Vereinigung der Juristen

aus der Bundesrepublik Deutschland

und der Republik China (Taiwan) e.V.

(DTJV)

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Mitgliederinformationen Nr. 9

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I n h a l t S e i t e

E d i t o r i a l

Sehr geehrte Damen und Herren,
liebe Mitglieder der DTJV,

das Jahr 2015 ist das 25. Jahr des Bestehens der DTJV. Schon vor unserer Gründungsversammlung gab es gegenseitige Besuche von Richtern und Staatsanwälten aus den beiden Ländern sowie einen Freundschaftsvertrag zwischen dem Landgericht Taipei und dem Landgericht Hamburg, unterzeichnet von den damaligen Präsidenten Chai-chi Cheng und Dr. Roland Makowka, dem leider verstorbenen, unvergessenen Gründungspräsidenten der DTJV.

Wie ich es Ihnen in meinem letzten Editorial bereits angekündigt hatte, ist eine kleine Delegation von Mitgliedern, die auf meine Anfrage im vorletzten Editorial ihr Interesse bekundet hatten, einigen Vorstandsmitgliedern sowie Richterinnen und Richtern des Landgerichts Hamburg in der Zeit vom 20. bis 25. April 2015 auf Einladung des Präsidenten des Landgerichts Taipei nach Taiwan gereist und hat in Taipei zusammen mit den dortigen Mitgliedern das Jubiläum unter anderem mit einem Symposium zum Thema “Strafzumessung” begangen. Höhepunkt der Reise war ein Empfang durch den Staatspräsidenten Ma, der sich für uns 40 Minuten Zeit genommen und in einer eindrucksvollen Rede das Wirken der DTJV sehr positiv gewürdigt hat.

Außerdem werden wir am 2. September 2015 auch in Hamburg eine Feier veranstalten. Dafür haben wir alle eine Einladung des Hamburger Senats für einen Senatsempfang im Bürgermeistersaal des Rathauses erhalten. Gastgeber und Redner ist der Hamburger Justizsenator Dr. Till Steffen. Zu den geladenen Gästen sprechen werden auch die hochgeschätzte Repräsentantin der Republik China S.E. Frau Agnes Hwa-Yue Chen sowie der Unterzeichner.

Erwähnen möchte ich noch das außerordentlich interessante Symposium, das mit der DTJV als Mitveranstalter vom 29.September bis zum 1. Oktober 2015 in Kaohsiung und Tainan stattfinden wird. Das Programm finden Sie in dieser Ausgabe. Sofern Sie sich dazu anmelden möchten, schreiben Sie mir bitte eine Email.

Wie immer an dieser Stelle möchte ich darauf hinweisen, dass der Vorstand sehr daran interessiert ist, Ihre Anregungen und Vorschläge entgegenzunehmen.

Dr. Jan Grotheer
Präsident

Bericht

des Präsidenten Dr. Jan Grotheer
über die Reise einer Delegation aus Mitgliedern **der Vereinigung** und Richterinnen und Richtern des LG Hamburg **nach Taiwan im April 2015 aus Anlass des 25jährigen Jubiläums**

Aus Anlass des 25jährigen Jubiläums der Vereinigung der Juristen aus der Bundesrepublik Deutschland und der Republik China (Taiwan) e.V. (DTJV) reiste eine 10köpfige Delegation aus Mitgliedern der Vereinigung und Richterinnen und Richtern des Landgerichts Hamburg in der Zeit vom 19. bis 25. April 2015 auf Einladung der taiwanischen Justiz in die Republik China (Taiwan).

Der Höhepunkt der Reise war der Empfang durch den Staatspräsidenten Ma Ying-jeou im Präsidentenpalais. Präsident Ma begrüßte jedes einzelne Mitglied der Delegation persönlich und hielt eine außerordentlich informative Rede, in der er unter anderem auf die juristischen Wurzeln des Rechtes der ROC verwies, die im deutschen Rechtssystem liegen und die Bemühungen der DTJV hervorhob, diese Rechtsbeziehungen zu unterstützen und zu verstärken.

Hier der Auszug seiner Rede, entnommen der offiziellen Homepage seines Büros:
http://english.president.gov.tw/Default.aspx?tabid=491&itemid=34602&rmid=2355
“President Ma Ying-jeou met on the afternoon of April 23 with a delegation from the German-Taiwanese Jurist Society (Deutsch-Taiwanesische Juristenvereinigung, DTJV). In addition to expressing his gratitude to the DTJV for its contributions in promoting judicial interaction between the ROC and Germany, the president also explained to the delegation the ROC's achievements in promoting judicial reform and strengthening judicial autonomy.
In remarks, the president stated that the DTJV was founded in September 1990 in Hamburg, Germany, and subsequently established an office in Taipei in 1997. This year thus marks the organization's 25th anniversary. For many years, the DTJV has continuously promoted both judicial interaction and friendship between the two nations' judicial communities through mutual visits and holding many legal-related academic seminars, the president said.
President Ma also mentioned that Dr. Jan Grotheer, the DTJV president, is highly regarded in German judicial circles and has helped the Judges Association of ROC join the International Association of Judges. Dr. Grotheer has also helped delegations from the ROC's judicial community visit Germany numerous times, making a significant contribution to bilateral interaction. Dr. Grotheer, the president said, was honored by the ROC's Judicial Yuan in 2010 for the many years of strong support and assistance he has given to Taiwan's judicial community.
The president pointed out that Germany is an exemplary example of the civil law system with many notable achievements, and has influenced the development of the rule of law in many East Asian nations. The ROC turned to German law as a foundation in setting up its legal framework, and consequently Germany has had an enormous impact on the ROC's legal system, he said.
Discussing the ROC government's efforts to promote judicial reform and strengthen judicial autonomy over the past few years, the president stated that the ROC's Judicial Yuan has long maintained full autonomy in proposing laws and enjoys complete independence in judicial budgeting, thus ensuring judicial independence. In addition, the Judicial Yuan formulated the Judges Act to protect the status and treatment of judges, and strengthen their self-discipline and self-governance. This legislation has helped to create an even more comprehensive system to ensure judicial independence, the president stated.

The president added that Germany in the 1970s addressed relations between the two Germanys based on the "one Germany, two states" concept (ein Deutschland - zwei Staaten), which inspired the ROC's promotion of cross-strait relations. For instance, much like the Federal Ministry for Intra-German Relations that was set up to handle affairs involving the two Germanys, the ROC established the Mainland Affairs Council under the Executive Yuan to handle cross-strait affairs. East Germany and West Germany, the president said, in 1972 also signed the Basic Treaty, which separates sovereignty from jurisdiction, and is similar to his advocacy of "mutual non-recognition of sovereignty, and mutual non-denial of governing authority" concept for both sides of the Taiwan Strait. These kinds of ideas can serve as a reference point for Taiwan in handling cross-strait relations, the president stated.
The president also mentioned that Germany and France engaged in large-scale student exchange programs following World War II, helping young people from those two countries to forge friendships. This subsequently was extremely helpful in fostering relations between Germany and France and turned out to be quite a visionary policy, he said. In the same vein, the number of mainland Chinese students studying in Taiwan has increased from some 800 before he took office 2008 to over 32,000

today. This allows young people from the two sides of the Taiwan Strait to interact starting at an early age, which helps the development of cross-strait relations, according to the president.
Lastly, the president thanked the delegation for coming all the way to Taiwan to attend the seminar and he hopes that the future holds even greater interaction between the judicial and legal communities of the ROC and Germany so that the two sides can create an even more well-rounded judicial environment in their countries.
Also in the delegation were Hamburg District Court Presiding Judge Britta Erbguth, Head Public Prosecutor at the Public Prosecutor's Office of Hamburg Cornelia Gadigk, former President of the Hamburg District Court Volker Ohlrich, Hamburg District Court Presiding Judge Matthias Steinmann, and Ruhr University Bochum Professor of Law Peter A. Windel. The delegation was led by Dr. Grotheer and was accompanied to the Presidential Office by Vice Minister of Foreign Affairs Vanessa Yea-Ping Shih (...) to meet with President Ma."

Ein weiterer Höhepunkt war die offizielle Feier aus Anlass des Jubiläums der DTJV, die in Form eines Symposiums zum Thema „Strafzumessung" durchgeführt und vom Landgericht Taipei organisiert wurde. Die Eröffnungsrede hielt der Präsident des Justiz Yuan und Chief Justice des Constitutional Courts Rai Hau-Min. Auf deutscher Seite wurde das Thema von der Vorsitzenden Richterin am Landgericht Hamburg Dr. Britta Erbguth behandelt, die Rechtslage in der ROC wurde von Prof. Hsu Heng-Da erläutert und durch Division Chief Judge Ku Cheng-De ergänzt. Die vom Präsidenten des Landgerichts Taipei moderierte Veranstaltung wurde abgeschlossen mit einer intensiven Diskussion unter den etwa 100 Teilnehmern.

Nicht zuletzt sind der Besuch der neu gebauten Richterakademie und der Empfang durch dessen Präsidenten Lu Tai-Lang zu erwähnen sowie die Begegnungen und ertragreichen Gespräche mit Präsident des Justiz-Yuan Rai Hau-Min und Vizepräsident Su Yeong-Chin, Vizeminister der Justiz Wu Chen-Huan, dem Generaldirektor der Europaabteilung des Außenministeriums Zhang Ming-Zhong sowie dem Präsidenten der Justizakademie Dr. Lin, Huei-Huang.

Für alle Mitglieder dieser Delegation wird diese Reise ein unvergessliches Erlebnis bleiben. Wir bedanken uns herzlich bei den zahlreichen Gastgebern und Organisatoren, die uns mit so großer Herzlichkeit und unübertrefflicher Gastfreundschaft empfangen haben.

Jan Grotheer

Ansprache

des taiwanesischen Staatspräsidenten Ma Ying-jeou anlässlich der Reise der Delegation der DTJV im April 2015 nach Taiwan (s. vorstehenden Bericht)

Präsident Ma Ying-jeou traf am Nachmittag des 23. April mit einer Delegation der Deutsch-Taiwanesichen Juristenvereinigung, DTJV, zusammen. Neben dem Ausdruck seiner Dankbarkeit gegenüber der DTJV für deren Beiträge zur Förderung der juristischen Interaktion zwischen der Republik China und Deutschland erläuterte der Präsident der Delegation auch die Erfolge der Republik China hinsichtlich der Förderung der Justizreform und Stärkung der justiziellen Autonomie.

In seiner Ansprache erklärte der Präsident, dass die DTJV im September 1990 in Hamburg, Deutschland, gegründet wurde und dann 1997 ein Büro in Taipei gründete. In diesem Jahr feiert die Organisation folglich ihr 25-jähriges Jubiläum. Seit vielen Jahren habe die DTJV durch gegenseitige Besuche und zahlreiche rechtlich bezogene akademische Seminare kontinuierlich sowohl gerichtliche Interaktion als auch Freundschaft zwischen den juristischen Kreisen beider Staaten gefördert, sagte der Präsident.

Präsident Ma erwähnte auch, dass Dr. Jan Grotheer, Präsident der DTJV in deutschen Justizkreisen hohes Ansehen genieße und dazu beigetragen habe, dass die „Judges Association of ROC" der Internationalen Richtervereinigung beigetreten sei. Dr. Grotheer habe auch dazubeigetragen, dass Delegationen der taiwanischen juristischen Gemeinde unzählige Male Deutschland besucht hätten und somit einen wesentlichen Beitrag zur bilateralen Interaktion geleistet hätten. Der Präsident

Dr. Grotheer wurde im Jahr 2010 vom Justiz-Yuan der Republik China für seine langjährige starke Unterstützung und Hilfe für Taiwans Justizgemeinschaft geehrt.

Der Präsident wies darauf hin, dass Deutschland ein exemplarisches Beispiel für ein Zivilrechtssystem sei, mit vielen bemerkenswerten Leistungen, welche die Entwicklung der Rechtsstaatlichkeit vieler ostasiatischer Nationen beeinflusst habe. Die ROC nahm bei der Gründung ihrer Rechtsgrundlage das deutsche Recht zum Vorbild. Somit habe Deutschland einen enormen Einfluss auf das Rechtssystem der Republik China, sagte er.

Während einer Diskussion über die Bemühungen der Regierung der Republik China zur Förderung der Justizreform und zur Stärkung der gerichtlichen Autonomie in den vergangenen Jahren stellte der Präsident fest, dass Taiwans Justiz-Yuan in seiner Gesetzgebung seit langem volle Autonomie erreicht habe, autonom Gesetze vorschlage und völlige Unabhängigkeit in der gerichtlichen Budgetierung besitze und somit die Unabhängigkeit der Justiz garantiere. Darüber hinaus habe der Justiz-Yuan das „Richter Gesetz“ formuliert, um den Status und die Behandlung von Richtern zu schützen und deren Selbstdisziplin und Selbstverwaltung zu stärken. Diese Gesetzgebung habe dazu beigetragen, ein noch umfassenderes System zu schaffen, um die Unabhängigkeit der Justiz zu gewährleisten, erklärte der Präsident.

Der Präsident fügte hinzu, dass Deutschland in den 1970er Jahren die Beziehungen zwischen den beiden deutschen Staaten auf der Grundlage des „Ein Deutschland – Zwei Staaten“-Konzeptes behandelt habe, welche die Republik China bei der Förderung der Beziehungen über die Taiwanstraße inspiriert habe. Zum Beispiel, ähnlich dem Bundesministerium für innerdeutsche Beziehungen, welches gegründet wurde, um Angelegenheiten unter Beteiligung der beiden deutschen Staaten zu behandeln, hat die ROC den „Rat für Festlandsangelegenheiten“, welcher dem Exekutiv-Yuan untersteht, etabliert, um die Angelegenheiten über die Taiwanstraße zu behandeln. Sowohl Ostdeutschland als auch die Bundesrepublik Deutschland, sagte der Präsident, unterzeichneten im Jahr 1972 den Grundlagenvertrag, der die Souveränität von der Gerichtsbarkeit trennte und seinem Konzept der Verfechtung für „gegenseitige Nicht-Anerkennung der Souveränität und der gegenseitigen Leugnung der Regierungsbehörden“, für beide Seiten der Taiwanstraße ähnele. Solche Ideen könnten als Bezugspunkt für Taiwan im Umgang mit den Beziehungen über die Taiwanstraße dienen, sagte der Präsident.

Der Präsident erwähnte auch, dass Deutschland und Frankreich nach dem Zweiten Weltkrieg einen großangelegten Studentenaustausch etablierten, damit die jungen Menschen aus diesen beiden Ländern Freundschaften knüpfen konnten. Dies war anschließend sehr hilfreich bei der Förderung der Beziehungen zwischen Deutschland und Frankreich und stellte sich als eine sehr visionäre Politik heraus, sagte er. Im gleichen Sinne hat sich die Zahl der festlandchinesischen Studenten in Taiwan von rund 800, bevor der Präsident sein Amt im Jahr 2008 antrat, auf über 32.000 heute erhöht. Dies ermögliche es jungen Menschen von beiden Seiten der Taiwanstraße, bereits in frühem Alter miteinander zu interagieren, welches der Entwicklung der Beziehungen über die Taiwanstraße helfe, so der Präsident.

Schließlich dankte der Präsident der Delegation für die weite Reise nach Taiwan, um das Seminar zu besuchen und er hoffe, dass die Zukunft noch mehr Interaktion zwischen den Justiz- und Rechtsgemeinschaften der Republik China und Deutschland bringen werde, so dass die beiden Seiten ihren Ländern ein noch besseres juristisches Umfeld bieten können.

In der Delegation vertreten waren die Vorsitzende Richterin am Landgericht Hamburg Britta Erbguth, die Hamburger Oberstaatsanwältin Cornelia Gädigk, ehemaliger Präsident am Hamburger Landericht Volker Öhlrich, Vorsitzender Richter am Amtsgericht Hamburg Matthias Steinmann und der Rechtsprofessor an der Ruhr-Universität Bochum Peter A. Windel. Die Delegation wurde von Dr. Grotheer geleitet und von der Vizeministerin für auswärtige Angelegenheiten Vanessa Yea-Ping Shih (...) zum Präsidentenamt begleitet, um Präsident Ma zu treffen.

Quelle: Taiwan-Vertretung in Hamburg, Übersetzung von Christa Aichele, Sinologin M.A.

Vortrag

von
Dr. iur. (NCCU) Rong-Chwan Chen,
Professor of Law, National Taipei University (Taiwan)

gehalten am 07. Juni 2013 in Hamburg *

Taiwan: Selected Problems of General Provisions in PIL

* Mit freundlicher Erlaubnis von Professor Dr. Chen und des Max-Planck-Instituts für ausländisches und internationales Privatrecht (MPI), Hamburg. Der Vortrag wurde anlässlich des rechtsvergleichenden Symposiums des MPI am 7. und 8. Juni 2013 in Hamburg zum Thema “International Private Law in China und Europe” gehalten. Dieser Vortrag wurde überarbeitet und mit den übrigen Vorträgen inzwischen unter dem Titel ”Private International Law in Mainland China, Taiwan and Europe” auf Englisch veröffentlicht (in Part 2 unter dem Titel„Selected Problems of General Provisions in the Taiwanese Private International Law, Enactment 2010“. - Zugleich Materialien zum ausländischen und internationalen Privatrecht 52. Im Annex sind in chinesischer Schrift mit englischer Übersetzung enthalten: Chinese PIL Act 2010, SPC PIL Interpretation 2012 und Taiwanese PIL Act 2010. Herausgeber: MPI, durch Prof. Dr. iur. Dr. mult. Jürgen Basedow und Dr. iur. Knut B. Pißler, Verlag: Mohr Siebeck, Tübingen, 2014, XIII, 470 Seiten, ISBN 978-3-16-153356-3, Leinen EUR 84,00.

I. Introduction

Private International Law in Taiwan denotes an area of law by which the legal problems involving foreign elements are solved in civil cases. However, it is an academic term rather than an enactment's title or a defined term in any legislation. Most of its principles have been codified in different enactments and some have been adopted by the judiciary in practical ways. The principles in this area are generally grouped in three categories: jurisdiction, choice of law, and recognition and enforcement of foreign court judgments or arbitral awards. While the principles regarding the international civil procedure such as service of documents abroad, discovery and investigation of evidence in foreign countries are also included in its field.

The problems of choice of law are basically dealt with by a legislation entitled "Act on Application of Laws in Civil Matters Involving Foreign Elements" (AAL). It was enacted in 1953 to replace a statue enacted in 1918 and was significantly revised in 2010. The revised AAL reflected the practical needs and academic development during the past decades and came into effect in 2011. It includes 63 Articles which are put into 8 chapters. This Paper focuses on the interpretation of the provisions under the head of "General Principles" (Chapter 1) and the relevant approach or rule adopted by the judiciary. Unless otherwise indicated, the number and contents of the cited Articles follow the revised version of AAL of 2011. *

II. Adoption of the Lex Patriae

Personal status, capacity, marriage, divorce and other family relations of an individual, no matter where h/she goes, are generally governed by his/her own personal law.[1] Given that facts that nationality had lost some of its advantages in being the principal connecting factor for personal law, domicile and habitual residence had been chosen instead in the trend led by the Hague Conventions in many jurisdictionas,[2] the concept of nationality was still relied on and the lex patriae principle remained adopted in the AAL of 2011.

A. Consideration of Different Policies

The framers analyzed the inspiration from the foreign and international codifications, took the specific needs of contemporary Taiwanese society into account, and decided to make the lex patriae sound for application. The nationality is more easily understood and confirmed in practice, while the ties between the nation and its subjects might be too tenuous to apply its law, reliance on nationality can be indeterminate in a case which involves a country with multiple legal systems, a stateless person or a citizen of two or more countries. They decided to focus on the significance of nationality in identifying allegiance in such a country like Taiwan, and prepared supporting rules for the lex patriae to make the personal law so determined more meaningful and reasonable to govern the personal matters.

The lex patriae was reconsidered seriously and diversely adopted in the AAL of 2011. It is applicable to several personal legal relationships, including the legal capacity and the capacity to act of a person (Arts. 9, 10), the internal affairs of an alien legal person (Art. 14), the legal relations between the injured party and the manufacturer resulting from an injury caused by the common use or consumption of the manufacturer's merchandise (Art. 26), the formation of an engagement to marry (Art. 45 I), the formation of a marriage (Art. 46), the legitimacy of a child (Art. 51), the acknowledgement of a child born out of wedlock (Art. 53), the formation and

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* Die offizielle englische Übersetzung ist abgedruckt in Mitgliederinformationen Nr. 7/2014, Seite 3 ff.

1 For the conflicts problem of divorce in Taiwan, see Rong-Chwan Chen, "Conflict of Laws of Divorce: Judicial Practice and Legislative Development of Taiwan", in: K. Boele-Woelki, T. Einhorn, D. Girsberger & S. Symeonides (Eds.), Convergence and Divergence in Private International Law – Liber Amicorum Kurt Siehr, pp. 193-220 (The Netherlands: Eleven International Publishing, 2010).

2 Franco Mosconi, "A Few Questions on the Matter of International Uniformity of Solutions and Nationality as a Connecting Factor", in: Jürgen Basedow et al., eds., Private Law in the International Arena – Liber Amicorum Kurt Siehr (The Hague: T.M.C. Asser Press, 2000), p. 480.

termination of an adoption (Art. 54), the legal relationships between parents and their child (Art. 55), the guardianship or wardship (Art. 56), the maintenance obligations (Art. 57), succession (Art. 58), and the formation, effects and revocation of a will (Art. 60). Since the lex patriae principle was adopted in the AAL, the concept of „national law" denotes the idea of „personal law" in addition to the law of the country which granted the person its nationality.

B. Ascertainment of the Lex Patriae

Given the political nature of a person's nationality and the fact that the lex patriae has been mostly replaced by the law of a person's habitual residence in deciding the person's personal law, the lex patriae was reconsidered and nationality was depended on to decide a person's personal law. The preparers were well aware that what a person's citizenship or nationality means to such a unique country like Taiwan. The AAL of 2011 relied on the principle of lex patriae and tried to rationalize and modernize it by improving the genuineness of link between the applicable law and the connecting nationality.

Taiwan not only has witnessed the international movement of persons and goods, but also has welcomed a large immigrant population from abroad in recent years. The lex patriae was adopted to respect the identity of individual from a foreign country. To avoid the difficulty arising out of the lex patriae, the AAL of 2011 gives less weight to the traditional allegiance of nationality and accords to the modem proximity of personal laws.

Three types of traditional problems around the lex patriae were seriously addressed in the AAL. Firstly, how shall a Taiwanese court apply the lex patriae among the national laws if the person has two or more nationalities? Secondly, how shall a Taiwanese court apply the lex patriae if the person has no nationally to designate his/her national law? Thirdly, how shall a Taiwanese court apply the lex patriae if the designated national law is composed by many domestic legal systems?

C. Lex Patriae of a Multinational Person

In case the lex patriae of a person shall be applied under the AAL, while he/she has multiple nationalities, the applicable law shall be singled out from the national laws designated by each nationality. Article 2 of the AAL changed from the policy that the ROC citizenship shall prevail in designating the applicable national law to state that the Taiwanese court shall apply the national law with which he/she is most closely connected.

D. Lex Patriae of a Stateless Person

Under the lex patriae principle, a person's status, capacity, marriage and other personal matters shall be governed by his/her national law. In case no nationality is granted to the person in question at the decisive time, some other connecting factor shall be provided to designate the applicable law. Article 3 of the AAL states that lex domicilii, i.e. the law of the place where that person is domiciled, shall be applied instead. No matter what problem might be faced with adopting the lex patriae principle, the governing personal law shall be finally ascertained.

When the lex domicilii is applied as the personal law, the problems around a domicile might be similar to a nationality. It is therefore stated in Article 4: "1. Whenever reference is made by the present Act to the law of the place in which a person is domiciled, while the person has multiple domiciles, the law of the place where he/she has the domicile of the closest connection shall be applied. 2. If no domicile of the person can be established, the law of the place in which that person resides shall be applied. 3. If the person has multiple residences, the law of the place where that person has the residence of the closest connection shall be applied. If no residence of the person can be established, the law of the place in which that person is actually present shall be applied."

E. Internal Conflicts of Law in Lex Patriae

Even though the lex patriae has been ascertained, the problem of choice of law may still arise if the person in question is a subject of a country that contains several distinct legal territories or legal systems. The test of nationality, in this case, may not offer an answer by itself. The AAL changed its

revised policy and provided with a solution which is to delegate the matter to the internal choice of law rules in such country. Article 5 states: "Whenever reference is made by the present Act to the national law of a person, who is a citizen of a state where its laws differ by territory or other element, the applicable law shall be the law indicated by the rules on application of laws of that state; should it prove impossible to establish such rules, the law with which that person is most closely connected within that state shall be applied."

This policy will inevitably cause the courts to conduct an extensive search over the applicable law. Because the internal-conflict-of-law rules adopted in federal states, divided states or other multi-legal-system countries, no matter of inter-territorial, inter-personal or inter-temporal nature, are therefore applicable to designate the applicable legal system within such countries. However, the indirect designation serves to fulfill the conflicts justice and increase the reasonableness in ascertaining the applicable law by referring to the "applicable" internal conflicts law of foreign country.

F. Lex Patriae Communis of the Parties

The "common national law" of the parties was adopted as an important type of the lex patriae in the AAL of 2011. It was particularly designed for the inter-spousal relationships in which the gender equality is emphasized as the core idea. In light of the facts that the parties' nationally may differ from each other, the law of the place of their common domicile and the law of the place which is the most closely connected with the parties are provided to govern the personal effects of engagements to marry (Art. 45 II), marriages (Art. 47), divorces (Art. 50) and the matrimonial property regimes (Art. 48 II). In tort cases regarding products liability (Art. 26) and infringement of personality right (Art. 28), the lex patriae of the victims will govern in order to protect them.

Instead of providing the law of parties' "common nationality", the AAL states that their personal relationship shall be governed by their "common national law." The drafters avoided the rigid form of connecting factor and referred to each individual's national law (personal law) in order to better balance the parties' interests in application of their own personal law. Therefore, in the case of ascertaining the national law of the multi-national or statelessness persons, the laws designated under Articles 2-4 are the national laws for the purpose of those provisions mentioned above.

On the basis of the above proposition, common nationality does not guarantee a common national law. The hypothetic example may illustrate the situation. X is citizen of country A, Y was granted nationalities of both countries A and B. Y is connected with A more closely than B. Although X and Y have a common nationality of A, they don't have a common national law. Because Y's national law is the law of B under Article 2 of AAL. The parties of different nationality might sometimes have a common national law. For instance, stateless X is domiciled in country A, of which Y is a citizen. Since X's national law is designated to be the law of A, where X is domiciled, under Article 3 of the AAL, the law of A is the common national law of X and Y**,** despite they don't have common nationality of A.

III. Renvoi

A. Basic Consideration

The process and result of applying conflicts rules by courts are theoretically sound, while it is the final substantial conclusion that faces the potential criticism from the parties and the public. The legislature thus tried to make the conflicts rules as reasonable as possible and reserved some general principles for the courts to ease the tension between conflicts justice and material justice.

In light of the conflict of the conflicts laws of the relevant states, it is necessary to adopt some approaches and rules in the AAL to pursue the goal of international harmony. As discussed earlier, the nationality decisive to a person's lex patriae is required to be the one with which the legal relationship is the most connected. The rule on choice of the national law among the several laws within a nation refers to the nation's domestic conflicts rules. The lex domicilii is alternatively adopted to ease the gap between the domestic conflicts law and foreign conflicts legislation. The similarity of traditional idea of domicile in Taiwan's Civil Code (Art. 20) and the habitual residence in the Hague Conventions and foreign legislations has nourished the ground of international harmony.

B. Adoption of Renvoi Doctrine

It is an insistent policy of the AAL to adopt provisions on renvoi. Given the facts that a person's personal law is designated to the law of his/her habitual residence in many states, the legislature encountered the problem of bridging the gap between the AAL and foreign conflicts legislations. The mode of distributing the applicable law has not yet reached a universal agreement; the framers of private international law legislation therefore, faced the selection between insistence of the policy embodied in the domestic conflicts legislation and acceptance of certain compromise and correction to pursue international harmony of judgments and to deter the parties' "forum shopping".

C. From Total Renvoi to Partial Renvoi

Renvoi was employed by the drafters to facilitate international decisional uniformity. Article 6 bases on the policy that renvoi focuses only on the international harmony of personal law and simplifies the total renvoi to certain types of renvoi.[3] It states: "Whenever reference is made by the present Act to the national law of a person, the other law shall be applied if the legal relation in question shall be governed by that other law under his/her national law. However, the law of the Republic of China (Taiwan) shall be applied if it shall be governed by the law of the Republic of China (Taiwan) under that national law or that other law."

Article 6 of the AAL of 2011 filled the gap of single renvoi or direct reference, which directs the courts to apply the relevant conflicts rule in the person's national law and to refer to the lex fori when it is so provided in it. The doctrine of "double renvoi" or total renvoi was revised to allow only a certain types of renvoi.

D. The Application of Renvoi

The law of a person's habitual residence has been widely adopted as the law applicable to many kinds of cases in foreign conflicts legislations. During their transplantation of it in the AAL of 2011, the drafters basically replaced it with his/her national law. The provision of "whenever the national law of a person shall be applied under the present Act" is therefore interpreted according to its spirit as "the cases whenever the personal law of a person is applicable" and the national law of an alien is expected to be reversed by referring to the whole of his/her national law, including its conflicts rules.

Taiwanese courts shall apply the law applicable under the AAL once it is decided that they have jurisdiction over the case containing foreign complexion. If the applicable law is a foreign law, it might be difficult to decide whether its conflicts rules are included in the applicable "law". Renvoi allows the court to apply the foreign conflicts rules and to refer the case again to the law of other country. For the purpose of international harmony in conflicts cases, the provision of renvoi shall be applied in all situations where the person's national law shall be applicable under the AAL no matter what the nature of legal relationship at issue is a person's capacity and status or not. Under such circumstances, the provision of renvoi can be applied in cases wherever a party's national law shall be applicable under the AAL.

E. Court Judgments on Renvoi

The provision of renvoi in the AAL is applied in some reported court decisions. The Taipei District Court Judgment No. Qing 98 of 1999 can be illustrated as an example. The parents of a child contested its legitimacy in this case. The court confirmed its jurisdiction over the case by

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[3] The AAL of 1953 adopted "total renvoi". In Article 29 it provides: "Whenever the national law of a person shall be applied under the present Act, another law shall be applied if under his/her national law the legal relation in question shall be governed by that another law; the other law shall be further applied if under the rules in that another law it shall be governed by such other law. However, the law of the Republic of China (Taiwan) shall be applied if under that another law it shall be governed by the law of the Republic of China (Taiwan)."

applying the rules for determining the domestic jurisdiction, which it did by analogy, before touching on any questions of substance. The father was a citizen of Japan and the mother a citizen of the Republic of China (Taiwan). The court determined that the law of the Republic of China (Taiwan) should govern by applying the rule of renvoi and examining Japanese legislation on private international law. The court, based on Article 16 Paragraph 1 of the AAL of 1953, ruled that the child should be governed by the national law of its mother's husband at the time of birth, namely, the Japanese law. After deciding that the case should be governed by the law of the Republic of China (Taiwan) under Article 21 of Japanese private international law (Ho-rei), the court concluded that the rule of renvoi should apply in this case, and that the law of the Republic of China (Taiwan) should be applied. It is understandable that the former legislature of the AAL preferred to include all types of renvoi to emphasize its function of referring from law to law. The lex fori is welcome by the court at the expense of restraining from absolutism of the domestic conflicts policy.

When the foreign conflicts rule is applied by way of renvoi, the foreign interpretations of connecting factors such as domicile or habitual residence shall also be applied. The further conflict of their characterizations is thus avoided.

IV. Ordre Public

A. Material Justice in the AAL

The "conflicts justice" rather than "material justice" has been the main objective of Taiwan's conflicts legislation since 1953.[4] Material justice plays a more important role in the AAL of 2011 even though the conflicts justice is still adhered to. Several examples illustrate this situation. Article 10 Paragraph 3 chooses the applicable law for a person's capacity by comparing the resulting differences, if any, between applying the person's national law and applying the lex fori.[5] Article 16 adopts an alternative reference to broaden the possibility of validity of the juridical act in question.[6] The same methodology was used to keep an engagement to marry (Art 45), a marriage (Art 46), legitimacy of a child (Art 51), acknowledgement of a child born out of wedlock (Art 53), and a last will (Art 61) with foreign elements as valid as possible.

B. Exceptional Exclusion of Applicable Foreign Laws

Contrast to facilitating the domestic moral value or public policy by way of applying the law favoring the same goal, the provision on public order operates to exclude the foreign law that is incompatible with the public order or boni mores of Taiwan. It is emphasized in the revised provision that the designated foreign law shall still be applied even if difference exists between it and the lex fori, it can only be excluded if it will lead to a "result" that cannot be accepted in domestic legal system. (Art 8)

C. Judicial Application of Ordre Public

Taiwan's Supreme Court has ruled that, unless the result of applying the foreign law in question is incompatible with the Taiwanese public order or boni mores, mere differences in the provisions of the foreign law when compared with its Taiwanese counterpart is not sufficient to exclude its application.[7] As an example, even though gambling is legal in Nevada and this legislation is literally

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4 For a general discussion on conflicts justice and material justice, see Rong-Chwan Chen, "New Way of Thinking in Private International Law Legislation: Material Justice in Conflicts Rules," 89 Taiwan Law Review 50-61 (2002).
5"Where an alien of no capacity or limited capacity to act under his/her national law is of full capacity under the law of the Republic of China (Taiwan), he/she shall be regarded as of full capacity to act for his/her juristic act that has performed within the Republic of China (Taiwan) ."Article 10 Paragraph 3 of the AAL.
6"The formalities of a juridical act shall be governed by the law applicable to that act. However, the formalities that satisfy the requirements of the law of the place where the act was done shall be effective." Article 16 of the AAL.
7Tieh Cheng Liu and Rong-Chwan Chen, Liu and Chen on Private International Law, 4th ed., pp. 227-228 (Taipei: San-Ming, 2008) (in Chinese).

incompatible with the Taiwanese public order or boni mores that prohibits gambling, the court concluded that the result of applying the Nevada law was not incompatible with the Taiwanese public order or boni mores and its application should not be excluded.[8]

The "public order or boni mores" is an indefinite legal concept that needs to be interpreted on a case-by-case basis. Although the provision stipulates the standard of exclusion on the literal comparison of provisions of Taiwanese law and foreign laws, the defensive spirit is always emphasized in its application.

V. Evasion of Mandatory Rules

A. Inserted Provision to Prohibit Evasion

Given the fact that conflicts justice might be distorted if evasion of compulsory provisions is tolerated, Article 7 was inserted in the AAL to maintain the applicability of domestic compulsory provisions. It states: "Whenever the parties to a civil matter evade being governed by the compulsory provisions in the law of the Republic of China (Taiwan), such compulsory provisions shall still be applied."

B. Underlying Policy

The artificially created connecting factors are far away from genuineness and fairness for the purpose of application of law. They shall not be treated as decisive connecting factors in the process of choice of law. This above provision aims at declaring that the malicious and fraudulent arrangement of connecting factors is unlawful and combating the evasion of domestic compulsory regulation. The parties are thus deprived of the interests they otherwise gained because the evaded domestic mandatory rules shall still be applied.

C. A Vision Beyond

Although there has not yet been any reported case on this provision, it is believed that the overriding character of domestic mandatory rules will be established as a reflection of this provision. A recent case involving a patent licensing agreement of which the parties had chosen the law of a foreign country as the law applicable, the Taiwanese courts correctly decided that the domestic competition regulation (Fair Trade Act) should be applicable to regulate the anti-competition acts made by foreign companies.

VI. Protection of the Weaker Parties

Protection of the weaker parties is a fundamental policy in the Taiwanese legal system. This policy draws a line to defend the basic material justice in many aspects of Taiwanese law. The drafters stay within the line of conflicts justice and leave the room of protecting the weak to the excluding effects of ordre public clause. Based on the conception that the personal law of the weak is not necessary the law protecting them mostly and best, the AAL of 2011 added its elements in few provisions of alternative application of the law protecting the weak parties better.

Article 26 on the law applicable to product liabilities is a good example. It states: 'The legal relations between the injured party and the manufacturer resulting from an injury caused by the common use or consumption of the manufacturer's merchandise shall be governed by the national law of the manufacturer. However, if the manufacturer agreed in advance or could have foreseen that such merchandise would be sold in the territory where any following law is enforced and such law has been chosen by the injured party as the applicable law, they shall be governed by it: a. the law of the place where the injury occurred; b. the law of the place where the injured party purchased the merchandise; or c. the national law of the injured party."

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8 Supreme Court Judgment No. Tai-Shang 130 of 1994. Two reported cases of lower courts, Taiwan High Court Judgment No. Shang 396 of 2000 and Taipei District Court Judgment No. Su 4566 of 2007, followed the opinions stated in this precedent.

VII. Characterization

A. Liberal Legislative Policy

It is beyond doubt that the preparers of the Taiwanese PIL Act borrowed many legal concepts and categories of legal relationships from the Civil Code and other enactments. Before determining the law applicable to a specific legal relationship, the court is required to know exactly which category of legal relationship the case belongs to. The descriptions of categories in the conflicts rules may be identical with the provisions of the Civil Code and other enactments. However, their interpretations may be different due to the standards employed by the different courts. The situation will be more complicated if the court employs foreign legal standards instead of the domestic law to characterize the nature of the legal relationship at issue.

The courts inevitably face the problem of which standard shall be adopted to interpret the conflicts rules in cases involving foreign elements. Legislators addressed such problem neither in the Taiwanese PIL Act 1953 nor in the Taiwanese PIL Act 2010. It is apparent that they left the courts with discretion to flexibly solve this technical problem on a case-by-case basis. However, Taiwan's courts exercise their discretion in this respect very cautiously. No reported case shows Taiwan's courts having ever expressly adopted the criteria of a foreign law to characterize the legal relationship at issue. Some court judgments have addressed only minimally the decisive criteria for characterization, but their choice of the conflicts rule for determining the applicable law has stood in line with the trend of comparative law. For example, Taiwan's Supreme Court ruled in Judgment Tai-Shang 1365 of 2001 that the victim's claim for damages resulted from an air crash shall be governed by the law applicable to such "tortious act".

B. Supreme Court Judgment Illustrations

Some famous examples on guardianship may help to illustrate the problems of characterization.

1. The Mosher's Case

In the case of parental rights and duties to Mosher, the parties are divorced parents disputing custody of their minor child.[9] In addition to the analysis of the characterization problems in its Judgment No. Tai-Shang 1888 of 1993, the Supreme Court focused on analyzing the basic premises and interpretations of related provisions in this case. The Supreme Court ruled that the effects of divorce cover the questions of the divorced parents' custody over their child. Such a conclusion is based on interpretations of several related terms. "The problems of allocating parental right of custody over a minor child and its method are outcomes resulting incidentally from a judicial decree rendering the parents' divorce. It shall therefore be governed by the applicable law for the effects of divorce." As demonstrated by the following quote, the criteria for the court's characterization are the material rules in the lex fori. "If the guardian of the minor child has been considered and appointed by a court in a decree to order divorce, but the circumstances changed afterwards, the parties are not prohibited to apply to court for changing guardian. It is the natural interpretation in light of the proviso of Article 1055 of the Civil Code."

2. The Mohajer's Case

In the case of parental rights and duties to Mohajer,[10] the Supreme Court emphasized that Article 15 of the Act of 1953 provides that the effects of a divorce shall be governed by the husband's national law; if an ROC woman is married to an alien but has retained her nationality, or if an alien is married to an ROC woman as a Zhui-fu, the effects their divorce shall be governed by the ROC's law. It ruled that the effects of divorce in the Article include the custody of children after the divorce, and that any change in the person who has custody of the child after the divorce is, by its nature, within the scope of the court's discretion to decide who is allowed custody (parental rights) of the child after its parents' divorce. These questions are therefore properly included in the field concerning the effects of divorce. It is reasonable to conclude that the Supreme Court characterized this

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9 For a detailed discussion on this case, see Rong-Chwan Chen, "The Applicable Law of the Assignments and Reassignments of Custodian für Children after Divorce: A Comment on the ROC Supreme Court's Judgment No.Tai-Shang 1888 of 1993", in Selected Essays on Private International Law, pp. 344-368 (Taipei: Wu-Nan, 1998). (In Chinese).
10 Supreme Court Judgment No. Tai-Shang 1207 of 1996.

legal relationship by following the rules of the lex fori.[11]

3. The Wu's Case

In the case of the guardianship over an orphan (Wu), whose Taiwanese father died of heart disease when he was taken to pay his first visit to Taiwan after years of his Brazilian mother's death, Kaohsiung District Court dealt with the problem of characterization as a standard procedure before applying specific provisions of the AAL of 1953. The plaintiff, Wu's Brazilian grandmother, asserted that she was qualified as the child's statutory guardian according to Article 1094 paragraph 1 of the ROC Civil Code. The court therefore characterized the dispute as a matter of guardianship under the criteria of the lex fori, i.e., the Taiwanese law. The parties did not dispute the standard or the result of this characterization.[12]

VIII. Incidental Questions

A. Tort and Maintenance Obligation

There is no provision addressing the problem of incidental question or preliminary question in the AAL. In its Judgment No. Tai-Shang 1804 of 2007, when considering the compensatory damages to the parents of a victim who lost her life in traffic accident, the Supreme Court addressed the relationship between the tort and the maintenance obligations.

In this judgment, the Supreme Court ruled that the question of whether the parents of a victim can claim the costs to support their future life shall not be decided directly by the conflicts rule for torts. Trying to take such questions out from the basket of the law applicable to torts, the Supreme Court said: "The ideal of the lex loci delicti is to grant prompt and reasonable compensation to the victim and to safeguard the victim with the protection and compensation that he/she is usually granted in the place of his/her domicile. In this case, the question whether the victim is legally bound to support the parents is not an integrated and inseparable part of the main legal relationship (tort), and therefore is not necessarily subject to the same applicable law designated by the conflicts rule for torts. Since the question of whether the victim is liable to support her parents is not an integrated and inseparable part of the tort in question, and the law relating the liability to support differs from country to country, we conclude that for the question of whether the defendant is liable to compensate the victim, the applicable law, by designation of Article 9 Paragraph 1 of the AAL of 1953, shall be the law of the place of the tortious act; for the issue of compensation or whether the victim is legally liable to support the plaintiffs, the applicable law, by designation of Article 21 of the AAL of 1953. shall be the national law of the debtor to support."

B. Tort and the Damage Suffered

The Supreme Court Judgment No. Tai-Shang 1838 of 2008 also deserves attention. It involves the question of whether a Taiwanese employer must compensate an injured foreign worker with the basic salary provided in Taiwanese Labor Basic Act. The Supreme Court addressed in this case that the measurement of the loss of working capacity, since it is to be decided after the liability for damages is confirmed, is not an integral or inseparable part of the tort in question, and can be subject to another applicable law. Although the applicable law of the tort in question designated by Article 9 Paragraph 1 of the AAL of 1953 is the Taiwanese law, the Supreme Court ruled, however, that the compensation for the loss of working capacity during the period when the injured victim is not legally permitted to work in Taiwan shall be governed by his own national law, i.e. the Vietnamese law.

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11 It is this author's opinion that they are all within the scope of the parent-child relationship of which choice of law problem should be solved under Article 19 of the AALof 1953. SeeTieh Cheng Liu and Rong-Chwan Chen, Liu and Chen on Private International Law, 4th ed,, p. 409 (Taipei: San-Ming, 2008) **(**in Chinese).

12 Kaohsiung District Court Judgment No. Qing 153 of 2001. For comments on this case, see Rong-Chwan Chen, "A Comment on The Disputes of Guardianship over the Taiwan-Brazilian Orphan Wu ," 76 Taiwan Law Review 147-158 (2001) (in Chinese); "Second Comment on The Disputes of Guardianship over theTaiwan-Brazilian Orphan Wu ," 17 Chinese (Taiwan) Yearbook on International Law and International Affairs 553-572 (2005) (in Chinese).

IX. The Closest Connection

A. Softening the Rigid Connectors

The drafters maintained the traditional legislative style of rigid conflicts rules in the AAL, and introduced the soft connecting factor of closest connection to pull Taiwan's conflicts legislations back to the modem trend. They considered carefully on the mode and extent of its adoption. The general rule on the closest-connection approach was not adopted to correct the unexpected effects of conflicts rules or fill their gap. The test was adopted only to decide the law applicable to some specific legal relationships. The change of thinking ways can well be illustrated by torts and contracts.

B. Proper Law of a Tort

The closest-connection approach was adopted in choice of law for torts. In order to protect the victims and to reflect the revolution and latest trend in private international law, the AAL of 2011 abolishes the "double-actionability" rule and adopts the "closest connection" test and flexible approach for torts. Article 25 states: "The obligations arising from a tortious act shall be governed by the law of the place where the tortious act was committed. However, if other law is the most closely connected, they shall be governed by such law."

According to such provisions, the lex loci delicti is still prima facie the law applicable to torts. The court may invoke this rule in order to apply the lex loci delicti, but only if the party cannot prove that other law is more closely connected with the case, i.e., the lex loci delicti is not the most closely connected law in the case. If the court rules as such it can make an exception and apply the law which is most closely connected. This interpretation of the philosophical grounding indicates that the obligations arising from a tortious act shall be governed by the law which is the most closely connected to the case, and the lex loci delicti is presumed to be the most closely connected law.

C. Absence of Choice in Contracts

The closest-connection approach was also adopted to decide the law applicable to the contracts for which the parties had not agreed on their applicable law. There are many different theories for determining the applicable law in cases where the parties' intention or agreement to choose applicable is absent or unclear. The AAL of 1953 followed a rigid approach to set general rules for designating the applicable law.[13] It was easy for the courts to determine the applicable law. However, this efficiency is earned at the expense of potential lack of significant connection with the juridical act in question.

The AAL of 2011 therefore keeps the basic rule of party-autonomy and changes the methodology used to decide the applicable law when the parties' agreements or intentions cannot be proven. Article 20 states: "1. The applicable law of the formation and effects of a juridical act from which obligatory relations result shall be determined by the parties' intention." " 2. Where there is no express intention of the parties or the express intention is void under the applicable law determined by the parties, they shall be governed by the law which is the most closely connected." "3. Where among the obligations resulted from a juridical act there is a characteristic one, the law of the domicile of the party who is to default on it at the time when the act was done shall be presumed as the law which is the most closely connected. However, where the subject matter of the juridical act is a real property, the law of the place where the real property is situated shall be presumed as the law which is the most closely connected."

It is apparent that the rigid rule was replaced with the open-ended "closest connection" test. The

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13 "When the intention of the parties is unknown, if both parties are of the same nationality, their national law shall be applied; if they are of different nationalities, the law of the place where the act was done shall be applied; if the act was done at different places, the law of the place where the notice of offer was issued shall be regarded as the place where the act was done; if the other party did not know the place where the notice of offer was issued when the offer was accepted, the place of the offerer's domicile shall be regarded as the place where the act was done." "If the place where the act was done provided in the preceding paragraph spans over two or more countries, or it does not belong to any state, the law of the place where the obligation was performed shall be applied." Article 6 Paragraphs 2 & 3 of the AAL of 1953.

expression of intention to choose applicable law was limited to explicit terms to give more room for the law of the closet connection. The criteria of "characteristic performance" were adopted as a prima facie rule in deciding the closest connection and the governing law.[14] The exercise of such revolutionary function in choice of law might be somehow challenging for the Taiwanese courts. The development of a new judicial culture in conflicts practice is highly expected.

X. Conclusions

The judiciary and academia have got on the stage after the legislation came into effect. The judicial practice and explanatory interpretations on the ALL of 1953 have formed solid and important ground on which the new ALL of 2011 stands. This revision bridged the gap between Taiwan's conflicts rules and that of foreign and international codifications and facilitated the international judicial harmony. It has also transformed and modernized Taiwan's conflicts legislation from its skeleton to blood.

The drafters considered the specific needs of the contemporary Taiwan society and kept the legislation in Taiwan's unique track. The experiences and scholarly researches are significant assets for the judiciary to implement the new legislation. It is hoped that the AAL will be enlightened through absorbing experiences in foreign jurisdictions, and the courts will build up their new discretionary functions and the correct attitude in applying the new provisions.

Taiwan's new legislation has undoubtedly added a new note to the development of conflicts codification. The international comparative study would provide some new nutrition and supplements to build up a new legal culture. It deserves observation on how the new European conflicts law will influence the interpretation of Taiwan's new legislation.

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14 Rong-Chwan Chen, "The New Autonomy in the Private International Law: The Principle of Party-autonomy in the AAL of 2011", 186 Taiwan Law Review 147-168 (Nov. 2010).

Mitteilungen und Nachrichten

- **Fünftes deutsch-taiwanesisches Strafrechtsforum**
  (29. September-01. Oktober 2015 in Kaohsiung und in Tainan)
  Sicherheit und Freiheit: Alte Herausforderungen im modernen Strafrecht

Tagungsprogramm:

Kaohsiung, National University of Kaohsiung, Building College of Law, Kohsiung University Rd. No. 700

***Dienstag, 29. September* 2015: Erster Tagungstag**

9:00-9:40	**Eröffnung der Tagung**
Seminarraum 414	**Grußworte**
	Prof. D.r Jow-Lay Huang, Präsident NUK
	Vertreter des Justizministeriums der Republik China od. des auswärtigen Amtes oder der Vertretung von BND
	Prof. Dr. I-Ming Liao, Dekan der Juristischen Fakultät NUK
	Dr. Jan Grotheer, Präsident der Deutsch-Taiwanesischen Juristenvereinigung
9:40-10:00	**Teepause**
10:00-10:10	**1. Sitzung: Zeugenschutz und effektive Strafverteidigung**
Seminarraum 414	Sitzungsleitung: Prof. Dr. Hsiao-Wen Wang, Tainan
10:10-10:40	1-1. Zeugenschutz und Strafverteidigung
	Prof. Dr. Jiuan-Yih Wu, Kaohsiung
10:40-11:10	**1-2. Staatliche Fürsorge im Strafprozess – Zeugenschutz vs. effektive Verteidigung**
	Prof. Dr. Robert Esser, Passau

Fortsetzung S. 16

11:10-12:00	**Diskussion**
Seminarraum 414	Sitzungsleitung Prof. Dr. Hsiao-Wen Wang, Tainan Prof. Dr. Jiuan-Yih Wu, Kaohsiung Prof. Dr. Robert Esser, Passau Prof. Dr. Chen-Chung Ku, Tainan Prof. Dr. Heng-Da Hsu, Taipeh Pro. Dr. Sheng-Wei Tsai, Taipeh Chung-Yen Chen, Staatsanwaltschaft Taipeh Prof. Dr. Arndt Sinn, Osnabrück Prof. Dr. Mark A. Zöller, Trier Prof. Dr. Chun-Soo Yang, Gyeongsan
14:00-14:10	**2. Sitzung: Das Prinzip der Nichtöffentlichkeit im staatsanwaltschaftlichen Ermittlungsverfahren**
Seminarraum 414	Sitzungsleitung: Dr. Jan Grotheer, Präsident der Deutsch-Taiwanesischen Juristenvereinigung
14:10-14:40	**2-1. Staatsanwaltschaftliche Geheimhaltungs- und Berichtspflichten im Ermittlungsverfahren – eine Bestandsaufnahme der Rechtslage und Praxis in Taiwan** Chung-Yen Chen, Staatsanwaltschaft Taipeh
14:40-15:10	**2-2. Die Staatsanwaltschaft im Schraubstock zwischen Pressefreiheit und Sicherheit der Privatsphäre** Dr. Markus Mavany, Trier
15:10-15:30	**Kaffeepause**
15:30-16:30	**Diskussion**
Seminarraum 414	Sitzungsleitung: Dr. Jan Grotheer, Präsident der Deutsch-Taiwanesischen Juristenvereinigung Chung-Yen Chen, Staatsanwaltschaft Taipeh Dr. Markus Mavany, Trier Prof. Dr. Chih-Jen Hsueh, Taipeh Prof. Dr. Heng-Da Hsu, Taipeh Prof. Dr. Yu-An Hsu, Taipeh Prof. Dr. Bernd Heinrich, Tübingen Prof. Dr. Zsolt Szomora, Szeged Prof. Dr. Robert Esser, Passau
16:30-16:40	**Zwischenfazit und Verabschiedung aus Kaohsiung**
16:40	**Ende der ersten Arbeitssitzung**
16:40-18:10	**Stadtführung Kaohsiung**
18:30	**Abendessen auf Einladung der Staatsanwaltschaft Kaohsiung**

Tainan, National Cheng Kung University

Li-Hsing Compus Building of Social Sciences, University Rd. No. 1, Tainan

***Mittwoch, 30. September* 2015: Zweiter Tagungstag**

9:00-10:00	**Eröffnung der Tagung**
North Block 2F	**Grußworte**
Moot Court	Prof. Dr. Chen-Huan Wu, Beamteter Staatsekretär am Justizministerium der Republik China Martin Erberts, Generaldirektor am Deutschen Institut Taipeh Prof. Dr. Yue-Dian Hsu, Dekan der Fakultät für Sozialwissenschaften NCKU
10:10-10:10	**Vortrag: Die Auskunft über Telekommunikationsverkehrsdaten im Spannungsfeld zwischen dem deutschen und europäischem Recht** Sitzungsleitung: Prof. Dr. Chen-Huan Wu, Beamteter Staatssekretär im Justizministerium
10:10-11:30	**Vortrag** Prof. Dr. Mark A. Zöller, Trier Dolmetscher (Deutsch-Chinesisch): Prof. Dr. Shin-Fan Wang, Tainan
11:30-12:00	**Diskussion** Prof. Dr. Mark A. Zöller, Trier Prof. Dr. Chih-Jen Hsueh, Taipeh Chung-Yen Chen, Staatsanwaltschaft Taipeh Prof. Dr. Arndt Sinn, Osnabrück Dr. Jan Grotheer, Präsident der Deutsch-Taiwanesischen Juristenvereinigung Dolmetscher (Deutsch-Chinesisch): Prof. Dr. Shin-Fan Wang, Tainan

Fortsetzung S. 17

12:00-14:00	**Gemeinsames Mittagessen**
14:00-14:10	**3. Sitzung: Meinungsfreiheit, Ehrenschutz und Strafrecht**
North Block 2F	Sitzungsleitung: Prof. Dr. Arndt Sinn, OsnabrückMoot Court
14:10-14:40	**3-1. Zum Ausgleich zwischen Ehrenschutz und Meinungsfreiheit im Strafrecht**
	Prof. Dr. Hsiao-Wen Wang, Tainan
14:40-15:10	**3-2. Meinungsfreiheit und Strafrecht**
	Prof. Dr. Zsolt Szomora, Szeged
15:10-15:40	**3-3. Meinungsfreiheit des Strafverteidigers**
	Prof. Dr. Karsten Gaede, Hamburg
15.40-16:30	**Diskussion**
North Block 2F	Sitzungsleitung: Prof. Dr. Arndt Sinn, Osnabrück
Moot Court	Prof. Dr. Hsiao-Wen Wang, Tainan
	Prof. Dr. Zsolt Szomora, Szeged
	Prof. Dr. Karsten Gaede, Hamburg
	Prof. Dr. Cheng-Chung Ku, Tainan
	Prof. Dr. Yu-An Hsu, Taipeh
	Prof. Dr. Robert Esser, Passau
	Dr. Markus Mavany, Trier
	Prof. Dr. Chun-Soo Yang, Gyeogsan
16:30-16:50	**Kaffeepause**
16:50-17:00	**4. Sitzung: Abschöpfung des illegalen Gewinns**
North Block 2F	Sitzungsleitung: Prof. Dr. Robert Esser, Passau
Moot Court	
17:00-17:30	**4-1. Einige Reformüberlegungen zur Gewinnabschöpfung im taiwanesichen Strafverfahren**
	Prof. Dr. Chih-Jen Hsueh, Taipeh
17:30-18:00	**4-2. Korruptionsstrafbarkeit und politische Eliten – Gibt es eine Grenze von strafbarer Korruption und strafloser Vetternwirtschaft?**
	Prof. Dr. Bernd Heinrich, Tübingen
18:00-18:50	**Diskussion**
North Block 2F	Sitzungsleitung: Prof. Dr. Heng-Da Hsu, Taipeh
Moot Court	Prof. Dr. Chih-Jen Hsueh, Taipeh
	Prof. Dr. Bernd Heinrich, Tübingen
	Prof. Dr. Sheng-Wei Tsai, Taipeh
	Prof. Dr. Jiuan-Yih Wu, Kaohsiung
	Prof. Dr. Mark A. Zöller, Trier
	Prof. Dr.Zsolt Szomora, Szeged
18:50	**Ende der zweiten Arbeitssitzung**
19:00	**Abendessen auf Einladung des Justizministeriums der Republik China**

***Donnerstag, 01. Oktober* 2015: Dritter Tagungstag**

9:00-9:10	**5. Sitzung: Verbraucherschutz durch Strafrecht**
North Block 2F	Sitzungsleitung: Prof. Dr. Mark A. Zöller, Trier
Moot Court	
9:10-9:40	**5-1. Reflektierte Moderne und Risiken des Risikostrafrechts – Am Beispiel der Reform des taiwanesichen Lebensmittelstrafrechts** (AS1)
	Prof. Dr. Chen-Chung Ku, Tainan
9:40-10:10	**5-2. Lebensmittelrisiken und sog. Risikostrafrecht**
	Prof. Dr. Yu-An Hsu, Taipeh
10:10-10:40	**5-3. Arzneimittelkriminalität und Verbraucherschutz – wie Europa sich vor illegalen Anbietern schützen will**
	Prof. Dr. Arndt Sinn, Osnabrück
10:40-11.00	**Teepause**
11:00-12:00	**Diskussion**
North Block 2F	Sitzungsleitung: Prof. Dr. Chih-Jen Hsueh, Taipeh
Moot Court	Prof. Dr. Cheng-Chung Ku, Tainan
	Prof. Dr. Yu-An Hsu, Taipeh
	Prof. Dr. Arndt Sinn, Osnabrück
	Prof. Dr. Heng-Da Hsu, Taipeh
	Prof. Dr. Sheng-Wei Tsai, Taipeh
	Prof. Dr. Jiuan-Yih Wu, Kaohsiung
	Prof. Dr. Bernd Heinrich, Tübingen
	Prof. Dr. Mark A. Zöller, Trier
	Prof. Dr. Zsolt Szomora, Szeged

Fortsetzung S. 18

12:00-14:00	**Gemeinsames Mittagessen**
14:00-14:10	**6. Sitzung: Rechtfertigungsgrundlagen für die Risikokontrolle durch Strafrecht**
North Block 2F	Sitzungsleitung: Prof. Dr. Yu-An Hsu, Taipeh
14:10-14:40	**6-1. Überlegungen zur strafrechtlichen Bewältigung der Risikogesellschaft**
	Prof. Dr. Heng-Da Hsu, Taipeh
14:40-15:10	**6-2. Probleme der Strafbarkeitsvorverlagerung im Straßenverkehrsstrafrecht – am Beispiel der Reformen des § 185c StGB**
	Prof. Dr. Sheng-Wei Tsai, Taipeh
15:10-15:40	**6-3. Fahrlässigkeitsdelikte in der modernen Sicherheitsgesellschaft: Am Beispiel von Südkorea**
	Prof. Dr. Chun-Soo Yang, Gyeogsan
15:40-16:00	**Kaffeepause**
16:00-17:00	**Diskussion**
	Sitzungsleitung: Prof. Dr. Jiuan-Yih Wu, Kaohsiung
	Prof. Dr. Heng-Da Hsu, Taipeh
	Prof. Dr. Sheng-Wei Tsai, Taipeh
	Prof. Dr. Chun-Soo Yang, Gyeogsan
	Prof. Dr. Hsiao-Wen Wang, Tainan
	Prof. Dr. Chen-Chung Ku, Tainan
	Prof. Dr. Yu-An Hsu, Taipeh
	Prof. Dr. Chin-Jen Hsueh, Tainan
	Prof. Dr. Robert Esser, Passau
	Prof. Dr. Karsten Gaede, Hamburg
	Dr. Jan Grotheer, Präsident der Deutsch-Taiwanesischen Juristenvereinigung
	Dr. Markus Mavany, Trier
17:00-17:20	**Schlussbetrachtung**
17:20	**Ende der dritten Arbeitssitzung**

Literaturhinweise

- **Sean Chuang, Meine 80er Jahre: Eine Jugend in Taiwan,**

Zweisprachige Ausgabe Deutsch-Chinesisch, Übersetzung von Marc Hermann, Verlag Chinabooks E. Wolf, 1. Auflage, 28. Juli 2015, ISBN: 978-3905816594, broschiert EUR 19,90

Sean Chuang, Werbefilmer und Comiczeichner, wurde 1968 auf Taiwan geboren. In dieser Graphic Novel schildert er Erinnerungen an seine Jugend auf Taiwan der späten 70er und 80er Jahre. Taiwan erlebte damals einen beispiellosen Wirtschaftsboom und eine politische Öffnung hin zu mehr Demokratie und Freiheit. Humorvoll fängt der Autor den Alltag und das Lebensgefühl seiner Generation ein und gewährt dabei Einblicke in die von typisch chinesischen Wertvorstellungen geprägte Kultur, aber schildert zugleich auch die Gefühle eines Jungen seiner Zeit. Das Tagebuch erhielt 2014 bei den Taiwan Golden Comic Awards als erstes Werk überhaupt sowohl den Preis für den besten Comic als auch den für den besten Newcomer.

Der Übersetzer, Dr. Marc Hermann, geboren 1970, Germanist und Sinologe, unterrichtet nach Lehrtätigkeit an der Universität Bonn derzeit Übersetzen an der Tongji-Universität in Schanghai.

- **Shang-Ju Yang, Konzeption des pouvoir constituant bei Sieyès und Schmitt: Der theoretische Ursprung der Verfassungsänderung in Taiwan,**

Deutsche Ausgabe, Verlag Duncker & Humblot, 1. Auflage, 29. Juli 2015, ISBN: 978-3428147205, broschiert EUR 69,90

Das Werk beginnt mit der Darstellung der Konzeptionen der verfassungsgebenden Gewalt bei Emanuel Joseph Graf Sieyès, geboren 1748, französischer Revolutionär, Politiker und katholischer Geistlicher (daher auch als Abbé Sieyès bekannt), und dem umstrittenen deutschen Staatsrechtslehrer

Carl Schmitt, geboren 1888, Werke u.a. „Verfassungslehre. Sieyès, der erste große Theoretiker des demokratisch legitimierten nationalen Einheitsstaates nahm in seinen Schriften die liberale Repräsentativverfassung des 19. Jahrhunderts vorweg. Sein Denken hat besonders die französische Verfassung von 1791 beeinflusst, die ihrerseits Vorbild für viele Verfassungen des 19. Jahrhunderts war. Yang zeigt die Auswirkung der entgegengesetzten Konzeptionen auf die Diskurse Taiwans in den Debatten um die Verfassungsänderungen seit den 1990er Jahren auf.

- **Der seidene Fächer - Klassische Gedichte aus China,**
aus dem Chinesischen übertragen und herausgegeben von Volker Klöpsch.
Originalausgabe: Deutscher Taschenbuch Verlag (DTJV Nr. 13815), 2009,
ISBN 978-3-423-13815-4, EUR 9,90

Dieses Taschenbuch enthält lyrische Kostbarkeiten der acht bedeutendsten klassischen Dichter Chinas, die in den Zeiten der Tang-Dynastie (618-907) lebten, die als Blütezeit der chinesischen Dichtung gilt: Neben Gedichten von Meng Haoran, Wang Wei, Du Fu, Bo Juyi, Liu Zongyuan, Du Mu, Li Shangyin sind auch etliche von Li Bai übertragen, dem berühmtesten Dichter der Tang-Zeit, der von 701 bis 762 lebte.

Ein Nachwort des Herausgebers und Übersetzers, des promovierten Sinologen Volker Klöpsch, der am Ostasiatischen Institut der Universität Köln unterrichtet, Quellenhinweise und ein Verzeichnis der Gedichte und Anmerkungen ergänzen diese schöne Ausgabe, die sich auch gut zum Verschenken eignet.

Das Werk enthält auch ein Gedicht von Li Bai “Der einsame Zecher im Mondenschein“, das mit Übertragungen von Eich „Einsamer Trunk unter dem Mond“, Klabund „Die drei Genossen“, Chen/Heider „Einsamer Zecher unter dem Mond“, Zhao/Ziethen „Zechen unter̕m Monde“ und Hans Bethge „Die drei Kameraden“, in den Mitgliederinformationen 5/2012 bzw. 6/2013 und 7/2014 und 8/2015 abgedruckt ist. Hier die folgende Nachdichtung aus dem vorgenannten Buch als Kostprobe und zum Vergleich:

Der einsame Zecher im Mondenschein

Nur Blüten rings und dieser Krug mit Wein,
alleine trinke ich, kein Freund hält mit.
Ich heb den Becher, lad den Mond mir ein,
mit meinem Schatten wären wir zu dritt.

Wenn auch der Mond aufs Trinken sich nur schlecht
versteht, ein Anhängsel mein Schatten bleibt -
die zwei Kumpane sind mir heut gerad recht:
Es heißt doch lustig sein zur Frühlingszeit!

Beständig hüpft der Mond zu dem Gesang,
der Schatten zuckt unruhig zu dem Tanz.
Erst einte nüchtern uns der Überschwang,
doch mit dem Rausche schwand die Allianz.

Sind die Gefühle endlich aufgehoben,
wird eine ewge Freundschaft uns verbinden.
Dann bin ich zu den Sternen aufgeflogen,
dort wollen wir dann zueinander finden!

Vorstand
(Stand 01. Januar 2015)

im Sinne von § 26 BGB

Präsident

Dr. Jan Grotheer, Hamburg
Präsident des Finanzgerichts Hamburg i.R.

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Aufnahmeantrag

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Hiermit stelle ich den Antrag auf Aufnahme in die Deutsch-Taiwanesische Juristenvereinigung e.V.

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Einzugsermächtigung

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Ich/Wir ermächtige(n) den Schatzmeister, den Mitgliedsbeitrag innerhalb des 1. Quartals im Wege des Einzugsverfahrens von meinem/unseren Konto bei der

本人/公司同意授權德中法律人員協會財政人員於每年第一季內以轉帳方式自本人/公司帳戶扣繳會費。

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