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PROPOSAL TO THE EXECUTIVE COUNCIL OF THE ILA TO ESTABLISH A COMMITTEE ON “URBANISATION AND INTERNATIONAL LAW – POTENTIAL AND PITFALLS”

Submitted by envisaged co-chairs, Helmut Philipp Aust and Janne E. Nijman, and co-rapporteurs, Anél du Plessis and Mirko Sossai.

Summary of the Work Programme

1. This proposal seeks to establish an ILA Committee on “Urbanization and International Law – Potential and Pitfalls”. In our view, this Committee will contribute to the mandate of the ILA as set out in Section 3.1 of its Constitution. The Committee will study and clarify how existing international law develops and is developed in urban contexts and in turn why and how cities participate at the level of international law and governance.
2. The Committee will allow the ILA to engage with a topic which is attracting increasing attention in both scholarship and practice, and it can contribute to the furtherance of international understanding of the role that cities play in international law and vice versa. The Committee aims to help shed light on whether fundamental concepts of international law are shaped, and if so how, by the urbanization of international law, including the impact of international law on life in and governance of cities. A broader focus on the urban contexts will allow the Committee: (a) to study the normative processes in which cities and other urban actors engage in and with international law; (b) to assess how their involvement in institutional practices shape law, policy and its implementation; (c) and to assess what patterns of argumentation or discourse constitute the urban turn in international law and governance and the politics of this discourse.
3. This Committee builds on the work of the Study Group (SG) on the role of cities in international law, which examined the legal ramifications of the rise of the city as an actor on the international stage. The mandate of the Committee expands the work of the SG: the focus is broader as the theme of “urbanization and international law” has repercussions across a wide range of different fields of international law.
4. The establishment of a committee holds the promise to also broaden the membership base of the existing group. The proponents of this Committee expect that interest in the topic will further rise when national branches in the global North and South will become involved more closely through the nomination of members. With its global span, the ILA is a particularly interesting organisation for the collaborative study of the urbanisation of international law.

Statement of the problem

5. Our planet continues to urbanise. Already today, more than half of the world's population is living in cities. This number is expected to rise further in the next decades. Metropolises in the Global South face daunting challenges with respect to adequate housing, urban poverty, access to basic services and a healthy environment. Digital urban infrastructure and surveillance systems are reshaping our cities: smart sustainable city projects suggest digital technologies will improve (responsive) urban governance and the delivery of urban services and help find local solutions to global challenges such as climate change.
6. International law - its norms, institutions, processes and practices – has been state-centric for centuries, also with respect to how intergovernmental organizations (IOs) like the United Nations (UN), the World Bank or the World Health Organization (WHO) function. Cities traditionally are irrelevant to international life and invisible in international law and governance. If planetary urbanisation is a major challenge to the rebalancing of the Earth system and cities necessary partners to this rebalancing and to addressing global challenges generally, a crucial question for international law and governance arises: how is urbanization changing international law – its norms, institutions, processes, practices, and argumentation?
7. Set up in 2019, the Study Group (SG) has contributed significantly to the establishment of a new research field in public international law. When the SG was launched, the connection between cities and international law might still have seemed to be rather esoteric to many in the field. Despite the difficulties of setting up work amidst the COVID-19 pandemic and the limitations this brought about for bringing the SG together physically, it has organized a number of events, both in-person and virtually, both in the context of the bi-annual ILA conferences and outside, and it has produced two reports for the bi-annual ILA conferences.¹ Among other connections to national branches, this has led most recently for instance to academic meetings like the 2022 gathering in Trento to launch the Italian Yearbook of international Law dedicated to a significant extent to cities and international law, which was co-sponsored by the Italian branch. The SG has contributed significantly to the growing visibility and recognition of the emerging research field on cities in international law. The proponents trust that the Committee can harvest this elevated visibility and recognition and build on it in concrete ways.

¹ See for an enumeration of all the Study Group activities these ILA reports.

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8. In terms of substantive output, the SG has launched a website collecting “city reports” on how local governments engage with international law.² Through this project, the engagement of cities with international law has been mapped for a number of cities on different continents. While still in its infancy, the city reports project has attracted considerable attention from various corners and promises to offer an innovative variation on the traditional format of country reports in international (human rights) law. Finally, the work of the SG has contributed to but reciprocally also benefitted considerably from the publication of the *Elgar Research Handbook on International Law and Cities* in 2021 which includes a significant number of contributions from former as well as current members of the ILA SG.³ The co-chairs of the SG (and envisaged co-chairs of the Committee) were also the editors of the *Research Handbook*. The book reproduces the original mandate of the SG in its Annex, thereby highlighting the close connection between this scholarly endeavour and the work of the SG. The impact of the *Research Handbook* on the emerging field of the role of cities in international law as well as the general recognition that this new field has by now gained in broader circles of the international legal academia has been highlighted by the book receiving the “Collaborative Book Prize 2022” of the European Society of International Law.
9. The work of the SG so far has shown that important aspects of what cities can do in terms of international law cover only parts of the wider problem area of how international law operates in urban contexts. Also, it will continue to be a focus of the Committee to study the contribution of subnational actors like cities to the operation of international law. Yet a broader focus on the urban contexts will allow this Committee to study in more depth how urban space is structured by law, how questions of urban sustainability are addressed by international law or how international humanitarian law addresses the reverberating effects of urban warfare on the civilian population and infrastructure. With the 2030 Agenda for Sustainable Development and SDG 11 the international community has committed to make cities and human settlements inclusive, safe, resilient and sustainable. Cities are organising in transnational networks and developing city diplomacy initiatives to influence, for example, norm- and policy creating processes at the international level. The specificities of norm-application in urban contexts challenge existing bodies of international law.
10. The emergence of the ‘turn to the city’ in international law is met by a ‘turn to international institutions and law’ by cities. As these processes are mutually constitutive, non-linear, and rather complex, new unresolved questions have emerged: what has caused these turns? What are the characteristics of this emerging

² Currently, the website is based at the T.M.C. Asser Institute in The Hague, but we would like to move it and develop it further. <https://www.asser.nl/global-city/ila-city-reports/>

³ Helmut Philipp Aust and Janne E. Nijman (eds), *Research Handbook on International Law and Cities* (Elgar 2021). <https://www.e-elgar.com/shop/gbp/research-handbook-on-international-law-and-cities-9781788973274.html>.

international law of and for cities? What historical frames have opened up mainstream international law and legal thought to this specific historical turn?

Mandate

11. To this end, it is proposed that the Committee to deal with the topic of “Urbanization and International Law”. This topic is broader than the mandate of the SG as the urbanization of international law has repercussions across a wide range of different fields of international law: it will take stock of the existing legal framework, study the normative processes in which cities and other urban actors engage in and with international law, assess how their involvement in institutional practices shape law, policy and its implementation, and assess what patterns of argumentation or discourse constitute the urban turn in international law and governance and the politics of this discourse.
12. In other words: international law (practices) develops in urban contexts while in turn the urban is constituted through international law (practices). This relationship between the urban and the international holds both potential and pitfalls – a potential that pressing questions of urban governance are addressed through the means of international law, but also the pitfalls that follow from unmediated contacts between the global and the local and the power dynamics that might work to the detriment of local governments and urban citizens alike.
13. The work of the Committee could also examine to what extent current problems of the urban are indeed furthered by international law, for instance through a reduction of policy space due to commitments from international economic law instruments. This thematic angle will also allow the Committee to take into focus the controversial question of the relationship and path dependencies between the centre and peripheries as well as between the urban and rural areas, both highly politicized topics which are at the core of many current debates relating to the future of global governance and liberal democracies alike.
14. Both the dynamics and implications of urbanisation may differ from the global north to the global south. A difference in knowledge production is also visible by the global north and the global south. This Committee is aimed at accommodating and addressing these differences and at closing knowledge gaps.

Work plan and schedule

15. The Committee’s mandate is designed for a four-year period that would begin with the forthcoming biannual ILA Conference in 2024. The work of the Committee would consist of an Interim Report, a Final Report, and a set of city reports, as well as a special issue



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of a leading international law journal (or book) with contributions from Committee members. Accordingly, the envisaged time schedule look as follows:

Until the 2024 Conference: constitution of the Committee under the new mandate (including nominations by the branches); distribution of work.

2024-2026: General overview and study on the impact of cities on urban sustainability, and human security, as well as on the law and practices of International Organisations and global governance. Further development of a website to expand the City Reports initiative started by the Study Group. This work will form the interim report, to be advanced in 2024, and ultimately concluded in 2026.

2026-2028: The second phase of the committee will centre on the impact of urbanization on fundamental concepts of international law like capacity, sources doctrine, jurisdiction, responsibility. A special issue (or book) with contributions from Committee Members will also be scheduled for 2028.

2028: The Final Report, to be presented at the 2028 ILA Conference, will build upon the research of the Interim Report. The Final Report will formulate recommendations for city governments, national executives as well as international organizations and other relevant stakeholders on the various forms of the international engagements of cities and other urban actors. While the development of the field may not be ripe to already formulate guidelines akin to law-making documents of a normative character, it is hoped for that the work of the Committee will allow for a clearer identification of the state of the art with respect to the growing role and importance of cities and the urban in and for international law. The work of the proposed Committee could thereby benefit from, but also feed into other projects taking place in various institutional contexts, ranging from the Guidelines of the Inter-American Juridical Committee on Binding and Non-Binding Agreements⁴ to the new work of the International Law Commission on non-binding agreements in international law.⁵

While the proposed chairs and rapporteurs are committed to this time frame, we wish to leave it open for the time being to have the mandate extended for a further two years should the need arise.

Linkages with other Committees

16. Urbanisation affects various areas of public international law and therefore the mandate of the Committee touches upon the work undertaken in other Committees

⁴ Guidelines of the Inter-American Juridical Committee on Binding and Non-Binding Agreements, OEA/Ser.Q/VII.3 (2020) with final report by Duncan B. Hollis (which contain various references on the role of subnational actors).

⁵ See Report of the International Law Commission on the work of its seventy-fourth session, 24 April to 2 June and from 3 July to 4 August 2023, UN Doc. A/78/10, 2023, chap. X.B, para. 249.



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and Study Groups. In this regard, the work of this Committee would complement the activities on human rights in times of emergency; global heritage in armed conflict; international migration and international law.

Proposed co-chairs and co-rapporteurs

17. In terms of the set-up of the Committee, the Chairs of the SG – Helmut Aust and Janne Nijman - suggest to coordinate the Committee together with two colleagues and members of the SG whose expertise would be key to breathing life into the ambitious research agenda of such a Committee.⁶ Accordingly, it is suggested to nominate Prof. Anél du Plessis and Prof. Mirko Sossai as co-rapporteurs. Prof. du Plessis (since 1 July 2023 Professor of Urban Law and Sustainability Governance at Stellenbosch University, member of the South African Branch) works particularly on questions of urban law and governance and its relation to global governance, environmental law, climate change and sustainable development. In particular, Prof. du Plessis has co-edited a volume on *The Globalisation of Urban Governance* published by Routledge in 2019. Prof. Sossai (Professor of International Law at the Roma Tre University, member of the Italian Branch) would bring particular expertise in the field of international humanitarian law to the work of the Committee, as evidenced most recently in his contribution to the *Italian Yearbook of International Law*. Both have contributed to the work of the SG and have also authored chapters of the 2021 *Research Handbook*.
18. Collectively, the proponents of this Committee envisage the application of a research grant to support an international research network of PhDs. Such a transnational doctoral program could have favourable synergies with the work of the Committee.
19. The short bio's of envisaged co-chairs and co-rapporteurs:

Helmut Philipp Aust is a Professor of Law at Freie Universität Berlin where he teaches public and international law. He is also an Associate Fellow of the German Council on Foreign Relations. His research interests lie in the fields of general international law, the relationship between international law and domestic law, the use of force, human rights law as well as the growing role of cities in international law. In this relation, he has been Co-Chair of the ILA Study Group on *The Role of Cities in International Law* (with Janne E. Nijman). His publications include *Complicity and the Law of State Responsibility* (CUP 2011), *The Interpretation of International Law by Domestic Courts* (OUP 2016, co-edited

⁶ Other contributions to the field developed by envisaged co-rapporteurs and co-chairs of the Committee are: Helmut Aust and Anél du Plessis (Eds), *The Globalisation of Urban Governance – Legal Perspectives on Sustainable Development Goal 11* (Routledge 2019); Janne E. Nijman et al (eds), *Urban Politics of Human Rights* (Routledge 2022) published open access: <https://www.routledge.com/Urban-Politics-of-Human-Rights/Nijman-Oomen-Durmus-Miellet-Roodenburg/p/book/9781032299037>; Mirko Sossai, 'The Place of Cities in the Evolution of International Humanitarian Law', in *Italian YIL* (2022) 227–252.



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with Georg Nolte), *Das Recht der globalen Stadt* (Mohr Siebeck 2017), *Encounters between Foreign Relations Law and International Law* (CUP 2021, co-edited with Thomas Kleinlein) as well as the *Research Handbook on International Law and Cities* (Edward Elgar 2021, co-edited with Janne E. Nijman) which was awarded the 2022 ESIL Collaborative Book Prize.

Janne Nijman is Professor of History and Theory of International Law at the Faculty of Law of the University of Amsterdam and senior fellow of the Amsterdam Center for International Law (ACIL). Nijman is also Professor of International Law at the Graduate Institute of International and Development Studies in Geneva. Previously, she has been Chairperson of the Executive Board of the T.M.C. Asser Instituut in The Hague, and its academic director (2015-2022). Nijman is a member of the Dutch Government's Advisory Council on International Affairs (AIV) and chair of its permanent Committee on Human Rights (2023-2026). She has held visiting positions at various universities. Currently, one of her two main research focus themes 'Cities and International Law'. Nijman has been PI of the research project 'The Global City: Challenges, Trust and the Role of (International) Law (2016-2021)' hosted at the Asser Institute. The project includes four individual PhD projects supported by the Gieskes Strijbis Foundation. She published a number of papers on the topic as well as *Urban Politics of Human Rights*, a co-edited volume, and the *Research Handbook on International Law and Cities* (2021) co-edited with Helmut Aust (FU Berlin), which has been awarded the ESIL Collaborative book prize 2022. Together they are also co-chairing the ILA Study Group on the role of cities in international law. Nijman is an advisory editor of the *London Review of International Law*.

Anél du Plessis is Professor of Law and the Chair in Urban Law and Sustainability Governance in the Faculty of Law, Stellenbosch University, South Africa where she lectures environmental law and sustainable development law. She previously held the Chair in Cities, Law and Environmental Sustainability at the North-West University, South Africa where she was subsequently appointed as an Extraordinary Professor. She is an established researcher in the field of cities, constitutional law, environmental law, climate change law and research methodology. Some of her recent publications include H. Aust and A. Du Plessis (eds), *The Globalisation of Urban Governance: Legal Perspectives on Sustainable Development Goal 11* (Routledge, 2019); 'SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable' in J. Ebbesson and E. Hay (eds.) *The Cambridge Handbook on the Sustainable Development Goals and International Law* (Cambridge University Press, 2022), and A.A. Du Plessis, N.R. Steyn and J. Rantlo, 'City-Law and Climate Action for Climate Resilience in Southern Africa' *Transnational Environmental Law* (2023). She is co-editor of the *Handbook on Cities, Climate Change Law and Accountability* (Edward Elgar, forthcoming 2024). She is also a Commissioner of the IUCN World Commission on Environmental Law and a rated researcher of the South African National Research Foundation (NRF).



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Mirko Sossai is Associate Professor of international law at the Law Department of Roma Tre University, Rome. Previously, he was research fellow at the Faculty of Law of the LUISS Guido Carli university in Rome. He is a member of the Academic board of the PhD programme in legal studies of the Law Department. His research interests focus on human rights, international humanitarian law and the law of international organizations. He has been co-rapporteur of the ILA study group of on the topic 'UN sanctions and international law'. He is member of the editorial board of the *Journal of Conflict and Security Law*. Some of his recent publications include: 'The Place of Cities in the Evolution of International Humanitarian Law' *Italian Yearbook of International Law* (2022) 227-252; 'Invisibility of Cities in Classical International Law' in H. Aust and J. Nijman (eds.), *Research Handbook on International Law and Cities* (2021) 64-76; A. Bultrini, F. Giumelli, C. Portela, M. Sossai (eds), *International Sanctions in Practice: An Interdisciplinary Perspective* (Routledge, forthcoming 2024).