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“Comparative Law and International Organizations: Competition, Cooperation and Connections”

Colloquium at the Swiss Institute of Comparative Law

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Contemporary comparative law is more than just a method of legal research. The explosion in numbers of international organizations after the Second World War dragged this “academic law” out of the shadows of legal libraries and made it become an instrument of and material for the construction of new legal institutions .

International organizations today are veritable laboratories of “living comparative law” where the practical implementation of comparative methods may be observed. In fact, the use of comparative law by international organizations occurs on several levels.

On the one hand, comparative law is applied in the construction of international entities. Indeed, international organizations and, in consequence, the international law they produce are “artificial legal orders” as opposed to the usual “naturally grown” legal orders of states. Historically, the national legal orders developed before international organizations, which, therefore, have been designed after the image of the former. Thus comparative law has become not only an instrument of construction, but also a sphere of competition among several legal traditions: the duel between the civil law and common law was followed by the increasing influence of the law of the Nordic countries as well as the Islamic legal tradition and the law of the former socialist countries. In order to be able to understand international organizations, it is essential to analyze this “competition of legal traditions” and to study the nature of international entities and of the law they produce: Is one legal tradition predominantly influencing an international organization – and what are the reasons and the consequences? Or is it actually a “chemical reaction” resulting in hybrid legal orders, for example somewhere between common and civil law, a fusion of elements from several legal families or traditions?

On the other hand, comparative law unquestionably also plays an important role in the daily work of international entities. Comparative studies concerning the legislation and practice within the member states are becoming an increasingly important part of the international organizations’ legislative process. This approach bears witness to the goal of finding a common denominator, a universally acceptable minimum standard, or a model-law conveying the most suitable solution. Within the work of international developmental organizations, comparative law is often a tool in the search for the best solution when proposing legislation to be adopted in assisted countries.

Furthermore, the case-law of the international courts facilitates the transposition of concepts from one legal tradition to another, thus contributing to blurring the boundaries between the major legal traditions. To give but one example: by interpreting the notion of “contractual obligations”, the European Court of Justice imposes on the British judge the duty to apply, in certain cases, a concept originating in the continental legal traditions.

Comparative law is therefore used as a reservoir for good practices, optimal legal solutions that enable international legislators and judges to propagate the models of law which best correspond to the objectives of the organization which they represent. By allowing for a “free movement of models of law”, the normative and judicial activities of international organizations contribute to the erasing of the borders separating the major legal traditions. The impact of this tendency on actual and future legal systems requires reflection: Which legal tradition shapes a changing legal system? Is it primarily one tradition, or does it incorporate the features of two or more legal traditions? What are the implications of “hybrid” models of law? And what are the reasons for the influence of a legal tradition? Is it the feature and quality of a legal tradition, geopolitical factors, the personalities involved, or pure coincidence that determines the influence of a legal tradition?

The aim of this conference is to lay the foundations for finding the answers to these questions. In three half-days, the conference endeavors to open up avenues for reflection on the functioning of international organizations, on the contents of the international legal rules they produce and on the crossed influences of the major legal traditions (e.g., civil law, common law, Islamic law, law of the Nordic countries, and law of the former socialist systems). Furthermore, the reverse influence of the international entities and their legal rules on the internal law of the member states will also be examined.

Taking examples such as the United Nations Organization, the European Union, the Council of Europe, the European Court of Human Rights, the World Trade Organization and the World Bank, this conference aspires to study the international organizations, on the one hand, as hybrid legal systems (1st half-day, 9th of September), and, on the other hand, as “consumers” and “producers” of comparative law, confronting their member-states’ national legal orders to search for and propagate the “most suitable solutions” (2nd half-day, 10th of September). These two topics will be brought together in a round table discussion on the various interactions between national and international legal orders and the different roles of comparative law in this process (3rd half-day, 10th of September).