

How do Swiss Cantons Implement International Law? Actors and Mechanisms

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Abstract

International law instruments are increasingly used as tools to tackle global challenges, but they often require implementation at the national and sub-national levels. While the implementation of international law at the national level has been largely documented, implementation at the subnational level is an under-explored process. Yet, subnational entities regularly enjoy a degree of sovereignty, which raises questions such as whether – and how – they implement international law. This paper aims to explore this question, using the implementation of the Council of Europe's 2011 Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) in Switzerland as a case study. Domestic violence is a topical issue both internationally and regionally. In Switzerland, the implementation of the Istanbul Convention is complicated by the fact that several obligations fall under the competencies of subnational entities – the cantons. To facilitate the implementation of the Convention at the cantonal level, federal actors decided to use the Swiss Conference against Domestic Violence (CSVD). The CSVD is an intercantonal conference, i.e. a mechanism allowing members of the federal and cantonal levels to discuss issues of common interest. It acts as a network of civil servants embedded within cantonal administrations who are in charge of domestic violence issues. This paper analyses the role of intercantonal conferences and demonstrates that they facilitate the exchange of information and best practices, but play a limited role with regard to implementation. I also use the concept of regulation intermediaries to observe the work of civil servants who take part in the CSVD. I argue that these domestic violence experts use international law as a tool and as an argument to support the fight against domestic violence at the local level. In this sense, they perform a “non-legal” implementation and make a “strategic use” of the law to solve problems. These findings allow to explore how international instruments are used and implemented at the local level.

Words: 9,588 (excluding Bibliography)

1. Introduction

International law instruments are increasingly used as tools to tackle global challenges, but they often require implementation at the national and sub-national levels. During the last decades, there has been a significant amount of research on the national implementation of international law. However, the implementation of international law in federal states is an under-explored process. Subnational entities regularly enjoy a degree of sovereignty, which allows subnational actors to use discretion in how they use international instruments in their response to global challenges. Thus, the main research question of this article is *whether – and how – international law is implemented at the subnational level?*

To address this overarching question, I decided to use the implementation of the *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention) in Switzerland as an exploratory case-study. Three reasons support this choice. First, domestic violence is a global issue, which “occurs around the world with few differences from one region to another”, according to the WHO.¹ It is tackled at the European level by the Istanbul Convention and it is also a topical issue in Switzerland. Second, the implementation of the Convention is complicated by the fact that several obligations fall under the competencies of subnational entities in Switzerland – the cantons. Third, the Convention entered into force for Switzerland on 1 April 2018. Therefore, there has been much discussion and activity around its implementation during the last years.

To facilitate the implementation of the Convention at the cantonal level, federal actors decided to use intercantonal conferences. These “conferences” are in fact coordination mechanisms where members of federal and cantonal levels meet to discuss issues of common interest. In the case of the Istanbul Convention, the Swiss Conference against Domestic Violence (CSVD) was mandated to facilitate the intercantonal implementation of the Convention. The CSVD acts as a network regrouping the civil servants embedded within each cantonal administration, who are in charge of domestic violence issues. In this paper, I observe *how intercantonal conferences contribute to the implementation of international law at the cantonal level*. This also enables me to shed light on the nature and functioning of intercantonal conferences of experts, a topic that has rarely been studied by the literature on federalism (Vatter, 2018). Finally, I scrutinise the work of the individual members of the CSVD, cantonal civil servants in charge of domestic violence issues. I use the concept of regulation intermediaries to frame their role and to explain *how they contribute to the implementation of the Istanbul Convention*. This allows me to discuss how local and regional actors use international instruments to tackle global challenges.

¹ <https://www.dw.com/en/who-calls-domestic-abuse-a-global-problem/a-16900699>

In the next section, I outline the theoretical framework and the literatures on which this article is based. Section 3 presents the design and methods used for this research, while section 4 outlines the multi-level mechanisms put in place in Switzerland to implement the Istanbul Convention. Section 5 draws on the data collected to shed light on how intercantonal conferences and civil servants contribute to the implementation of the Convention. Finally, section 6 uses a lawmaking process in the canton of Neuchâtel as an example to highlight the main claims of this article.

2. Theoretical Framework

2.1. International Law Implementation, Regulation and Intermediaries

This article first draws on international law literatures, as legal scholars have extensively published on the implementation of international law, notably international human rights law. In this article, we define international law implementation as “the act of putting into effect a norm of international law within the legal order of the state” (Beenakker, 2018, p. 15). We focus on an international Convention, but we bear in mind that a Convention is not a rule; it establishes rules² that have to be implemented. This is why this article notably focuses on specific obligations of the Istanbul Convention. Few legal scholars have written on the federal challenges of implementing international human rights law in Switzerland (Besson & Belser, 2014; Wyttenbach, 2017). When they have, they have “disproportionately focused on domestic courts” (Schmid, 2019, p. 52), probably because human rights traditionally were “a model focused on judicial protection” (Lorion, 2019, p. 240). During the last two or three decades, the model has started to change, notably with the establishment of national-level institutions aiming at implementing international human rights law. This was notably caused by a perceived crisis of human rights, as “the UN had diagnosed the ‘failure’ of international monitoring” (Lorion, 2019, p. 240). As a result, in the early 2000s, international human rights instruments started “to prescribe structures and processes that states should set up domestically in order to implement treaties”(Jensen, Lagoutte, & Lorion, 2019).

Many avenues for research on the implementation work of state actors in practice remain open (Lagoutte, 2019). So far, much of the literature has focused on independent state actors, such as national human rights institutions. But international law increasingly prescribes the establishment of government-based structures to facilitate implementation. The fact that such structures are not independent from political whims might raise additional challenges for implementation, as we will see in this article. In the United States, one recent study has observed the implementation of treaties through “subnational mechanisms” (Ku, Henning, Stewart, & Diehl, 2019). The authors give an account of subnational implementation, providing examples, but not focusing on a specific case study. They note that “there is room for careful empirical research and documentation describing the extent and contours of this phenomenon [subnational implementation of treaties]” (Ku et al., 2019, p. 106).

² Article 38, paragraph 1, number 1 of the Statute of the International Court of Justice

Their article highlights forms of cooperation between national and subnational levels, which seem to be less developed than in Switzerland. Consequently, the multi-level cooperation mechanism that are described in this paper might be of interest for US scholars and practitioners. Finally, I draw inspiration from the work of Risse, Ropp and Sikink on domestic compliance with human rights, who notably argue that compliance is more difficult to reach when it requires collaboration between several decentralized actors (Risse & Ropp, 2013).

The literature on regulation and governance is also insightful to analyse the issue at hand. Regulation may notably take the form of rules (Abbott, Levi-Faur, & Snidal, 2017); thus the Istanbul Convention is – in itself – regulation. Traditional research on regulation focused on the two-party relationship between regulators and targets. More recently, a third actor – intermediaries – has emerged in-between (Abbott et al., 2017; Brès, Mena, & Salles-Djelic, 2019). This analytical move was notably made to address changes in the nature of regulation, such as the rise international regulation, and the “wide variety of actors that act as intermediaries in this kind of regulation” (Abbott et al., 2017, p. 17). Pegram has applied this new regulatory model to two international Conventions: the Optional Protocol to the Convention against Torture, and the Convention on the Rights of Persons with Disabilities. He explains that international treaties “are binding laws intended to change the behaviour of the targets: states acting individually” (Pegram, 2017, p. 228). In this analysis, the regulator is the states, who act collectively through an international treaty, and the targets are the states, individually (the analysis is complexified, as regulators and targets are closely related). Both treaties analysed by Pegram create international bodies of independent experts and prescribe the designation of national institutions for monitoring and implementation, which he qualifies as international intermediaries and national intermediaries, respectively (Pegram, 2017). This work is insightful for us, as the Istanbul Convention also creates an international body of experts and prescribes the designation of a national institution for monitoring and implementation.

2.2. Multi-level Governance and Federalism

The topic at hand also relates to the policymaking and multi-level governance (MLG) literatures. The internationalization of policymaking has been intensively studied in the last decades, including from the Swiss perspective (Linder, 2017; Sciarini, Fischer, & Traber, 2015; Sciarini, Nicolet, & Fischer, 2002). Existing literature acknowledges the fact that international decisions can directly impact on cantonal core policy domains (Linder, 2016, pp. 112-113). However, this topic has never been studied in-depth.

In parallel, the literature on MLG emerged in the 1990s, notably under the impulsion of Lisbeth Hooghe and Gary Marks, the authors of seminal studies in the field (Hooghe & Marks, 2003; Hooghe et al., 2017; Hooghe et al., 2016). There now exist in MLG literature a “consensus that the nation state undergoes a transformation of its structure and functions” (Maggetti, forthcoming). Political power spreads at the same time upwards – towards the international level – and downwards – towards

the sub-national level (Maggetti, forthcoming). The topic under scrutiny could be a manifestation of this process, since norms established at the international level could be implemented at the sub-national level, bypassing the national level. Alternatively, other authors have argued that higher normative ambitions at the upper levels should lead to a reduction of autonomy at the lower levels (Schmid, forthcoming). According to this last theory, multi-level governance would be detached from the democratic circuit (Papadopoulos, 2010). In this logic, the sub-national level could be relegated to the rank of mere implementer of decisions made at the national and international levels. Based on this, this paper's overarching goal is to explore *whether – and how – international law is implemented at the subnational level*, and related challenges.

Federalism is a much older concept than multi-level governance, but both are intrinsically linked nowadays (van der Wusten, 2015). Swiss federalism is evolving and related literature will be particularly relevant for this research. Intercantonal conferences are a telling example of this evolving process, as they are rather recent instruments of federalism in Switzerland. The Conference of cantonal governments (CdC), the most important of these conferences, was set up in 1993, “to ensure that the cantonal interests are considered in the Europeanization process” (Vatter, 2018, p. 75). Vatter explains that there exist different types of intercantonal conferences. The CdC constitutes a first type. Second, there are 12 conferences of ministers, such as the Conference of Cantonal Ministers for Justice and Police (CCDJP) and the Conference of Cantonal Ministers of Social Affairs (CDAS). Third, there are intercantonal conferences of experts, which regroups specialized civil servants from the cantonal administrations. According to Vatter, “there is not much research available on such technocratic conference of experts, since they are mostly convened ad hoc on a case-by-case basis out of specific demand” (2018, p. 81). The Swiss Conference against Domestic Violence (CSVD), which is one of the main focus of this article, is one of such intercantonal conferences of experts. Finally, there also are regional intergovernmental conferences, and regional conferences of experts. We will touch upon the latter in this article.

In federalism literature, intercantonal conferences are seen as reinforcing the power of cantons vis-à-vis the federal level (Füglister & Wasserfallen, 2014; Vatter, 2018, p. 82). It seems that intercantonal conferences were created as bottom-up mechanisms. However, policy-specific conferences now primarily engage in horizontal policy coordination (Schnabel & Mueller, 2017). Scholars have been calling for more studies on intercantonal conferences, notably on directly and indirectly Europeanized domains (Schnabel & Mueller, 2017, p. 564). This research hopes to contribute to the recent and scarce literature on those conferences. In my case study, I postulate that intercantonal conferences are used as top-down mechanisms, to implement norms coming from the international level. My first hypothesis is that *Intercantonal conferences play a key role in the implementation of international law* (H1).

2.3. Lawmaking and Administration Dynamics

Finally, I will draw on lawmaking literatures to analyse administration dynamics and individual bureaucrats. Looking at the role of civil servants in lawmaking processes, Chevallier explains that bureaucrats are not passive executioners (2011). Their resources, such as the knowledge of what is at stake and the control of information sources, allow them to take on more responsibilities and influence the production of norms. They are influenced by “the problems they have to manage [and] a vision of the difficulties to solve, measures to take [and] reforms to make” (Chevallier, 2011, p. 632). Moreover, they can use the margin of interpretation they have to make strategic use of the law. The literature on state feminism and *femocrats* highlights the blurred boundary between state gender equality agencies and women’s movement. Agencies are often staffed by women formerly active in women’s movements, who develop a “dual identity” as a result of this double affiliation. As such, these actors form an integral part of the processes of domestication and *vernacularisation* of international human rights norms highlighted by Merry. These processes approach human rights not only as law but also as a discourse and set of values for asserting claims (Merry, Levitt, Rosen, & Yoon, 2010 102). In this paper, I observe how specialised bureaucrats positioned between the international and the local play an important role in the implementation of international law and navigate plural loyalties (to the state and to the cause). Based on this and on the legal literature on the role of state actors presented above, I make the assumption that *Non-legal civil servants play a key role in the implementation of international law* (H2).

3. Research Design

To try and answer these questions, I decided to use the implementation of the *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention) in Switzerland as an exploratory case-study. Three reasons support the choice of the Istanbul Convention. Firstly, domestic violence is a widespread phenomenon in Switzerland, and therefore a serious human rights issue. In 2017, 49% of police-recorded homicides and 42% of rapes took place within the domestic sphere. While the number of domestic violence infractions remained stable in the early 2010s, it then steadily increased from 15’650 in 2014 to 19’669 in 2019.³ The issue was acknowledged by the Minister of Justice and Police before the Swiss parliament, who stated that “[o]ne out of three women faces [violence] during her life. When we look at the numbers, it is hard to believe that Switzerland has no problem”.⁴ Secondly, the implementation of the Istanbul Convention is complicated by the fact that several obligations fall under the competencies of subnational entities in Switzerland – the cantons. Thirdly, the Convention entered into force for

³ Office fédéral de la statistique, *Violence domestique* (Neuchâtel, 2020)

⁴ ATS, *Délibérations au Conseil national* (2017)

Switzerland on 1 April 2018. Therefore, there has been much discussion and activity around its implementation during the last years.

For reasons of feasibility, I decided to investigate a sample of four cantons considered as diverse, notably in terms of size, language, degree of urbanization, political position, and resources. I identified Geneva as a “most likely case” in terms of engagement: a large and urban canton with a resourceful administration and relationships with international organizations. By contrast, Schwyz could be our “least likely case”: a small conservative German-speaking rural canton with a weak administration. I added two intermediate cantons: Neuchâtel (a small French-speaking canton) and Zürich (a large German-speaking canton).

I intensively studied the implementation of the Istanbul Convention through two complementary methods, with a focus on these four cantons. First, I analysed international, Swiss, and cantonal official documents related to the Convention. Second, I conducted 25 semi-structured interviews with governmental, administrative, and parliamentary actors who have participated in the implementation of the Istanbul Convention at the federal level, in intercantonal conferences, and in these four cantons.⁵

4. The Istanbul Convention and its Ratification by Switzerland

The Istanbul Convention, formally the *Convention on preventing and combating violence against women and domestic violence*, was adopted by the Council of Europe Committee of Ministers on 7 April 2011. The Convention takes a global approach in combating violence against women and domestic violence (Lempen, Marfurt, & Heegaard-Schroeter, 2015). Moreover, it requires Parties to ensure a gender perspective is applied both when designing measures in the implementation of the Convention and when evaluating their impact (article 6). An international group of experts on action against violence against women and domestic violence (the “GREVIO”) is charged with monitoring the implementation of the Convention by the Parties (article 66).

In accordance with this global approach, article 7 requires that relevant policies should include different actors and agencies that take several measures in order to provide a holistic response to violence against women.⁶ More specifically, article 7 paragraph 3 calls for the involvement of “all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations”. According to the

⁵ Interviews were conducted with my colleague, Dr. Jonathan Miaz, in French and in German. The quotations used in this article have been translated by the author. Most interviews lasted between two and three hours.

⁶ Council of Europe, *Explanatory Report on to the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul, 2011) 12 (*Explanatory Report*)

Explanatory report, the drafters notably “wished to reflect the different levels of law-making powers in Parties with a federal system.”⁷

Indeed, in Switzerland, the Convention contains some obligations that fall within the competencies of the federal level, but also others that fall within the competencies of the cantons. For instance, on the one hand, article 35 of the Convention states that “[p]arties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalized”. As criminal law is federal in Switzerland, it is the federal state that has to make sure to respect this obligation. On the other hand, article 23 of the Convention obliges state parties to take the “necessary legislative or other measures” to provide for the setting-up of shelters in sufficient numbers for victims of domestic violence. The setting-up of such shelters falls under cantonal competencies. Therefore, only the cantons can fulfil this obligation in Switzerland.

In view of the ratification of the Convention, a consultation procedure had to be organized in Switzerland.⁸ Sometimes referred to as “pre-parliamentary consultation procedure”, this procedure “has the aim of allowing the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation”.⁹ It is mandatory for the adoption of certain legal instruments – notably for international law agreements that are subject to a referendum – and for projects, “which significantly affect individual cantons or all the cantons”.¹⁰ Cantonal constitutions generally foresee that governmental authorities are consulted during this process (Nuspliger, 2006, p. 10). Usually, cantonal governments then consult the relevant services of their administration. This procedure provides cantons with an opportunity to oppose the acceptance of new international obligations by Switzerland. For the Istanbul Convention, the consultation procedure took place between October 2015 and January 2016. The project sent into consultation by the Federal Office of Justice (OFJ) stated that “globally, swiss law fulfils the requirements of the Convention”, but acknowledges that “a few points must be clarified with regards to cantonal competencies [...] notably on the question of whether there exist enough shelter possibilities for victims” (*our translation*).¹¹ All the cantons, the major political parties, and interested institutions and organizations were invited to submit their position. The vast majority of the participants clearly

⁷ *ibid* 12

⁸ This is foreseen by Article 55 al. 3 of the Swiss Federal Constitution: “The views of the Cantons are of particular importance if their powers are affected. In such cases, the Cantons shall participate in international negotiations in an appropriate manner.”

⁹ Article 2 of the Federal Act on the Consultation Procedure, adopted in 2005

¹⁰ Article 3 of the Federal Act on the Consultation Procedure, adopted in 2005

¹¹ Office fédéral de la justice, *Projet mis en consultation : Convention du Conseil de l'Europe du 11 mai 2011 sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique* (convention d'Istanbul) (Berne, 2015) 2

supported Switzerland's ratification. Only three cantons and one party opposed the ratification.¹² After its ratification, the Convention entered into force for Switzerland on 1 April 2018.

5. A Multi-Level Network of Actors for Implementing the Convention

5.1. The Official Set-Up of the Network

With regard to implementation, article 10 of the Convention states that parties shall “designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures”. The Explanatory report specifies that “[t]he term “official body” is to be understood as any entity or institution within government”.¹³ It adds that “[r]egarding the tasks of implementation, monitoring and evaluation this body should be in existence on the respective level of a Party's structure which is responsible for the carrying out of the measures. This means that in a federal government structure it may be necessary to have more than one body”.¹⁴

Despite these incentives, Switzerland decided to designate only one official body: the Domestic Violence Domain of the Federal Office for Gender Equality (BFEG).¹⁵ In addition to this single official body, Swiss governmental authorities designated other organs to ensure the implementation of the Convention at the cantonal level, although they were not designated as official bodies. The Conference of Cantonal Ministers for Justice and Police (CCDJP) and the Conference of Cantonal Ministers of Social Affairs (CDAS) mandated the Swiss Conference against Domestic Violence (CSVD) to facilitate the intercantonal implementation of the Convention.¹⁶ The CSVD is an intercantonal conferences of experts (Vatter, 2018, p. 81), which regroups specialized civil servants who are in charge of domestic violence issues in each cantonal administration. It was founded in 2013, so that these civil servants could speak with one voice in cases of consultation procedures or other national projects regarding domestic violence. Before that, these CO were regrouped in two regional conferences. These two conferences – a Latin one (the *Conférence latine*, or CL) and a German one (the *Konferenz der Interventionsstellen, Projekte und Fachstellen gegen häusliche Gewalt der deutschen Schweiz*, or KIFS) – still often meet to exchange experience and collaborate on specific projects. There exists an organisational difference between the two linguistic regions: in the Latin part, CO in charge of domestic violence work within the cantonal *Bureau de l'égalité* (“Office for Gender Equality”), while in the German part, they are usually attached to the Justice and Security

¹² Luzern, Schwyz, Thurgau and the Swiss People's Party. A few institutions and organisations also opposed the ratification. Conseil fédéral, *Message concernant l'approbation de la convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (convention d'Istanbul)*, (Bern, 2016) 169-170 (*Message du Conseil fédéral*)

¹³ *Explanatory Report* 13

¹⁴ *ibid*

¹⁵ *Message du Conseil fédéral* 249

¹⁶ BFEG, *Concept de mise en œuvre* (Berne, 2018) 15

cantonal department. For simplicity, in this article I refer to the cantonal civil servants in charge of domestic violence as domestic violence (DV) delegates.

Upon receiving its mandate, the CSVD published a September 2018 report on the implementation of the Istanbul Convention at the cantonal level,¹⁷ which takes stock of relevant measures taken by cantons and identifies seven priority fields for the first phase of the implementation. Drawing on this, on 29 October 2018, the BFEG published an “Implementation Concept”, which aims to clarify the collaboration between the federal state and the cantons. This document acknowledges the fact that large parts of the Convention fall into the competencies of the cantons and specifies that in such cases, the cantons are responsible for completing the necessary measures.¹⁸ Accordingly, the Conference of Cantonal Ministers for Justice and Police and the Conference of Cantonal Ministers of Social Affairs agreed to prioritise six fields during the first phase of the Convention’s implementation,¹⁹ which lasts from mid-2018 to the first Swiss State Report to the Council of Europe (see Article 68 of the Convention), due in 2020.²⁰

At the federal level, the BFEG is responsible for monitoring the implementation of the Istanbul Convention in Switzerland. We conducted an interview with the BFEG Deputy Director, who explained that implementation at the federal level occurs in an interdepartmental working group, which meets once a year.²¹ Moreover, a Committee was created to ensure the coordination of tasks between the federal state and the cantons. The Committee is led by the BFEG; the Federal Statistical Office and the Federal Office of Justice are also represented at the federal level. On the cantons’ side, there is one representative of the CDAS, one of the CCDJP, and two representatives of the CSVD (one per linguistic region). Members of the Committee discuss the implementation concept, the priorities identified by the cantons, and ongoing projects.²² They decide collectively on priorities; there is no voting process. The current priorities include the State Report for the Council of Europe. They are currently collecting data for this report, the BFEG at the federal level and the CSVD at the cantonal level. The coordination takes place in the Committee, but the BFEG then merges the data and drafts the report, which has to be adopted by the Federal Council. The report is clearly structured

¹⁷ CSVD, *Mise en œuvre de la Convention d’Istanbul au niveau des cantons: Etat des lieux et mesures à entreprendre – rapport de la Conférence Suisse contre la Violence Domestique* (Bern, 2018) 3 (*Rapport CSVD*)

¹⁸ BFEG, *Concept de mise en œuvre* (Berne, 2018) 11. This document was written in cooperation with the Conference of Cantonal Ministers for Justice and Police and the Conference of Cantonal Ministers of Social Affairs.

¹⁹ One of the seven priority fields regarded education. It was therefore transferred to the Conference of Cantonal Ministers of Education.

²⁰ <https://www.ebg.admin.ch/ebg/fr/home/le-bfeg/organisation/themes-prioritaires.html>

²¹ BFEG, *Concept de mise en œuvre* (Berne, 2018) 13

²² Interview with the Deputy Director of the Federal Office for Gender Equality and the Lawyer of the Federal Office of Justice (Bern, Switzerland, 2 July 2020)

because it is based on a questionnaire prepared by the GREVIO (Article 68, paragraph 1 of the Convention).

5.2. Intercantonal Conferences of Experts as a Subnational Implementing Network?

This subsection aims to show how the CSVD contributes to the implementation of the Istanbul Convention. It also provides an opportunity to observe the functioning of the CSVD, thus, shedding light on an intercantonal conferences of experts. It should first be noted that the CSVD is exclusively constituted of cantonal civil servants in charge of domestic violence issues. Just as for other kinds of intercantonal conferences (e.g. conferences of ministers) (Vatter, 2018, pp. 78-79), the federal actor in charge of the issue can sometimes be invited, but is not a member of the conference. According to my interviews, the BFEG has regular exchanges with the CSVD; they meet once a year to discuss both sides' priorities. They sometimes also have common projects, that the BFEG can financially support. As the BFEG does not have contact with individual cantons, the CSVD acts as a "seismograph on the field"²³ for them. Since the arrival of the Istanbul Convention, the CCDJP exchanges more regularly with the CSVD, as they often need advice from the technical experts.²⁴ In short, the CSVD works as a link between the cantons on the one hand, and the BFEG, the CCDJP and the CCDAS on the other.

Members of the CSVD meet three to four times a year. Interviewees stated that these meetings are primarily a place to exchange information and share experiences (notably what works well and what does not), to discuss potential common projects, and "sometimes to implement".²⁵ Some DV delegates who are less familiar with the Istanbul Convention take advantage of the CSVD to ask fellow members which actions they should take to respond to the Convention. This is more likely to happen to DV delegates of smaller cantons, who have less resources.²⁶ In this sense, the CSVD acts as a network for DV delegates. Furthermore, the CSVD creates working groups on specific topics, for prevention campaigns, or when they want to take a stance on a distinct political issue. These working groups serve as fora for officials to receive input from members of private associations active in relevant fields, such as shelter institutions.

The two regional conferences (Latin and German), which are at the origin of the CSVD's creation, still function and seem to be carry more importance for DV delegates. According to one DV delegate, the Latin conference meets at least five times per year and is able to produce more output, while CSVD meetings are limited to information exchange. This is probably because the regional

²³ *ibid*

²⁴ Interview with the Head of the Domestic Violence Coordination Office St. Gallen (Zoom, 19 January 2021), who also is the one of the current co-president of the CSVD (there are always two co-presidents: one from the German region and one from the Latin region)

²⁵ Interview with the Head of the Office for Family Policy and Gender Equality (Neuchâtel, 13 March 2020)

²⁶ Interview with the Head of the Domestic Violence Coordination Office St. Gallen and Co-President of the CSVD (Zoom, 19 January 2021)

conference existed before the CSVD and their members are less numerous, speak the same language, and, as a result, probably know each other better. Regional conferences, for instance, allow the creation of prevention campaigns and exhibitions. Cantons join forces to produce regional strategies.

With regard to the implementation of the Istanbul Convention, an important contribution of the CSVD is the 2018 report on implementation at the cantonal level, which identified the seven priority fields. This report was written by the Committee of the CSVD—i.e. by the two co-presidents and two other members—in consultation with the CSVD as a whole.²⁷ The co-president of the CSVD explained how this report was produced: the Committee decided to do an assessment exercise and to look at what was addressed in the Istanbul Convention, what were the current needs, and what should be prioritised. The report was drafted on this basis and was consequently produced exclusively at the cantonal level. Neither the BFEG, nor any other federal entity was consulted. Thus, the report was written by people who had excellent knowledge of the field but were not necessarily lawyers. Similarly, the DV delegates did not seem to see the CSVD as an implementation mechanism in the legal sense. Instead, they viewed the exchange of information and other activities as contributing to the implementation of the Istanbul Convention.

This analysis forces me to bring a nuanced answer to my first hypothesis that *Intercantonal conferences play a key role in the implementation of international law* (H1). Designated by the CCDJP and the CDAS, the CSVD is supposed to act as a top-down mechanism, to implement norms coming from the international level at the cantonal level. However, the analysis shows that the CSVD acts as a network, allowing the exchange information and best-practices, but that it plays a limited role with regard to implementation. Reasons for this probably include the fact that there is no federal actor that can act as pilot within the CSVD (the BFEG formally is not in the CSVD), and that DV delegates still favour the two older regional conferences (Latin and German). So, while intercantonal conferences do officially play a key role in the implementation of international norms in my case study, their practical contribution is limited. My findings converge with Schnabel and Mueller's results (2017), that policy-specific conferences engage in horizontal policy coordination, rather than vertical influence (although these authors worked on conferences of ministers).

5.3. The CSVD: a Political-Administrative Nexus

Going on step further than the mere role of the CSVD. The interviews provide me with material to reflect on the nature of the CSVD and of the job of DV delegates. We should bear in mind that these “experts” are not independent: they are civil servants from the cantonal administrations and report to a member of the cantonal government, i.e. a cantonal Minister, who is an elected politician. In this

²⁷ Interview with the Head of the Office for the Promotion of Gender Equality and the Prevention of Violence (Geneva, 1 July 2020)

subsection, I argue that the CSVD and DV delegates find themselves in a political–administrative nexus.

The CSVD was created by DV delegates during a constitutive assembly, in 2013. During this assembly, there was a discussion on whether members of the CSVD should be officially designated by their canton. In certain cantons, this would have forced members to ask for voting instructions from their governments. To avoid this, it was decided that members would not have to be officially designated by their cantons. This allows DV delegates to support, within the CSVD, positions that differ from those of their governments. Furthermore, the CSVD was constituted under the form of an association under Swiss private law. While the literature acknowledges the fact that intercantonal conferences do not have constitutional bases (Vatter, 2018) and are “located outside the formal framework of Swiss federalism” (Schnabel & Mueller, 2017, p. 552), it is somewhat surprising for a state-like entity to be constituted as an association under private law. Hence, it appears that the CSVD wishes to remain independent from political decisions.

At the individual level, while DV delegates still have to report to their minister, our interviews show that they can generally carry out their mandate in a relatively autonomous manner. First, their office is generally located high up in the administrative hierarchy, which provides them with a certain degree of autonomy and direct access to the cantonal minister. Second, their mandate to prevent and fight domestic violence is “not contested anymore” politically,²⁸ especially in the current political context. Consequently, DV delegates can generally count on the support of their minister. Financial considerations are the main obstacle to political support. If a project requires more funding than the usual budget of the office, this is likely to raise opposition, perhaps not from the minister, but from the cantonal government as a whole. As one interviewee stated with regard to the implementation of the Istanbul Convention: “if resources are needed, it becomes a political decision, and not a legal one”.²⁹ In the example below of the canton of Neuchâtel, the new legislation proposed by the DV delegate as part of the implementation of the Istanbul Convention received broad support. The only controversial points related to the DV delegate’s request for more manpower, which meant more budget.

The work of DV delegates is political and relates closely to civil society. There is, both in the CSVD and in the cantonal offices for gender equality, a “culture ... of collaborating with the civil society ... in order to assist victims in the most harmonized and comprehensive manner”.³⁰ Moreover, several DV delegates come from the political scene and/or associations. One of the DV delegate I interviewed had a political career and was involved in women’s movements before becoming the head of the

²⁸ Interview with the lawyer from the Legal Office for Family Policy and Gender Equality (Neuchâtel, 25 June 2020)

²⁹ *ibid*

³⁰ Interview with the Head of the Office for the Promotion of Gender Equality and the Prevention of Violence (Geneva, 1 July 2020), who also is the second current co-president of the CSVD

Office for Gender Equality. While in office, she has been accused of being too political, but in the interview, she stated “I am political; I accept that, but this job is political, whether you want it or not”.³¹ Another DV delegate had worked more than 20 years in an association supporting victims of violence. She was able to compare the two entities, saying that being a public service with the backing of an international Convention gives more authority than being a feminist association. She said that as a public service, they are more listened to, but their discourse has to be “legally sound, factual, argumentative”.³² Indeed, most DV delegates possess what Kardam and Acuner refer to as “dual identity” (Kardam & Acuner, 2018 107): they are both bureaucrats and close to women’s movements.³³ In this sense, they also find themselves in a societal–administrative nexus.

5.4. DV Delegates as Intermediaries

In this subsection, I shed some light on the way DV delegates contribute to the implementation of the Istanbul Convention at the cantonal level. I argue that DV delegates can be qualified as intermediaries, according to the literature on regulation and governance, as they provide assistance to the targets to accomplish the regulator’s goals (Abbott et al., 2017). I follow Pegram’s approach, which qualifies international treaties as “binding laws intended to change the behavior of the targets: states acting individually”(Pegram, 2017, p. 228). In the case of the Istanbul Convention, the regulator is the states at the international level, who act collectively through the Convention (the regulation). The targets are the individual states, and in my case study more specifically, the cantons. There is, as in Pegram’s analysis, an international intermediary – the GREVIO – and a national intermediary – the BFEG – who are responsible for monitoring the implementation of the Convention. In addition to this, there are intermediaries in all cantons in Switzerland: the DV delegates. This constitutes a “chains of intermediaries” (Abbott et al., 2017, p. 25). Ultimately, targets must implement regulations, while intermediaries must facilitate many aspects of implementation (Abbott et al., 2017, p. 22).

Indeed, DV delegates receive an indirect mandate (through the CSVD) to facilitate the intercantonal implementation of the Istanbul Convention. Most DV delegates are professionals with an extensive experience on domestic violence. Implementation responsibilities assigned to them under the Istanbul Convention are additional tasks rather than their primary role. In my interviews, I enquired about how they carry out such implementation. In their answers, DV delegates discussed many measures and programs that are underway, but without explaining precisely how they contribute to implementing the Convention. When asked about implementation more specifically, they said that these measures and programs were “linked to the Convention, but not only”³⁴ and that “the Convention falls within

³¹ Interview with the Head of the Office for Family Policy and Gender Equality (Neuchâtel, 13 March 2020)

³² Interview with the Head of the Office for the Promotion of Gender Equality and the Prevention of Violence (Geneva, 1 July 2020)

³³ On the relationships between DV delegates and women’s movements in Switzerland, see (Delage, Lieber, & Roca i Escoda, 2020)

³⁴ *ibid*

something more global”.³⁵ Furthermore, the DV delegates explained that when they mention the Convention while speaking in public, saying that it is binding and that it must be implemented, they are using it as “a tool to raise awareness”.³⁶ In this sense, DV delegates use the Convention as a set of values and as “a practice of claims-making rather than as a system of law” (Merry et al., 2010, p. 102).

But how do DV delegates see specific obligations of the Istanbul Convention? Several reports point to a lack of capacity in shelters in Switzerland for victims of domestic violence. Article 23 of the Convention obliges states to take the necessary measures to provide for the setting-up of shelters in sufficient numbers. When asked whether DV delegates would use this article to push political authorities to act, one DV delegate replied: “we always manage to find solutions ... there are times where it is not sufficient and others where we find solutions, sometimes people are placed in a hotel ... the whole problem is to inform people, and that people arrive where they should arrive”. This DV delegate saw implementation as a problem-solving exercise, rather than a legal exercise. This echoes Chevallier’s approach on the role of civil servants in the law-making process. In the production of norms, civil servants are influenced by the problems they must solve. Furthermore, they may use the margin of interpretation they have to make a “strategic use” of the law (Chevallier, 2011, p. 632). This is precisely the two phenomena identified during interviews. Firstly, DV delegates implement the Istanbul Convention in their own way, by focusing on the problems they have to solve and the measures they want to take, rather than trying to identify specific legal obligations that should be implemented. Secondly, DV delegates make strategic use of the Convention, using it as a tool and as an argument to facilitate pursuing their main task: preventing and fighting domestic violence.

This analysis shows that although DV delegates act as intermediaries, they do not directly implement specific legal obligations emanating from the Istanbul Convention in their work. They rarely refer to the Convention’s articles, nor do they base their initiatives and actions on them. However, the DV delegates work towards implementing the goals and values of the Convention. This might constitute a more indirect form of implementation, but it is primarily based on the protection of the Convention’s beneficiaries. One important element that explains this favourable outcome is that DV delegates have previous knowledge of the field and are committed to their mandate. My second hypothesis, that *Non-legal civil servants play a key role in the implementation of international law* (H2), is confirmed. But again, I ought to nuance this finding, as they do not perform the kind of implementation I expected. Finally, Switzerland’s federalist structure and this indirect form of implementation likely leads to some diversity in the measures taken in different cantons, depending on the ideas and priorities of the local DV delegates.

³⁵ *ibid*

³⁶ *ibid*

5.5. The Consequences of Federalism

In this subsection, I discuss consequences of federalism on the implementation of international law. At the federal level, the BFEG took part in the negotiations of the Istanbul Convention and must now prepare the first State Report on implementation for the Council of Europe. Thus, I asked the BFEG Deputy Director whether she was worried that cantons would not play their part in the implementation. According to her, the cantons should implement the Istanbul Convention because they accepted it by a large majority during the consultation procedure. As the Convention is binding, cantons have an “auto-obligation to implement”.³⁷ However, she explained, if a canton does not implement the Convention, the federal state has no mean to intervene. She said that this is a consequence – and a challenge – of the Swiss federalism. She stated that many NGOs do not understand this, and ask for the federal level to “give orders” and intervene in cantonal matters, but “it does not work like this”.³⁸

The BFEG Deputy Director explained that they can only encourage cantons to implement the Convention. She recalls that one way that has already been used to encourage cantons to implement international law was to link it with federal funding. This was done for instance in the creation of detention centres. Switzerland helped funding the construction of prisons by cantons, under the condition that international norms were respected (for instance with regards to the size of cells). This seems to be the furthest the federal level can go to encourage cantons to implement international norms.

The BFEG Deputy Director is the federal equivalent of the DV delegates with regard to the implementation of the Convention. She has a similar profile to many DV delegates, but her interview shows that her contacts at the international level have provided her with thorough knowledge of the international framework surrounding the Istanbul Convention. By contrast, DV delegates do not have any direct link with those at the international level. The BFEG acts as a link for all official information. The BFEG publishes documents, but does not give instructions to the cantons, as it cannot interfere in the cantons’ competencies. This was confirmed by a DV delegate, who stated that she did not receive any instruction from the federal level and that the implementation was up to her. Often, cantonal civil servants do not read the Istanbul Convention, but only official documents prepared at the federal level. Even lawyers from cantonal legal offices, who sometimes assist DV delegates, do not necessarily read the text of the Convention, as seen in the example of Neuchâtel. Abbott et al. define intermediaries as “any actor that acts *directly or indirectly* in conjunction with a regulator to affect the behavior of a target” (2017, p. 19, emphasis added). In this case, as we defined

³⁷ *ibid*

³⁸ *ibid*

the regulator as the states acting at the international level, intermediaries only act *indirectly* in conjunction with it.

To sum-up, DV delegates are remote from the international framework of the Convention, which raises challenges for the implementation. The BFEG acts as a link, but does not issue instructions to the cantons. Moreover, DV delegates often base their implementation on documents prepared at the federal level rather than on the Istanbul Convention directly. These consequences of Switzerland's multi-level setting shed some light on this paper's overarching explorative question: *whether – and how – international law is implemented at the subnational level?* Furthermore, this reinforces my finding from the previous subsection that the Convention is only indirectly implemented at the cantonal level.

6. Implementation in the Canton of Neuchâtel as an Example

In the canton of Neuchâtel, the DV delegate initiated a process that led to the adoption of new legislation to fight domestic violence in November 2019, in the wake of the ratification of the Istanbul Convention.³⁹ The DV delegate is the head of the Office for Family Policy and Gender Equality. She has been heading this office for 12 years. In 2018 she considered producing a new cantonal report on domestic violence, because the last had been completed in 2008. But as the Istanbul Convention entered into force in Switzerland around the same time (1 April 2018), she decided to take the opportunity to actually change the cantonal law on domestic violence, which dated back to 2004, “to adapt it to the Istanbul Convention”.⁴⁰

She mentioned that the Latin Conference on Domestic Violence “was charged with applying the Istanbul Convention in the cantons”.⁴¹ Even though the other Latin cantons had not undertaken any legal changes at that time, she thought the advent of the Istanbul Convention presented a good occasion to change the law in Neuchâtel—“it seemed like the right time”.⁴² The BFEG sometimes sends information to DV delegates by e-mail, and DV delegates received information sheets on the Istanbul Convention. However, she noted that “the cantons are still sovereign to apply [the Istanbul Convention], due to federalism”.⁴³ In her experience, “nothing comes from the upper level”.⁴⁴ In short, she decided to change the cantonal law on her own and used the Convention as a supporting

³⁹ Interviews were conducted with the DV delegate, with the Minister from the Department for Education and Family – who is the superior of the DV delegate, with the lawyer from the cantonal Legal Office who worked on the new legislation with the DV delegate, and with several members of the cantonal parliament who were involved when the legislation went to the parliament.

⁴⁰ Interview with the Head of the Office for Family Policy and Gender Equality (Neuchâtel, 13 March 2020)

⁴¹ *ibid*

⁴² *ibid*

⁴³ *ibid*

⁴⁴ *ibid*

argument. She also mentioned that those at the federal level are not really aware of what the cantons are doing.

The DV delegate used the fact that Switzerland had ratified the Istanbul Convention and that it had to be implemented as a mean to support her draft legislation. The report presenting the new legislation to the cantonal parliament mentioned that the canton “will be able to honour its obligations coming from the signature of the Istanbul Convention”.⁴⁵ She stated that this was a reference to the text as a whole, not to specific obligations. This report was made by her office, including her and two colleagues, and it was then passed on to her superior, the Cantonal Minister for Education and Family. The minister read it and suggested changes, and there was a bit of back and forth between them. The cantonal minister notably helped to make the political proposals more acceptable. Issues that are the most politically sensitive are by far those related to budget, for instance, the fact that she requested more manpower for her office.⁴⁶

The new legislation was drafted by her office together with the legal office. She explained that they took the former law and the Istanbul Convention, and looked at the differences. The main change was to modify the scope of the legislation. The former legislation was the 2004 cantonal law on fighting violence in couple relationships. This had to be adapted to the Istanbul Convention, which covers domestic violence, a more global concept which notably includes persons who are not in a relationship and children. In addition, they deleted a few articles that had become obsolete, and they included language on prevention. She stated that this process was “a bit artisanal”.⁴⁷

A lawyer from the legal office who worked on this with the DV delegate explained that when they work on new legislation, they have to fill in a form to assert that the draft law complies with federal law.⁴⁸ When asked if they verify that it also complies with international law, she said that they probably should, but that they do not. She believes that in such cases, it is the office in charge (here the Office for Family Policy and Gender Equality) that should take care of this compliance, because the legal office is not necessarily aware of the Istanbul Convention, whereas the office in charge is. Interestingly, both the DV delegate and the legal office responded that it would be the job of the other to know whether specific legal obligations in the Istanbul Convention had to be implemented.

When the lawyer received the report and the new legislation, she did not read the whole Istanbul Convention. She went instead to look at the documents established by the BFEG and the Federal Council’s message, “because federal services made the [legal] analysis”.⁴⁹ In the end, she made only

⁴⁵ Conseil d’État, *Rapport du Conseil d’État au Grand Conseil à l’appui d’un projet de loi sur la lutte contre la violence domestique* (Neuchâtel, 2019) 24 (my translation)

⁴⁶ Interview with the Head of the Office for Family Policy and Gender Equality (Neuchâtel, 13 March 2020)

⁴⁷ *ibid*

⁴⁸ Interview with the lawyer from the Legal Office for Family Policy and Gender Equality (Neuchâtel, 25 June 2020)

⁴⁹ *ibid*

few changes to the new legislation, because “it was considered” that “broadly speaking”⁵⁰ the canton respected the Convention. When I asked who “considered”, she said it was both the legal office and the DV delegate.

This example exemplifies many of the points made in this paper. First, it shows that neither the DV delegate nor the lawyer from the legal office carried out a provision-by-provision analysis of the Convention to see if specific obligations had to be implemented. Interestingly, all actors seem to think this is someone else’s task. The unclarity of the situation is notably, but not only, due to Switzerland’s multi-level structure and to the fact that cantonal actors have no direct link with international instruments and actors. Nevertheless, cantonal actors did implement the general ideas of the Convention—notably its scope—through this new legislation, performing a kind of indirect implementation. The DV delegate took this initiative and used the Convention as a tool and as an argument to ensure the adoption of the legislation. However, it was a personal initiative; in this sense, implementation is likely to vary significantly from one canton to another. The adoption of the legislation was a political process, as it first had to be supported by the minister in charge, then by the whole cantonal government, and finally adopted by the whole cantonal parliament. However, the project received broad support during the whole process, notably because the topic is widely supported across the political spectrum, and it was successfully adopted by the cantonal parliament with only minor changes.

7. Conclusion and Discussion

This paper aims to shed light on how international law is implemented at the subnational level in federal states. Using the Istanbul Convention in Switzerland as a case study, I carried out a qualitative analysis of this implementation process and of the mechanisms and actors involved, with a focus on intercantonal conferences and civil servants. Intercantonal conferences play a pivotal role in Switzerland’s official plan to implement the Convention at the cantonal level: two conferences of ministers mandated an intercantonal conference of experts to do so. This allowed me to study the role and nature of the CSVD, an intercantonal conference of experts regrouping cantonal civil servants who are in charge of domestic violence issues.

I showed that intercantonal conference of experts are peculiar entities: they are state-based instruments of federalism, but are formally constituted as association of private law. Their members are civil servants from cantonal administration, yet they strive to remain independent within the framework of these conferences. The CSVD has been designated to facilitate the implementation of the Istanbul Convention – an international law treaty. While I expected the CSVD to act as top-down mechanisms – to implement international norms –, I found that it acts as network to facilitate the exchange of information and best practices, but plays a limited role with regard to implementation.

⁵⁰ *ibid*

This finding converges with Schnabel and Mueller's results (2017), that policy-specific intercantonal conferences engage in horizontal policy coordination rather than vertical influence. I also showed that regional conferences of experts remain very important, even more so than the more recent national-wide conference in the case of the CSVD.

Analysing the role of civil servants, I argued that the literature on regulation and governance provides a relevant framework to frame DV delegates as intermediaries in the implementation of the Istanbul Convention. I showed that DV delegates generally are experienced professionals specialised in domestic violence, but not lawyers. Moreover, as subnational actors, they are remote from international frameworks and actors. For these reasons, they are often very supportive of the Istanbul Convention, but they see it as a tool and as an argument rather than as a treaty to be implemented. As civil servants, they are first and foremost driven by the problems they have to solve, and they make a "strategic use" (Chevallier, 2011) of the law for this purpose. This illustrates how local and regional actors use international instruments to tackle global challenges. The analysis also confirmed previous findings that intermediaries play varied roles, "from providing expertise and feedback to facilitating implementation" (Abbott et al., 2017, p. 15). Furthermore, I demonstrated that there is a lack of clarity among subnational actors about who should be aware of specific obligations from international law.

Overall, this exploratory case study sheds light on actors and networks that are behind the implementation of international instruments responding to global challenges. The analysis confirms that the multi-level structure of federal states complexifies and causes challenges in the local implementation of international law. Although cantons are required by federal law to implement international law, Switzerland does not have means to ensure that cantons effectively do so. Despite the existence of implementation networks, such as the CSVD, implementation is likely to vary significantly among subnational entities, as it depends on the knowledge and commitment of local actors. I showed that state actors involved in the implementation of international law are becoming more numerous and diverse. This was one of the reasons brought forward by Abbott and al. to encourage to study of regulation intermediaries (2017). This case study also confirms the theory that compliance can be more difficult to reach when it requires collaboration among several decentralized actors (Risse, Ropp, & Sikkink, 2013). Nevertheless, federal states surely enable efficient and context-based implementation in some cases. Finally, the implementation of international law remains a political process, perhaps even more so in subnational entities which are remote from the international scene. While the topic of domestic violence generally gathers political support, it would be interesting to study topics that are politically more sensitive, such as international migration law.

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