Colonialism and German Private International Law – Introduction to a Post Series

In March 2023 I gave a talk at the conference of the German Society of International Law. The conference had the title "Colonial Continuities in International Law" and my presentation focused on "Continuation of colonialism in contemporary international law? – Foundations, structures, methods from the perspective of PIL". Thus, I was exploring those foundations, basic structures, and fundamental methods of mainly German Private International Law (PIL) and whether and how they have been influenced by colonialism.

Even though the perspective is mainly one of German PIL one, some of my thoughts might be of interest for a more global community. Therefore, in some upcoming posts I will share some of my findings that will also be published in the book to the conference (in German).

My general – not surprising – finding ist that the existing PIL, much like the broader German legal system, has been impacted by colonialism. T**he aim is to reveal these influences without automatically pass judgment on a norm or method influenced by colonialism as inherently negative**. The primary goal is to initiate an first engagement with and awareness of this topic and to stimulate a discussion and reflection.

1. State of the Discussion

"Colonialism" I will understand broadly, referring not only to colonialism in a strict sense, but also including postcolonialism and forms of neocolonialism. Until now, the discussion regarding colonialism, coloniality, or decolonialism within German PIL remains limited. Initial discussions tend to arise within specific areas of PIL, such as migration law, cultural heritage protection law, investment protection law, occasional considerations of supply chain responsibility/human rights protection, and climate change litigation. The broader discussion around fundamental questions and structures within German PIL remains relatively sparse. Initiatives such as the project by the Max Planck Institute for Comparative and International Private Law in Hamburg drive the discourse on "decolonial

comparative law" which is not the same but in practise overlapping with the PIL discourse.

2. Categories of Colonialism in the Upcoming Posts

The attempts to systematize the colonial imprints lead to different categories.

- The **first** relates to the (sometimes unconscious) implementation and later continuation of the colonial structure in PIL – now and then.
- Another **second** category deals with structures and values inherent in German or European law, implicitly resonating within the PIL and, thus, expanding those values to people and cases from other parts of the world.
- The **third** category reveals an imagined hierarchy between the laws of the Global North and Global South.
- Finally, **fourth,** conflict of laws rules may lead to or at least contribute to exploiting actual North-South power asymmetries.

3. Intention of the Series

In the next four posts, I would like to present some thoughts on colonial imprints I found in German PIL and sometimes EU PIL. I will not focus on other country's PIL rules, but I am happy to learn about other systems and similar or very different approaches.

As aforementioned, I only want to **start a discussion** and reveal some forms of colonialism in German PIL. I do not want to abolish all norms that are influenced by colonialism or judge them as inherently "bad". Colonialism might only be one of many influences that shape the rule. Furthermore, I believe we are still at the very very beginning of the debate. Therefore, I **welcome any (objective and substantive) discussion** about the topic. I especially welcome comments, experiences and ideas from other countries and **particularly from countries that are former colonies.**