

Conference Report: Conflict of Laws 4.0 (Münster, Germany)

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Digitization, Artificial Intelligence and the blockchain technology are core elements of a historic transformation of modern society. Such transformations necessarily challenge traditional legal concepts. Hitherto, the academic discourse is much more intense in the area of substantial private law than it is in the area of Private International Law. Thus, a conference on the specific challenges of Artificial Intelligence and Digitization for Private International Law was long overdue. Stefan Arnold and Gerald Mäscher of the Institute of International Business Law (WWU Münster) organized a conference with that specific focus on November 8th at Münster University. The title of the conference was »*Conflict of laws 4.0: Artificial Intelligence, smart contracts and bitcoins as challenges for Private International Law*«. Around a hundred legal scholars, practitioners, doctoral candidates and students attended the conference.

The first speaker, Wolfgang Prinz of Fraunhofer Institute and Aachen University, provided insight into the necessary technical background. His presentation made clear that blockchain technology is already a key factor in international contracting, as e.g. in agricultural crop insurance policies. This introduction into complex digital processes to a largely non-tech-expert audience helped kick off the first round of vivid discussion.

Michael Stürner of Konstanz University devoted his presentation to smart contracts and their role in applying the Rome I Regulation. After raising the question of a specific *lex digitalis*, he focused on the scope of the Regulation with regard to qualification, choice of law and the objective connecting factors. While he concluded that the respective contracts can mainly be treated on the basis of the Rome I Regulation, he also took a quick glance on subsequent questions in terms of virtual securities and the statute of form.

In the third presentation, Stefan Arnold of Münster University explored the issues Artificial Intelligence raises concerning party autonomy and choice of law. At the

beginning of his presentation, he emphasized that these questions are closely related to the different levels of AI and their (lack of) legal capacity: As long as machines act as simple executors of human will, one should establish a normative attribution to the human being in question. For the cases in which the AI exceeds this dependency, Arnold claimed there was no answer in the Rome I Regulation, leaving the way open for the national rules, primarily Art. 5 II EGBGB. Finally, he discussed possibilities *de lege ferenda* such as applying the law of the country of effect and future gateways for the *ordre public*.

Jan Lüttringhaus of Hannover University presented about questions of insurance and liability in the context of Private International Law. In order to underline the importance of this topic, he referred to a provision in the usual insurance conditions presupposing the application of German national law. In a first step, he examined the international civil procedure law of the Brussels I bis Regulation as well as potential difficulties with state immunity. The second part of his lecture was dedicated to the problem of determining the applicable law in situations that feature a decentralization of injury and damage.

In the following presentation, Gerald Mäscher of Münster University proposed a solution for finding the applicable law to Decentralized Autonomous Organizations (DAOs). When legal practitioners try to determine which law applies, they usually resort to the traditional rules of domicile and establishment. Since DAOs have neither of the two, it cannot be subjected to the law of a specific nation by these two approaches. Leaving the international corporate law behind, Mäscher called for a return to the basics: If there is no primary choice of law, one should plainly refer back to the most significant relationship as stated by Savigny. Acknowledging the regular lack of publicity, he nonetheless insisted that this solution answered the parties' needs at the best possible rate.

Bettina Heiderhoff of Münster University presented on how questions of liability can be solved in the context of autonomous systems. She started her presentation by raising the question whether autonomous systems could simply fall into the scope of the Product Liability Directive. Following up, the speaker focused on new fund and insurance systems and the deriving problems with regard to conflict of laws. She expanded upon Art. 5 of the Rome II Regulation and its applicability on autonomous systems, emphasizing the legislator's intention behind the respective rules.

In the following presentation, Matthias Lehmann of Bonn University examined the interaction between blockchain, bitcoin and international financial market law. After a short introduction into the basics of Distributed Ledger Technology (DLT), he shed light onto problems in international banking supervision and how they could be solved by implementing DLT-based solutions. He closed with a plea for common international regulations regarding cryptocurrencies.

Concluding remarks from a practitioners' point of view were made by Ruth-Maria Bousonville and Marc Salevic from Pinsent Masons LLP. The speakers shared their perspective on the topics that had been raised by their predecessors and how practitioners deal with these questions in creating solutions for their clients.