

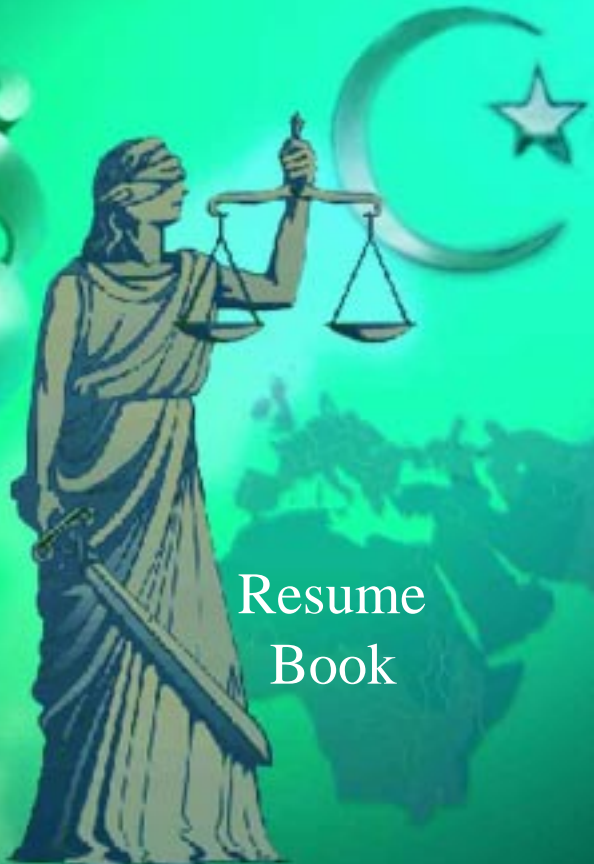
Law in the Islamic World

an international dialogue among law students
and young lawyers

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



06.10. - 10.10.2003
in Hamburg



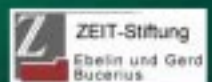
Resume
Book

elsa

The European Law Students' Association
GERMANY

www.islam-conference.org
info-conference@elsa-germany.org

in cooperation with ELSA Hamburg, ELSA Kiel, ELSA Lüneburg



Vision

A just world in which there is respect for human dignity and cultural diversity.

Purpose

To contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers.

Means

To provide opportunities for law students and young lawyers to learn about other cultures and legal systems in a spirit of critical dialogue and scientific cooperation.

To assist law students and young lawyers to be internationally-minded and professionally skilled.

To encourage law students and young lawyers to act for the good of society.

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Greetings by our partron Prof. Dr. Hans Küng

Message to the ELSA conference “Law in the Islamic World”

In our days the world religions have reappeared as actors in world politics. To be sure: throughout history religions have far too often shown their destructive face. They have inspired and legitimized understanding, reconciliation, cooperation and peace. Over the last decades initiatives of interreligious dialogue and cooperation have grown all over the world and September 11, 2001 has not destroyed but in many cases even strengthened dialogue initiatives.

We need everyday dialogue of all the people of different religions who meet and discuss daily and hourly all over the world on all possible occasions: in mixed marriages and shared social projects, on religious festivals or in political initiatives, all over the place, where in in questions great and small the religions constantly interact in a quite practical way. In quite specific terms we need:

- external dialogue of those who live in the same street or in the same village, work in the same factory or study at the same university;
- internal dialogue, the discussion that goes on within ourselves, in our heads and hearts, whenever we encounter strangers, a person or a book, whenever for example Christians hear something from the Qur'an or Muslims something from the Bible.

The implication of the many levels of interreligious dialogue is that not only are good will and an open attitude necessary at all levels, but – on each level – also solid knowledge. But this is still often lacking – not least at the scholarly, academic, and juridicial level, where the basic problems are still worked on all too little.

Your ELSA Conference, dear friends, addresses one of the most fundamental questions in the Islamic world and beyond: the role of law. In your discussions you will certainly face controversies. But I am sure that with knowledge and good will you will find the common ground which is necessary for a peaceful living together of Muslims and non-Muslims all over the world.

I wish your conference full success and an atmosphere of friendship and joy.

Hans Küng

About ELSA

ELSA (The European Law Students' Association) is an international, independent, non-political, non-profit-making organisation run by and for students who are interested in law and have demonstrated commitment to international issues. Law students from Austria, Hungary, Poland and West Germany founded ELSA in 1981. ELSA is today the world's largest independent law students' association and it is represented in more than 200 law faculties in 37 countries across Europe with membership in excess of 25 000 students and young lawyers.

ELSA members are internationally minded individuals who may have experiences with foreign legal systems and practices. Through various activities especially international seminars and conferences our members acquire a broader cultural understanding and legal expertise. ELSA prepares law students for living and working in an international environment.

Through its activities and commitment within the international community. ELSA has gained a special status with several international institutions. In 2000 ELSA was granted consultative status with the Council of Europe. Furthermore, ELSA has consultative status with several United Nations bodies; in 1997 ELSA obtained Special Consultative Status with UN ECOSOC (United Nations Economic and Social Council) and Consultative Status with UNCITRAL (UN Commission on International Trade Law), in 1994 ELSA was granted Consultative Status in Category C in UNESCO (UN Educational, Scientific and Cultural Organisation). In addition, ELSA has a co-operation agreement with UNHCR (UN High Commissioner for Refugees).

The project

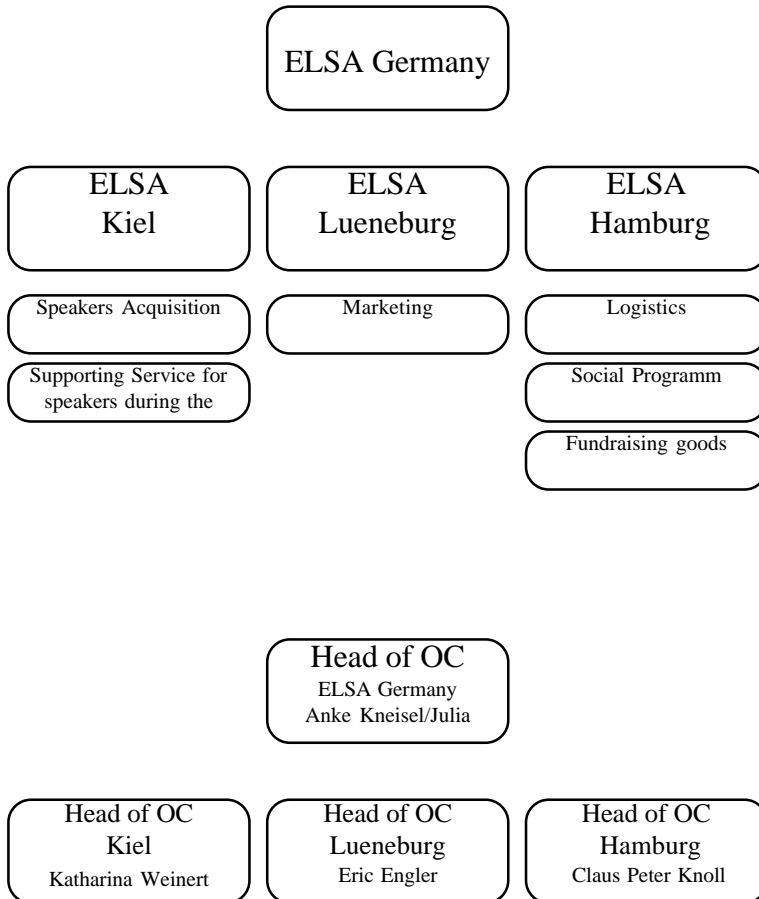
A dialogue between International law students and young lawyers about Islamic Law.

In times like these where a peaceful “living together” is daily threatened by terror and war it is extremely necessary to have a mutual understanding between cultures. With this project we like to give a chance to law students and young lawyers from the islamic and the western world for personal acquaintance and exchange of knowledge. The law of both cultures should be considered as the red line for a dialogue.

The focus of the conference organized by ELSA Germany in cooperation with the Bucerius Law School, the University of Hamburg, the German Orient-Institute and the Max Planck Institute for Foreign Private and Private International Law Hamburg lies on the transfer of the basics of the islamic law and on the comparison of the juridical basic principles with that from the West. Planned are workshops and lectures in which the juridical positions of both „worlds” will be discussed. Contents will be governmental law in relation to the principle of democracy and topics as criminal law, human rights and civil law - based in islamic countries. To avoid political irritation it is important that open-minded participants and speakers from allover the world take part.

The conference will take place between the 6th and 10th October 2003 in Hamburg and should bring together about 70 international participants. The event is organized by ELSA Hamburg, ELSA Kiel and ELSA Lueneburg and ELSA Germany as the national supervisory board.

The Structure of the Organizing Committee



The Heads of the Organizing Committee

Anke Kneisel



Anke was Head of Organizing Committee from 09/2002 – 07/2003 She also was the Vice President of Academic Activities in the National Board of ELSA Germany 2002/ 2003"

“Being the Head of the Organising Committee for eleven months implicated a lot of work, stress and trouble. So this job was a big challenge for me. But besides I was able to improve my abilities in time management, project management, conflict management, negotiation and so on. And never before I got the chance to work with so many famous and fascinating people. So at the end it was a big success for me and I never rued my decision.”

of the National Board ELSA Germany

Julia Lefèvre



Julia was Head of Organizing Committee form 08/2003 – 12/2003 She also was the Vice President Seminars & Conferences in the National Board of ELSA Germany 2003/2004

"To organize such an event like this conference has been a pleasant experience for me. Even we had a lot of work to do and to solve some serious problems in the beginning of my job as Head of Organising Committee in August 2003 I would ever take a job like this again. I got to know a lot of interesting people and had the chance to improve my knowledge about such a current topic. I think I am speaking for all of us, when I say we have come up with a whole range of good results. Thanks to everybody who supported our work and made this event come true."

The heads of the local ELSA groups Kiel, Lueneburg and Hamburg

-Through the eyes of the OC...

Being Head of Organising Committee for the groups in Hamburg, Kiel and Lueneburg for the conference “Law in the Islamic World” was quite an experience.

We learned a lot about how it is to work in a team since the conference was a co-operation between three local ELSA groups and ELSA Germany. In addition we learned about the importance of good communication between single helpers and between the single organising ELSA groups.

Nevertheless we got to know the key for all work in ELSA which is definitely motivation. The outcome of the work of about 30 helpers was a fantastic week with an international academic programme, an outstanding social programme and well chosen speakers.

Claus Peter Knoll - Head of OC ELSA Hamburg
Katharina Weinert - Head of OC ELSA Kiel
Eric Engler - Head of OC ELSA Lueneburg

Important Dates during the planning Phase

20 June 2002

Meeting between Mascha Berg (President 2001/2002) and Dr. Dieter Ahrens (Member of the Advisory Board of ELSA Germany) to talk about the idea of hosting a conference

12 September 2002

Assumption of the project by Anke Kneisel (Vice President Academic Activities 2002/2003)

07 October 2002

Meeting between Jochen Hoerlin (President 2002/2003), Anke Kneisel, Dr. Ahrens and members of ELSA Hamburg and ELSA Lueneburg to talk about the realisation and the time line of the project

08 October 2002

Meeting between Anke Kneisel and the ZEIT foundation to assure the financing of the conference

14 October 2002

Meeting between Jochen Hoerlin, Anke Kneisel, Dr. Ahrens, Prof. Dr. Joost (University of Hamburg) and members of ELSA Hamburg and ELSA Kiel to talk about the academic part of the conference

26 October 2002

Completed draft of the conference

18/19 January 2003

Project management training in Hamburg with the members

of the OC (ELSA Hamburg, ELSA Lueneburg, ELSA Kiel),
Anke Kneisel and Anja Kunath (internal trainer of ELSA
Germany)

25 January 2003

Advertising the conference at the National Council Meeting
in Goettingen

10 February 2003

Meeting between Anke Kneisel and Prof. Dr. Udo Steinbach
(Director of the Orient Institute in Hamburg) to talk about the
speakers for the conference

12 February 2003

Workshop in Kiel (Anke Kneisel and ELSA Kiel)

January/ February 2003

Zeit Foundation confirmed financial support

04 March 2003

Meeting between Anke Kneisel and the head of the mosque in
Mannheim to talk about the specialties of the Islamic culture

13 March 2003

Printing of the posters and flyers for the project

22 March 2003

Advertising for the conference at the International Council
Meeting in Athens

31 March 2003

Meeting between Anke Kneisel and Prof. Steinbach

Meeting between Anke Kneisel and Dr. Ahrens

Workshop in Hamburg (Anke Kneisel and ELSA Hamburg)

01 April 2003

Meeting between Anke Kneisel and Prof. Dr. Hein Kötz
(Director of the Bucerius Law School in Hamburg)

Workshop in Lueneburg (Anke Kneisel and ELSA Lueneburg)

02 April 2003

Workshop in Kiel (Anke Kneisel and ELSA Kiel)

08 April 2003

Prof. Dr. Hans Küng promised to be the patron of the conference

12. April 2003

Prof. Dr. Mahmoud Hamdi Zakzouk promised to be the patron
of the conference

05 May 2003

Landeszentrale für politische Bildung (Agency for Civic
Education Hamburg) confirmed financial support

06 May 2003

Launching of the Homepage for the conference

23/24 May 2003

Meeting between Anke Kneisel and the members of the OC
(ELSA Hamburg, ELSA Kiel, ELSA Lueneburg) in Lueneburg

05 June 2003

Workshop in Kiel (Anke Kneisel and ELSA Kiel)

05 June 2003

Workshop in Kiel (Anke Kneisel and ELSA Kiel)

06 June 2003

Application form is online

13 June 2003

Meeting between Anke Kneisel and the Rotary Club Hamburg Hafentor in Hamburg to introduce ELSA

28 June 2003

Advertising for the conference at the National Council Meeting in Bayreuth

June 2003

Rotary Club Hamburg Hafentor confirmed financial support

10- 28 July 2003

Transition from Anke Kneisel to Julia Lefèvre as the new Head of Organising Committee

23- 24 August 2002

Organising Committee Meeting in Sehlendorf

1 September

Application Deadline

September

Bosch Foundation confirmed financial support

October

German Federal Ministry of Research and Education (BMBF)
confirmed financial support

5-11 October 2003

Conference in Hamburg

The program

Sunday, October 5th

till 9 p.m.

Arrival of the participants
at the youth hostel Horner
Rennbahn



afternoon

“Getting to know Hamburg”- city tour



evening
get together”



Monday, October 6th

10 a.m.

Official opening at the Warburg House

Greetings by Prof. Dr.
Mahmoud Hamdi Zakzouk,
Kairo



Greetings by Prof. Dr. Hans Küng

Speech by Prof. Dr.
Karl-Heinz Ladeur, Hamburg



Speech by Claus Becker,
President ELSA Germany
2003/2004

2 p.m.

Lecture at the Warburg House

“The legal sources of Islam” Speaker:
Prof. Dr. Konrad Dilger, Hamburg



3.30 p.m.

Lecture at the Warburg House

“Islam – community and law” Speaker:
PD Dr. Birgit Krawietz, Berlin



5 p.m.

Lecture at the Warburg House

“History of the Islamic World and its
relation to the West in 20th and 21th
century” Speaker: Ebrahim Afsah,
Heidelberg

7.30 p.m.

Reception at the Hanseatisches Oberlandesgericht Hamburg



by Erika Andreß, Vice President of the High
Court of Hamburg and Prof. Dr. Ulrich
Karpen, University of Hamburg.



Tuesday, October 7th

9.30 a.m.

Visit of the Blue Mosque in Hamburg
guiding and discussion

11 a.m.-1.30 p.m.

Workshops in the mosque

Workshop A

””Islamic public law in Germany”

Speaker: Prof. Dr. Stefan Muckel, Cologne



Workshop B

”Institutions in public law and constitutional law in Islamic countries”Speaker: Ebrahim Afsah, BA

(SOAS),

M.Phil

(TCD),



MPA (Harvard),
Heidelberg



3 p.m. – 5.30 p.m.
Workshops to be
continued at the
University of
Hamburg



7.30 p.m.
Diner at the Ethnological Museum
Hamburg

8.30 p.m.
Lecture at the Ethnological Museum Hamburg
“Experiences with secular legal systems of the Islamic World
– study case Turkey” Speaker: Gottfried Plagemann, lawyer

9.30 p.m.
Discussion at the Ethnological Museum Hamburg

Wednesday, October 8th

10 a.m.- 12.30 p.m.
Workshops at the University of
Hamburg

Workshop A “The different treatment
of Muslims and Non-Muslims within
the Islamic penal system” Speaker: Dr.
Nadeem Elyas, Bonn



Workshop B „Human rights – roots and practice in Islamic countries”
Speaker: Prof. Dr. Gerhard Luf, Vienna



2 p.m. – 4.30 p.m.
Continuation of the Workshops



6.30 p.m.
Social program
Visit of Hamburg harbour

8 p.m. Diner at the “Cremon”-
an Italian restaurant



Thursday, October 9th

10 a.m.
Lecture at the University of Hamburg



at the Philosophenturm



“Introduction to the Islamic Family and Succession Law System” Speaker: Dr. Nadjma Yassari, Hamburg

12 a.m.

Visit of the church St. Michaelis

and dialogue with pastor primarius, Helge Adolphsen



2.30 p.m.

Lecture at the University of Hamburg

“Economic and trade law in Islam” Speaker: M. Aziz Alkazaz, Hamburg

4 p.m.

Lecture in the University of Hamburg

“Introduction into commercial law of some Arabian states” Speaker: Prof. Dr. Hilmar Krueger, Cologne

8 p.m.

Lecture at the Bucerius Art Forum

Lecture: “The Middle-East Conflict”

Speaker: Prof. Dr. Udo Steinbach, Hamburg



Afterwards

Discussion at the Bucerius Art Forum

Friday, October 10th

9 p.m. – 10.30 p.m.

Lecture in the University of Hamburg

Speaker: Maurits Berger

11.30 p.m. – 12.15 p.m.

Lecture in the University of Hamburg

Lecture: “The controversy over Ghanima and its effect on Khums”
Speaker: Dr. Najib A. Wahhab Al-Fili

12.30 p.m.-3.30 p.m.

Resume/ Feedback

of the participants of the conference and outlook

4.15 p.m.

Public panel discussion

at the Auditorium of the Bucerius Law School



Topic: “Possibilities and limits of an intercultural dialogue between the Islamic and Western World”
Opening by Prof. Dr. Hein Kötz, President of the Bucerius Law School
Moderator: Dr. Nadjma Yassari, Hamburg
Speakers: § Hamid Khurshid, M.A., LL.B, Pakistan , Anna Würth, Berlin



from 9 p.m.

Closing evening/ Farewell

at the Alster Lounge

Saturday, 11th October

from 10 a.m.

Departure of the participants

Subject Matter

Community

ELSA Islam - Community and Law
by Birgit Krawietz

The very speciality of Islam, starting with its earliest days in the northwestern part of the Arabian Peninsula of the 7th century, seems to be that law has been there from the very beginning. The talk focused in its first part on the early transition period in which a new type of society and leadership gradually emerged against the background of old tribal loyalties. When his hometown Mecca opposed the Prophet Muhammad's cause, he accepted an offer from the oasis-town Medina where he functioned as administrator, legislator, judge, and commander in chief as well as teacher, preacher, and prayer leader. Muhammad showed his political genius for the first time in the pacification of this oasis which had been torn apart by blood feuds. The so called 'constitution' of Medina provides regulations concerning its administration and security. While allowing for different tribal identities, it declared the new Muslims „one single community“ (*umma*). In this charter, the Jews received freedom of worship in return for loyalty and payment of the poll-tax. Muhammad finally managed to return to Mecca in a bloodless conquest, more than seven years after leaving it. The second part dealt with certain presumably typical criteria of Islamic law and Islamic societies. The prominent ideas discussed were the notion of Muslim people having a collective rather than an individual consciousness, the repression of women, further, cruelty and disregard to bodily integrity, and a sort of medieval immobility as averse to change and variety. It was not intended to claim that all these alleged characteristics are either outright prejudices or the exact

opposite, but to highlight them from some alternative angles. Generally, the chances provided by inbuilt inner-Islamic pluralism are often overlooked. In the third and last part, different layers in which Islam pervades the social sphere were presented, because the Sharia contributes in multiple ways to the moulding of Islamic societies or communities. Such a differentiation is important when it comes to the question of a possible application/ abolishment of the Sharia or the general prospects for reform. Islamic reformers offer various approaches, but often do not take all such levels into account.

The Middle-East Conflict

by Prof. Dr. Udo Steinbach

1. What is the Middle-East Conflict ?

Normally it means the conflict between the Arabs/ Palestinian on the one side and the Israeli on the other side. Nothing has to be said about this because everything has been said. It is rather needed to do something. However Mr. Bush, who largely shares the opinion of Mr. Sharon, and the USA are the only ones who have influence on Israel. Unfortunately Mr. Bush is only interested in fighting terrorism.

It also means the conflict in Iraq and the conflict of cultures. Hence the Middle- East Conflict are a few conflicts in this area.

2. What is the reason for the conflict between Israel and Palestine?

The conflict started with the coming into existence of Israel in the Arab area. The Arabs were frustrated and that's why they fight the Israeli. In 1967 the six days war broke out and the "Arab world" lost against such a small and young country. In 1978/79 the peace process between both states started.

Another problem is to whom belongs Palestine. In 1993 Israel and Palestine missed the chance for ongoing peace. In 2000 there were 200 000 settlers in the West Banque. On the 28th of August 2000 the violence started again after Scharons arrogant visit on the Temple hill. Then a conservative government came into power in Israel. They started to build a wall, kill Palestinian every night and cut of 200 000 Palestinian of their existence. Now they bring Syria into the picture in order to deflect from Palestine.

3. Iraq conflict

The reasons for the US invasion in Iraq are not the weapons of mass destruction, Saddam Hussein or bringing democracy to the Iraqi people.

In the 1920's the British and French created the entire area. The whole regimes were created or came up by the colonialism and the East- West conflict. No ruler got their legitimacy by elections.

Kurds are the fourth larges group in the area and now the Turkish want to come in. This is the biggest mistake and shows that the USA has not got a clue about the area and Islam.

His consumption was that one has two unsolved problems- the Palestine one and the Iraqi one.

4. Overall Middle- East Conflict- The religious conflict

Hardly anybody in the Arab world trusts the US. In their opinion real reason of the US is fighting the Islam. Thus the Moslems figth the Djihad against the US appearance and power.

5. Way out of it

The UN is the only alternative to it. We have to strenghten the UN, take every issue (Iraq, Palestine, Kashmir, Chechenya) one by one, find common solutions and find compromises.

If we do not find a solution it will go on forever. The conflict will widen and grow more and more.

Is Sharia a correct translation of Islamic Law ?

by Mr. Mauritzberger (protocoll)

Islamic law usually means BAD NEWS. We do not know anything about Islamic law but we have a strong opinion about it and we usually think negative about it.

If you ask Moslems in the Arab world, nine out of ten say Sharia is great.

should it be implemented- yes

so can you say what it is- no

In 1920 Islamic law was recognized as law and defined as religious law.

Religious law is defined as irrational, common in poor countries, part of a primitive society, no rule of law, arbitrary and inflexible.- BAD NEWS, once again.

- Islamic law is derived from

Sources: — Koran,

—Sunna,

through methodology: — consensus,

— analogy.

Substance of Islamic law : mainly

— conflicts of law (how Moslems shall deal with Non- Moslems)

— family law

Only 1 % of the Koran are legal rules (mostly about family law and the position of women).

A lot about commercial law is to be found in Sunna.

- Law & Morality

Koran has no law enforcement. It contains only five criminal

acts and enforcements (e.g. theft- chop of the hand). Islamic law has not been developed by lawyers instead it has been developed by Moslem scholars.

- devine law vs.
is god made law

positive law
-is men made law
-Here one gets to an emotional level. Fundamental moslems say everything is religious.

Western countries have arbitrary justice because they change law as they want to. That´s why Islamic Countries sometimes accuse Western countries of arbitrariness. However they forget the Western systems of legislation which hinder arbitrariness.

- Sahria and Law:

Sharia is a code of conduct and blue print of justice. After Sunna everybody wrote books mostly about case law. At the beginning of the 20th century (post colonial period) the codification started. From then on textbooks have been written (mostly copied from French code of law or German commerce code).

- Politics and taxes (e.g. Syria and Egypt):

The people in Syria and Egypt are sick of their government. It is a socialst welfare structure but they do not deliver. The citizien of Syria do not have to pay zakât. Moslems go to their sheikh (religious legal adviser) and ask him whether he could calculate the zakât which is completely voluntarily. They want to pay it but they do not trust the state court to calculate it. Hence in Syria exist two completely different systems (the state legal system and the religious Moslem legal system). Molesms can get divorced or married without getting state registered.

Public Panel Discussion about „Possibilities and limits of an intercultural dialogue between the Islamic and the Western World”

The highlight of the conference was a public panel discussion which was held in the new Bucerius Law Scholl Auditorium on Friday the 10th of October. Hamid Kurshid (MA., LL.B., Advocat at the High Courts of Pakistan) and Dr. Anna Wuerth (Institute for Human Rights, Berlin) were the speakers and the event was hosted by Dr. Nadjma Yassari. Originally Prof. Dr. Steinbach and Dr. Al-Fili were designated as speakers, too. However the former had to attend another conference and the latter had to fly back earlier.

Firstly, Mrs. Leuck- Baumanns of the Zeit foundation gave a little speech about the foundation and the conference. Secondly, Prof. Dr. Kötz (President of the Bucerius Law School, Hamburg) gave a little speech as well. Then Mrs. Yassari followed with an introduction of the topic of the public panel discussion and of the speakers.

Afterwards Mr. Kurshid made some remarks about Islam and the Islamic law in Pakistan. As a former British colony the Pakistan legal system is similar to the one of Great Britain. All courts in Pakistan accept Sharî'a law. However Pakistan is a very liberal Islamic state.

Mrs. Wuerth followed with some remarks on the whole concept of dialogue, how dialogue is conducted in the field of human rights and a conclusion. The dialogue between moslems and non- moslems (the interreligious dialogue), which has always existed, went on to a political level after the 11th of September 2001. For a dialogue one needs a problem (e.g. cultural or

Law

The Legal Sources of Islam

by Prof. Dr. Dilger (protocoll)

At first Mr. Dilger pointed out, that there are quite some different resources of Islamic law, not only the Koran, as some people usually think. He emphasized that the Sharia is although most important as it is the idea of the Islam which regulates all aspects of the private and public life. The Sharia is based mainly on 4 roots:

1. The Koran

The Koran is based on religious speeches of the prophet Mohammed. Older Arabic common law has also been partly converted into content of the Koran. It was written down in 632 a.d. after the death of Mohammed. An official codification was done in 651. The Koran was established through the will of god and no human was involved in this process. It contains almost no absolute rules, it consists mostly of more ethical statements like “desirable, recommended, allowed, forbidden”. If an act does not correspond to the Koran, it can be as well valid or invalid. This does of course not correspond to practical needs, so here are a lot of gaps between the content of the Koran and the possibilities for its practical use.

2. The Sunna

The Sunna consists of Mohammeds speeches, his actions and his approval of other actions; even if there are some actions Mohammed has done himself, which are not allowed, to other Islamic people. The Sunna is written down in 6 books and is canonic established.

3. The Idjma (communis opinio)

The Idjma describes a principle: if all Islamic lawyers have one common opinion, this common opinion becomes part of the Islamic law. When such a common opinion is established at some time it will be established for ever, even if the common opinion does not exist any longer; the Idjma is also always right. This whole principle is justified by Mohammed, who said “My community will not have a common opinion about an error.” So the Idjma is a solution for lawyers in the Islamic world to find new solutions for new problems and cases, but it also leads to a petrification of the Islamic legal system, because decisions can not be abolished anymore once they are set.

4. The Kiyas

The so called Analogieschluß, the Kiyas, describes the principle of logical deduction, the solution of a new case by changing and fitting the solution of an ancient case, like in other systems which are working with a lot of case law. The Kiyas can also lead to abstract law, which makes it unique in the Islamic legal system.

Institutions in public law and constitutional law in the Islamic countries

by Mr. Ebrahim Afsah

1. First part of the workshop

The main difference between the Western World and the Islamic World is that in Islam there is no separation between the religion and the state.

In Islam exists four sources of law. Their hierarchy is:

1. Quoran-

is the word of God and it is not contestable. God spoke to Muhammad (Prophet) and he wrote it down in the Quoran. When Mohammed died he did not leave a successor. That's why four Kalifs were elected. They run the country and interpreted the Quoran. Four Sunni law schools and two Shi'i law schools developed, too. Their comments are regarded as law.

2. Sunna-

-tradition; what the prophet has done (way of living) and what he started to do

3. ijma-

-consensus

4. customs

5. six law schools

-all six are equal and different

Islam is not an unified thing. Islam encourages you to be enterprising. Islam is pick and choose attitude. It is so diverse that you can find every provision you like.

Ijtihad (advice given by a Moslem scholar)- e.g. Dogs are

unclean. Moslems were starving after the earthquakes in Iran and asked whether they could eat dogs. The Moslem scholar gave a fatwa (legal opinion) and said yes. This is an example for creating law.

If I have a daily problem and I do not know how to behave (e.g. Am I allowed to use the Internet.) I go first to my Mullah. He could go to the Ajatholla of the school where he studied the Quoran. The Ajatholla gives a ijthihad and e.g. says you can use the internet.

The better the reputation of the Ajatholla is the more important is its legal opinion. However another Ajatholla can give another opinion (e.g. you can not use the Internet). If this happened the Moslem can decide which advice he follows.

The main crimes in Sharia are theft, false accusation, adultery, highway hijacking and killing. The stiff sentence (stoning for adultery) is linked to stiff procedural codes. In order to prove adultery I need four highly reputed witnesses who saw the actual intercourse. Hence I will almost never have this stiff sentence if I stick to the stiff procedural rules. Thus Sharia has procedural safe guards in theory but if the Mullah caughts you red handed committing theft he would punish you right from the spot and cut your hand off. Hence the whole problem are the Mullahs who are not trained in law, do not stick to the procedural safeguards and enforce the Sharia wrong.

2. Second part of the workshop

We watch slides of Afghanistan and Mr. Afsah told us about his journey through the country, about the project he is working on and the history of the country, living and security situation there.

Legal problems which arise in Afganistan:

- the constitution says all laws are valid
- one has no proper enforcement
- the police is not trained
- the judges are untrained, ridiculous paid, live of bribes and apply mostly customs and tribal law
- even the minister of justice does not know the law of the land
- women are property and you can basically do everything with them what you want to;
this has nothing to do with Islam

Economic and trade law in Islam

by Mr. Aziz Alkazaz

The Quoran and the Sharia affect the economic behaviour. However a textbook for economy does not exist.

In Islam exists different ideas of ownership. Allah has the general ownership and men takes ownership as an trust from Allah. Islam distinguishes between ownership of natural resources and private ownership of man. The former belongs to all inhabitants of a country. The latter is what men have lawfully arquired and does not harm the rest fo the society.

Islam also distinguishes between lawful items/professions and unlawful items/professions which are not legal to use (e.g. theft, gambling, interests, breach of trust and prostituion). Quoran and Sunna provide rules about what one can use and what is lawful or not.

The most important principles of economy are truth, kindness and justices.

One example for this is ribâ (usury, unfair). It means e.g. the

supplier of money must share lost and profit. If you get a credit from an Islamic bank, the bank participates in the project and risk. They only give money to just projects.

It also means that interest are an unfair earning as you do not work hard for it. Saudi Arabia prohibited interests.

Mullahs in Pakistan established the first banks which are not ribâ based and today around 150 banks and insurance companies exist. Future prospects are encouraging. Islamic projects and companies are very competitive and successful.

The Islamic has taxes, too. The most important one is the zakât. Zakât means that every Moslem has to give a part of their property for the good of the society (e.g. 5 % on agricultural products). Generally it is thought that the zakât provides enough revenue to finance the whole budget of a country.

An Introduction to Commercial Law in the States of the Arab Peninsula

by Prof. Dr. Hilmar Krueger

Mr. Krueger divided his lecture into five parts. Firstly he spoke about the obligations and contracts in the Arab world, secondly about commercial law: Legal sources in the States of the Arab Peninsula, thirdly about special features of the commercial codes, fourthly he made remarks on some problems of the commercial contract law and finally he gave a summary.

I. Obligations and Contracts in the Arab World

The civil and commercial law in most of the Arab countries is mainly based on principles of French law (either via Egypt or directly). The only exceptions in civil law are the succession laws, the laws of domestic relations and the laws of pious foundations. These laws are normally based on rules of the

predominant law school (madhhab) of the Sharī'a.

The most important acts and/or codes concerning the law of contract in the contemporary Arab world are, with some exceptions, codified as, e.g. in France, Germany or Italy. Egypt is the leader insofar and has got the leading legal system in matters of civil law, and especially in the law of obligations. Sharī'a is not of important relevance in the law of contract in most of the Arab countries, apart from Saudi Arabia (there no codified law of obligations and contracts exists) and the Republic of Yemen. The Egyptian civil code has become the main source in numerous other Arab civil codes and of the application of the law by law courts in other Arab countries since more than five decades.

II. Commercial Law: Legal Sources in the States of the Arab Peninsula

Commercial law contracts are a special form of civil law contracts and so some remarks about the civil law has been made in order to understand commercial law contracts. The provision of civil law regarding contracts (the law of obligations) are the basis of commercial contracts. The countries of the Arab Peninsula (except Saudi Arabia) do not trust very much in the law of obligations contained in the Sharī'a.

Kuwait, strongly influenced by Egyptian and Iraqi law (concerning civil law matters), Syrian law (concerning commercial law matters) and generally by French legal thinking, is the leader under the states of the Arab Peninsula. The area of commercial law is regulated in the elaborate Commercial Code of 1980 which entered into force in 1981. This code contains in four books detailed provisions on trade

in general, on commercial obligations and contracts, on negotiable instruments, and on bankruptcy and composition proceedings. Qatar and Yemen adopted the old Kuwaiti Commercial Code of 1961 and so it is structured exactly like the Kuwaiti model.

The model of the Commercial Code of the Emirate of Bahrain is the new Kuwaiti Commercial Code of 1981. The commercial code of the United Arab Emirates (UAE) and the Sultanate of Oman is modeled on the basis of the new Kuwaiti Commercial Code. In Saudi Arabia the Kuwaiti legislation did not serve as a legal model up to now and it has no modern Commercial Code. The old Commercial Code has its origin in the Ottoman Commercial Code of 1850, a rather bad translation of the French Commercial Code of 1807.

III. Special Features of the Commercial Codes

In introducing the commercial codes of Kuwait and Yemen some particular features are included in the codes of Kuwait, Bahrain, UAE, Oman, Qatar and Yemen, which one does not expect in such codes from a worldwide comparative point of view. These are international commercial terms (e.g. fob - free on board), special rules on letters of guarantee and documentary credits (one of the most important instruments of securing financial claims in international trade).

IV. Remarks on some problems of commercial contract law

The law of interest in the light of the Koranic prohibition of „ribâ“ (literally increase or excess, including interests, at least today) is one of the problems of commercial law. Interests in commercial transaction are perfectly legal in the smaller states (Kuwait, Bahrain, Oman, UAE and Qatar) of the Arab Peninsula. When it comes to business affairs the prohibition

of „ribâ“ (including interests) is generally of no or only little value. However there exists a maximum limit of legal and contractual interests in the mentioned countries. The only exception exists in Saudi Arabia. There interests for loans or for delay are prohibited because the Islamic legal principles (ribâ) apply. Other problems are agency contracts and speculative transactions.

V. Summary

All the states of the Arab Peninsula- with the exception of Saudi Arabia- have got comprehensive commercial codes. Occasionally they show special features by codifying certain parts of commercial practice as well (e.g.international commercial terms). Islamic law- apart from Saudi Arabia- is of little importance in this field of law. This is true even concerning the problem of interests on loans and for delay of payment, for loss of profit and partly even for speculative contracts. The Islamic prohibitions of ribâ and gharar (literally hazard, risk, uncertainty; the Koranic prohibition of certain game of hazard contradicts e.g. speculative transactions) are empty formulars insofar. These countries, and their law courts, give priority to the protection of local traders, place special emphasis on this aspect by their commercial laws and use to follow internationally accepted commercial and banking customs.

Social Part





The motivation of our participants -some examples

“One can aim to understand the miscellaneous facets of Islamic law, be it civil or criminal, as well as more evasive problems such as the relation of the Islamic world to the west. (...) for this reason I would like to take part in the conference, deepen my knowledge, acquire precious experience and thus pursue my aim.”

Participant of Poland

“!Quantara!-building bridges is an important issue in nowadays times of globalization. But how to begin with? Law as the basic of state systems and therefore a source of a better understanding between different cultures is the ideal point to start with.”

Participants from Germany

“My main reason of interest in Islamic law is the wide range of impressive solutions that may outdo the ones used in the western world. These solutions and institutions come from a different approach as we´ve learned during our years of study. (...) I see this conference as an unique forum of real conversation and profitable debate.”

Participant from Hungary

“As I am living in a bi-religious marriage in Germany I have also been confronted with a lot of prejudices about the Islam so that I am not only interested in Islam on an abstract level, but also in how life in Germany as far as the coexistence of the different cultures is concerned can take place peacefully and with respect. (...)The conference provides the chance to discuss these topics with a lot of very different persons with lots of different backgrounds.”

Participant from Germany

“We all get very much information about the Islamic World and its inhabitants. But what kind of information? News about terrorism, war and other subjects that are “hot enough” for the press coverage. Getting balanced knowledge about the real Islamic world and its culture is much harder. The conference “Law in the Islamic World” will focus on the base of the social life - law. I can’t imagine a better initial point to learn more about another culture and to understand each other.”

Participant from Germany

Statements/ Feedback of the participants

“Too many cooks spoil the broth? Far from it! Thanks to ELSA Germany, ELSA Hamburg, ELSA Kiel and ELSA Lueneburg.”

“I swallow doesn’t make a summer. 4 ELSA groups do make a great conference!”

“A great week in Hamburg! International participants, interesting introduction in Islamic law, fantastic social program. So, a perfect ELSA-Conference!”

“The Islam Conference was a great experience. It gave me an idea of the Islamic culture and it’s relation to reality. Because of the conference my interests in this matter grew so much that I started to study the Arabic language and Islamic Sciences beside my study of laws.”

“During the week in Hamburg I had the unique chance to see how it is possible for a “crowded” OC (30 people from Kiel, Hamburg and Lueneburg!) to work in harmony and male an international project come true. Unexpected was however that the majority of the OC were freshers or had very little ELSA experience. “Never say never” is a rule in our ELSA-world.”

“In my opinion the conference “Law in the Islamic world” was a fabulous week and a great experience for all. It was a perfect organisation: interesting lectures in exciting locations, always good food and of course great parties! Thank you to all OC’s and of course to all participants who made this conference to an unique Elsa event!”

October 14th, 2003

Re.: “Law in the Islamic World”/ A final comment

Dear Julia,

let me take the opportunity to thank especially you and Anke Kneisel for the excellent job the two of you did to make the conference happen at all and to make it such a success. Also once more my thanks to the most knowledgeable, highly motivated (and as to the ladies: charming) speakers and discussion-partners.

It is with great respect that I note the perfect site-management including logistics and social events by ELSA Hamburg, Kiel and Lüneburg. Last but not least my thanks to all participants whose open-mindedness and “Engagement” guaranteed a friendly learning atmosphere. In this context the contribution of the participants coming from Islamic countries must especially be mentioned.

To sum it up: I am convinced that the conference fully met expectations. We all, I think left knowing that there is a challenge out there also to young lawyers like yourself and the other participants though your contribution to a peaceful “better” world may seem to be marginal at the moment. We are leaving well equipped to meet the challenges to come. Let us try to continue the dialog which started so promisingly during the week of October 6 – 10th 2003 in Hamburg.

ELSA let’s get started again.

All the best for your professional careers and your personal well-being

Yours Dieter Ahrens

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