

THE EMERGING INTERNATIONAL CONSTITUTIONAL ORDER: THE IMPLICATIONS OF HIERARCHY IN INTERNATIONAL LAW FOR THE COHERENCE AND LEGITIMACY OF INTERNATIONAL DECISION-MAKING

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Summary

The article examines the contours and implications of the emerging international constitutional order. The "constitutional" nature of this order relates to the fact that it contains certain fundamental substantive and structural norms that form a supreme legal framework for the exercise of public power. The substantive elements primarily include the value system of the international legal order, meaning norms of positive law with a strong ethical underpinning (notably human rights norms) that have acquired a special hierarchical standing vis-à-vis other international norms through state practice. The structural elements refer to the subjects of the international legal order that collectively constitute the international community (polity), as well as the mechanisms for enforcement of the international value system.

This vision of an international constitutional model is inspired by the intensification in the shift of public decision-making away from the nation state towards international actors of a regional (for example EU) or functional (for example WTO, UN) nature, and its eroding impact on the notion of a "total" constitutional order, where the fundamental substantive and structural norms that form the supreme legal framework for the exercise of public power are concentrated in the nation state. It is also inspired by the belief that such a supreme legal framework is only possible in a system where different national,

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regional and functional legal orders complement each other in order to form an international constitutional order.