered nearly 3,900 actors, representing 158 million people across the 50 states of the USA.

Even if in the absence of any proper foreign activity (We Are Still In was expressly intended only for actors within the USA) would this be still considered as an act of mere domestic legal order, or just a matter of local actors within a state?

b) *Is a Kafkaesque path for local governments avoidable on the global stage?*

The insurmountable resistance of international law to the recognition of local governments' subjectivity and full juridical capacity as original, and autonomous from that of the nation-states in whose internal systems they are based, represent serious wicked problems to local governments on the global stage.

The systemic dystonia manifests itself primarily in the imbalance and atomization that characterizes the constellation of (not a few) norms of positive international law that directly concern governments and sub-state-level entities.

These are certainly recipients of numerous obligations directly established by international treaties and conventions, obligations arising both from their nature as governmental bodies and from their nature as administrative authorities. This is not so, however, for their corresponding (possible) rights, unrecognized, uncoded, and, consequently, not legally protected by international jurisdiction. It is precisely this latter aspect which constitutes the essential core of the problem.

The definition of the exact latitude and extent of the (possible) legal subjectivity and ability to act under international law of sub-state governmental bodies could be archived as a mere academic matter, but what does not appear in any way is the predetermination of how and where these subjects can request protection for their prerogatives. In other words, who should be the natural judge of local cities and governments in the world arena?

A natural judge should protect:

- The horizontal plane of the relationship between local governmental bodies. In the previous chapters, the risk of a directory which has arisen in the scenario of trans-local relations has already been mentioned. The risk is that a few hegemonic super-entities (e.g., the so-called global cities) might oligopolise the trans-local scenario, modelling it at will on the basis of their needs. From a legal perspective, it should be possible to define a harmonious framework in which equal substantial opportunities are guaranteed in the exercise of rights and the fulfilment of obligations, whether in New York City or in the most remote territorial community of any country.

- The vertical plane of the relationship between the local government and the nation-state. It has been described in the previous paragraphs how the trans-local action of sub-state governments often corresponds to a highly critical or openly polemical position towards policies implemented by their national governments, precisely (and paradoxically) as a function of substitutive fulfilment of international obligations imposed on those national governments and disregarded by them.

To date, this question has no answer. We therefore need to ask ourselves what the *de jure condendo* solutions can be.

First of all, we can reasonably argue that the current status of sub-state governmental bodies corresponds to a few margins of uncertainty regarding the status of the individual in classical international law and is intended as a mere *de facto* beneficiary of the effects of international standards intended for states, with the fundamental difference that as administrative authorities, local governmental bodies are also direct recipients of obligations

established by international conventions and treaties (recall the example of the New York Convention of 20 November 1989 on the Rights of the Child and Adolescent).

It is therefore reasonable to imagine that the future evolution of contemporary international law, in light of the practices that have stratified concerning the recognition and inclusion of local governments in the structures or policies of international organizations (see the aforementioned UN-Habitat, but also see the policies of the World Bank Organization for the development of local self-government, etc.), and of the recognition of the local government as an effective representative body and guardian of the subjects of international law established on its territory, will lead to a redefinition (or *ex novo* definition) of the subjectivity of international law as it relates to local governments, similarly to what happened to the individual in the aftermath of the Second World War.

Second, regarding the subjectivity of international law for local governments, considering the models, practices, and overall historical evolution hitherto explored, it can be said to be already informally or partially consolidated in various forms (Papisca, 2005; Blank, 2006); however, it will remain the essential issue of local governments international judicial protection.

Some hypotheses can be made in this regard. On the horizontal level of the relationship between local governmental bodies, the most adequate and effective solution is to establish arbitration boards within the organizations and networks to which they belong. On the vertical plane of the relationship between the local governmental body and the nation-state, it seems that the prospect of involvement of the International Court of Justice can immediately be eliminated through the possible mere enlargement of the list of subjects entitled to its jurisdiction. This is for both systematic reasons (lacking a certain basis of international law norms that local governments could invoke before it) and practical reasons, since the sudden extension of jurisdiction to (at best) tens or hundreds of thousands of new subjects would certainly send the overall functioning of the Court into paralysis.

It seems to us, however, that a first hypothesis concerning the extension of the competences of the transnational “natural Courts” of the Human Rights (ECHR, Inter-American Court of Human Rights, etc.) is much more viable.

Thus, for example in the case of the European Court of Human Rights, even at the price of the substantial subjective limitation to the sub-state rank governments that are part of the states belonging to the ECHR, and at the price of another objective limit to the non-reintegrating nature of the Court's decisions, pursuant to art. 41 ECHR.

This hypothesis, rather than by modifying the conventional system, should be made concrete by adopting a specific additional protocol that extends the ability of an individual to appeal to the Court to the local government authorities, provided that they are democratically elected (thus reporting for the purpose and spirit of art. 21, pt. 3, UDHR).

In addition, the protocol should contain an authentic interpretation of the provisions of the ECHR clarifying that, in the parts that refer to the individual as the bearer of universally recognized rights, these parts must also be understood as referring to the local governmental authority within whose jurisdiction the daily life of the individual occurs, and that the same rights and interests are considered for a representative body (according to Papisca's thesis).

We have identified the subjective and objective limits of this option (feasible at least until an overall redefinition of the matter at international level). There is, however, impressive added value that would derive from it, given:

1. The first certain and predetermined consecration of subjectivity, rights, and obligations of the local governmental authorities in an act of international law deputed to the protection and safeguarding of fundamental human rights.

2. The creation of jurisprudential precedents *in subjecta materia* by an international body, and the consequent and progressive stratification of a sort of *acquis* of international law.

3. The function—propulsive on the one hand and deterrent on the other—of the Court's decisions concerning the behaviour of nation-states towards their own governmental bodies, with the setting of certain universally recognized criteria by the signatory states of the Convention, which, as is known, are required to apply these principles internally.

4. The presumed emulation (or imitation) of the new ECHR model with extended participation by other international organizations of a regional nature who are responsible for the protection of human rights and the consequent multiplication and diffusion of this model.