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Zusammenstellung: Hatem Elliesie.

**Vorträge auf der Jahrestagung der GAIR
im Rahmen des 29. Deutschen Orientalistentags
am 20. und 21. September 2004**

**in der Martin-Luther-Universität Halle-Wittenberg
Mühlweg 15
06114 Halle (Saale)
Raum Mel E**

Leitung: Hilmar Krüger (Köln) und Mathias Rohe (Erlangen)

Montag, 20. September 2004

Block 1: 14.00 – 15.30 Uhr

- Christoph Werner *Persische Fatwa-Sammlungen des 19. Jahrhunderts*
(Freiburg)
- Christian Müller *Zum Recht im Mamlukenreich: Die Urkunden vom al-Haram al-Sharif in Jerusalem*
(Paris/Frankreich)
- Stefan Turner *Internationaler Kulturgüterschutz und Scharia: Die Zerstörung der Buddhas von Bamian und die Konferenz von Duha*
(Saarbrücken)
- Almut Hinz *Die "Seeräuberei der Barbareskenstaaten" im Lichte des europäischen und islamischen Rechtsdenkens*
(Leipzig)

GAIR-Mitgliederversammlung 16.15 – 17.45 Uhr

Dienstag, 21. September 2004

Block 1: 9.00 - 10.30 Uhr

- Silvia Tellenbach *Zur Staatsanwaltschaft in der Islamischen Republik Iran*
(Freiburg)
- Mahmoud Jalali-Karveh *New Developments in the Iranian Law of Arbitration and its Challenges* [[Link zum Abstract](#)]
(Isfahan/Iran)

Block 2:**10.45 - 12.45 Uhr**

Bülent Ucar

(Oberhausen)

Ist die Scharia wandelbar? Die usul-Debatte türkischer Gelehrter am Anfang und Ende des 20.Jh.s

Mathias Rohe

(Erlangen)

Aktuelles zur Rechts- und Justizentwicklung in Afghanistan

Irene Schneider

(Göttingen)

*Die Position der Frau in der klassisch islamischen und modernen afghanischen Rechtsprechung***Block 3:****14.00 - 15.30 Uhr**

Ebrahim Afsah

(Heidelberg)

Die Verfassungsentwicklung in Afghanistan

Hatem Elliesie

(Heidelberg)

Friedensprozess und Verfassungsentwicklung im Sudan[\[Link zur Landkarte\]](#)

Hans-Georg Ebert

(Leipzig)

*Muhammad al-Abbasi al-Mahdi (gest. 1897) und die Formierung des hanafitischen Rechts in Ägypten***Block 4:****15.45 - 17.45 Uhr**

Ghada Audi

(Köln)

Islamic Family Law in Western Legal Systems: A Survey of German and American Approaches

Ebrahim Afsah

(Heidelberg)

Der Verfassungsaufbau im Irak

Andreas Neumann

(Göttingen)

Die Nasser-Enzyklopädie und die Nutzbarmachung der Meinungsverschiedenheiten

Sahiron Syamsuddin

(Bamberg)

Das islamische Erbrecht nach Muhammad Sahrur



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Abstract

New Developments in the Iranian Law of Arbitration and its Challenges

[Sektionen](#) [Fächerübergreifende Panel](#) [Foren](#)

Das Abstract zum Referat von [Mahmoud Jalali-Karveh](#) innerhalb der [Einzelreferate](#) im Arbeitsfeld [Islamisches Recht seit der zweiten Hälfte des 19. Jahrhunderts bis zur Gegenwart](#) des Forum [Recht](#), Block 1 (Dienstag 9.00 - 10.30 Uhr, Raum Mel E).

Since the beginning of the 20th century, arbitration has been part of the Iranian modern legal system. Articles 632 to 676 of the 1939 Code of Civil Procedure and its subsequent modifications constituted the main legal framework of arbitration both at the national and international levels regardless of the nature of disputes. This law without any fundamental change was replaced by the new Iranian Code of Civil Procedure and came into force in March 2000 only for domestic arbitrations. However, over recent years Iran has been giving increasing attention to international arbitration. For instance since 1981 it has been a party to thousands of cases before the Iran-US Claims Tribunal whose decisions have already played an important role in the development of international law. This is an indicative of the confidence this country has in arbitration as a peaceful means of dispute settlement. As a second major development, since early 1990s attempts have been made to establish a regional arbitration centre for the settlement of commercial disputes in Iran. In 1987, during the 26th session of the Asian-African Legal Consultative Committee, it was decided that the Committee would assist Iran in setting up of a regional centre of arbitration. To this end, in May 1997 in its 36th session the Committee made an agreement with Iran. The agreement was approved by the Council of Ministers and, as far as the writer is aware, has not yet been ratified by the Parliament. If established this would be the first arbitration centre in Iran and the second in the Asian region. A third significant step was the adoption of

a new law on international commercial arbitration to match the mentioned proposed Centre. To remedy the shortcomings of the national system of arbitration and to recognise an independent set of rules for international arbitration, on 17 September 1997, for the first time, a new Act on International Commercial Arbitration of Iran was enacted by the Parliament and entered into force in November 1997. The fourth development is the accession of the country to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which took place on 15 October 2001 and entered into force in Iran on 13 January 2002. This will facilitate the enforcement of arbitral awards issued in other countries, in Iran and vice versa.

No doubt the new economic and political reforms in Iran and new open policies towards foreign relations both at regional and global levels, which have been developing since the election of President Khatami in 1997, and the huge dependency of the country on foreign investment and transfer of technology, demand a greater role for the Iranian legal system of dispute settlement. However, despite the new developments, it seems that there remain still a number of important obstacles towards a successful arbitration regime in Iran which in turn leave the future of the said developments in doubt. Article 139 of the Constitution, e.g., imposes certain restrictions as to the recourse to arbitration in that it is unclear whether, despite the enactment of the Act and the great hopes for the establishment of the Centre, the foreign partners will be willing to accept the provisions of the Article. Moreover, reading the Act together with the Iranian domestic and private international laws, it seems that some rules of the conflict of laws in the country as well as a number of national laws must be modified to be in harmony with the new developments. For example, there are in the Iranian law certain restrictions as to the arbitrability of some disputes. As the law stands today, claims relating to bankruptcy cannot be referred to arbitration. This seems to be inconsistent with the general policy of the Act which limits the intervention of the national courts in matters governed by the Act.

What are the main obstacles towards the success of the aforementioned advances? What changes are necessary to be made in the current municipal law to harmonize it with the global international arbitration? Whereas in domestic law of Iran, arbitration has not attracted much attention, is there any hope for the new law at the international level? These are questions to which this paper is going to answer.

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