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International Conference

The Comparison of Constitutional Law: An Asian – European Dialogue



Macau, 25/26 November 2008

The comparison of constitutional law is of rising importance worldwide. The increasing international and economic interrelations between states have resulted in a growing need to analyse constitutional issues in a comparative approach. This conference shall address the contemporary challenges of comparative constitutional law in theory, as well as in practice. It shall also serve as a starting point for a long-term cooperation on this topic between Asian and European universities.

Conference Program

Location: University of Macau, Faculty of Law
Stanley Ho Building (何鴻燊樓)
Moot Court, Law Faculty, Room S201

Project Coordinators:

Dr. Rostam J. Neuwirth LL.M., Assistant Professor
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Dr. Konrad Lachmayer, Department of Constitutional and Administrative Law, University of Vienna; konrad.lachmayer@univie.ac.at

Conference Program

Tuesday, 25 November 2008

9.30 Registration

10.00 -10.30 Welcome Address and Group Photo

Prof. Zeng Lingliang, Dean of the Faculty of Law, University of Macau
Prof. Rostam Neuwirth, University of Macau

10.30 – 11.00 General Introduction

Dr. Konrad Lachmayer, University of Vienna

11.00 -11.30 Coffee Break

Session I

11.30 -13.30 Challenges and Perspectives on Comparing Constitutional Law in Europe and Asia

Chairperson: Prof. Rostam J. Neuwirth

Prof. Mahendra P. Singh, National University of Juridical Sciences, Kolkata, (*"The Indian Perspective"*)

Prof. Surya Deva, City University of Hong Kong (*"Marrying Socialist Constitutions with Free Market Ideology: What can China Learn from Indian Constitution's Flirtation with the Right to Property?"*)

Prof. Bea Verschraegen, University of Vienna (*"The European Perspective"*)

13.30 - 15.00 Lunch Break

Session II

15.00-17.00 International Constitutional Law and the Constitutionalization of International Law

Chairperson: Dr. Konrad Lachmayer

Dr. Christina Binder, University of Vienna (*"The UN Charter as Global Constitutional Law? Old Ideas and New Perspectives"*)

Prof. Muruga Perumal Ramaswamy, University of Macau

Prof. Rostam J. Neuwirth, University of Macau (*"WTO Constitutionalism: Insights from China, India and the EU"*)

19.00 – Conference Dinner

Conference Program

Wednesday, 26 November 2008

Session III

9.45 – 11.15 The Relevance of Comparative Constitutional Law in Supreme and Constitutional Courts

Chairperson: Prof. Gui Jesus Conde e Silva

Dr. Bedanna Bapuly, Austrian Academy of Science (*"Constitutional Courts in Europe"*)

Dr. Denis Halis, University of Macau (*"Constitutions "in Action": Comparative Approaches"*)

11.15-11.45 Coffee Break

Session IV

11.45-13.00 Constitutional Law and Private Law

Chairperson: Prof. Bea Verschraegen

Prof. Tong lo Cheng, University of Macau (*"The Chinese Perspective"*)

Dr. Judith Schacherreiter, University of Vienna (*"Land Property Beyond Public and Private law"*)

Prof. Gui Jesus Conde e Silva, University of Macau (*"Arbitration and Constitutional Law"*)

Session V

13.00-15.15 Methodology in Comparative Constitutional Law

Chairperson: Dr. Denis Halis

Dr. Konrad Lachmayer, University of Vienna (*"Different Approaches towards a Methodology in Comparative Constitutional Law"*)

Joachim Stern, University of Vienna (*"Applied Methodology in Comparative Constitutional Law"*)

15.15-15.45 Coffee Break

Concluding Session

15.45-17.00 Final Discussion: Future Perspectives

End of the Conference



International Conference: The Comparison of Constitutional Law Asian – European Dialogue

Conference Outline

Comparative constitutional law is increasingly important worldwide. Although the tradition of comparing constitutional law is deeply rooted in legal history, constitutional comparison is situated at the crossroads in a globalizing world. The conference aims at addressing the contemporary challenges of comparative constitutional law. In particular, four crucial questions shall be raised: How to compare constitutions? How to deal with the impact of international law on domestic constitutional law? More in particular: what mediating factor may international law when confronted with national differences? Which role can be played by comparative constitutional law in legal formation?

The conference involves China, India and Europe in the comparison of constitutional law. The reason for this is the political and economic importance of these regions, the different cultural perspectives and the interesting constitutional developments. The possibility of a global comparison on constitutional law can perfectly be tested and proved between these so different constitutional systems in this Asian-European dialogue.

In the era of economic and technical globalization, the comparison of different domestic legal systems is of increasing importance. The specific national constitutional framework is of immediate relevance for individuals, like businessmen, lawyers, tourists or migrants. Comparing constitutional law is also useful for state actors. The classic motivation for a comparison of one's own constitution with other constitutions is case-specific and may, for instance, consist in the consolidation of one's own interpretation of a certain case. Thus, there is vivid debate about the role of the comparative argument with regard to interpretation. Another purpose of comparative constitutional law is directed "*pro futuro*" and aims at improving possible future constitutional reforms or amendments. In the process of constitution-making, other constitutions can be of special interest. In short, the purpose of comparative constitutional law in a state is that the knowledge about other constitutions can support the legislative norm-creating process (both creating general norms and creating individual norms).

Furthermore, the increasing competence in the legislative sphere of international organizations and especially of the European Union have created a specific need for a comparison (also) of constitutional law. The different ways of dealing with a legal problem within a domestic constitutional system provides important information for European and international organizations to form and develop their own legal system.

Both, the internationalization of constitutional law and the constitutionalization of international law stress the increasing interrelation between constitutional and international law. Thus, a comparative constitutional law approach has to consider the impacts of international law too. This need is well exemplified in the context of the World Trade Organization (WTO).

The methodological debate about how to do this constitutional comparison has been not solved yet. Comparing constitutional law implicates at least two different constitutional systems. In these cases it is often the own constitutional order and one other constitutional system. In most of the cases a whole range of constitutions are compared. In this way, the question remains: how to compare the different systems? There are various approaches towards the methodology of comparing constitutional law. Starting point is a functional approach which has a problem-oriented aspect. Critical approaches show that this functional approach does not reflect sufficiently the cultural preconditions of the position of the person who is working on the comparison. Thus, a reflective approach, which considers these cultural dimensions, seems to be more appropriate. The problems of language, especially the personal limits of knowledge and understanding of several constitutional legal orders remain also unresolved. Thus, comparing constitutional law means the reconstruction of different constitutional orders within the perspective of the respective comparing person. To do this in a serious way implicates to reveal the own methodological preconditions and to start a scientific discourse about the (constructed) results of the analysis.

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