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Global constitutionalism and supranational adjudicative bodies: Global south experiences *vis-à-vis* hegemony

Call for Papers

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Dates: Thursday 16 - Friday 17 November, 2023

1. Conceptual framework and rationale

The constitutionalization of the global legal system has been based on three fundamental pillars: the rule of law, democracy, and human rights (Wiener et al., 2009), which have been components of an emerging international constitutional order (de Wet, 2006) and bind diverse international community actors (UN Secretary-General, 2004). In turn, international adjudication has been studied due to the *inter alia* the proliferation of diverse supranational adjudicative bodies: i) international courts such as the International Court of Justice (ICJ); ii) international and hybrid criminal courts such as the International Criminal Court (ICC) and the Extraordinary Chambers in the Courts of Cambodia (ECCC); iii) regional human rights courts such as the Inter-American Court of Human Rights (IACtHR) and the African Court of Human and Peoples' Rights (ACtHPR); and iv) non-judicial international adjudicative bodies such as the International Centre for Settlement of Investment Disputes (ICSID) and the World Trade Organization Dispute Settlement System (WTODSS).

Global constitutionalism has been used as an ideal and normative framework grounded on the supposed convergence of universal standards ruling constitutional and international law (Shinar, 2020). Accordingly, supranational adjudicative bodies have been considered as agents that contribute to constitutional principles (Shinar, 2022; Schwobel, 2010) and their transformative meta-function for principles such as the *ius publicum europaeum* and *ius constitutionale commune* (Greer and Wildhaber, 2013; Von Bogdandy, 2015) has been argued. However, global constitutionalism as a framework is still contested. Some have criticised its western origin, hegemonic nature, predominant relation with predetermined principles ruling liberal democracies (Schwobel, 2010), or its use as a tool for maintaining power asymmetries or elitist economic policies (Shinar, 2020). Others refer to its influence on profiling the said bodies as institutions with meta-normative functions or that their supra-constitutional nature is ideological leading to backlashes and legitimacy crises (Dzehtsiarou, 2022; Torres Zuniga, 2022). Thus, scholars have discussed the relevance of global constitutionalism



to challenge hegemonies such as populist waves (Kumm, Havercroft, Dunoff, Wiener, 2017). Others prefer problematizing the concept by regarding it as a result of both the convergence between international and national jurisdictions and resistance to global constitutionalism in global south regions (Son Bui, 2021).

We aim to discuss the concept of global constitutionalism as an ongoing process and as an empty concept with a normative end (Schwöbel, 2010) in supranational adjudication. Rather than assuming that it is a predefined, abstract and generic concept, this call endeavours to contribute towards building a concept based on global south experiences concerning hegemony manifestations in supranational adjudication. While discussing the concept of global constitutionalism as an open definition, we challenge the notion of uniformity and hegemony arising from the idea of global as a liberal western project with universal standards that may threaten diversity in the international community. Although global constitutionalism may be regarded as an 'empty shell', its normative nature can be used to frame legal, political and philosophical reflections on the role of supranational adjudication against economic, political and social hegemony in the global south.

Accordingly, this call for papers has two main goals. First, promote a theoretical discussion on the relevance of the concept of 'global constitutionalism' to address issues of hegemony at supranational adjudicative bodies, focused on global south states, actors, and matters. *Hegemony and domination* can arguably guide discussions in supranational adjudication as they explain the dominance or authority exercised by one state or group of states over others. Adapted to supranational adjudication, these categories can be also used to frame relationships between individuals or between individuals and the state that arise from economic, gender and racial inequality (Charlesworth and Chinkin, 2000). The present call welcomes critical, normative, and/or doctrinal perspectives on the notion of global constitutionalism and its potential use as a discourse against hegemony in supranational adjudication. In the context of international adjudicative bodies, we seek to discuss who are the subjects involved in creating constitutional values, how the values and principles pursued by the said bodies challenge the different hegemonies in the international community, and which actors benefit from the decisions of these bodies.

Secondly, this call also aims to engage with empirical, descriptive, and case-based approaches to the role of international adjudicative bodies in consolidating principles of contemporary international law that endeavour to open a discussion on the role of the said bodies against domination and hegemony from global south perspectives. Recent scholarship has paid attention to the role of international courts such as the European Court of Human Rights against the wave of populism in Europe. Nonetheless, authors often neglect to provide a more concrete reflection on the role of supranational adjudication from a global south perspective about the impact of supranational adjudication on the global south regions.

We aim to discuss the contribution of supranational adjudication to build principles such as sovereignty in its modern and post-colonial definition (McWhinney, 1987), the notions of customary international law and persistent objector as a contribution in favour of the global south (Chimni,



2018), the respect for women rights and its impact on the global south, the protection of environmental rights in the current climate change crisis, and the role of international criminal justice.

While studying specific international adjudicative bodies' case law, we intend to highlight the role of these 'other subjects' such as social movements, third states, and NGOs, in shaping the outcomes of international human rights adjudication and other international bodies, namely, a sort of list of 'third world projects' (Eslava et al., 2017; Ragapogal, 2003) helps address issues of hegemony and the way the grassroots actors challenge it through international institutional channels. In that sense, we aim to discuss and supplement often contradictory and critical perspectives on the role of international courts. For example, some TWAIL scholars point out how international criminal justice is the product of Western hegemonic states seeking to exclude criminal responsibility for atrocities committed by Western powers against minorities and peoples under (neo-)colonial domination. (Klamberg, 2020).

This call attempts to provide a more concrete reflection on the role of supranational adjudication from a global south perspective. Global constitutionalism is the departure point to discuss the role of supranational adjudication in either accepting or challenging hegemony and domination in the global south. Furthermore, we endeavour to contribute towards de-centralizing studies on the international judiciary and their focus on the role of international adjudicative judicial bodies as lawmakers. In doing so, we intend to look at global constitutionalism and the case law of international adjudicative bodies as the result of actions driven by different subjects (not only judges or adjudicators) who participate in international law-making via judicialization. Accordingly, this call invites contributions that highlight how actors outside the court-room have contributed to the formulation of judicial decisions, principles and rules in international law from a global south perspective.

Finally, this is arguably the first academic project focused on international adjudication and the global south through global constitutionalism and hegemony-based approaches. We believe that scholarship must further discuss how supranational adjudication has paid attention or should draw attention to global south matters because, *inter alia*, several supranational adjudicatory bodies correspond to global south countries exclusively (e.g., the IACtHR, the ACtHRPR, and the ECCC) or the volume of its case-law has almost exclusively (e.g., the ICC) or to an important extent (e.g., the ICJ, the ICSID) involved and concerned states, individuals, and/or other actors from the global south. In turn, the use of comparative constitutional and global constitutional-based approaches and methodologies aims to achieve higher levels of synergies and convergences with scholars from related fields such as general public international law, human rights, and settlement of international disputes.

2. Potential topics (NB: this is an illustrative list)

In the light of the above-explained conceptual framework and rationale, the present call considers, among others, the following topics:



- Delimitation of the scope of hegemony and its link to the global south in supranational adjudication: geographical hegemony and other types of domination criteria such as gender discrimination and racialization.
- The explanatory power of global constitutionalism in a world ruled by hegemonic elites in supranational adjudication.
- Global constitutionalism and supplementary/competing approaches to the role of international adjudicative bodies (TWAIL, Decolonization, etc)
- Global constitutionalism as an empty concept, as an ongoing process and/or as a political discourse from a global south perspective, with emphasis on supranational adjudication.
- Dangers and limitations of global constitutionalism as a framework grounding the image of supranational adjudicative bodies as supranational actors in the context of cases related to the global south.
- Discussion and/or problematization of the metafunction of supranational adjudication, examining the influence of global constitutionalism in shaping authority and legitimacy of the international adjudicative bodies when tackling matters concerning the global south.
- Global constitutionalism and hegemony behind and beyond the supranational courtroom: unseen actors, networks, and processes in global south scenarios examined through empirical and socio-legal approaches.
- Global constitutionalism from below: "other subjects" and networks. building constitutional values and principles.
- Whether, to what extent, and how the application or observance of global constitutionalism standards by supranational adjudicative bodies may or may not advance post-decolonizing trends in international law and comparative public law.
- The strengths and weaknesses of *regional* adjudicative bodies compared to those of *international* adjudicative bodies in terms of an (adapted) application of global



constitutionalism standards or principles in specific developing regions of the world and/or with regard to issues that are more pressing to developing states.

- Whether and to what extent non-judicial bodies such as political, 'executive', or 'legislative' organs of international organizations rather than supranational adjudicative bodies should deal with the expectations on the development, adaptation, and/or application of global constitutionalism in addressing global south problems.

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