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DOI
10.17176/20211006-134144-0

Publication date
2021

Document Version
Final published version

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Link to publication

Citation for published version (APA):
Aust, H. P., & Nijman, J. (2021). Urban Legacies of 9/11: An International Law Perspective. Web publication or website, Verfassungsblog. https://doi.org/10.17176/20211006-134144-0

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Download date:16 Oct 2026

Urban Legacies of 9/11: An International Law Perspective

VB verfassungsblog.de/os1-urban-legacies/

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This article belongs to the project » 9/11, zwei Jahrzehnte später: eine verfassungsrechtliche Spurensuche
This article belongs to the debate » 9/11 und die Völkerrechtsordnung
06 Oktober 2021

When reflecting upon the legacy of the attacks of 9/11 from the perspective of an international lawyer, there are obvious topics which spring to mind: the right to self-defense against non-state actors, the legacy of the C.I.A. extraordinary renditions program, the widespread practices of mass surveillance which the Snowden revelations brought to the fore and so on and so forth. Important as all these questions are, we would like to use this post to reflect on a different legacy of the attacks of 9/11. This legacy takes its cue from the place where the two most severe attacks struck: New York City and its World Trade Center. Much of the shock created by the attacks derives from the fact that they targeted the heart of the American territory and its primary city; a city which to many has been for quite some time also something akin to the capital of the world. This urban dimension of the attacks of 9/11 is conspicuously absent from most of the debates in international law. Yet, this brief essay argues, there is a hidden story underneath the bigger geopolitical picture and its international legal implications that most of the contributions to this symposium discuss. The 9/11 attacks went for urban symbols that were at the same time global symbols; in the wave of terrorism that followed cities both in the Global North and Global South were the target – physically, politically and culturally. Security is increasingly understood as an urban issue.

The absence of cities from traditional international law discourses

Let us first discuss the obvious – the absence of cities as actors and sites from traditional international law. It is this absence which explains why the starting point of this blog post may be counterintuitive to many lawyers. In public international law, for a long time, scholars did not give a lot of attention to sub-national actors. And if they did, it was only indirectly. There were some debates about the treaty-making powers of the units of federal states. And, of course, cities and local governments can violate international law in their capacity as state organs. According to the customary international law rule reflected in Article 4 of the 2001 Articles on State Responsibility, their conduct is attributed to the state. The consequences of such violations can be cases before the

European Court of Human Rights or arbitral tribunals in the field of international investment law. In addition to these legal and technical questions, there is another reason why we do not immediately think about cities and the urban when we reflect on the legacies of 9/11. Interstate warfare overshadowed any criminal justice response. The terrorist attacks of 9/11 and their consequences are as “high politics” as it can get, steeped in ideology. Al Qaida attacked the world’s most powerful nation at the time, hit its most important city and triggered a military response which has shaped the twenty years afterwards. If ever there was an example of a situation of high politics, here you have it. Is it not entirely inappropriate to reflect on the legacy of these events through the prism of sub-national actors?

The urban turn in global governance

Unsurprisingly, we would say that it is not. Over the last two decades, and hence coinciding with the period under analysis in this symposium, cities have asserted themselves as internationally relevant actors in manifold ways, also challenging the divide between high and low politics which previously relegated international efforts like twinning to a sphere that international lawyers felt comfortable enough to ignore. The rise of cities towards being important international actors has much to do with, on the one hand, a certain geopolitical constellation and, on the other hand, developments in the field of climate change governance, which has led to spill-over effects into other fields, such as security. Let us first turn to the geopolitical constellation: with the end of the Cold War, the West was celebrating the so-called “end of history”. It seemed to be all but inevitable that capitalism and liberal democracy had won the fight of the Cold War. The prevailing ideology of the day was one which put an emphasis on the retreat of the state which, if not superfluous, at least had to be cut back to size.

This process and dynamic opened up possibilities for other actors, mostly from the private realm, as well as for unbundling the state into different agencies, as it was described by Anne-Marie Slaughter in her book “A New World Order” with its focus on the “disaggregated state”. With respect to cities, it was Saskia Sassen who captured the atmosphere of the time with “The Global City”, her seminal book detailing how certain metropolises functioned as command and control centers of the global economy and produced a highly mobile class of employees, especially in the finance sector, whose lives became increasingly detached from the previously unquestioned bonds of national citizenship. It is also this group of people who found themselves targeted in the attacks of 9/11, with the World Trade Centre hosting the offices of important companies of the financial sector. Sassen’s book and later works in the field detailed a “loss of control” of the nation-state. In a paradoxical way, the attacks of 9/11 represent different strands of this narrative – both the fixation on a lean state and the emphasis on corporate power, exported to all corners of the globe, as well as the increasingly fragile conditions of modern statehood, exposed to “new wars” which could not be won on a classical battlefield (if ever there was such a thing).

The crucial move towards a more active role in global governance – and also international law? – was, however, initiated in the climate change context. This is not the place to go into the details of this development, but suffice it to note that the common disenchantment with the global climate change regime around the United Nations Framework Convention opened up a policy space in which cities and their transnational networks increasingly claimed a role to play. Pointing to the alleged deficits of inter-state cooperation, cities claimed that they would be more agile and willing to cooperate. This rhetorical move has been replicated also in other policy fields, including security, where a panoply of transnational networks exist among cities today as well and where such networks also partner with international organizations in various ways. As the political scientist Kristin Ljungkvist has shown in "The Global City 2.0", these developments in the fields of climate change governance and security are closely interwoven – and nowhere in a more evident way than in New York City, which she has used as a case study for her important book, explaining how the city administration of Mayor Bloomberg set upon itself the task of making New York a leader in both urban sustainability and security; a mission which was continued under Mayor de Blasio, as recently detailed by New York City's international commissioner, Penny Abeywardena at a high-level panel of the American Society of International Law.

And international law? Urban features of global security law

A broader societal legacy of 9/11 is the securitization of our lives, a legacy which looks unlikely to be undone at any point in the near future. Many activities ranging from shopping to commuting to work to other forms of travel bear a security imprint today, which would have been unimaginable twenty years ago. These imprints seem reasonably justified for many of us today and are made ever more forceful due to technological developments, with the specter of automatic decision-making processes driven by artificial intelligence and self-learning machines only being the most recent scare (to which we will also grow accustomed in due course). Smart cities come with serious concerns for permanent surveillance and the Covid-19 pandemic only exacerbates the development of urban surveillance systems. All of this pertains to real world events, or at least to our perception of these events. But is it also legally significant? And how does this translate to the world of international law?

The legal significance is easy to affirm from a perspective of fundamental and human rights protection, the yardsticks for the legality of security measures. As we know, some of these protections have proven to be bulwarks against securitization tendencies, whereas the overall trend seems to be unstoppable. This legal significance is not yet specifically related to the urban sphere, however. As Alejandro Rodiles has remarked in his contribution to our recently published *Research Handbook on International Law and Cities*, in this connection "the city appears merely as an object, a referential space of international law, not as a subject."

The relationship between this securitization trend and the urban becomes more palpable, also from a legal sense, if we turn our attention to the growing world of informal security cooperation which is orchestrated by and around international organization, with the UN Security Council and its sanctions committees being only the most obvious emanation, as Rodiles details in his article. A number of networks and initiatives have sprung up which are active in the field of urban security and whose work feeds back into international policy debates on how to achieve urban security. Sub-committees of the Counter Terrorism Committee of the Security Council partner with the Strong Cities Network, with a view to developing best practices how to fight terrorism and "preventing violent extremism", the newest emanation of global security politics. Being the targets of global terrorism, cities have claimed a role in counter-terrorism. Hence, in this policy field, international and regional organizations are turning to cities as partners, for example in the prevention of terrorism, radicalization, and violent extremism. The UN, EU or Global Counter Terrorism Forum (GCTF) are well aware that the so-called "life-cycle of radicalization" frequently finds fertile grounds in cities with marginalized groups and individuals; research points to a relationship between marginalization, social exclusion, and serious mental health issues of terrorist suspects living in Dutch cities. Therefore, these international organizations seek connections with the local level and recognize the relevance of the condition of the social tissue in cities. Dialoguing and collaborating with urban practitioners potentially provides input for the development of good practices and guidelines for preventing and countering terrorism and violent extremism. The UN also encourages dialogue among cities, and on September 24th 2021, SCN chaired the first session of the GCTF's 14th Coordination Committee Meeting in New York, on the margins of the 73rd Session of the UN General Assembly, on *GCTF and Local Impact – the Role of Cities and Communities.*

On a normative level, the focus on cities has found a crystallization point in the UN Sustainable Development Goals (SDGs), which were adopted by the UN General Assembly in 2015. SDG 11 is the only actor-specific goal among the SDGs and is concerned with making cities and local communities "inclusive, safe, resilient and sustainable". The accompanying target 11.2 speaks about the more mundane aspects of urban safety, notably with respect to road safety and public transport (but also including the special attention required "to the needs of those in vulnerable situations"). But this is not where international policy documents stop when it comes to urban safety. The New Urban Agenda (NUA), adopted as the outcome of the Habitat III conference in Quito 2016, makes a more explicit link between urban safety and more robust security discourses. In the "Quito Implementation Plan", it is envisaged that "[w]e will integrate inclusive measures for urban safety and the prevention of crime and violence, including terrorism and violent extremism conducive to terrorism" (para. 103).

To the traditionally-minded international lawyer this will all sound rather vague. Where are the sources of international law as detailed in Article 38 of the Charter of the International Court of Justice? How can cities and their local governments be part of this international law game when they are not even subjects of international law in a traditional sense? These questions, we would submit, are beside the point, however, though even formalist

international lawyers will have to acknowledge that the boundary between binding international law and the SDGs, as well as the NUA, can be eventually quite thin. Global governance has moved on far beyond the traditional categories of public international law. As Jan Klabbers has argued in his contribution to the Research Handbook on International Law and Cities, the old categories no longer work. They are not fit to capture the many ways in which authority is today exercised. Accordingly, international law needs an update, desperately, to get a sense of how international cooperation is unfolding today.

The changes of global security cooperation which have taken place since 9/11 are one potent example to underline the need for such an update. In this development, cities and their transnational networks have had a role to play – arguably not among the forefront and not in a way which would displace the centrality of states for both security governance and international law. But increasingly, a vocabulary of international law which does not allow to take into account what sub-national actors are doing, is incomplete and risks overlooking important developments in various policy fields.

Concluding observations

Accordingly, the urban legacies of 9/11 invite us to consider such an update in a most fruitful way. Issues of national security are often issues of urban security, and countering terrorism cannot be done without practitioners active in the urban space and their involvement in the development of effective, rule of law and human rights compliant practices, policies and norms.

The urban legacies also make clear what is at stake. If international lawyers decide to rest in the comfortable armchair position of the established sources and subject doctrines which we teach our students, we will miss out on important real-world developments which are driven by technocrats, analyzed by political scientists and fought by social movements. It is all too easy to close our eyes to these developments. The new worlds of international law and global governance are messy – but we should embrace them as international lawyers.

It is another question how the urban legacies of 9/11 will overlap with new developments and layers of history. Since early 2020, the world is living through the Covid-19 pandemic. The ensuing lockdowns and the images of empty cities they have produced have led many to question whether the so-called “urban age” is already over and a new era of suburban living and “urban flight” is dawning. Yet, we are not convinced that this pandemic will reverse long-term trends of urbanization. Cities have lived through and mastered many plagues. They have not undone the fascination that cities apparently meet with. But each previous pandemic has changed the streetscape of cities and their infrastructures. So will Covid-19. Its turn to smart governance, including the increasing use of tracing apps look all but likely to reinforce tendencies that were originally triggered by 9/11. The securitization of urban living is here to stay.

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SUGGESTED CITATION Aust, Helmut Philipp; Nijman, Janne: *Urban Legacies of 9/11: An International Law Perspective, VerfBlog,* 2021/10/06, https://verfassungsblog.de/os1-urban-legacies/, DOI: 10.17176/20211006-134144-0.

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