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Grundzüge des chinesischen Internationalen Privatrechts

Osnabrücker Rechtswissenschaftliche Abhandlungen, Vol. 29, Köln 1991, XLIV + 199 S., DM 124,--

This is the first monography on the Private International Law of the People's Republic of China published in a European language. As the title "Essential Features of Chinese Conflict of Laws" wrongly suggests, it does not cover the relevant rules of Taiwan, leave alone Hong Kong, Macao or Malaysia (up to 1982) and Singapore (up to 1961).

Students of the Law of Taiwan will have to refer among others to *Chiwei Cheng*, Private International Law of Persons in the Republic of China (J.D. thesis Münster 1980), *Liu Jiayi*, Guoji sifa (Private International Law), 2d. ed. Taipei 1988; *Su Yuancheng*, Guoji sifa zhi lilun yu shiyong (Private International Law in Theory and Practice), 4th ed. Taipei 1988 or *Lu Dongya* (ed.), Guoji sifa, 2d. ed. Taipei 1969. Referring to Macao Portuguese literature will be helpful (cf. *Vitalino Canas*, Relações entre o ordenamento constitucional português e o ordenamento jurídico do território de Macau, Boletim do ministerio da iustica No. 365 (1987), 69-93; *Rui Afonso / Francisco Goncalves Pereira*, The Political Status and Government Institution of Macao, Hong Kong Law Journal 16 (1986), 28-57; *A.R. Dicks*, The Position of Hong Kong and Macao in Recent Chinese Legislation, HKLJ 4 (1974), 151-161). The Private International Law of Hong Kong is rooted in English common law rules (cf. The Legal System of Hong Kong, Modern Legal Systems Cyclopedia, *Kenneth Robert Redden* (ed.), Buffalo, N.Y. 1989, Vol. II, pp. 2.40.1-2.40.93) as the case law of the colony widely demonstrates (for the proper law of contracts cf. Bank of India v. Gobindram Narainda Sadhwani and Others [1988] 2 HC KHLR 262, for the *forum non conveniens* principle cf. Deak Perera Far East Ltd. (in liquidation) v. R. Leslie Deak (personal representative of Nicholas Louis Deak, deceased) and Others [1988] 2 HC HKLR 95, for the appropriate forum cf. The owners of cargo lately laden on board the ship or vessel "Andhika Samyra" v. The owners and/or demise charterers of the ship or vessel "Andhika Samyra" and Others [1989] 1 HC HKLR 198 or for the legitimacy of children cf. In re Sit Woo-tung [1990] 2 HC HKLR 410).

The book is an update of a doctoral thesis at the Law Faculty of the University of Osnabrück under the auspices of well known law professors who deal with conflict's law but are not legal sinologists, although Germany is home to a considerable phalanx of renowned representatives of the juridical sinology. Nevertheless the author who did research at the East China Institute of Politics and Law in Shanghai bases his writings on an abundant material of Chinese legal literature as well as official and unpublished documents, that constitute per se an impressive achievement and parts of which are reproduced as annex (pp. 181-199) in German. Of special interest are the Opinions and Solutions of the Supreme People's Court which are quoted by the author.

Süß portrays the different schools of thought in the Chinese doctrine of this branch of law, viz. the nationalist, the dualistic and/or the internationalist approach. The advocates of the

diverse theories on the Chinese continent received their inspirations from Russian, English, US-American and French scientists, but never made use of the research results of their insular compatriots in Taiwan in public. The same is true for the PRC legislator who never took into account the Republican Law on the Application of Law in Civil Matters with Foreign Elements of 6 June 1953.

Even those interested in legal history will learn, that the oldest Chinese conflict rule dates from 651 A.D., the times of the Tang dynasty, and submits, just as the modern German jurisprudence does, the law applicable to torts to the *lex communis patriae* of both the injured and injurer. The chapters on the law in force in the PRC are divided into general principles and special regulations.

The general chapter treats subjects concerning connecting factors, qualification or subject matter characterization, public policy, evasion of law, renvoi, proof of foreign law, preliminary or incidental question, adaptation, interstate conflict of laws, intertemporal and inter-personal law. As to interregional law in China reference should be made also to *Han Depei* and *Huang Jin*, A Look at Regional Conflict of Laws in China, Social Sciences in China - A Quarterly Journal 11 (1991), 150-169.

The special part touches topics like personal status, legal capacity of natural and juridical persons, guardianship, immovables and movables, contracts in general, sales, transport contracts (carriage of goods by sea, air and rail), partnerships, joint ventures, foreign investment, licence and loan agreements, transfer of technology, unjust enrichment, *megoriorum gestio* (acting without mandate), torts, products liability, domestic relations, formal and substantial prerequisites (non-age and miscegenation) and legal effects of marriage, divorce, matrimonial property, status of children, legitimation by subsequent marriage, adoption, support claims, inheritance, descent and distribution and wills.

The author mentions the various international treaties China has signed. It should be added that the PRC ratified the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 Nov. 1965 on 2 March 1991 (cf. *Arno Wohlgemuth*, StAZ 1991, 205; *Harro von Senger*, IPRax 1991, 352). Süß relies nearly exclusively on Chinese original sources, which makes the book a valuable guide to any reader. Those who have a command of Chinese language though will miss the Chinese characters or at least the diacritics on the reproduced romanized Chinese names and words. One should however keep in mind that a vast literature has appeared in Western languages by both Chinese and non-Chinese authors, e.g. *David C. Buxbaum*, People's Republic of China Law Digest, Martindale-Hubbel Law Directory, 121st ed. Summit, N.J. 1989, 1-36; The Legal System of the People's Republic of China (PRC), Modern Legal Systems Cyclo-pedia, op. cit. 1990, Vol. IX, pp. 9.300-9.380; *Steven L. Toronto*, Bankruptcy of Foreign Enterprise in the PRC: An Interpretation of the "Rules Concerning Bankruptcy of Foreign Companies in the Shenzhen Special Economic Zone", Journal of Chinese Law 4 (1990), 227-296; *Bruce R. Schulberg*, China's Accession to the New York Convention: An Analysis of the New Regime of Recognition and Enforcement of Foreign Arbitral Awards, Journal of Chinese Law 3 (1989), 117-144; *Mark B. Baker*, *Abraham Charnes* and *Lianlian*

Lin, Foreign Banks in China: The Legal Framework, China Law Reporter 6 (1990), 87-102; Tim N. Logan, The People's Republic of China and the United Nations Convention on Contracts for the International Sale of Goods: Formation Questions, China Law Reporter 5 (1988), 53-74.

The last book on Private International Law of China published in a European language was a thin booklet by G. Padoux, La loi chinoise du 5 août 1918 sur l'application des lois étrangères en Chine, 2. ed., Peking 1922. Seventy years later Süß has lifted the veil on this section of the Chinese legal system of post-Mao era; one would wish the next volume will include procedural and jurisdictional matters (cf. Harro von Senger, People's Republic of China (completed 1990), in: Bergman and Ferid (eds.), International Law of Marriage and Infants, Vol. II, pp. 74-83) together with a subject index. After all the present book may be recommended without any reservations as an indispensable manual to all scholars of Chinese Conflict of Laws as well as to all practising lawyers in the world of Chinese-foreign cultural exchange and commercial and legal transactions.

Arno Wohlgemuth

Hans Maretzki

Kim-ismus in Nordkorea - Analyse des letzten DDR-Botschafters in Pjöngjang

Anita Tykve Verlag, Böblingen 1991, 206 S., DM 29,80

Das Buch Hans Maretzkis "Kim-ismus in Nordkorea" gibt einen fundierten Einblick in das politische System der Koreanischen Demokratischen Volksrepublik (KDVR). Es besteht nicht etwa aus Berichten über das Leben und die Menschen Nordkoreas oder Informationen über die Tätigkeit eines Botschafters, sondern berichtet sozusagen "exklusiv" über Kim Il Sung und seinen Sohn Kim Chong Il, über die alles überdeckende Tschutsche-Lehre (Juche) und die Situation in Politik und Wirtschaft. Die Entstehungsgeschichte Nordkoreas wird dargestellt, der Weg des Tyrannen an die Macht, die heutige Situation des Landes, und - ganz am Ende - werden "Zukunftsperspektiven" oder - realistischer gesehen - verschiedene Wege zur Einheit der beiden Koreas aufgezeigt, die sich bisher als Sackgassen erwiesen.

Das Buch ist in seiner einfachen Sprache gut verständlich. Es ist homogen aufgebaut und der "rote Faden" immer erkennbar, die Gliederung in einzelne Kapitel erscheint fast entbehrlich.

Maretzki konzentriert sich ganz auf den Kult um die Person Kim Il Sung, auf seine Geschichte (die dieser selbst macht und nach Belieben neu erfinden kann) und seine politische Macht. Deswegen werden Lebensbereiche wie Kultur, Erziehung und Religion zwar erwähnt, jedoch nur in bezug auf das sämtliche Bereiche des Lebens restlos durchdringende