



Die Unidroit-Prinzipien (German Edition)

Sandra Paeselt

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Studienarbeit aus dem Jahr 2002 im Fachbereich Jura - Europarecht, Völkerrecht, Internationales Privatrecht, Note: 15 Punkte, Gottfried Wilhelm Leibniz Universität Hannover (Lehrgebiet Zivil- und Zivilprozessrecht), Veranstaltung: BGB goes Europe, Sprache: Deutsch, Abstract: Dass Kaufleute oftmals ihre eigenen Regeln haben, diese aus den unterschiedlichsten Gründen befolgen und nach Möglichkeit auch sanktionieren, lässt nicht nur der berühmte Handschlag beim Pferdekauf, der als Besiegelung des Kaufvertrages bis in die heutige Zeit gang und gebe ist, erkennen. Ein anderes, weniger nostalgisches Beispiel ist § 362 Handelsgesetzbuch², der unter bestimmten Bedingungen das Schweigen des Kaufmanns als Annahme wertet. Dies läuft der allgemeinen Wertung des deutschen Rechts zuwider, die grundsätzlich im Schweigen gerade keine rechtsverbindliche Äußerung sieht³.

Trotz dieser Bräuche hat es bereits sehr früh Versuche gegeben, die geltenden Handelsregelungen zu kodifizieren. So hat Colbert⁴ in Frankreich bereits 1663 Handelsregeln in Form eines Gesetzes aufgeschrieben. Erste internationale Handelsregelungen in Gesetzesform wurden 1671 auf seerechtlichem Gebiet mit der "codification du maritime" niedergelegt.

Jedoch bereits Jahrhunderte zuvor wurde im Römischen Reich die Notwendigkeit erkannt, für den grenzüberschreitenden Handel besondere Regelungen zu schaffen. Hier führten Unzulänglichkeiten des dem Personalprinzips verhafteten ius civile, dem Recht der römischen Bürger, zur Herausbildung des ius gentium, dem auch für Nicht Römer geltenden römischen Recht⁵.

Zu Colberts Zeiten fand auch im englischen Rechtskreis die Entwicklung vom Common law zum Merchant law ihr Ende. Das Merchant law als internationales Handelsrecht wurde im Lethulier's Case von 1692 als "a number of usages, each of which exist among merchants and persons engaged in mercantile transaction, not only in one particular country, but throughout the civilised world, and each which has acquired such notoriety, not only amongst those persons, but also in the mercantile world at large, that courts of this country will take notice of it" beschrieben⁶.

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