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SERIE
DOCUMENTOS DE TRABAJO
DEPARTAMENTO DE DERECHO CONSTITUCIONAL

**Regional systems of human rights
protection as a cornerstone
in the constitutionalization
of international law: Towards
a multilevel constitutionalism**

Paola Andrea Acosta Alvarado

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Paola Andrea Acosta, Editora
Calle 12 n.º 1-17 Este, Of. A-306. Bogotá, Colombia
www.icrp.uexternado.edu.co/

Presentación

Los *Documentos de Trabajo* son un espacio para la reflexión y el debate. A diferencia de otros formatos, esta serie ofrece un palco para los trabajos inacabados, para la discusión de las ideas en formación y el perfeccionamiento de los procesos de investigación. Se trata pues, de textos que salen a la luz para ser enriquecidos con la crítica y el debate antes de pasar por el tamiz editorial.

En esta colección se sumarán cinco grandes áreas del conocimiento: el derecho constitucional, el derecho internacional, la sociológica jurídica, la teoría y filosofía del derecho. Además, de poner a prueba nuestras ideas, el cometido principal de esta publicación es aportar a los debates actuales, tanto aquellos que se viven en la academia como los que resultan de la cada vez más compleja realidad nacional e internacional.

Esta publicación está abierta a todos los miembros de nuestra Casa de Estudios, profesores y estudiantes, así como a quienes nos visitan. Esperamos contar con el aporte de todos aquellos interesados en la construcción de academia.

MAGDALENA CORREA HENAO
*Directora del Departamento
de Derecho Constitucional*

PAOLA ANDREA ACOSTA A.
Editora

Regional systems of human rights protection as a cornerstone in the constitutionalization of international law: Towards a multilevel constitutionalism

The consolidation of international human rights and the changes it has brought can be understood as a result of various phenomena. On the one hand it can be seen as another example of the fragmentation of international law, on the other, it can be understood as a response to the national deconstitucionalization, so it can be seen as a step towards the constitutionalization.

From our point of view, it is a phenomenon that has a bit of all of those. In fact, we believe that this consolidation shows a process of humanization and international constitutionalization, which is both fuelled by and a response to fragmentation and deconstitucionalization.

Indeed, the regional systems' strengthening shows the existence of new general and fundamental values, thus, the existence of an international community in charge of its protection, as this duty is no longer exclusively incumbent on States. In this context, the idea of an international public order, among others, developed by the regional courts, is a cornerstone of constitutionalization.

Likewise, the work of these systems has led to the reformulation of many basic concepts of international law, and to establish its own rules including rules not strictly related to the traditional internationalist perspective. This can be understood as a manifestation of the so-called fragmentation, however it is primarily a useful scenario to the constitutionalization as this new reading is one of its basic prerequisite.

Moreover, thanks to new tools of regional systems such as the pilot judgment procedure and the control of conventionality, we can speak of a reformulation of the relationship between international law and domestic law which allows us to eventually think that regional courts can be seen as constitutional courts, as well as setting up a network of global goods protection with different scales. At first, we might think that rather than a harmonious collaboration between national and international there is a tension between both, but the recent work of the regional courts and the national courts leads to another conclusion: there is a growing relation of collusion that only needs to be harmonized.

In this context, our research claims the role of regional systems in the constitutional process and, moreover, shows that, nowadays, their work is leading to one of the first steps of what we call (adapting Pernice or Peters' model) polyarchic multilevel constitutionalism. Indeed, in our opinion, the constitutionalization of international law is a multistep process which finds its first layer in the relations between states and their regional ties, especially those regional scenarios for the promotion and protection of general interests of the international community.

In this sense, the jurisprudence of both, the European system of protection of human rights and the Interamerican system, the most advanced in the area, offer us strong evidences of three key lines mentioned above that we will highlight.

In sum, our work aims to describe the most interesting tools that serve to regional systems to, first of all, lay the foundations of constitutionalism, then to generate the context which help to its implementation, and finally, to build the foundations of a constitutional network. So, in general terms, our research addresses three major issues:

The claim of the key concepts of constitutionalism by regional systems: the existence of an international community and human rights as core values

The reinterpretation of international law by the regional systems: between fragmentation and constitutionalism

The reinterpretation of the relationship between International Law and domestic law: towards a multilevel and polyarchic constitutionalism.

As noted, our project coincides at various points with the initiative COST Action 1003. First we start with the same assumption: fragmentation and constitutionalization are two phenomena intertwined. In the second instance many of the concerns raised in the initiative can find answers in our work.

For example, among others, as the Working Group I, we also asked about the role of regional and local authorities in the recognition and implementation of constitutional values and in the harmonization of two seemingly contradictory processes such as fragmentation and constitutionalization. Also, we wonder how it stands the multi-governance and constitutionalism from the regional scenarios of human rights. Similarly, as the Working Group II, we also intend to highlight the role of the functional diversification of international law and the fundamental role of international human rights law in the constitutional process.

Last fall in Florence, during the last PhD school, we showed the general ideas of our project, specially we tried to point out, what we think are the principal contributions of the regional systems of protection of human rights to the constitutionalization of international law. However, in this opportunity we want to analyze a more punctual phenomenon: the creation of a judicial network of protection in the interamerican scenario and, with that, the crea-

tion of a regional community of human rights (a regional community of law) which works as foundation to the multilevel constitutionalization. To prove the existence of that network we intend to analyze the normative fundament and the case law tools that help such interaction, and how both of them are useful to the constitutionalism.

This contribution have a particular interest to this new meeting of the PhD school to the extent that we can help to the debate about coordination –but not unity, even less hierarchy- of the different levels of protection and how this can help to de constitutional process. This perspective, can contribute, as well, to show how constitutionalism and pluralism are not so far each other.

WORKING PLAN

The interamerican network of human rights protection: towards a constitutional process

– The new relations between international and national law: the constitutional block and the article 2 of the ACHR as normative fundament of the interaction between interamerican and national judges.

– The case law tools to built the network: the conventionality control and the consistent interpretation.

