18 How Global Constitutionalism Is Related to Domestic Constitutional Conflicts?

Ielyzaveta Lvova[*]

There is

> 'no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality – and none of these great goods without stability and order.'
> Clinton Rossiter (1917-1970), introduction, *The Federalist Paper*

18.1 Introduction

The recognition and protection of human rights are one of the main goals of global governance in the XXI century. International principles and norms play an important role in defining the strategy of social and political transformations in the process of constitutional modernization as well as the proliferation of democracy all over the world.

It is quite apparent for international lawyers that international terms and definitions are unsuitable in the context of contemporary complexed military conflicts and 'new hybrid wars.' Unfortunately, we witnessed the failure of international law to prevent and stop wars, occupations, self-determination conflicts, criminal violence, foreign intervention and terrorism.

Contemporary public international law deals with the 'changing' characteristics of conflicts: social conflicts, armed conflicts, constitutional conflicts, etc. Since the end of World War II moral conflicts have 'transmuted' into constitutional conflicts, that should be resolved on the basis of the Constitution. Terroristic acts of Islamic extremists, conflicts

* PHD in law, Docent, Associate professor at National Academy of Public Administration under the President of Ukraine, Odessa, Ukraine. 2015 Award of Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany. Email: lvovaliza@outlook.com. I'm grateful to all my colleagues, who have provided me with expert support during my research stay in Heidelberg (2014-2015). In particular, I would like to thank Michail Baymuratov, Armin von Bogdandy, Matthias Goldmann, Matthias Hartwig, Mete Erdem, Anthony F. Lang, jr, Achilles Skordas, and many other esteemed researchers. I want to thank Prof. Anne Peters for her words of support, remarks and constructive critique. All mistakes, omissions and misunderstandings remain my own.

in Syria and Libya, the escalation of Israeli/Palestinian conflict, crisis in Ukraine (Crimea), Armenia and Greece – are the main modern threats to international peace, stability and security.

Re-defining the link between the impact of these conflicts on global international relations and the development of public international law, it is useful to demonstrate the importance of the formation of an approach, that recognizes the functions of public international law and domestic constitutional law in solving constitutional conflicts (especially the function of regulating existing and possible conflicts).

Upon this backdrop, the mentality of *global constitutionalism* is and should be at the centre of attention for international lawyers and political scientists alike. The main goal of the article is to elucidate the foundations of global constitutionalism in the context of promoting democracy in countries suffering from constitutional and other conflicts (such as, e.g. Ukraine).

The first focus of the article is to point out the significance of legal globalization for domestic democracy and constitutional law development.

As the main goal of international law is to ensure peaceful relations between interdependent societies, this analysis is based on a 'Butterfly effect'[1] of non-international constitutional conflict in Ukraine – that started from a reconsideration of the balance of power relations between the government and citizens, and further unraveled into *a conflict, that was internationalized* (Section 18.1)

By revealing the limits of Ukrainian domestic constitutionalism, I seek to display domestic and international instruments of influence on constitutional conflicts in the context of 'politics v. law'. Furthermore, it is important to demonstrate the impact of the decisions of international organizations (ECtHR) on domestic regulation (Section 18.2).

To this end, the idea of *global constitutionalism* is seen as a productive approach to modern international relations for better accepting the principles of a democratic political order. In this article global constitutionalism (GlobCon) is not to be understood as an Idea of Global Constitution.[2] Instead, it is considered as a mindset, (academic and political

1 To my mind, a metaphor *of* "a butterfly effect" is suitable here. For a deeper understanding of this effect see: P. Smith. The butterfly effect, in *Proceedings of the Aristotelian Society*, Wiley on behalf of The Aristotelian Society New Series, Vol. 91 (1990-1991), pp. 247-26, also available at www.jstor.org/stable/4545139. At the same time, I share the constitutional mindset of Ge Chen, who also recognizes the interconnection of fragmented international law and 'a rejuvenated mentality of global constitutionalism', mentioning that the 'butterfly effect' began with China's voluntary step against the censorship regime. See G. Chen. 'Piercing the veil of state sovereignty: How China's Censorship regime into fragmented international law can lead to a butterfly effect.' in *Global constitutionalism*, Vol. 3, Mach, 2014, p. 31.

2 See e.g. B. Fassbender. 'The United Nations Charter As Constitution of the International Community' in *Columbia Journal of Transnational Law*, Vol. 36, Issue 3, 1998, pp. 529-620; M.W. Doyle. Dialectics of a global constitution: The struggle over the UN Charter. http://ejt.sagepub.com/content/18/4/601.full.pdf+html, O. Diggelmann, T. Altwicker. 'Is there something like a Constitution of International Law? – A Critical Analysis of the Debate on World Constitutionalism', *in ZaöRV*, 2008, pp. 623-648.

approach) that envisages, with the words of one of the main thinkers and supporters of GlobCon – prof. Anne Peters, a constitutionalist reconstruction of the international legal order, through the application of constitutionalist principles that are of great importance for the legal sphere all over the world[3] (Section 18.3).

In my vision, GlobCon must be understood as an assistance for domestic democracies in future decades. GlobCon is seen as a guideline for the development of national constitutional law and dispute resolution. Thus, the final aim of the present article is to promote my vision of global constitutionalism as a *constitutional experiment* with further establishing a separate discipline, or a subfield of public international law (Section 18.4).

18.2 The Impact of Legal Globalization on State Constitutions: Constitutional Conflicts and Their Possible Solutions (a Vision for Ukraine)

The status of human rights as a complex phenomenon and legal institution is under pressure from legal globalization,[4] which also influences constitutional development in most states of the world.

At the same time, due to the integration of national legal orders, legal globalization gives rise to extraterritorial influence on domestic regulation. Thus, the complex process of the implementation of international treaties may also lead to constitutional conflicts on the domestic level.

First of all, it would be useful to mention that constitutional conflict is a tension in the political-legal cooperation of subjects of constitutional relations, – yet this type of conflict does not always relate to argument surrounding the law. Constitutional conflict may occur in case of confusion concerning the formation of the law or violation of constitutional norms. An assessment of this problem proves that it exists on several levels: state, regional and local level.

However, constitutional conflict that occurs *on the domestic level* and has significant social-political relevance and public effects, is a conflict *of the macro level*.[5] At this point we may agree with Chris Thornhill that both the American and the French revolutions of 1776 and 1789 can be interpreted as political events in which states,

3 See e.g. A. Peters. 'The Merits of Global Constitutionalism', *in Indiana Journal of Global Legal Studies*, Switzerland, 2008, pp. 397-411.

4 According to Jeremy Elkins, legal globalization is understood as the transfer of legal jurisdiction away from individual states to transnational bodies. See J. Elkins, 'Beyond "Beyond the state": rethinking law and globalization', in A. Sarat, L. Douglas, M.M. Umphrey, *Law without nations*, Stanford, California: Stanford Law Books, 2011, p. 27

5 See 'Problemi such as noYi konstitutsIonalIstiki: navch.posIb'./ M.P. OrzIh, M.V. AfanasEva, V.R. Barskiy [ta In.]; za red. M.P. OrzIha – K.: YurInkom Inter, 2011. – 272 p., pp. 128-137 (translation: M. Orzih. Problems of modern constitutional science (in ukr.),

> both institutional and at a conceptual/reflexive level, underwent an accelerated internal transformation, as a result of which they began to utilize highly refined constitutions and constitutional rights to legislate consistently across society, and to organize their power as a general, inclusionary and autonomously abstracted facility.[6]

For example, in Ukraine constitutional conflicts of such historical importance took place in 1991-1994, 1996 and in 2004, resulting in the 'orange revolution' and further constitutional reforms.

In the winter of 2013 a constitutional conflict of a macro-level in Ukraine changed its structure and became *a non-international conflict, that was internationalized.*

By means of announcements in the social media network (V Kontakte, Facebook and others) on 21 November 2013 several hundreds of thousands of demonstrators from all over Ukraine gathered together in the main street of Kiev for Euromaidan to express their constitutional will of EU integration and the rule of law. The origin of this event was the decision of Victor Yanukovitch, the President of Ukraine to 'pause' the EU integration of Ukraine in favor of closer economic relations with the Russian Federation.

Later the violent attacks of the government forces on 30 November 2013 further increased the level of protests. Foreign governments expressed grave concerns regarding the situation in Ukraine. On 19 January 2014 approximately half a million Ukrainians gathered together to protest against Yanukovych's actions, violating core human rights – adopting laws that severely limited the freedom of speech, free movement and peaceful public assembly in Ukraine. Euromaidans were held internationally, primarily by the larger Ukrainian diaspora populations in North America and Europe. Another example for a *conflict between a center and a region* is a situation, that revealed a constitutional conflict of a *mid-level* in the Autonomous Republic of Crimea.[7]

According to the opinion of the Venice Commission, the Constitution of Ukraine, like other constitutions of Council of Europe member states, provides for the indivisibility of the country and does not allow for the holding of any local referendum on the secession from Ukraine.

This follows in particular from Articles 1, 2, 73 and 157 of the Constitution. These provisions in conjunction with Chapter X of the Constitution show that this prohibition also applies to the Autonomous Republic of Crimea and the Constitution of Crimea does not allow the Supreme Soviet of Crimea to call such a referendum. Only a consultative

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6 See C. Thornhill: *A sociology of constitutions*. – 1. publ, 2011 – XII, 451 p, p. 182.

7 On 1 March, 2014 the President of the Russian Federation Vladimir Putin recognized the referendum in Crimea on secession from Ukraine and declared that Crimea is a sovereign state. On this ground, he appealed to the Council of the Federation of the Federal Assembly of the Russian Federation to approve the use of Russian *Armed Forces* in the Crimean Peninsula in Ukraine.

referendum on increased autonomy could be permissible under the Ukrainian Constitution.[8] This situation elevated the tension in Ukraine in the Eastern regions and later considerably harmed the peaceful and stable relations between Russia and Ukraine, shifting this problem to the global level.[9] Speaking in the terms of legal discourse, in contrast with political and diplomatic terms, the international community was faced with the *immense violation of international law and agreements in the Ukraine crisis.*

I think, that there are several problems and questions pertaining to the international legal system that emerged and must be solved, e.g.:

- How to classify the boosting of a the Russian language 'problem' in Crimea: was it a national or an international threat to human rights, which lead to an information war?
- Is the Russian Federation responsible for not taking into consideration the Agreement on the Status and Conditions for the presence of the Russian Federation Black Sea Fleet on the territory of Ukraine?
- Wherein lies the international responsibility for failing to respect the territorial integrity and sovereignty of another independent state?
- Is it possible to justify the unlawful act of a 'more powerful' state by an unlawful act committed previously by another, 'less powerful' state?
- Is it possible to justify Russian deployment and the deeds of its forces by means of the UN Charter?
- Is there a possibility under international law for the constitutional violation of Article 2 (4) of the Charter: (i) self-defense and (ii) intervention by invitation?

From the legal policy point of view, the main technical matter is: whether the violation of legal procedures and agreements in light of the Budapest memorandum of 1994,[10] was an illegal deed of the Russian Federation or not (in the context of the political principle of 'responsibility to protect')?

In this sense, D. Miller wonders who has the responsibility to protect'? According to D. Miller there seem to be two extreme positions one might take: a) one should protect human rights whenever doing so does not involve sacrificing anything of *comparable* moral

8 See Opinion of the Venice Commission No. 762 / 2014 CDL-AD(2014)002.

9 For a fundamental analysis of the Crimean Referendum see A. Peters, 'The Crimean vote of March 2014 as an abuse of the institution of the territorial referendum', in *Herausforderung an Staat und Verfassung*, pp. 278-303.

10 See The Budapest Memorandum on Security Assurances is a political agreement signed in Budapest, Hungary on 5 December 1994, providing security assurances by its signatories relating to Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, www.msz.gov.pl/en/p/wiedenobwe_at_s_en/news/memorandum_on_security_assurances_in_connection_with_ukraine_s_accession_to_the_treaty_on_the_npt.

significance; b) one should protect human rights only when doing so does not require *any* morally significant sacrifice.[11]

At the same time, in case states systematically and deliberately violate the human rights of their own citizens,

> …direct intervention here is not only ruled out by existing norms of state sovereignty, but likely to be so costly that no state or group of states will contemplate it (no one is rushing to enforce human rights in China).

So the only realistic possibility here is reinforcing the system of *international law*, with an attempt to put into practice the various human rights charters that almost all states have already signed up to in theory. The well-known problem is of course how to render international law effective in the absence of a powerful enforcement body, which ex hypothesi does not exist in this case.[12] The question is: what are the instruments for supporting peace and justice under the conditions of legal globalization and the constitutionalization of public international law?

18.3 The Analysis of Domestic and International Instruments of Influence on Constitutional Conflicts

18.3.1 Prognosis and Negotiations in Public Conflicts Resolution

In light of the foregoing, if there is no powerful enforcing body of global regulation, it is useful to start from the very beginning – answering the question: what are the types of instruments of influence on constitutional conflicts within international and domestic law?

Here, it is worth mentioning *prognosis* – a prediction of the evolution and the results of conflicts.

For example, the conflict in Crimea was also predictable, as the motives of the locals were tied up with historical events that took place in 1994. In 1994 the Constitution of the Republic of Crimea, that was adopted in 1992 following the independence of Crimea, came into force, and the edicts of the President of Crimea cancelled the status of the Verhovna Rada of Crimea, the local councils. According to the Decree of the Chamber of Verhovna Rada of Ukraine of 12 September 1994 #119/94-ПВ, entitled 'Appeal on the situation in

11 See D. Miller 'The Responsibility to Protect Human Rights' in *Memo for the workshop on Global Governance*, Nuffield College, Oxford, Princeton University, 2006 p. 2, www.princeton.edu/~pcglobal/conferences/normative/papers/Session6_Miller.pdf.

12 Ibid., p. 9.

Crimea' these events constituted a conflict and the actions of the President of Crimea were qualified as violating the Constitution of Ukraine and other laws.[13] Besides, the presence of the Russian fleet in Crimea infringed the Constitution of Ukraine (Art. 17).[14]

Furthermore, the domestic constitutional conflict in Crimea of 2014 led a huge battle between Ukraine government forces and pro-Russian separatists in the Luhansk and Donetsk regions (that are still on-going at the time of the writing of this article).

In this context, the Ukrainian government appealed to the UN Security Council, the Hague Tribunal and other institutions for help in investigating alleged 'crimes against humanity' that occurred in the region.

In order to reveal *international instruments of influence on constitutional conflicts*, let us turn to the well-known effective tools of *negotiations*. The tension between Ukraine and Russia during 2014 witnessed international dispute resolution in its different forms (negotiations, court proceedings, economic sanctions, etc.).

For example, the negotiations (summit) in Minsk on 26 August 2014 were first held in a unique format '3+1+1' ('Euroasian 3' (Belarus, Russia and Kazakhstan) + Ukraine + European Union).[15] Yet as regards the referendum of 16 March 2014 in Crimea, no negotiations aimed at a consensual solution took place before the referendum was called.

18.3.2 The Role of the ECtHR in International Dispute Resolution and the National Perspective

The European Court of Human Rights (ECtHR) plays a central role in international dispute resolution in conflicts between the state and the individual.

In Europe, a cosmopolitan legal order has emerged with the incorporation of the European Convention on Human Rights (ECHR) into national law. The system is governed by a decentralized sovereign: a community of courts whose activities are coordinated through the rulings of the European Court of Human Rights. E.g., Alex Stone Sweet claims that the Court is the single most active and important rights-protecting body in the world, which 'routinely succeeds in raising national standards of rights protection, and it has been crucial to the success of transitions to constitutional democracy in post-authoritarian states.'

The ECtHR decisions concerning conflicts between a state and a citizen have a huge social importance for Ukraine. Unfortunately, there is a great volume of such decisions influencing individuals and the entire state (e.g. *I. Sirenko v. Ukraine* and *Y. Derevyanko*

13 See http://zakon4.rada.gov.ua/laws/show/180/94-%D0%B2%D1%80.

14 Konstituts Iya Ukra Yini: Priynyatana Vses IY i Verhovno Y i Radi Ukra Yini 28 chervnya 1996 r. With subsequent amendments (hereinafter 'the Constitution of Ukraine'), http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0.

15 See http://news.tut.by/politics/412851.html.

v. Ukraine cases concerning a violent dispersal of protesters in Kiev in November[16] 2013, case of *G. Shvudka v. Ukraine* concerning freedom of expression (2014)).[17]

But for the furthering of legal globalization in domestic and constitutional law *A. Volkov v. Ukraine* case is of utmost scientific interest.[18]

For the first time in its history, the European Court of Human Rights (ECtHR) ordered a Member State to reinstate a dismissed former judge. In its 9 January 2013 judgment in *Oleksandr Volkov v. Ukraine*, the ECtHR found that Ukraine violated Article 6 (right to fair trial) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR) when the High Council of Justice dismissed Supreme Court Justice Oleksandr Volkov in May 2010 due to an alleged 'breach of oath.'[19]

The Court held that Ukraine was to pay Volkov 6,000 euros (EUR) in non-pecuniary damages and EUR 12,000 in respect of costs and expenses. It also decided that, given the very exceptional circumstances of the case, Ukraine was to reinstate Oleksandr Volkov in the post of Supreme Court judge at the earliest possible date.

Prof. Philip Leach commented:

> We are delighted by this decision. Mr. Volkov was the victim of endemic political corruption, which this judgment confirms is prevalent in Ukraine. It is significant that the European Court has, for the first time, ordered the reinstatement of someone who was unfairly dismissed. This judgment confirms that the Ukrainian legal system is in urgent need of fundamental reform.[20]

The Court held in particular, that the proceedings leading up to Volkov's dismissal had not fulfilled the requirements of an

> independent and impartial tribunal; that the proceedings before the High Council of Justice, which initiated the inquiries leading up to his dismissal, had been unfair as there were no time-limits for such proceedings; that the vote in Parliament on his dismissal had been unlawful; and, that the chamber of the Higher Administrative Court, which reviewed the case, had not complied with the principle of a 'tribunal established by law.[21]

16 See *Sirenko v. Ukraine*, Appl. No. 9078/14 and *Derevyanko v. Ukraine* (2013) Appl. No. 7684/14.

17 See *Shvydka v. Ukraine*, ECHR (2014), No. 17888/12, Judgement of 30 October 2014.

18 *Volkov v. Ukraine*, ECHR (2013), No. 21722/1, Judgement of 9 January 2013.

19 For more details see http://hrbrief.org/2013/02/european-court-of-human-rights-reinstates-ukrainian-supreme-court-judge/.

20 See www.mdx.ac.uk/news/2013/01/european-court-of-human-rights-orders-reinstatement-of-supreme-court-judge-in-landmark-case-against-ukraine.

21 See Press release issued by the Registrar of the Court. ECHR 008 (2013) 09.01.2013.

The court stated:

> Under Articles 41 (just satisfaction) and 46 (binding force and execution of judgments), the Court, in view of the serious systemic problems concerning the functioning of the Ukrainian judiciary disclosed in Volkov's case, recommended Ukraine to urgently reform its system of judicial discipline.

On 2 February 2015 according to the Law 'On the Judiciary and Status of Judges'[22] (p.4 part 1 art. 41) and the Decree of Verhovna Rada from 25 December 2014 No 60-VIII the Chairman of the Highest Court of Ukraine edited the Edict to reinstate Oleksandr Volkov in the post of Supreme Court judge.[23]

Also

> the Court notes that the present case discloses serious systemic problems as regards the functioning of the Ukrainian judiciary. In particular, the violations found in case suggest that the system of judicial discipline in Ukraine has not been organized in a proper way, as it does not ensure sufficient separations of the Judiciary from other branches of state power. Moreover it does not provide appropriate guarantees against abuse and misuse of disciplinary measures to the detriment of judicial independence, the latter being one of the most important values… underpinning functioning democracies.[24]

It is important to note that in Ukraine there is a huge need for improving national constitutional legislation to conform to the standards of modern international law. According *to Article 18 of the Constitution of Ukraine*

> the foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community, according to generally acknowledged principles and norms of international law.

22 See ZakonUkraYini «Pro sudoustrIy I status suddiv» vid 07.07.2010 #2453-VI (hereinafter 'the Law of Ukraine 'On the Judiciary and Status of Judges'), http://zakon2.rada.gov.ua/laws/show/2453-17.

23 www.kv.com.ua/politics/ukraina-vypolnila-reshenie-espch-vosstanoviv-sudju-volkova-v-dolzhnosti-53733/#sthash.8Fs6hd5T.dpuf).

24 T. Altwicker. 'Convention Rights as Minimum Constitutional Guarantees? The Conflict between Domestic Constitutional Law and the European Convention on Human Rights' in A. von Bogdandy and P. Sonnevend (Eds.), *Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania*, Oxford and Portland, 2014, p. 344.

As demonstrated above, the ECtHR operates as the most effective mechanism of human rights protection, as an instrument of influence on constitutional conflicts and assisting in the evolution of human rights guarantees and the European integration of Ukrainian constitutionalism.

Moreover, this case shed light on the importance of taking into consideration the fact that under the conditions of legal globalization, individuals have rights under international law and that they have an impact, not only on their duties but also on doctrine and the law.

That vision, in the words of A. Clapham,[25] could help build an international community which properly recognizes the role of the individual in international law.

18.4 Global Constitutionalism as a Guideline for the Development of Domestic Constitutional Law

As globalization requires a new conceptualization, opening the way to the emergence of administrative law beyond the state,[26] it is useful to take into consideration that legal globalization is the most important factor of GlobCon. Besides, GlobCon is very tied to the concept of local democracy and plays an important role in solving conflicts on the domestic level.

The concept of GlobCon is not all that new, since it is based on the ideas present at the beginning of the 21st century.

Scientists became very preoccupied with the idea of global constitutionalism in 2000. Perhaps the most important scientific source, that gave birth to ideas of GlobCon is the work of J.A. Frowein 'Konstitutionalisierung des Völkerrechts' (available in German).[27] To my mind, another significant work on GlobCon appeared in 2005 – authored by A. Peters on global constitutionalism and published under the title 'Global constitutionalism in a nutshell.[28] It is worth briefly considering the different schools of global constitutional-

25 A. Clapham 'The role of the individual in international law' in The European Journal of International Law Vol. 21 No. 1, from:http://ejil.oxfordjournals.org/content/21/1/25.full.pdf+html.

26 See Stefano Battini. The Procedural Side of Legal Globalization: The Case of The World Heritage Convention in JMWP, 18/10, p. 37.

27 See 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.

28 See A. Peters 'Global Constitutionalism in a Nutshell', p. 536 in K. Dicke, S. Hobe, et al. Weltinnenrecht – Liber amicorum Jost Delbrück, 2005, pp. 535-550. In the present article, I took an opportunity with a great honour to respond to G. Halmai on the matter of the first usage of 'global constitutionalism' by Anne Peters in 2005. While, G. Halmai claims that the ideas of GlobCon started from R. Falk and later (in 2006) A. Peters conceived global constitutionalism in the article 'Compensatory Constitutionalism: The function and potential of Fundamental International Norms and Structures'. See G. Halmai. *Perspectives on global constitutionalism: The use of foreign an international law*.' Leiden Journal of International law, 2006, Vol. 19, 2006, pp. 579-610."

ism. E.g., B. Fassbender distinguished three main scientific schools, that conceived ideas of global constitutionalism: 1) the school founded by Alfred Verdross, 2) The New Haven School, 3) the authors focusing on the idea of an 'international community', who formed an international community school.[29] A. Wiener further distinguished between normative and functionalist schools of global constitutionalism.[30]

What all representatives of scientific schools have in common is that they perceive the ideas of global constitutionalism to be of great importance in evaluating principles such as: general principles of international law, principle of subsidiarity, principles of transparency, principle of sovereignty, principle of conferral, etc.

Moreover, taking into an account that the theoretical and practical approaches of GlobCon are not linear, it is useful to answer the question: what are the alternative solutions to defining the frontiers of this concept and how would this mechanism work in conformity with international regulatory standards.

Global constitutionalism has its circles, which include legal regimes that all interact with each other – from the global level to the domestic and vice versa. Global constitutionalism involves all subjects of international law, but at the same time the main actors of global constitutionalism are international organisations and transnational organisations.[31]

Under the circumstances of uncertain modern societal reflections and in the face of the ever increasing volume of globalization, I think it would be of scientific importance to present global constitutionalism as a *constitutional experiment* with further creating a separate discipline, or a subfield of public international law.

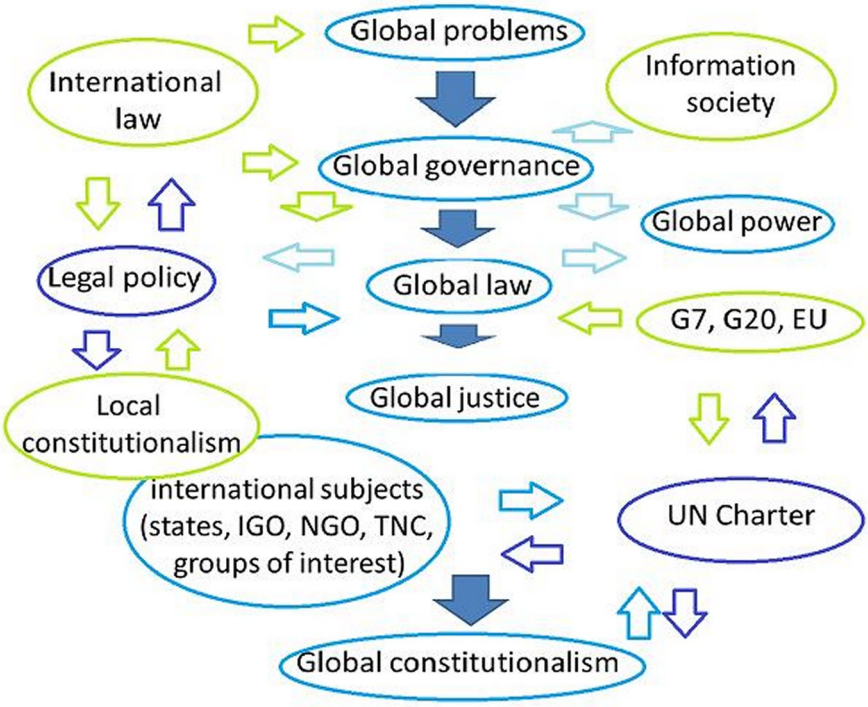
To further the understanding of global constitutionalism and to better elucidate its point, in the following, I would like to present *the formation of global constitutionalism on the mutual effects between international law and local (domestic) constitutionalism including its foundations and limitations*.

29 Id., p. 532.

30 For a very good overview of schools of global constitutionalism see e.g. A. Wiener. Global constitutionalism, www.wiso.uni-hamburg.de/fileadmin/sowi/politik/governance/Wiener_2012_global_constitutionalism.pdf.

31 See A. Peters. 'Introduction' ininAnnePeters, ManuelDevers, Anne-MarieThévenot-WernerandPatriziaZbinden (dir.) *Les acteurs dans l'ère du constitutionnalisme global*/ Actors in the Age of Global Constitutionalism, coll. In 'UMR de droit comparé de Paris', vol. 35, Paris, Société de législation comparée, 2014, pp. 21-23.

Figure 18.1 (by Iel.Lvova) Formation of global constitutionalism in the cross-fertilization between international law and local (domestic) constitutionalism



18.5 Conclusion

In conclusion, it important to note that the idea of global constitutionalism is highly effective in changing scholarly attitudes about global governance and human rights, while as an approach it may nevertheless give rise to certain criticism. Some researchers claim that the concept of global constitutionalism is unclear and essentially contested,[32] or that global constitutionalism doesn't live up to its promises.[33] Several authors are interested in whether GlobCon is a reality or an utopia?[34]

32 See, e.g. L. Viellechner 'Constitutionalism as a Cipher: On the Convergence of Constitutionalist and Pluralist Approaches to the Globalization of Law' in: *Goettingen Journal of International Law* 4 (2012), pp. 599-623.

33 See C. Volk 'Why Global Constitutionalism Does Not Live up to Its Promises', *in Goettingen Journal of International Law* 4 (2012) 2, pp. 551-573.

34 See M. Rosenfeld 'Is global constitutionalism meaning or desirable?', in *European Journal of International Law* 25 (2014), 1, pp. 177-199.

It is important to stress that one of the possible reasons for this 'attitude' may be the fact that the process of the formation of global constitutionalism is far from completed due to its pluridirectional and misnomer character. Understanding the 'utopical' flavor of global constitutionalism, I'm convinced that GlobCon is a very definite and encouraging approach of promoting democracy and the rule of law on domestic level. To my mind, those international scholars, who would not support the ideas of global constitutionalism, should use the word *'newtopia'* for better understanding transformations, that are and will be prompted by the process of global constitutionalism.