

# 10 THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR LOCAL DEMOCRACIES IN TRANSITION TIMES

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## 10.1 INTRODUCTION

It may seem unclear what Global Constitutionalism actually means, since all around the world the term “constitutionalism” has very divergent manifestations.<sup>1</sup> Moreover, the mission of world/global constitutionalism is different for legal and political scientists around globe.

However, there is consensus that raising questions concerning the role of inter-state integration, participation and globalization in modern constitutional legal science is the main focus of global constitutionalism (GlobCon), which is understood as a discourse, promoting the value and functions of constitutional principles in the international legal order. The role of international principles and legal norms for forms of established cooperation between states is highly acknowledged. At the same time, global constitutionalism needs a clear perspective. For this reason this article addresses two main questions:

1. Why is the study of global constitutionalism seen as the origin of constitutional provisions and a guideline for national democracies under extreme conditions?
2. What promise and perspectives does global constitutionalism hold to modern legal and political science?

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1 Historically, theoretical thinking of constitutionalism is viewed as a completely positive phenomenon. However, there are several scientific works that study irreparable flaws of certain forms of social systems and their relations (capitalism, communism, socialism, etc.) and various legal and illegal social movements, entitled something ending with ‘-ism’ (pragmatism, rationalism, nationalism, etc.) Therefore, by reason of being in the company of ‘-isms’ and for employing the terminology of globalization, global constitutionalism ‘may be essentially contested’ as a ‘utopian ideology’. See, e.g. Lars Viellechner. ‘Constitutionalism as a Cipher: On the Convergence of Constitutionalist and Pluralist Approaches to the Globalization of Law’, *Goettingen Journal of International Law* 4 (2012) 2, p. 602.

*IELYZAVETA LVOVA*

For the analysis of these questions, several conditions and criteria for the interpretation of Global Constitutionalism must be set:

- Emerging global problems and the transformation of international relations;
- EU as a global actor;
- Particular interest of the international community in the formation of a modern approach that is relevant to the state of globalized international affairs and global governance;
- Formation of relevant subfields of public international law (international administrative law and international constitutional law);
- Specific normative acts (treaties, resolutions, soft law and customary law) that guarantee the protection of human rights and freedoms and prevent bilateral conflicts;
- Special constitutional principles applicable under international law (human rights, democracy, rule of law, transparency, etc.).

## 10.2 WHAT IS THE REPERTOIRE OF GLOBAL CONSTITUTIONALISM CONCEPTS IN THE ERA OF TRANSFORMATION?

Remarkably, there is still no scientific consensus on exactly what Global Constitutionalism consists of. The formation of a unitary school of GlobCon is still in process; meanwhile its promoters have not developed a common definition. At the same time, the approach of Global Constitutionalism was most possibly not shared by numerous scientists.<sup>2</sup>

Nevertheless, the present paper is confirmation that international political and legal scientists still work on clarifying the concept of Global Constitutionalism with the help of reinterpreting international law relevant to modern conditions. To clarify the meaning of global constitutionalism, we must analyze the work of modern researchers active in the field of global constitutionalism.

It is worth noting that according to A. Wiener there are three main schools of Global Constitutionalism: the normative school, the functionalist school and the pluralist school.<sup>3</sup> The normative school sees GlobCon as a strategic move towards establishing a Global Constitution (or maintaining the argument that the UN Charter should be understood as a Global Constitution). A. Wiener claims that the functionalist school focuses on the impact of constitutionalism by mapping the global terrain according to new standardized procedures and regulatory agreements. The pluralist school emphasizes the importance of distinct

2 Anne Peters agrees with Niko Krisch and states that ‘the political, economic, intellectual, and moral diversity of the world population makes constitutionalism both unachievable and illegitimate.’ Available at: [www.mpil.de/files/pdf4/Peters\\_Global\\_Constitutionalism2.pdf](http://www.mpil.de/files/pdf4/Peters_Global_Constitutionalism2.pdf).

3 For detailed analysis of Global Constitutionalism as a novel phenomenon in a global realm see A. Wiener. Global Constitutionalism. available at: [https://www.wiso.uni-hamburg.de/fileadmin/sowi/politik/governance/Wiener\\_2012\\_global\\_constitutionalism.pdf](https://www.wiso.uni-hamburg.de/fileadmin/sowi/politik/governance/Wiener_2012_global_constitutionalism.pdf).

10 THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR  
LOCAL DEMOCRACIES IN TRANSITION TIMES

ancient, modern, and postmodern eras of constitutionalism. This school takes into account the social practices of constitutionalism as they extend beyond modern state boundaries with the intention of identifying the variety of possible and desired principles, norms, and rules of constitutionalism that are considered appropriate by a plurality of global actors.

We must agree with the statement made by A. Wiener that all schools of global constitutionalism ‘share in observing a qualitative shift from globalized toward constitutionalized relations and take a historically sensitive approach to constitutionalism’.

In modern international interpretations Global Constitutionalism is perceived:

1. *As an ideology, academic and political agenda, a constitutional mindset and a hermeneutic device* that advocates for the application of constitutionalist principles in the international legal sphere,<sup>4</sup>
2. *As an interdisciplinary approach*, connecting the worlds of legal and political sciences,<sup>5</sup>
3. *As an approach centered on* ‘rethinking constitutional law from the perspective of global citizens’,<sup>6</sup>
4. *As a jurisprudential account*, claiming to describe the deep structure of post national law as it is,<sup>7</sup>
5. *As an umbrella concept*,<sup>8</sup>

4 Anne Peters is also convinced that global constitutionalism is an adequate reaction to the de-constitutionalizing impact of global governance on domestic legal-political orders. For more on this subject, see Anne Peters, ‘Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures’, 19 *Leiden Journal of International Law* (2009) 3, p. 579; Anne Peters, ‘Strands of global constitutionalism’, in: Michael T. Gibbons (Ed.), *The Encyclopedia of Political Thought*, 1st edn., 2015, pp. 1-4; or Anne Peters, ‘Simple-international-rights-global-constitutionalism-and-scholarly-methods.’ <http://voelkerrechtsblog.org/simple-international-rights-global-constitutionalism-and-scholarly-methods/>; available at: [www.mpil.de/files/pdf4/Peters\\_Global\\_Constitutionalism2.pdf](http://www.mpil.de/files/pdf4/Peters_Global_Constitutionalism2.pdf).

5 The original idea of GlobCon as an interdisciplinary approach is based on the ideas of C. Tomuschat, J.A. Frowein, A. von Bogdandy. See e.g. C. Tomuschat, ‘International Law: Ensuring the Survival of Mankind on the Eve of a New Century’, *Recueil des Cours de l’Academie de Droit International* 281 (1999), 9-438 at 72-90, J.A. Frowein, ‘Konstitutionalisierung des Völkerrechts’, in: K. Dicke et al., *Völkerrecht und Internationales Privatrecht in einem sich globalisierenden internationalen System* (2000) pp. 427-448, A. von Bogdandy, ‘Constitutionalism in International Law: Comments on a Proposal from Germany’, *Harvard International Law Journal* 47 (2006), 223-242.

6 Framing global constitutionalism, I. Pernice states that Global constitutionalism ‘... is an extension of constitutionalism beyond the state and includes the instruments and processes for establishing, organizing and limiting legitimate public authority at the global level as a matter of people so giving themselves the legal status of global citizenship.’ See I. Pernice, ‘Global Constitutionalism and the Internet. Taking people seriously’, *HIIG Discussion Paper Series*, 2005-01, p. 10.

7 See Niko Krisch, *Beyond Constitutionalism: The pluralist structure in postnational law*, Oxford University Press, 2010, pp. 52-57.

8 Being a critic of Global Constitutionalism, Christian Volk nevertheless understands GlobCon as ‘... an umbrella concept uniting many different authors who either describe the current legal order in constitutional terms – as cosmopolitan, multi-level, heterarchical – or plead for a constitutional development of the “post-national constellation”.’ See op. cit., Christian Volk, p. 554.

IELYZAVETA LVOVA

6. *As a modern legal-political project*,<sup>9</sup>
7. *As a field of social sciences and law*,<sup>10</sup>
8. *As a cipher* – Lars Viellechner offers the conclusion that constitutionalism merely serves as a cipher in contemporary legal theory, under which law is rethought beyond the State.<sup>11</sup>

*My vision of global constitutionalism is based on understanding it as a constitutional experiment (for its ‘-ism’) – to my mind, global constitutionalism may be seen a specific form of modern constitutionalism, that provides further transformations of the international political system and international law.*<sup>12</sup> Launched in the beginning of the 21st century, the experiment of the formation of global constitutionalism is still open.

### 10.3 THEORETICAL MODEL OF GLOBAL CONSTITUTIONALISM

Today it is obvious, that Global Constitutionalism (GlobCon) has become the subject of research for political scientists and legal scholars all over the world. Meanwhile, modern global threats and problems of peacebuilding and dispute settlement raised challenges for the future conceptualization of GlobCon as an interdisciplinary approach.

The theoretical model of global constitutionalism deals with three sections of trends and problems to be observed while exploring the free, vivid and “large world of global constitutionalism”:<sup>13</sup>

- The first section of problems is based on the development of public international law constrained by the constitutionalization and fragmentation processes;
- The second section relates to the interpretation, understanding and explanations of GlobCon as a phenomenon, founded on the idea of applying constitutionalist principles in the international legal sphere and their interconnection;

9 For a better understanding of the cosmopolitan claim of constitutionalism see Matthias Kumm “The cosmopolitan turn in Constitutionalism: On the Relationship Between Constitutionalism In and Beyond the State, in J.L. Dunoff and J.P. Trachtman (Eds.), *Ruling the World?: Constitutionalism, International Law and Global Governance* (2009).

10 Establishing conceptual clarifications and common definitions, A. Wiener fleshes out global constitutionalism as a much-needed research program in social sciences and law. See A. Wiener. *Global Constitutionalism*, available at: [https://www.wiso.uni-hamburg.de/fileadmin/sowi/politik/governance/Wiener\\_2012\\_global\\_constitutionalism.pdf](https://www.wiso.uni-hamburg.de/fileadmin/sowi/politik/governance/Wiener_2012_global_constitutionalism.pdf).

11 Lars Viellechner, *Constitutionalism as a Cipher: On the Convergence of Constitutionalist and Pluralist Approaches to the Globalization of Law*, p. 602.

12 Ielyzaveta Lvova, ‘How Global Constitutionalism Is Related to Domestic Constitutional Conflicts?’, in: *Hungarian Yearbook of International Law and European Law 2015*, Eleven International Publishing, 2016, pp. 383-395.

13 See M. Kumm, A.F. Lang, Jr., J. Tully, A. Wiener, ‘How large is the world of global constitutionalism?’, in: *Global Constitutionalism*, Cambridge University Press, Vol. 3, No. 3, November 2014, pp. 1-9.

10 THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR  
LOCAL DEMOCRACIES IN TRANSITION TIMES

- The third section of problems deals with the contestation and criticism of GlobCon for its lack of international formulations and definitions, while there are various “lenses” of the doctrine in the “spectacles” of global legal scholars’ vision.

In order to fully understand global constitutionalism, we need to answer the question whether GlobCon – as a political, legal and ethical project that is seen as a universal agenda – can help overcome modern wars and crises (migrant crisis, Ukraine crisis, etc.), while assisting the development of new world (dis)orders?<sup>14</sup>

Under these conditions, global constitutionalism is understood as modern progressive thinking that offers democratic legitimacy, respect for international principles and provides a peaceful conflict (dispute) resolution to social and political thought. Furthermore, Global Constitutionalism as global agenda of international law has two main directions: theoretical and practical; the idea of global constitutionalism is based on a strategic constitutional experimental vision of the acceptance of the standards and constitutional principles by international subjects and international practice.

10.4 WHAT IS A GLOBAL CONSTITUTIONALISM MAP AND IS AN ACTION OF  
GLOBAL CONSTITUTIONALISM EFFECTIVE?

To begin with, if we look at global governance under modern conditions through constitutional “lenses”, we may see that not all qualifications of subjects, rules and notions are determined in legal terms.

Our progressively globalized world augmented the changes that took place in the cooperation of states, including issues of self-determination, violation of democratic principles, intervention and interference, fear of loss of sovereignty. It is still unpredictable whether constitutional principles are applicable in the global realm. Global constitutionalism, accompanied by process of constitutionalization should be underpinned by a global survey on principles/metaprinciples, which must be recognized by all actors of international relations. As such, *uncertainty* is still a flaw in the formation and development of global constitutionalism. Under extreme conditions uncertainty in international law-making has to be taken into consideration in order to prevent unexpected global situations.

The idea of global constitutionalism thus provides a clear understanding of international law to future generations.

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14 Neil Walker, ‘Beyond boundary disputes and basic grids: Mapping the global disorder of normative orders’, *International Journal of Constitutional Law*, Vol. 6, No. 3-4, pp. 373-396.

IELYZAVETA LVOVA

In this regard, Christian Volk 'sees the promise of global constitutionalism in efficient and effective ruling and cooperation, and not just in limiting power'.<sup>15</sup> He is also states that

in order to prevent the radicalization and escalation of political conflict, we must restructure the institutional setting of global governance regimes in such a way that politicization becomes possible. (...) After restructuring the order of international politics, regimes of global governance may really serve as a kind of 'coral reef' where plurality and the necessity to gather and connect are more obvious than on the national level.<sup>16</sup>

The partnership of states on the international level is considered to have a weak democratic legitimacy, in light of the possibility of a state refusing to respect the given mechanism (strengthening socio-economic situation, bilateral and diagonal cumulation, promoting the absence of racial discrimination, etc.). Nonetheless, a 'road trip' of global constitutionalism definitely needs a proper 'roadmap' for national democracies. In this sense, the *Global Constitutionalism Map for Local Democracies* is presented in the following steps:

- Step 1. Changing the modern legal situation and solving current global negative traditions for internal needs;
- Step 2. Continuous accepting democratic standards of internal policy and supporting its improvement;
- Step 3. Prognosis of future reforms in public international law, EU law and international politics.

## 10.5 CAN GLOBCON BE VARIABLE OR NOT?

Among others, it is necessary to clarify in what sense global constitutionalism differs from other modern approaches in international law. In the past five years the international community entered a new era of development – with the main features of unification of attitudes to the contents of human freedoms and rights. Permanent modern trends, such as globalization and the universalization of international relations, international securitization still need appropriate legitimization. At the same time, codifying human rights and freedoms in constitutions remains one of the marked trends in transforming the architecture of global peaceful co-existence in the 21st century.

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15 Ch. Volk, 'Why Global Constitutionalism Does not Live up to its Promises', *Goettingen Journal of International Law*, Vol. 4, No. 2 (2012), p. 557.

16 *Ibid.*, pp. 570-572.

10 *THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR LOCAL DEMOCRACIES IN TRANSITION TIMES*

There are several constitutional principles that assist global constitutionalism in being variable, e.g. let us explore:

10.5.1 *Transparency, Internet Securitization and Global Public-Private Sphere*

The main functions of transparency are defined in the Council of Europe Convention on Access to Official Documents (No. 205, 2009), that lays down a right of access to official documents. In this Convention transparency of the operation of public authorities is seen as

a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist. It is also essential to the self-development of people and to the exercise of fundamental human rights. Limitations on this right are only permitted in order to protect certain interests like national security, defense or privacy. The right of access to official documents also strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them. The Convention sets forth the minimum standards to be applied in the processing of requests for access to official documents (forms of and charges for access to official documents), review procedure and complementary measures and it has the flexibility required to allow national laws to build on this foundation and provide even greater access to official documents.<sup>17</sup>

At present moment this Convention is not in force, as its entry into force depends on 10 ratifications by non-member/member states of the Council of Europe. Notably, in its Resolution 1954 (2013) 2 October 2013 the Parliamentary Assembly calls on all the member States of the Council of Europe which have not yet done so to sign and ratify the Council of Europe Convention on Access to Official Documents. The importance of the Convention is seen in the fact that

... constitutions, national laws and jurisprudence across Europe now recognize a right of access to official documents...and this right has also been increasingly recognized at the international level.<sup>18</sup>

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17 The Council of Europe Convention on Access to Official Documents is the first binding international legal instrument that affords recognition for a general right of access to official documents held by public authorities. Available at: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205).

18 See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3836>.

IELYZAVETA LVOVA

Even though the ECtHR has not recognized a general right of access to official documents or information, there are several interesting and ground-breaking cases, that include certain conditions, under which Article 10 of the European Convention on Human Rights may point toward a right of access to documents held by public authorities.<sup>19</sup>

It is obvious, that transparency is accompanied by the human right to information, and the relationship between these ‘companions’ is seen by Jonathan Klaaren

...as a vehicle for increasing a certain amount of transparency or (stated somewhat differently) as a vehicle for furthering the ends or some of the ends contained within the concept of transparency.<sup>20</sup>

J. Klaaren also argues that

the development of a norm of informational privacy, where the individual may enforce certain rights and norms concerning information about that individual, can be seen as taking away from transparency.<sup>21</sup>

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19 European Convention on Human Rights, 4 November 1950, 213 UNTS 221 ECtHR in Art. 10 states, that: ‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

E.g., the case law *Sdružení Jihočeské Matky v. Czech Republic*, Appl. No. 19101/03, decision on admissibility of 10 July 2006 suggests that under certain circumstances Art. 10 of the Convention may imply a right of access to documents held by public bodies. See *Sdružení Jihočeské Matky v. Czech Republic*, ECHR (2006), Appl. No. 19101/03, decision on admissibility of 10 July 2006. Another conceptual point is highlighted in one of the most important cases of ECtHR for Central-Eastern Europe – *Guseva v. Bulgaria* case law 17 February 2015. See *Guseva v. Bulgaria*, ECHR (2015), Appl. No. 6987/07, judgment of 17 February 2015. This case shows a considerable hesitation of judges, concerning the application of Art. 10 regarding access to information. The Court considered that ‘the applicant must have suffered frustration as a result of the impossibility for her to perform her role of an association information she had sought in implementation of the three final judgments in her favour’ Also in its decision the Court pointed out that, in ‘cases where the applicant was an individual journalist and human rights defender, it has held that the gathering of information is an essential preparatory step in journalism and is an inherent, protected part of press freedom (see *Shapovalov v. Ukraine*, No. 45835/05, §68, 31 July 2012; *Dammann v. Switzerland*).

20 J. Klaaren, ‘The Human Right to Information and Transparency’, in: Andre Bianchi and Anne Peters (Eds.), *Transparency in International Law*, Cambridge University Press, 2013, p. 225.

21 *Ibid.*, p. 237.



10 THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR LOCAL DEMOCRACIES IN TRANSITION TIMES

In this sense, the recent *Bărbulescu v. Romania* case law 12 January 2016, concerning the surveillance of Internet usage in the workplace is a 'good lesson' about the right of the individual to privacy and data protection in the era of globalization.<sup>22</sup>

At the same time, citizens still want their 'on-line internet' rights to be as secure as their 'off-line' human rights are. I. Pernice, claims that

the Internet provides us with two closely linked aspects relevant to how global constitutionalism is understood: 1) the experience with Internet governance can teach us about new forms of non-governmental norm-building processes, 2) it also provides us with the public sphere needed for effectively setting up a framework and legitimating processes for constituting a global political community.<sup>23</sup>

Nevertheless, there are plenty of problems to be solved, while studying the influence of internet on the formation of Global Constitutionalism.<sup>24</sup>

Therefore, one must also agree with Jiří Přibáň, who states that

Erlich's concept of living law is reformulated as signifying the process of spontaneous juridification and even constitutionalization of different sectors of global society without polity, such as commerce, intellectual property, internet, sport, environment and so on. The well-established theoretical semantics differentiating between living and legislated law, respectively law in action and law in books, is supplemented by new distinctions, such as hard law/soft law, national government/transnational governance and state/civil global constitutionalism.<sup>25</sup>

10.5.2 Principles of Human Dignity and Self-Determination – with Specific Regard to Ukraine Crisis

While the investigation of global constitutionalism is still based on national constitutional custom, it is interesting to learn how GlobCon held the promise of freedom and the right of self-determination for modern states.

22 See *Bărbulescu v. Romania*, ECHR (2016), Appl. No. 61496/08, 12 January 2016.

23 Op. cit., I. Pernice, p. 11.

24 For a better understanding of modern internet challenges, see e.g. 'The "Right to be Forgotten" – recent developments and German case law', available at: [www.hiig.de/en/the-right-to-be-forgotten-recent-developments-and-german-case-law/](http://www.hiig.de/en/the-right-to-be-forgotten-recent-developments-and-german-case-law/).

25 See Jiří Přibáň, *Sovereignty in Post-Sovereign Society: A Systems Theory of European Constitutionalism* Ashgate, 2015, p. 102.

According to A. Scordas,

the ‘self’ does not emanate exclusively from a nation’s own history and revolutionary project, but is reproduced and re-framed in a sequence of communications among a plurality of domestic and global actors.... Moreover, if the people as ‘self’ takes shape in the clash between *pouvoir constituant* and international recognition, this does not yet explain how both dimensions merge to produce order. Under any alternative, a constituent decision on the part of the ‘people’ or its representative organization is indispensable, and it is not self-evident, how its groundlessness carries through the epoche into an order....<sup>26</sup>

GlobCon encourages constitutional principles to become an origin, a basis and a standard for relations between states – either on a bilateral level, or within international organizations. However, European legal standards, that likewise include constitutional goods and principles (such as the rule of law, democracy, self-determination, sovereignty, humanity, non-use of force), constitute the main legal values of member states and impact the effectiveness of participation by countries seeking membership of the European Union (e.g., Georgia, Moldova, Turkey, Ukraine, etc.).

Also Ukrainian situation shows the important status of the ECHR (Art. 10 freedom of expression, Article 11 freedom of assembly and association, Article 15 derogation in time of emergency). For example, specific events that happened and are coming to pass in Ukraine<sup>27</sup> show that self-determination and international recognition processes are closely related. Human dignity is regarded as a basic human right in the Constitution of Ukraine (Art. 297 p. 1). While boasting the best democratic origins of constitutionalism, Ukraine meanwhile needs great constitutional reforms to avoid normative conflicts emerging in the course of the self-determination processes in the Eastern parts of the country.<sup>28</sup>

From a constitutional perspective, the main duty of states is to act internationally with solidarity, maintaining sovereignty as responsibility. The principle of sovereignty should

26 See A. Skordas, ‘Self-determination of peoples and transnational regimes as foundational principle of global governance’, in: Nicholas Tsagourias (Ed.), *Transnational Constitutionalism. International and European Perspectives*, 2007, 392 p. at pp. 218-219.

27 Right now, Ukraine needs peaceful conflict resolution in the Eastern parts and a solution to the unfolding economic crisis. See also complaints filed by Ukraine to ECtHR: *Ukraine v. Russia I* (No. 20958/14), *Ukraine v. Russia II* (No. 43800/14), *Ukraine v. Russia III* (No. 49537/14), *Ukraine v. Russia IV* (No. 42410/15).

28 *Zakon Ukrainy pro vnesennya zmin do Konstytucii Ukrainy (vidnosno pravosydydy)*, dated 2 June 2016 (hereinafter *The Law of Ukraine “On amendments to the Constitution of Ukraine (regarding justice)”*), available at: <http://zakon0.rada.gov.ua/laws/show/1401-19>. The Law will enter into force on 30 September 2016; *Zakon Ukrainy pro sudoustrij i status suddiv*, dated 2 June 2016, No. 1402-VIII (hereinafter “*the Law of Ukraine ‘On the Judiciary and Status of Judges’*”), available at: <http://zakon3.rada.gov.ua/laws/show/1402-viii>. The Law will enter into force on 30 September 2016.

10 THE CONCEPT OF GLOBAL CONSTITUTIONALISM AS A ROAD-TRIP TO FREEDOM FOR  
LOCAL DEMOCRACIES IN TRANSITION TIMES

fulfill the function of confirming tolerance and an aggressive policy amongst the states. It is remarkable, that

Agreements and Constitution of laws and Freedoms of the Zaporozian Host of 1710 can be acknowledged as the first European constitution in a modern sense. It contained the main principles to govern the establishment of the state. ...The ideas of human and national rights of the Kozaks and the right of people to protest against humiliation are found in the political memoir *The Foundation of the rights of Ukraine*. Above all the Constitution of Pylyp Orlyk 'emphasized the principle of freeing Ukraine from 'foreign domination', which in modern usage is the principle of independence or state sovereignty....<sup>29</sup>

Yet sovereignty as a crucial feature of democratic Europe is under strain. Illegal migration and the fear of states that they should lose national identity revealed the importance of unified legal standards and regulation. At this point it is worth recalling Anne Peters' claim, according to whom 'true parliamentary powers, namely the adoption of global laws which would complement or replace inter-state treaties, are utopian'; ...at the same time Peters mentioned, that

transnational referendums and consultations, establishment of electoral districts all over the world, as well as the setting up of a 'Global Peoples' Assembly' would have to be considered.<sup>30</sup>

At the same time, supranational (integration) law and world order are based not only on international, but on local authority, legitimacy and power. In order to improve the effectiveness of the EU's normative framework, domestic decision-making must be modified and approximated.

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29 Main issues of the Constitution of Ukraine are based on the first Ukrainian Constitution – Pylyp Orlyk Constitution, that was adopted on 5 April, 1710. The Constitution of Pylyp Orlyk was confirmed by Charles XII and is known as one of the world's first democratic constitutions. The authors of the book *Le patrimoine constitutionnel européen: actes du séminaire UniDem organisé à Montpellier (France) les 22 et 23 novembre 1996* rightly insist that the ideas of the Constitution of Pylyp Orlyk preceded the principles of the French revolution by 80 years. See *Le patrimoine constitutionnel européen: actes du séminaire UniDem organisé à Montpellier (France) les 22 et 23 novembre 1996*, Council of Europe, 1997, 235 pp., at p. 130.

30 Anne Peters, 'Dual Democracy', in: Jan Klabbers, Anne Peters, Geir Ulfstein (Eds.), *The Constitutionalization of International Law*, Oxford University Press, 2009, at pp. 320-321.

*I ELYZAVETA LVOVA*

## **10.6 CONCLUDING REMARK**

This article started with the question which important aspects of global constitutionalism still need clarification and further exploring. It is obvious that the idea of constitutionalism is contested: although it can fall back on generous scholarly and legal resources it is nevertheless very problematic. In light of the original prescriptive vision of Global constitutionalism, I understand it to be an experimental ‘(-ism)’ guiding the formation and development of local democracies.

The main advice of Global Constitutionalism is to give obligatory legal validity to international judicial decisions, while reinforcing global governance institutions. One should choose a skilled ‘driver’ when starting ‘the road trip’ of global constitutionalism. We should see Global Constitutionalism as an international constitutional ‘headlight’ for political actions in the context of global governance under extreme conditions. Apparently, solutions offered by global constitutionalism for modern day issues can form a legal model for developing democracies all over the world.