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THE PRINCIPLE OF EQUIVALENCE OF LEGAL SYSTEMS IN PRIVATE INTERNATIONAL LAW AND ITS CONTRIBUTION TO THE FOUNDATION AND PRESERVATION OF PEACE*

Abstract: *Private international law (PIL) might seem disconnected from peacebuilding and peacekeeping efforts. However, this perception falls short. PIL, contrary to public international law's direct peacekeeping potential, indirectly contributes to peace by fostering mutual respect between states. The relationship between PIL and peace stems from the recognition and respect states show for each other's legal systems. PIL operates on the principle of comity, where states acknowledge the applicability of foreign laws to resolve cases. In essence, while PIL's impact on peace is indirect and modest, its emphasis on mutual respect and fair treatment contributes to peaceful relations between states, making it an important element in the broader context of peacebuilding and peacekeeping efforts. Private international law (PIL) does not determine substantive fairness for parties but focuses on localizing cases at a meta-level of conflict-of-laws. This localization is guided by party, trade, and regulatory interests, and is rooted in neutrality and respect for other legal systems. While the principle of equivalence and neutrality remains foundational in PIL, exceptions and limitations have been established over time to address specific scenarios, ensuring a balanced approach that respects both foreign legal systems and fundamental legal principles.*

Keywords: *Private International Law, peacebuilding and peacekeeping, mutual respect, comity, equivalence.*

What contribution can private international law (PIL) as a part of conflict-of-law regulations make to peacebuilding and peacekeeping? At first glance, one

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might answer: certainly not too much. After all, according to its name, it appears to be *private law*, i.e. a field of law that deals with legal issues only at the horizontal level of private parties. Moreover, private international law does not even determine how a legal dispute is ultimately decided, because it deals only with the preliminary question of *which legal system actually applies* to a private law dispute in a cross-border case.

How is this very special legal field supposed to be related to peace? Perhaps it can be indirectly related to peace – legal peace – between individuals, but in no case to peace between states. Right?

I would like to demonstrate to you today that such a view falls somewhat short. Rather, it is quite true that private international law *can make a small, modest, but nevertheless not-to-be-underestimated contribution to peace, even between states*. There are not even many fields of law that are able to demonstrate respect between states as clearly as private international law does.

Needless to say: In contrast to public international law, which can provide direct and far-reaching peacekeeping, private international law's contributions in this regard are more indirect and limited – at least at the legal level. However, public international law *might* perhaps have at times – and I am not an expert here – a certain enforcement deficit at the factual level. In contrast, private international law – at least in its classical form, being far less "political" – does not have this kind of shortcoming. It may have only a *small* impact on peace, but it is an impact you can pretty much count on. However, recently PIL seem to have experienced several "politicisation pushes", so it remains to be seen whether I will have to change my optimistic initial assessment in the course of my talk...

To start with, it would be useful to clarify some terminology. I am using the term 'private *international* law', but this term is somewhat misleading. Traditionally, and originally, private international law actually meant *national* law which is "activated" in *international situations,* i.e. in cross-border situations*,* and only then becomes relevant. This means that it is *not necessarily the sources of law* that are international, but *rather the circumstances* that are ultimately resolved on the basis of national law.[1] It is true, of course, that there is an increasing amount of private international law in the form of EU regulations and, already for some time now, also in international treaties; but, at its very foundation, private international law is national law. And with this national law we can show our respect for other states. Of course, we can also do this as EU Member states with EU private international law towards non-EU states, or we can do this as states that have entered into a PIL treaty towards states that have not.

[1] Cf. *v. Bar/Mankowski*, Internationales Privatrecht, Vol. I, 2nd ed. 2003, § 1 para. 3 et seqq; *Raape*, Internationales Privatrecht, 4th ed. 1955, p. 7; critically, *Kropholler*, Internationales Privatrecht, 5th ed. 2004, § 1 V 1.

In a moment, I will explain how this expression of respect works.

Let me come back to the terminology first: the "private" element of private international law also seems a little misleading. It is true that private international law is concerned with determining which national private law should be used to resolve a particular legal dispute. However, this does not necessarily mean that private international law itself is *private* law.[2] Since it decides how to apply national law and thus ultimately determines the scope of sovereignty, a *classification as part of public law* also seems *quite arguable*. You may be familiar with a similar discussion from civil procedural law, which is considered part of public law since it deals with the regulation of a state, i.e. the sovereign activity of the courts.[3]

This may make it clearer already that private international law – although *in concreto* it only deals with disputes between individuals – *also features a larger dimension*: it has a much broader effect than merely on the horizontal level between private parties. *In private international law, states allow the legal systems of other states to take precedence over their own legal systems if and when these simply fit the case better.*

And with this trust that a state puts in these foreign private legal systems it at the same time pays respect to the other states. When states show each other respect and appreciation, then, this can – of course – only be helpful for peacekeeping.

So, *how exactly* does private international law ensure this respect and acknowledgement?

Well, first of all, it is assumed that private international law is based on the mutual recognition of the particular states' legal systems and sometimes it is even said that this recognition arises from a corresponding duty under public international law.[4] This duty would follow, among other things, from the *concept of comity* (in Latin: *comitas*).[5] In concrete terms, this means, for example, that a state whose private international law only led to the application of its *own* domestic law would act *just as contrary to public international law* as a state that *excluded* the private law of a certain other state from application *per se*.[6]

In practice, the effects of this mutual respect can be seen in the fact that national courts have to apply foreign private law in private cross-border disputes. The precondition for this, of course, is that a certain foreign law is applicable pursuant to PIL rules. But then, the judges *have to* apply the foreign law whether they want to or not – and often they do not want to, not out of a lack of respect,

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[2] However, the prevailing opinion sees it this way: cf. *Kropholler*, Internationales Privatrecht, 5th ed. 2004, § 1 V 1.; *Raape*, Internationales Privatrecht, 4th ed. 1955, p. 6.

[3] *Kaufmann*, JZ 1964, 482.

[4] *Raape*, Internationales Privatrecht, 4th ed. 1955, p. 15.

[5] *Weller,* IPRax 2011, 429 (430); cf. *Siehr*, Internationales Privatrecht, 2001, p. 365 et seq.

[6] *Raape*, Internationales Privatrecht, 4th ed. 1955, p. 15.

but because they know domestic law better and have been trained in it.[7] In this respect, one can even say that *the classical conflict-of-law approach counteracts the very natural "striving home tendencies" of courts and the intuitive tendency to consider domestic legal norms as qualitatively superior*.[8]

Private international law in its classic form understands as *one of its central goals* the "*equal treatment of natives and foreigners and thus the avoidance of discrimination* on the basis of foreign contact".[9] In principle, this requires that foreign law is accepted as equivalent to the domestic legal system.[10] This approach is perfectly in line with Art. 3 of the UN Declaration on a Culture of Peace.[11] According to this, and I quote, the "fuller development of a culture of peace is integrally linked to [...] mutual respect and understanding".

This principle of the equal value of all legal systems or – in other words – the "spirit of liberality and tolerance towards other legal systems"[12] can be traced back to *Friedrich Carl von Savigny*. His method is known as the "classic" private international law doctrine. *Savigny* wrote in Volume 8 of his famous "System des heutigen Römischen Rechts" from 1849 – and now I quote my own translation of his German text – "This is the result of the desirable reciprocity in the treatment of legal relations, and of the equality in the judgment of natives and foreigners which arises from it [...]. For this equality must lead to the complete development that not only is the foreigner not set back against the native in each individual state [...], but also that the legal relations, in the case of a collision of laws, *have to expect the same assessment, without distinction whether the judgment is pronounced in this or that state*."[13] From this starting point, *Savigny* concluded that the applicability of a law could not depend on what the judge simply determines to be the "*best*" law in the sense of a better law approach. Rather, the legal regime that has to be applied is the one to which "the legal relationship *belongs* or *is subject to* according to its characteristic nature",[14] i.e. which is most appropriate from a *geographical-functional point of view*.[15]

Before that, in cross-border cases it was only asked how far one's own national law actually wanted to be applied, and foreign law was warded off at national borders. In this respect, one sometimes spoke of a "principle of territoriality".[16]

[7] Cf. *Kropholler*, Internationales Privatrecht, 5th ed. 2004, § 7 I. with further references.

[8] *Weller,* IPRax 2011, 429 (431).

[9] Staudinger/*Looschelders*, Einleitung IPR, 2018, para. 56.

[10] MüKoBGB/v. *Hein*, 8th ed. 2020, Art. 6 EGBGB para. 1.

[11] A/RES/53/243, 6 October 1999.

[12] MüKoBGB/v. *Hein*, 8th ed. 2020, Art. 6 EGBGB para. 1.

[13] *Savigny*, System des heutigen Römischen Rechts, Vol. VIII, 1849, p. 26 et seq.

[14] *Savigny*, System des heutigen Römischen Rechts, Vol. VIII, 1849, p. 28; see also *v. Gierke*, Deutsches Privatrecht I, 1885, p. 217.

[15] MüKoBGB/v. *Hein*, 8th ed. 2020, Einleitung zum Internationalen Privatrecht, para. 32.

[16] *Weller,* IPRax 2011, 429 (430); *Weller,* ZGR 2010, 679 (687 et seq.); in detail on the history of PIL: *Kegel/Schurig,* Internationales Privatrecht, 9th ed. 2004, § 3.

Against this background, *Savigny's* new approach of determining case by case where to locate the "seat" of the respective legal relationship has often been called the "Copernican turn of private international law".[17] From then on, when formulating rules for PIL, one would inquire "from the facts of the case" as to which legal system should govern the case.[18]

Bearing this in mind, it becomes understandable that the ideal in a conflict of laws is also its structuring as a *loi uniforme,* i.e. that in principle, from the point of view of e.g. the Serbian, Hungarian or German judge, *all private law systems of the world can potentially be invoked for application*. If additionally the conflict-of-law rules of the individual states converge, *Savigny's* approach then leads to an international decision harmony.[19] This convergence in the design of the conflict-of-law rules is also a PIL ideal. It follows the insight that a decision on the same or similar facts should not depend on the randomness of the jurisdiction, and in particular that there should not be contradictory judgments.[20] The convergence of PIL rules is being realised to a large extent by the Europeanisation of private international law, i.e. the standardisation through PIL regulations, in particular the so-called Rome Regulations.[21]

The assumption of the equivalence of and neutrality towards foreign private law regimes according to *Savigny* is reflected in today's both continental European national law and EU conflict-of-law regulations in the *principle of the closest connection*, according to which the applicable legal system should be the one that is the most relevant ("closest") to the concrete facts of the case.[22] It is therefore a matter of finding the private law to which the facts or the legal question arising from them have the strongest relationship in social, economic, and cultural terms.[23] This principle of the closest connection is considered one of the most important principles in private international law.[24] It serves as the starting point for the various connecting factors of PIL, which are often specified in the conflict-of-law rules, e.g. the habitual residence of the seller or the location of a property, the place the damage occurred, and so on. However, these specifications can then also be

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[17] As *pars pro toto*: *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 32.

[18] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (816).

[19] Cf. *Raape*, Internationales Privatrecht, 4th ed. 1955, p. 2.

[20] *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 56.

[21] *Kropholler*, Internationales Privatrecht, 5th ed. 2004, § 6 III; *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 59.

[22] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (816); Staudinger/*Looschelders* Einleitung IPR, 2019, para. 3.

[23] *v. Bar/Mankowski*, Internationales Privatrecht, Vol. I, 2nd ed. 2003, § 7 para. 109; *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 51.

[24] *v. Bar/Mankowski*, Internationales Privatrecht, Vol. I, 2nd ed. 2003, § 7 para. 108.

corrected in individual cases if a legal system other than the one currently invoked has an even closer connection,[25] e.g. in Art. 41 (1) German EGBGB.[26] Such an "escape clause" is a useful tool, since the legislative stipulations can only depict the typified rule case, but not atypical cases, in which the decision must often revert to the principle of the closest connection in its pure form.[27]

In all of this – and it should be emphasised once again – private international law is *not* concerned with achieving a *substantively fair result* for the actual parties involved. Private international law has *nothing* to do with the substantive decision. This is then made on the basis of the applicable substantive law, meaning the applicable contract law, tort law, etc. Rather, PIL is a matter of localizing the facts of the case or the legal questions arising from them *in a just manner at the meta-level of a conflict of laws*.[28] In other words, private international law *has its own justice content*. According to the interest theory of *Gerhard Kegel,* it is primarily a matter of party, trade, and regulatory interests, not of substantive assessments (meaning a substantively fair solution in the final outcome of the *specific* case).[29] As that determination of the abstract appropriate legal system is "result-blind", *Leo Raape*[30] has vividly spoken of a "leap into the dark".

However, even *Savigny* already recognised the possibility of restrictions on his tolerant approach "with regard to some types of laws whose special nature is contrary to such a free treatment of the community of law among different states".[31] *Savigny* here meant fields of law that are "based on reasons of the public good" (in Latin: publica utilitas), having "a political, a police or a national economic character".[32] These legal fields or provisions, which he described as "anomalous law", were beyond the "free treatment of the legal community among different states", so that here *any* consideration of a conflict of laws was *a priori* ruled out and only the respective state's own law could be decisive.[33] Also *Gerhard Kegel* considered state interests to be eligible for consideration by way of exception.[34] This possibility of limitation is traditionally found in *public policy / ordre public clauses* such as in Art. 21 of the Rome I Regulation, for example.[35] This norm

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[25] *v. Bar/Mankowski*, Internationales Privatrecht, Vol. I, 2nd ed. 2003, § 7 para. 108.

[26] MüKoBGB/v. *Hein*, 8th ed. 2020, Einleitung zum Internationalen Privatrecht, para. 32; Weller, IPRax 2011, 429 (433).

[27] *v. Bar/Mankowski*, Internationales Privatrecht, Vol. I, 2nd ed. 2003, § 7 para. 110.

[28] *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 49.

[29] *Kegel* in Festschrift für Hans Lewald, 1953, p. 259 (273 et seqq.); Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (19).

[30] *Raape*, Internationales Privatrecht. 4th ed. 1955, p. 87.

[31] *Savigny,* System des heutigen Römischen Rechts, Vol. VIII, 1849, p. 32.

[32] *Savigny,* System des heutigen Römischen Rechts, Vol. VIII, 1849, p. 36.

[33] *Savigny,* System des heutigen Römischen Rechts, Vol. VIII, 1849, pp. 32 et seq., 61.

[34] *Kegel* in Festschrift für Hans Lewald, 1953, p. 259 (277 et seq.).

[35] Cf. Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (19).

reads as follows, and other ordre public clauses have more or less the same content: "The application of a provision of the law of any country specified by this Regulation *may be refused only* if such application is *manifestly incompatible* with the public policy (ordre public) of the forum".

The fact that there must be a certain substantive control and possibility of correction also in the classic "result-blind" private international law was back then and still is now plausible, indisputable, and reasonable. However, the wording of the ordre public clause I have just read for you also makes it clear that these are to be *applied quite restrictively*. Consequently, no problem with the principle of equivalence arises for this reason alone.

Over the decades, however, *further limitations* on the principle of the closest connection implementing mutual recognition have become established.

First of all, the conflict-of-law rules themselves are subject to the values of the national constitutions,[36] a circumstance which was seen differently for a long time (at least in Germany) following the argument that conflict-of-law rules are neutral towards substantive law values as well as social and economic policy objectives and could *therefore a priori not be measured against the standard of the constitution*.[37] However, the opposite seems to be a commonplace nowadays, and in any case it is not a fundamental violation of the principle of equivalence.

Moreover, the increasing expansion of the principle of party autonomy – not yet considered by *Savigny* in detail – i.e. the possibility for the parties involved to *choose the law applicable* to the facts of the case, could *prima facie* contribute to the erosion of the equivalence postulate.[38] The principle of free choice of law was first recognised in international contract law, but it is increasingly expanding so that there is now also a choice of law in the field of international tort law,[39] but also in international family law,[40] inheritance law,[41] and so on.[42] This principle is derived from fundamental human rights as a part of freedom of action and the free development and expression of personality.[43] Of course, party autonomy is in addition also a matter of efficiency and therefore a practicality consideration.[44] And a second, closer look shows that even if the question will be relevant for the parties involved as to which substantive law is *better* for them *in terms of content*,

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[36] BVerfG 04.05.1971, 1 BvR 636/68 = BVerfGE 31, 58 – "Spanierbeschluss".

[37] BGH 12.02.1964, IV AR (VZ) 39/63 = NJW 1964, 976.

[38] Cf. *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (817 et seq.)

[39] Art. 14 Rome II Regulation.

[40] Art. 5 Regulation (EU) No. 1259/2010.

[41] Art. 22 Regulation (EU) No. 650/2012.

[42] See *Steinrötter*, Beschränkte Rechtswahl im Internationalen Kapitalmarktprivatrecht und akzessorische Anknüpfung an das Kapitalmarktordnungsstatut, 2014, p. 58 with further references.

[43] *Weller,* IPRax 2011, 429 (431f.).

[44] Duden/*Reibetanz*/*Wendland*, IPR für eine bessere Welt, 2022, p. 17 (20 f.).

the idea of equivalence is also recognisable in this respect. It is the endeavour of national and supranational legislators to restrict the choice of law *as little as possible*, so that all parties can at least *widely* agree without discrimination against the validity of *all* private law systems in the world. However, there *are* some restrictions: mandatory domestic norms (in Latin: *ius cogens*) cannot usually be deselected in purely domestic cases; and, in the case of *ius cogens* provisions of Union law origin, these cannot be selected in purely EU constellations.[45] Furthermore, sometimes certain criteria are set for which private law can be chosen, e.g. in EU conflict-of-law rules on divorce inter alia the law of the forum *or* the law of the State of nationality of either spouse at the time the agreement is concluded.[46] Ultimately, it is important to note that these limitations on party autonomy are precisely not for political reasons but are *primarily a corrective towards the principle of the closest connection*. Therefore, it can be concluded that there is no substantial problem with the concept of equivalence here either.

In addition, however, there are further – and maybe more notable – possible exceptions to the principle of the closest connection and thus to a "result-blind", neutral connection. These exceptions are associated with the catch phrase *politicisation of conflicts of laws*.[47]

On the one hand, there are so-called "*overriding mandatory provisions*" (cf. Art. 9 Rome I Regulation), while on the other hand there are PIL norms that are intended to *protect the structurally inferior party*, e.g. the consumer from the professional (Art. 6 Rome I Regulation). The reason given for these deviations from the equivalence principle is that the fundamental equivalence of legal systems cannot justify a specific "indifference to the violation of elementary national legal principles".[48]

In view of *Savigny's* principle of the equivalence of legal systems and tolerance of foreign ideas of private law, the possibility of enforcing one's own ideas of justice regarding the *lex fori* via so-called *overriding mandatory provisions* has been criticised in part, although PIL rules have led to the application of a foreign law. What exactly are those overriding mandatory provisions? Art. 9 (1) Rome I Regulation defines them as "provisions the respect for which is regarded as crucial

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[45] E.g. Art. 3 para. 3, para. 4 Rome I Regulation.

[46] E.g. Art. 5 Regulation (EU) No. 1259/2010: "1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

(a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or

(b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or

(c) the law of the State of nationality of either spouse at the time the agreement is concluded; or

(d) the law of the forum."

[47] Gebauer/Huber/*Gebauer/Huber*, Politisches Kollisionsrecht. Sachnormzwecke, Hoheitsinteressen, Kultur, 2021, p. VII (IX et seqq.).

[48] MüKoBGB/v. *Hein*, 8th ed. 2020, Art. 6 EGBGB para. 1.

by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are *applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract* under this Regulation." The reasoning is therefore the same as with ordre public clauses – both legal figures refer to public interests and want to enforce them. The difference is that the ordre public just wards off foreign law, while overriding mandatory provisions are themselves enforced as substantive law provisions against foreign law. This means that at the starting point there is a *loi uniforme* application instruction, which can potentially lead to the application of any private law system in the world. However, certain norms (especially) of the party's own legal system are nevertheless binding as overriding mandatory provisions; they "pierce", so to speak, the foreign law, which remains applicable in all other respects. The *criticism* here is that for the purpose of enforcing one's own[49] substantive law, the fundamental equivalence of all legal systems is increasingly being sacrificed via the aforementioned legal figure[50] – and this for the purpose of enforcing public interests, not for the purpose of balancing private interests.[51] And indeed, the purpose of overriding mandatory norms is to enforce certain (regulatory) goals of (first and foremost) economic law – detached from the question of which private law would otherwise apply. Overriding mandatory provisions from currency law, foreign exchange law, and foreign trade law can be described as almost classic ones here.[52] In addition, there are those from capital market, cartel, and media law.[53] Here, it is *important to note* that overriding mandatory provisions are also to be handled restrictively, as, e.g. recital 32 Rome II Regulation also points out. *If this restrictive handling is the case*, we still have no problem with *Savigny's* precious notion of equivalence.

In parts even more critically reviewed,[54] however, are those conflict-of-law rules that are primarily dedicated to socio-political and thus tangible substantive goals, in that they are intended to protect the structurally weaker party. Such special conflict-of-law rules can be found for the protection of consumers in Art. 6 Rome I Regulation, protection of insurance policyholders in Art. 7 Rome I Reg-

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[49] In contrast, EU conflict-of-law rules seem to largely exclude the enforcement of foreign overriding mandatory rules beyond Art. 9(3) Rome I Regulation; Gebauer/Huber/*Gebauer/Huber*, Politisches Kollisionsrecht. Sachnormzwecke, Hoheitsinteressen, Kultur, 2021, p. VII (XIV).

[50] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (826, 829).

[51] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (829).

[52] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (820).

[53] See the overview in BeckOGK/*Maultzsch* Art. 9 Rom I-VO, para. 224 et seqq.

[54] From the 1960s onwards, the "political school" of PIL saw things differently; cf. e.g. *W.-H. Roth,* AcP 220 (2020), 458 (470 et seqq.).

ulation, and protection of employees in Art. 8 Rome I Regulation. In order to get an impression of what I am talking about and as a *pars pro toto* of these "PIL protection rules", the consumer protection provision in Art. 6 Rome I Regulation should be briefly presented: Pursuant to Art. 6(1) Rome I Regulation, "a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) *shall be governed by the law of the country where the consumer has his habitual residence*, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities."

Detached from *Savigny*'s criteria, the contract law of the state in which the consumer habitually resides is thus regularly invoked. The classic approach would – as a specification of the principle of the closest connection – lead to the law of the state of the habitual residence of the person *who provides the performance characteristic of the contract*, e.g. seller or service provider. The difference between the two approaches is evident.

But, also the choice of law is restricted in favour of the consumer. According to Art. 6(2) Rome I Regulation, "[s]uch a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1", i.e. that the ius cogens of the law of the habitual residence of the consumer applies also in cases where another contract law has been chosen. So, we get a legal mix of the chosen law and the ius cogens of the consumer's state of residence, if this is more favourable for the consumer than the chosen law.

This example appears to make clear that the principle of equivalence may *no longer be fully applicable in modern PIL*. Especially in the latter cases of PIL "protection rules", some are observing a partial "erosion" of this principle, attributed, among other things, to the Europeanisation of conflicts of laws.[55] Some say that PIL rules are no longer primarily oriented towards international decision harmony and the neutrality of the connection as guiding principles, but rather towards the promotion of the European internal market, increased legal certainty, and protection of the structurally weaker party, e.g. the consumer.[56] In this context, one will also hears of the "*materialisation*" of private international law.[57]

[55] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (816 et seqq.).

[56] *Weller,* IPRax 2011, 429 (433)

[57] *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (817).

Criticism starts above all at the limitations to the principle of the closest connection, e.g. in the case of Art. 6 (1) Rome I Regulation, which would lead, especially in the case of third countries, to *conflicts being resolved in favour of European law*,[58] and would then be accompanied by *discrimination against third-state law.* In particular, the shifting of connecting factors within the framework of protective regulations for weaker parties is seen by some legal scholars as a turning away from *Savigny's* equivalence postulate: with this, materialisation of PIL would lead to the result that *equivalence would no longer be the orientation point*; instead, the respective state's own, assumed better, substantive law would be enforced.[59] It would often be a matter of simply enforcing substantive Union law against third countries, which has also been described as "Euro-chauvinism in conflict of laws".[60]

This aspect of the materialisation or politicisation of private international law is currently of great interest in the PIL community. For example, the PIL Young Legal Scholar Conference next year in Vienna will address the topic "Respect for strangers – empty formula or guiding principle in private international law?"[61] The previous year's conference was already entitled "PIL for a better world".[62] The symposium on the occasion of the 85th birthday of *Erik Jayme*, a great conflict-of-laws expert of our time, also dealt with "political PIL".[63]

"Political" and "private international law" – two terms that have been (re)[64] associated with each other *increasingly* over the last 50 years and which show that the conflict of laws, which in its manifestation since *Savigny* has been praised for its recognition of the equal value of foreign private law systems, *is suspected of possibly not being as tolerant as it once was.* Is this *suspicion valid?*

Sure, it cannot be denied that a certain materialisation and politicisation of private international law has taken place. However, this does not mean that the principle of equivalence has been abandoned. In the *vast* majority of cases, EU private international law continues to contain neutral conflict-of-law rules and

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[58] Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (20) with further references.

[59] Cf. *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (817); *Weller,* IPRax 2011, 429 (435).

[60] Thus *Kühne* in Festschrift für Andreas Heldrich zum 70. Geburtstag, Die Entsavignysierung des Internationalen Privatrechts insbesondere durch sog. Eingriffsnormen, p. 815 (828).

[61] https://jus.sfu.ac.at/de/forschung-fakultaet-fuer-rechtswissenschaften/tagung-internationales-privatrecht/.

[62] Duden (ed.), IPR für eine bessere Welt, 2022.

[63] Gebauer/Huber (eds.), Politisches Kollisionsrecht. Sachnormzwecke, Hoheitsinteressen, Kultur, 2021.

[64] Before *Savigny's* approach, the so-called statute theory applied, which was only concerned with the application of one's own law; see *Gebauer,* JZ 2011, 213 (213 et seq.).

implies a universal application thereof, even towards third countries.[65] Moreover, materialisation does not consequently mean "dull" enforcement of EU law, because in the relevant cases there is always a close connection to the EU,[66] although – this must be conceded – it is not always the *closest* connection in the sense of *Savigny*. Furthermore, materialisation does not at the same time mean "European unionisation". Often, e.g. in the context of Art. 6 Rome I,[67] third-country law remains applicable.[68] This is the case if the consumer is habitually resident in a third country. In addition, taking into account legal policy values at the level of private international law always entails their implementation at the conflict-of-law level, although it does not mean the concrete material realisation of a desired *result*.[69] Let me give you an example: Consumer protection in private international law means only that the consumer is protected from the threat of being excluded from the application of the law of his or her country of habitual residence. Only the content of this applicable private law system can decide whether it provides him or her with concrete protection in material terms.[70] It is therefore not at all a matter of invoking a particularly consumer-favourable substantive law, but rather – neutrally in relation to the substantive result – of applying the consumer's law of his or her habitual residence,[71] which the consumer admittedly knows particularly well, and is certainly an advantage for him or her.

To sum up: The principle of equivalence is still relevant in today's PIL. It still demonstrates respect among national private law systems as well as respect for third-state law in EU PIL.

After all, private international law is unquestionably a stone in the mosaic of human peace. One *tiny* stone only. But, one that has maintained its shine and does not appear so easily broken – despite the recent tendencies towards materialisation.

Even such relatively small aspects can in the end contribute to showing respect for other states and thus serve as a tool to achieve a peaceful coexistence. No more. But also, no less.

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[65] Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (31).

[66] Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (31).

[67] However, this is to be assessed differently in the case of Art. 7 and Art. 3(4) Rome I Regulation.

[68] Duden/*Reibetanz/Wendland*, IPR für eine bessere Welt, 2022, p. 17 (30).

[69] *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 74; cf. also Gebauer/Huber/*Gebauer/Huber*, Politisches Kollisionsrecht. Sachnormzwecke, Hoheitsinteressen, Kultur, 2021, p. VII (XIV).

[70] *Rauscher*, Internationales Privatrecht, 5th ed. 2017, para. 75.

[71] Gebauer/Huber/*Gebauer/Huber*, Politisches Kollisionsrecht. Sachnormzwecke, Hoheitsinteressen, Kultur, 2021, p. VII (XIV).

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Принцип једнакости правних система у међународном приватном праву и његов допринос успостављању и очувању мира

Сажетак: *На први поглед може деловати да Међународно приватно право (МПП) нема везе са напорима за успостављање и очување мира. Међутим, ова перцепција није утемељена. Супротно непосредном потенцијалу међународног јавног права за очување мира, МПП индиректно доприноси миру подстицањем међусобног поштовања између држава. Однос између МПП и мира произлази из поштовања које државе исказују према правним системима других држава. МПП функционише на основу принципа узајамног уважавања, где државе признају применљивост страних закона за решавање случајева. У суштини, иако је утицај МПП-а на мир индиректан и скроман, његов напласак на међусобном поштовању и правичном поступању доприноси помирљивом тону у односу између држава, чинећи га важним елементом у ширем контексту изградње и очувања мира. МПП нема непосредни допринос у постизању суштинске правичности међу странама спора, већ се фокусира на локализацију случајева на мета-нивоу сукоба закона. Ова локализација се води страначким, трговинским и регулаторним интересима и укорењена је у неутралности и поштовању других правних система. Иако принцип еквиваленције и неутралности остаје темељни у МПП-у, су временом успостављени изузеци и ограничења како би се адресирали специфични сценарији, осигуравајући уравнотежен приступ који поштује и стране правне системе и темељне правне принципе.*

Кључне речи: *међународно приватно право, успостављање и одржавање мира, узајамно поштовање и уважавање, једнакост.*

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