



**THE UNIVERSITY OF ZAMBIA**  
School of Education  
Department of Language and Social Sciences Education

**CVE 9020: LEGAL EDUCATION AND PUBLIC POLICY**

**Topic 7: Lecture Notes**

**TOPIC: Globalisation, Global Governance and constitutionalism**

## 7.1 Topic Contents

- 1 Introduction
- 2 Intergovernmentalism and international federalism
- 3 Global Governance and constitutionalism
- 4 Prospects of Constitutionalism.

**7.2 Aim:** To give an account of the effect of globalisation on constitutionalism.

**7.3 Objectives:** By the end of this unit you should be able to:

1. Explain how the collapse of the Soviet Union has affected constitutionalism in Eastern Europe and in most developing countries.
1. Define Intergovernmentalism and international federalism and explain how they relate to constitutionalism.
2. Show how global governance embraces constitutionalism.
3. Identify problems of constitutionalism which arise from global partnership for Development.
4. Suggest prospect for constitutionalism in the wake of globalisation.

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## **7.4 Introduction**

At this stage we must leave off by mentioning that there are forces that work against the operation of a constitutional government and whose results weaken support for the concept of constitutionalism as an imperative to the establishment of a democratic political order. This emanates from the fact that during war, emergency and socio-economic degeneration governments may claim absolute power and in the name of defending the realm from internal and foreign aggression may go to the extent of crushing the essential liberties of the people. Important to note, however, here is that legitimacy of such measures here depends upon whether such a provision goes against the very spirit of constitutionalism or not. Therefore we have to be aware that national governments can use constitutions to grossly violate the rights of the citizenry and even violate rights of other nationals and even disregard international laws. Hence in this unit you are going to learn about how the development of Intergovernmentalism and international federalism, or global partnership for development is shaping constitutionalism.

## **7.5 Intergovernmentalism and International Federalism**

Given the foregoing scenario, it is important to accept that some kind of overarching force, a kind of world authority, is the only alternative to curb international anarchy, which in the past, has produced two devastating wars and must, if not checked, end in such, rather far bigger, holocaust entailing total destruction of the human race. It requires that the constitution of a state should be so devised that it does not act as an impediment to the growth of a better international order. A constitution desiring 'export of revolution' or propagation of an ideology of totalitarianism, or subscribing to the eulogy of wars and the like should be deemed as the very enemy of the idea of constitutionalism. We may once again invoke the device of federalism that can serve out purpose in this regard very well, a constitutional state must subscribe to this idea that the ultimate objective is the 'establishment not of an international but of a supra-national authority to which the nations would sacrifice their external authority.'

Therefore, any movement in the direction of weakening the civil rights of the people in the name of the 'reason of the state' is a challenge to the concept of constitutionalism that should be faced to revise the meaning of constitutionalism in the light of new and still newer conditions. We should look at the forces that have an essentially totalitarian

character and yet they have a potential attraction for the people. Conditions should be generated in which the models of social and economic democracy are strengthened. Such a model of democracy “is not a miracle which comes to life at a particular moment and then continues to function automatically, but it is rather a political task upon which it necessary to work continually. It calls for the revision of the old values and systems in the light of new hopes and aspirations of the people. We have seen that it is on account of this change that the content of constitutionalism took a turn from an aristocratic to a democratic side and that socialism came to be added as one more attribute to it after those of nationalism and democracy. In other words, it signifies that the meaning of constitutionalism should not be given a rigid or fixed form; it should be treated as a dynamic affair that changes with the emergence of new conditions, new challenges new problems and new issues. And change “is not something to be feared and avoided, but it is of the very recipe of modern constitutionalism.”

## **7.6 Global Governance and constitutionalism**

Global governance or world governance is the political interaction of transnational actors aimed at solving problems that affect more than one state or region when there is no overarching power of enforcing compliance. The modern question of world governance exists in the context of globalization. In response to the acceleration of interdependence on a worldwide scale, both between human societies and between humankind and the biosphere, world governance designates regulations intended for the global scale. The collapse of the Soviet Union in 1991 marked the end of a very long period of international history based on a policy of balance of powers. Since this historic event, the planet has entered a phase of geostrategic breakdown. The national-security model, for example, while still in place for most governments, is gradually giving way to an emerging collective conscience that extends beyond the restricted framework it represents. The question of world governance did not arise until the early 1990s. Up until then, the term "interdependence" had been used to designate the management of relations among states(Winkpeadia free Encyclopaedia, 12 .11. 2012 at 04:32). The post-Cold War world of the 1990s saw a new paradigm emerge based on a number of issues:

- The growing idea of globalization as a significant theme and the subsequent weakening of nation-states, points to a prospect of transferring to a global level of regulatory instruments. Upon the model that regulation was no longer working effectively at the national or regional levels.
- An intensification of environmental concerns, which received multilateral endorsement at the Rio Earth Summit (1992). The Summit issues, relating to the climate and biodiversity, symbolized a new approach that was soon to be expressed conceptually by the term Global Commons.
- The emergence of conflicts over standards: trade and the environment, trade and property rights, trade and public health. These conflicts continued the traditional debate over the social effects of macroeconomic stabilization policies, and raised the question of arbitration among equally legitimate objectives in a compartmentalized governance system where the major areas of interdependence are each entrusted to a specialized international institution. Although often limited in scope, these conflicts are nevertheless symbolically powerful, as they raise the question of the principles and institutions of arbitration.
- An increased questioning of international standards and institutions by developing countries, which, having entered the global economy, find it hard to accept that industrialized countries hold onto power and give preference to their own interests. The challenge also comes from civil society, which considers that the international governance system has become the real seat of power and which rejects both its principles and procedures. Although these two lines of criticism often have conflicting beliefs and goals, they have been known to join in order to oppose the dominance of developed countries and major institutions, as demonstrated symbolically by the failure of the World Trade Organization 1999 Ministerial Conference in Seattle.

In a simple and broad-based definition of world governance, the term is used to designate all regulations intended for organization & centralization of human societies on a global scale. Traditionally, government has been associated with "governing," or with political authority, institutions, and, ultimately, control. Governance however denotes formal political institutions that aim to coordinate and control independent social relations, and that have the ability to enforce, by force, their decisions. However, authors like James

Roseau have also used "governance" to denote the regulation of interdependent relations in the absence of an overarching political authority, such as in the international system. Some now speak of the development of "global public policy". These "cooperative problem-solving arrangements" may be formal, taking the shape of laws or formally constituted institutions for a variety of actors (such as state authorities, intergovernmental organizations (IGOs), non-governmental organizations (NGOs), private sector entities, other civil society actors, and individuals) to manage collective affairs. They may also be informal (as in the case of practices or guidelines) or ad hoc entities (as in the case of coalitions).

Thus, global governance may be defined as "the complex of formal and informal institutions, mechanisms, relationships, and processes between and among states, markets, citizens and organizations, both inter- and non-governmental, through which collective interests on the global plane are articulated, Duties, obligations and privileges are established, and differences are mediated through educated professionals."

There are those who believe that world architecture depends on establishing a system of world governance. However, the equation is currently becoming far more complicated: Whereas the process used to be about regulating and limiting the individual power of states to avoid disturbing or overturning the status quo, the issue for today's world governance is to have a collective influence on the world's destiny by establishing a system for regulating the many interactions that lie beyond the province of state action. The political homogenization of the planet that has followed the advent of what is known as liberal democracy in its many forms should make it easier to establish a world governance system that goes beyond market laissez-faire and the democratic peace originally formulated by Immanuel Kant, which constitutes a sort of geopolitical laissez-faire.

Another view regarding the establishment of global governance is based on the difficulties to achieve equitable development at the world scale. "To secure for all human beings in all parts of the world the conditions allowing a decent and meaningful life requires enormous human energies and far-reaching changes in policies. The task is all the more demanding as the world faces numerous other problems, each related to or even part of the development challenge, each similarly pressing, and each calling for the same urgent attention. 'Our age is the first generation since the dawn of history in which mankind dares

to believe it practical to make the benefits of civilization available to the whole human race.'" Winkpeadia free Encyclopaedia, 12 .11. 2012 at 04:32)

## **7.8 Prospects of constitutionalism**

A study of the subject of the development of constitutionalism, as contained above, leaves certain important impressions. First, constitutionalism signifies 'addiction to constitutions or the fundamental law. That is, it desires that every state should be governed by means of a constitution that may be taken as a clear proof of the fact that the rule of law and not that of men is their prime necessity of a civilized political order. Second, constitutionalism, in course of time, has come to have three essential attributes – nationalism, democracy and self-government. We have neither city-states of the ancient model nor an empire of the medieval form but sovereign nation states. Then, every state is committed to the ideal of a democratic form. Thus, constitutionalism desires that power should be with the people and that all changes should be effected in a peaceful manner. Finally, internationalism requires that every state must subscribe to the principle of a super-world federation in which each state is a member and it has to keep faith in the principles of the charter of this international organization.

One thing is, however, certain that the idea of constitutionalism is still in an experimental stage and that it is under the stress of a severe challenge coming from the side of the communist model. Since modern state is a social welfare state, it is also needed that the constitution of a country must be such that the ideal of the socio-economic welfare of the people should be realized along with the realization of the purpose of securing a stable political order. The ideal of national democratic constitutionalism, ancient though its origins may be, "is still in an experimental stage and that if it is to survive in competition with more revolutionary types of governments, we must be prepared constantly to adopt it to the ever-changing conditions of modern society. The basic purpose of a political constitution is, after all, the same wherever it appears: to secure social peace and progress, safeguard individual rights and promote national well-being."

Several stakeholders have produced lists of proposals for a new world governance that is fairer, more responsible, solidarity-based, interconnected and respectful of the planet's diversity. Some examples are given below.

reforms related to the internal organization of international institutions and their external role in the framework of global-governance architecture. He also deals with global taxation, the management of global resources and the environment, the production and protection of global knowledge, and the need for a global legal infrastructure.

A number of other proposals are contained in the World Governance Proposal Paper: giving concrete expression to the principle of responsibility; granting civil society greater involvement in drawing up and implementing international regulations; granting national parliaments greater involvement in drawing up and implementing international regulations; re-equilibrating trade mechanisms and adopting regulations to benefit the southern hemisphere; speeding up the institution of regional bodies; extending and specifying the concept of the commons; redefining proposal and decision-making powers in order to reform the United Nations; developing independent observation, early-warning, and assessment systems; diversifying and stabilizing the basis for financing international collective action; and engaging in a wide-reaching process of consultation.. This list provides more examples of proposals:

- the security of societies and its correlation with the need for global reforms—a controlled legally-based economy focused on stability, growth, full employment, and North-South convergence;
- equal rights for all, implying the institution of a global redistribution process;
- eradication of poverty in all countries;
- sustainable development on a global scale as an absolute imperative in political action at all levels;
- fight against the roots of terrorism and crime;
- consistent, effective, and fully democratic international institutions;
- Europe sharing its experience in meeting the challenges of globalization and adopting genuine partnership strategies to build a new form of multilateralism.

FIM (Montreal International Forum) and of PRIA (Participatory Research in Asia), prepared a framework document entitled "Democratization of Global Governance for Global Democracy: present five principles that could provide a basis for civil society actions: "Global institutions and agenda should be subjected to democratic political accountability."

- Democratic policy at the global level requires legitimacy of popular control through representative and direct mechanisms.
- Citizen participation in decision making at global levels requires equality of opportunity to all citizens of the world.
- Multiple spheres of governance, from local to provincial to national to regional and global, should mutually support democratization of decision making at all levels.
- Global democracy must guarantee that global public goods are equitably accessible to all citizens of the world

(Winkpeadia free Encyclopaedia, 12 .11. 2012 at 04:32)

## **7.9 Unit Summary**

In this unit you have explored current position of constitutionalism. You have seen how occurrences like the demise of the Soviet Union can change constitutionalism and hence affect governance trends in both developed and developing countries. You now know Intergovernmentalism and international federalism and all what globalisation and cosmopolitanism entail. With this knowledge you are able foretell problem and prospects for constitutionalism.

### **7.10 Activity**

- 1 Explain how the collapse of the Soviet Union has affected constitutionalism in Eastern Europe and in most developing countries.
2. Define Intergovernmentalism and international federalism and explain how they relate to constitutionalism.
3. With clear examples show how global governance embraces constitutionalism.
4. Identify and explain problems of constitutionalism which arise from global partnership for development.
- 5 Suggest prospect for constitutionalism in the wake of globalisation