3rdCongress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
28 September – 1 October 2014
Seoul, Republic of Korea

Session I: Challenges of Social Integration in a Globalised World

Report by
Mr Valery ZORKIN
President of the Constitutional Courtof the Russian Federation

Dear colleagues! Ladies and gentlemen!

The difficulty of all-human integration, which we are discussing today, is connected inseparably with the growth of global challenges and threats. Split of the world community to winning countries, which gain all the profit from the process of globalisation and, using words of Jurgen Habermas, "defeated countries", becomes one of the main factors of disintegration of the all-world human society.

Nowadays the main advantages of global interaction belong to the most economically powerful states, transnational monopolies, and even some family clans. Common global social space turns more and more to the arena of struggle of egoistic interests, which sometimes have a criminal nature. I mean the situations when transnational criminal groups, interfering in legal business, begin to influence the global economy.

It leads to marginalisation and deprivation of people in many (primarily developing) countries of decent life, to the growth of a number of "unwanted people" who become a target for extremists' ideas and practices. This tendency leads to the reaction which is expressed in revival of various local identities (in the first place - confessional and ethnical ones), which quite often oppose to the rest of the world.

From a legal perspective distribution of the world economy income in accordance with the principle of accumulated advantages leads to the substantial *limitation of the majority's right to development*. And that is why it is a step aside from fairness.

In this regard the following questions arise:

- Why does law, which because of its universal significance is the most effective instrument of social integration, obviously cannot cope with this function in the frameworks of the global social space?

- What needs to be done for improvement of effectiveness of the integrative function of law?

The necessity of solving of two general problems arises from the

abovementioned questions. **The first problem** is improvement of the legal doctrine following the goal of better understanding of the place of law in the modern world. **The second problem** is development of democratic routes of supranational law-making.

Concerning the first problem I would like to clarify and at the same time to stress my point in the following way: **Does the liberal-individualistic point of view on human rights, which is predominant today, really correspond to the tasks of social integration of all the mankind?**

Giving the response to this concern from a perspective of human rights, being understood as a quintessence of reasonable foundations of people's community, I believe, one shall address the ideas of distinguished philosopher Immanuel Kant. And one shall agree that the nature, which created a human as a rational being, was intending to develop these rational prerequisites not in a human being per se, but in the all humankind, leading it to reaching a "perfect civilian community of all the mankind" based on law.

Kant wrote that if to try to discover the aim of the nature in meaningless human routine, where a lot of things are made of "childish anger and passion to destroy", one will recognise that potential of a person as a reasonable being is "*realised in full not in an individual but in a genus*". It is not a sole human being regardless of his or her abilities, could be called a crown of nature, but all the mankind with regard to its unrealised yet potential.

From this perspective the law, being the most complete reflection of rational foundations of social rules, has to promote preservation and development of all the mankind and, at the minimum, not to undermine foundations of its preservation and development. Meanwhile, the real life shows that liberal-individualistic interpretation of human rights often contradicts to this imperative. One can see it in different spheres of human life – from egocentric behaviour of economic monopolies grabbing the main Planet's life-supporting resources, to aggressive struggle of sexual minorities to equality of opportunities of their self-realisation, including such controversial issues as upbringing of adopted children.

These facts which seem to be very different one from another have a common route – individualistic ideology, which currently defines the dominant approach towards understanding of the core meaning and content of human rights. From a perspective of this approach a person regards the world not as an environment which has inner connections and ties with this person, which is a precondition for continuation and rise of the mankind, but rather as a sum of external means which he or she can use for a personal well-being and success.

I believe that rejection from this strain influence of this interpretation of liberalism would contribute a lot to strengthening of the role of law in securing social integration.

I have to stress: I am challenging neither the ideology of liberalism nor the principle of liberal understanding of law according to which a human being is free in his or her actions unless this freedom violates freedom of others. My point is that the concept of "freedom of others" should be interpreted in the context of the mankind as a whole, since freedom of each and every person is possible only

when free development of all the mankind is preserved.

The second problem which I have addressed **is development of democratic routes of supranational law-making.**

We see that while proneness of conflict of the modern world is complicating, the need for legal regulation of international relations is increasing. I am sure that a conceptual foundation for securing of this social request can be found in an emerging concept of the global constitutionalism.

I have to mention in advance that I understand the concern of those who regard formation of global constitutionalism as a threat of losing national ability to determine foundations of their national and social regimes within their domestic constitutional frameworks independently. Difficulties and dangers connected with the democratic deficit of law-making within the supranational and, moreover, global level – are understandable.

But from the other hand, for me it is not less obvious that without a transfer of some state functions to the level of international structures in accordance with the idea of *united nations* - that is the idea of *united sovereignties* (provided that they are united *on the ground of equality*) – it is impossible to deal with numerous challenges of globalisation. Including such dangerous trends as privatisation of global public space by several states which adhere to the concept of global leadership as well as by transnational financial economic groups which create international networks of global influence which function in accordance with their own rules.

By this moment theoretical formation of the doctrine of global constitutionalism is only being developed. That is why I would address just some conceptual frameworks of this idea originated from the Kant's project of "eternal peace".

According to Kant this peace is possible only within the frameworks of a universal federation of sovereign equal republics. I believe that all the characteristics of this cosmopolitan union of states, which were listed by Kant (these are: **sovereignty, equality, and republican form of government**) have the principal importance and nowadays, taking into account some additional content, they still are of an actual significance.

I strongly disagree with those who claim that departure from the principle of **national-state sovereignty** is the only way to secure safety and human rights in globalising world.

All of us understand that the modern meaning of sovereignty is not just a maxim of Jean Bodin who said that: "*Sovereignty is an absolute and permanent state power over its nationals and citizens*" – the maxim which lies in the basis of the Westphalian international system. However, taking into account that this power is not an absolute anymore, it means that the world moves from the ancient lawless sovereignty which was understood as *the right of the strong to abuse* – to modern legal construction of sovereignty as *lawful organisation of power*.

Herewith it does not mean that I am talking about dying away or destruction of sovereignty of states, but I rather mean voluntary association of sovereignties of different states, seeking to provide more effective guarantees of human rights.

The world system which corresponds to all the requirement of safety, which is able to oppose all challenges and threats of globalisation, can be built only by sovereign states which united their powers and sovereignties on the grounds of voluntary participation and equality. And this is the only possible way for global integration of all the mankind.

Special difficulties within the context of the problem of correlation between principles of global constitutionalism and national-state sovereignty are concerns about human rights protection. I assume that for many of us substantial weaknesses of the “responsibility to protect” doctrine which replaced the failed doctrine of “humanitarian intervention”, are obvious.

The approach towards the state sovereignty not as a privilege but as a responsibility is undoubted. This approach includes the obligation of states to provide guarantees of rights of its citizens as well as the right of the international community to control implementation of this obligation. However, the devil is in details. And details of this concept are not well-elaborated. It opens a room for abuses of “global leaders”. The consequences we may see on the examples of Iraq, Libya, and Syria.

I believe that some clarifications of the main United Nations documents would be an important step on the way of improvement of the international law system. These clarifications could define legal borders and hierarchy of such fundamental categories as the state sovereignty, human rights, obligation of states to protect human rights, responsibility of all the world community for maintenance of human rights all over the world etc. Only on the ground of legally confirmed consensus of the world community it is possible to restore trust to international and supranational legal and political institutions. The other way round, extension of current legal uncertainty could lead to collapse of international law and return to the archaic right of the strong.

In my opinion on this stage we shall agree that a theoretical model of global constitutionalism can be constructed as a multilevel system, where an inner republican constitution is complemented with international public law which regulate relationships between states, and with the global layer of human rights. Within the mainstream of this theoretical construction we can search for solutions of problems arising on the way of global constitutionalism as an institutional foundation of the all mankind integration.

An important step on this way would be consequent formation and development of regional systems of human rights protection, based on corresponding conventions, and secured with mechanisms of court law-enforcement. When the Asian Convention on Human Rights will be enforced (and it will hardly be just a copycat of the European Convention) we will be able not just in theory but also in practice estimate intersection points between the European understanding of law and the Asian one, which in future would lead to creation (or natural formation) of the universal understanding of law. And there are all grounds to believe that as a result we would be able to harmonise the liberal-individualistic understanding of law from the position of strengthening of its solidarity foundations.