Global Knowledge Transfer
Working Group

Ten Years of
Global Knowledge Transfer

Projects and Research
2002 - 2012
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A. Introduction

For ten years, the staff of the Max Planck Institute for Comparative Public Law and International Law (now of the Max Planck Foundation for International Peace and Rule of Law) have been providing assistance in the reconstruction or restructuring of public bodies to states which have experienced situations of radical change in relation to their constitutional law. Recipients of assistance include states which are trying to re-establish public order following civil wars, states undergoing a change of direction (e.g. Afghanistan, Sudan or Somalia), new states which come into existence after having seceded from other states (such as South Sudan) or states which are trying to realign their systems of legal and public order in the aftermath of the so-called Arab Spring. Two fundamental objectives can be discerned in relation to the assistance provided. Firstly, advice and assistance for the creation of new constitutions, the revision of existing constitutions as well as advice related to the passing of new legislation and reform of legislation. To this end, the training of parliamentarians, other persons involved in the legislative process, lawyers and members of civil society is also necessary. These two objectives, consultation and training, can overlap. Training focuses on constitutional law, international law (especially the protection of human rights as well as international humanitarian law), the relationship between national and international law, proceedings in national courts and the principals of fair legal processes.

The starting point for the group’s work was its substantial participation in the development of a peace agreement between the different sides in Sudan’s civil war as well as the development of an interim constitution from 2002 to 2005.

The projects of the Max Planck Institute for Comparative Public Law and International Law which came under the umbrella title of “Global Knowledge Transfer” were under the overall management of Prof. Dr. Dr. h.c. Rüdiger Wolfrum for their duration. With the founding of the Max
Planck Foundation for International Peace and the Rule of Law, the responsibility for continuously increasing the content of the projects along with their ongoing geographic expansion fall upon various shoulders. The heads of the foundation, Dr. Daniel Gruss, Dr. Tilmann Röder and Prof. Rüdiger Wolfrum, bear the overall responsibility. They are supported by Dr. Daniel Heilmann and Dr. Kathrin Scherr who have conceptual and administrative responsibility for specific regions. Dr. Gruss and Dr. Röder nonetheless continue to bear direct responsibility for projects in specific regions and for events dealing with overarching themes, such as legal pluralism for example.
B. Concept

The idea of providing legal assistance to governments, parliaments and interested groups in other states for the preparation of draft constitutions and laws (for example, electoral laws or laws on political parties) originated from talks with foreign academics at the Max Planck Institute for Comparative Public Law and International Law as well as from collaboration with international forums for the protection of human rights. Additionally, the institute’s consulting experience with German institutions could be drawn upon.

The aim of consultation at both international and national levels was to utilise the valuable practical expertise of the institute in the field of international law and foreign public law and to share it with political decision-makers and interested groups. There is a crucial difference between consultation with national decision-makers and that with foreign decision-makers. Consultation with foreign institutions and decision-makers in relation to constitutional questions, for example, requires that the existing legal structures and their development as well as the social and economic situation of the population concerned be taken into account. One of the basic principles of the Global Knowledge Transfer working group, which has been stressed and followed thus far, is that these factors influence the formulation of concrete proposals for the organisation of legal reform projects. This is possible only if proposals are developed through dialogue with the relative institutions and partners. The development of a peace plan for Darfur serves as a good example. The text of the Darfur Outcome Document was developed through a three year intensive dialogue with representatives of all the political powers in Darfur. Collaboration on the peace agreement and the provisional constitution for Sudan was based on the same principle. The assistance in drafting a constitution for the Republic of South Sudan began in August 2012 and took place in close cooperation with the South Sudanese constitutional commission and therefore also followed this approach, which has now been adhered to time and again. When carrying out its advisory function, the consultation team is also always advised by
respected politicians and academics who have close connections with the region concerned.

Political neutrality is another fundamental requirement for the successful transfer of knowledge. Consultation and support is only successful on a long-term basis if the respective institutions and partners are convinced that their foreign partners are not pursuing their own interests.

A key element of the advice and training work is that it is first and foremost based on verified knowledge. This principle has thus far been ensured by incorporating it into the work of the Max Planck Institute. Even with the transfer of consultation and training operations to the foundation, the strong academic relationship with the Max Planck Institute for Comparative Public Law and International Law will be retained. Intensification of academic collaboration with other Max Planck institutions has also been planned.

It is important to emphasise that from the very beginning our basic concept was that the transfer of knowledge should not be seen as being unidirectional. The foundation’s staff benefit greatly from the dialogue with the institutions and partners. As a result of their inclusion in the constitutional and reform processes of various countries, the knowledge base of the foundation’s staff is improved. They also gain the opportunity to quantify or verify the results of theoretical research against empirically ascertained findings in the transition states.

Finally, the transfer of knowledge has the result that doctoral candidates from countries where projects are being carried out can be persuaded to deal with questions of foreign public law and international law on the basis of German legal doctrine. To date, two theses have been completed in this field and further dissertations are yet to be completed.

The following description of projects is ordered chronologically because they build upon each other’s methodology and informational content. Finally, the methodology has been developed, consolidated and has gained recognition amongst our partners.
C. Sudan

1. Background

A group from the Max Planck Institute has been supporting the peace process since 2002, as well as the transformation process following South Sudan's independence in 2011. The initiative came from Prof. Wolfrum, who simultaneously offered the expertise of the Max Planck Institute for Comparative Public Law and International Law to both the government of Sudan and the leadership of the Sudan’s People Liberation Movement (SPLM).

Train the Trainers Workshop in Khartoum
2. Projects

a. Constitutional advice

The background of this initiative was that, at the start of 2002, the peace negotiations between the national government (Government of Sudan, GoS) and the SPLM had stalled. These negotiations were initiated by the regional development organisation IGAD (Intergovernmental Authority on Development) and were aimed at ending the civil war which had lasted more than 20 years. In mid-2002, the talks were restarted and, following tough negotiations, resulted in six peace protocols, which are essential features of the peace agreement which was signed on 9 January 2005.

The neutral legal advice offered by the team from the Max Planck Institute in relation to constitutional questions facilitated bringing both parties together at the negotiation table and also aided them in formulating the political compromises that were settled upon in a constitutional text.

Discussion of key questions about a future Sudanese constitution with civil society

In April 2002, Prof. Wolfrum initiated a dialogue with both parties of the civil war for the development of a draft framework for a future common constitution. This was done with support from Dr. Christoph Jaeger, the former UN coordinator and UNDP representative in Sudan. During the preparation of this proposal, the aspirations of civil society were ascertained through a series of workshops so that the draft document would not only reflect the interests of the parties of the civil war, but also those of the wider public.

This approach was implemented by holding eight workshops. Four of these were held in Khartoum and, in South Sudan, two were held in Rumbek and two in Yei. The main themes, amongst others, were “state and religion”, “self-determination and referendum” and the division of
resources. The information gained from this process formed an important part of the discussions held at the “Heidelberg Dialogue”.

**Heidelberg Dialogue: Creation of a draft constitution based on the Machakos Peace Protocol**

In November 2002, representatives of both parties of the civil war met in Heidelberg in order to work out an initial draft constitution for a peaceful Sudan. The dialogue was presided over by Prof. Wolfrum and recognised international experts. Although there was still no comprehensive peace agreement at this point in time there was, however, an initial partial agreement in the form of the Machakos Peace Protocol.

The delegation of the GoS (Government of Sudan) consisted of the former president of the Supreme Court of Sudan, the deputy chairperson of the Sudan Bar Association, an ambassador as well as the General Secretary of the Peace Commission, who is answerable to the President. The SPLM was represented by their deputy advocate-general, their designated representatives for legal questions and constitution development and by one further lawyer. The mediation team of international legal experts was led by Prof. Wolfrum who was accompanied by Prof. T. Mensah (Ghana), Prof. F. Morrison (USA), Senator Dr. Majali (Jordan), Prof. Rémy Granger (France), A. Aust (Great Britain), Prof. R. Kahn (India) and Ambassador J. Bucher (Switzerland).

During the dialogue with the two civil war parties in Heidelberg, integral elements of the Draft Legal and Constitutional Framework for the Interim Period were successfully developed. The text encompassed the legal basis for a federal Sudanese state for the interim period between the signing of a peace treaty and a referendum on the secession of the south from the north of the country.

The fragmented content of the Machakos Peace Protocol was put into more concrete terms, expanded upon and changed into the form of a constitution. The GoS delegation insisted that the gaps in the text be filled with content from the 1998 constitution which contained strongly Muslim
elements. The SPLM rejected this demand. Some difficulties arose from the broadly defined wording of the Machakos Peace Protocol. Many of the text’s passages were intentionally formulated with “constructive ambiguity”. This made it possible for both sides to read their own ideas for a future constitutional framework into the text. Representatives of the GoS wished that the previous structures of the constitution be retained as much as possible and that the existing constitution be adapted, if need be, in those areas where it was necessitated by the peace protocol. This contradicted the ideas of the SPLM, which wanted to create a completely new framework. A text was finally produced that was broadly accepted by both sides.

Subject areas discussed included the relationship between the state and religion, fundamental and human rights, the separation of powers, the status of South Sudan, national jurisdiction, equalisation payments, self-determination and the procedures for the adoption and amendment of the constitution. In relation to all these areas it was possible to produce a text which was, for the most part, consolidated. It was necessary, however, to leave other points to future peace negotiations.

Many formulations and results which were achieved at the Heidelberg Dialogue can also be found in the Naivasha Protocols, in particular in the Power Sharing Agreement.

**Workshop on the different forms of decentralisation**

Through the Comprehensive Peace Agreement (CPA) which was reached in January 2005, Sudan attained an asymmetrical federal state structure. Nonetheless, the word “federal” was not used during the negotiations due to historical reasons. For this reason, substitute terms principally associated with decentralised states were used in the agreement text.

In February 2005, a workshop was held for the lawyers of the SPLM and a further workshop was held in April for the staff of the Ministry of Justice in order to inform the respective parties about the different forms of decentralisation and decentralised state structures while also clarifying the
distinctive characteristics of a federal system. This was done by taking an approach of comparative legal analysis.

**Development of a draft constitution for South Sudan**

In accordance with the structure resulting from the CPA, the ten southern states of Sudan’s total 25 states attained an additional level of government in the form of the Regional Government of South Sudan (Government of South Sudan, GoSS). Following the request of the SPLM, the Max Planck Institute developed an appropriate draft constitution.

The terms of reference of the peace treaty provided a solid framework which was expanded upon in Heidelberg. The rough draft was discussed in workshops with Sudanese lawyers and amended in accordance with further suggestions. The first workshop was held with lawyers of the SPLM in Heidelberg. In order to provide the draft with a broader foundation, additional workshops were held in Khartoum and Nairobi with South Sudanese lawyers who were not associated with the SPLM. The result was a draft constitution text which contained various options for specific regulations and which was the main basis for the constitutional negotiations in South Sudan. A large amount of the content of the text was also present in the Interim Constitution of South Sudan (ICSS) which was put forward in the South Sudanese parliament.

Prior to the final reading of the draft constitution by the South Sudanese constituent assembly in September 2005, the text was reviewed by experts from the team in order to verify its compatibility with the Interim National Constitution (INC). During this process, most of the proposals were adopted.

**b. Legislative advice**

After the INC and the ICSS had come into force in 2005, the projects focused on supporting the Sudanese partners in the implementation of the
constitutional framework. Amongst other things, advice was given to Sudanese legislative institutions in relation to constitutional and international law in this context.

The Max Planck Institute team organised workshops on the formulation of laws for officials from both the Ministry of Justice (MoJ) and from the South Sudanese Ministry of Legal Affairs and Constitutional Development. (MoLACD). In these workshops, constitutional requirements were especially emphasised. Along with linguistic and technical aspects, the vertical division of powers and the distribution of competencies between the different levels of government in Sudan were central themes of this training. Two additional workshops for the SPLM working group focused on the functions and structures of the regional level of government and the drafting of a local government act.

Following the request of the Advocate-General of the MoJ, the constitutionality of the laws, which were adopted before and after the INC came into force, was also examined. Items commented on and discussed with the South Sudanese partners included the press and media act of 2005, the human rights commission bill of 2005, the political party law bill of 2006 as well as the electoral law bill.

c. Advising of Sudanese institutions

The Max Planck Institute team advised Sudanese institutions on the implementation of the constitutional framework at their request.

Educational trip for members of the National Judicial Service Commission

While on an educational trip, which was financed by the team and the UNDP, members of the National Judicial Service Commission visited numerous German institutions in order to learn about the structure of judicial administration in Germany. The members of the South Sudanese
delegation were intensively prepared in advance, with lectures at the Max Planck Institute for Comparative Public Law and International Law. These lectures dealt with the German legal and judicial system as well as with Germany’s federal structure. The results of the comparative group discussions with the South Sudanese participants were summarised in a handbook on the legal system and judicial administration in Germany and Sudan.

**Workshop on the terms of reference of the INC for staff of the MoJ**

According to Article 226 (8) of the INC, the MoJ was charged with examining the compatibility of the ICSS and the constitutions of individual constituent states with the INC.

The MoJ requested the team to hold a group discussion on the subject matter scope of this mandate with the MoJ officials responsible for it. This led to intensive dialogue about the provisions of the INC, their legal consequences for the ICSS and for the constitutions of individual constituent states.

d. **Further training programme for Sudanese lawyers**

Sudanese lawyers from different governmental and state institutions and the judiciary play a fundamental role in the implementation of South Sudanese constitutional law. For this reason, the Max Planck Institute ran programmes to increase their capacities. The aim of these programmes was to familiarise the members of civil society with the contents of the interim constitution. Federal structure, the primacy of the constitution and the guarantees on human rights fixed in the constitution were and remain of central importance to the implementation of the Comprehensive Peace Agreement between North and South Sudan.
Research visits by representatives from the National Ministry of Justice

In 2005, two visits to Heidelberg for research purposes were facilitated for staff of the MoJ. The research visits were overseen by the Max Planck Institute and were financed by the Max Planck Society. The Sudanese participants were supervised by Prof. Wolfrum and team members.

During his research visit, Shazali Mustafa Elhaj investigated the distribution of competencies in federal systems. His area of focus was the comparison of regulations for competing and other competencies in a federal context. On this basis, he analysed potential problems in the terms of reference of the INC and developed recommendations for improving cooperation between the different levels of government in order to avoid disputes. After his return to Sudan, it was possible for the MoJ to draw on his expertise in the area of competing competencies.

A research visit was also organised for Hamid Mohammed Elhassan El Sayed to the International Criminal Court. In accordance with the recommendation of the International Commission of Inquiry on Darfur, which was set up to investigate violations of international law and of human rights in the region, the UN Security Council brought the situation in Darfur before the ICC with the passing of resolution 1593 on the basis of Article 13(b) of the Statute of the ICC. The ICC is thus responsible for dealing with international crimes which were committed during the Darfur conflict since 1 July 2002, even though Sudan is not a signatory state of the Rome Statute.

The research programme focused on questions which are important for Sudan, the history of international criminal law (including ad hoc UN tribunals) and also the substantial and procedural law of the ICC. In addition to this, Mr. El Sayed dealt with cooperation provisions according to Part IX of the ICC Statute and the rights of suspects and defendants.
Further training programme on constitutional law for North and South Sudanese judges

In December 2006, the Max Planck Institute organised a workshop on the influence of Sudanese constitutional law on the judicial system of ordinary courts in Sudan. The participants of the workshop were judges from the highest courts and courts of appeal of North and South Sudan. In the first stage of the workshop, emphasis was placed on the primacy of the constitution as well as the role of ordinary judges in maintaining the constitution. Human rights and how they influence the interpretation of ordinary laws were also discussed. The second part of the workshop dealt with the relevance of the right to a fair trial, which is guaranteed in the constitution, and considered it in relation to the pre-trial phase, the main trial phase and in relation to sentencing itself.

Further training programme on international and public law for judges and lawyers from South Sudan

After the INC and ICSS came into force in 2005, there was a significant need for further training at all levels of the judiciary of South Sudan (JoSS) and the MoJSS in order to familiarise judges and ministry officials with the contents of the interim constitution and its consequences. This was particularly true in relation to the protection of human rights. The INC resulted in significant alterations to Sudan’s judicial structure, particularly for South Sudan. For example, the Supreme Court of South Sudan was established. This court functions as South Sudan’s highest court and as the country’s constitutional court. It was not, however, responsible for the final interpretation of the INC.

Building upon the further training for judges in North and South Sudan which began in 2006, the Max Planck Institute organised a capacity-building programme. The programme, which was financed by the Dutch government, served to discuss and analyse the new South Sudanese constitutional order with both the JoSS and the GoSS as well as with the MoLACD in particular.
The human rights guaranteed in the constitution and the implications of the new constitution for the work of the judiciary branch in particular were discussed with high-ranking judges from the South Sudanese Supreme Court, from the Court of Appeals and from district courts as well as with public prosecutors and legal advisors from the MoLACD. In this context, the emphasis was placed on the relationship of the National Constitutional Court to the Supreme Court of South Sudan.

At the time of the ICC inquiry into Darfur (facilitated by UN Security Council Resolution 1593/2005), the indictment of two high-ranking members of government as well as the inquiry against the President of Sudan, the South Sudanese MoLACD requested a workshop with the Max Planck Institute in order to improve the South Sudanese judiciary’s understanding of international criminal trial law. The Max Planck Institute, therefore, held a workshop on the ICC in which emphasis was placed on the situation in Darfur and the responsibility of the Sudanese government in respect to the extradition of persons possibly responsible.

Participants at the workshop included, amongst others, the Vice President of South Sudan Dr. Riek Machar, numerous cabinet ministers and state secretaries, judges from the South Sudanese Supreme Court, selected members of the South Sudanese parliament and the country’s attorney general.

Further training programme for Sudanese constitutional judges and South Sudanese Supreme Court judges

In accordance with the INC, Sudan’s highest court is the Constitutional Court of which six judges from North Sudan and three judges from South Sudan are members. The court’s range of responsibilities is diverse and the duties with which it is charged are of special significance for securing peace in the country. The court is the final instance for interpretation of the constitution.

The Supreme Court of South Sudan is not only South Sudan’s highest court of appeal, but also assumes the functions of a constitutional court of
first instance for issues related to the constitutions of individual constituent states and for the ICSS.

Because constructive cooperation between the two courts is necessary for the development of a constitutional jurisdiction in Sudan, a further training programme for constitutional judges and South Sudanese Supreme Court judges was implemented. The programme was financed by the European Union and the German Government.

The training programme for Sudanese constitutional judges consisted of two units. In the first unit, the different areas of responsibility along with the associated processes were clarified at a workshop which took place in Wad Madani in February 2006. The second unit focused on the content of potential constitutional disputes and took place in Heidelberg. In order to preserve the functionality of the Sudanese Constitutional Court, the workshop was divided into two groups, each with half of the judges. Both of the groups, which travelled to Heidelberg in July 2006 and January 2007 respectively, visited the German Federal Constitutional Court in Karlsruhe as part of the programme. The second trip was paid for by the Federal Foreign Office of Germany.

**Workshops on Sudanese electoral rights**

In the run-up to the elections of April 2010, the Max Planck Institute organised five workshops dealing with Sudanese electoral rights. This was done with financial support from the UNDP. The workshops, which took place in Khartoum and Kassala in the north of the country and in Wau and Malakal in the south, were aimed at staff of the MoJ and the MoLACD.

The workshops served to familiarise participants with electoral rights and described legal approaches to solving potential problems. To this end, the workshops also dealt with constitutional law relevant to the elections as well as political party law and electoral law. In this context, the duties and authorities of the National Election Commission (NEC) as well as the roles of parties, the media and international election observers were discussed.
Punishable offences in relation to elections were also dealt with out of consideration for the public prosecutors who participated.

**Capacity-building programme in preparation for the independence referendum of South Sudan**

In January 2011, the people of South Sudan decided in favour of the establishment of an independent state in a referendum held under international monitoring. The secession proceeded peacefully and was undoubtedly facilitated by the newly created legal structures in Sudan. In order to avoid political destabilisation in both states, strengthening of the legal framework in both states was and still is of the utmost importance. Therefore, staff from the Africa Team discussed the legal foundations of the referendum with North and South Sudanese lawyers. In this capacity-building programme, the consequences in relation to constitutional law and international law were also discussed.

The Africa Team organised a series of workshops in both Khartoum and Juba for officials of the MoJ and the MoLACD. These workshops were financed by the Federal Foreign Office. On the basis of comparative law materials, the national and international legal consequences of the referendum were discussed along with its other possible effects. For obvious reasons these workshops had to be held with strict compliance to the principle of neutrality.

The Africa Team primarily discussed the constitutional and legislative terms of reference for the referendum with the participants at four workshops in Khartoum and three workshops in Juba. The responsibilities of the Southern Sudanese Referendum Commission and the judiciary as well as the monitoring of voting procedures were discussed in particular detail. The participants dealt with the referendum’s legal consequences on an international level in addition to the legal framework on a national level. The shared use of natural resources, free movement of persons (including questions in relation to the rights of nomadic groups) and the rules of defining nationality were identified as potential areas of dispute.
In addition to this, the themes of international standards on the right to self-determination, the partition of states, political independence, territorial integrity, international recognition of new states, and the succession of states into treaties were addressed. The Africa Team explained these points and others in relation to the referendum on independence and past experiences in Czechoslovakia, Ethiopia/Eritrea, Singapore/Malaysia, the USSR, Yugoslavia and Canada.

**Further training of lawyers and staff of the National Ministry of Justice**

The Africa Team of the Max Planck Institute has supported the further training of ministry officials of the MoJ and lawyers of the Sudanese Bar Union (SBU) since 2009. These activities were financed with funds from the Norwegian government in 2009 and 2010 and were organised in cooperation with the UNDP Sudan. A follow-up project for supporting the MoJ and the SBU started in 2011 and is being financed by the Federal Foreign Office of Germany. The project will be continued by the foundation and this continuation has already been discussed with the Sudanese minister for justice and the chairperson of the SBU.

It is planned that multiple workshops will be held over a period of 18 months in which different subject areas will be discussed with each subject area being dealt with at two consecutive workshops. This approach will make it possible for two different groups of participants of MoJ officials and of SBU lawyers to visit separate workshops which deal with the same theme.

The workshops will be organised and held by three instructors nominated by the MoJ and two instructors nominated by the SBU in cooperation with members of the Africa Team. In accordance with the requests of the Sudanese partner institutions, the workshops are to deal with questions of Sudanese constitutional law, comparative constitutional law, human rights, international law and humanitarian international law.

To this end, an introductory workshop will be organised for Sudanese instructors for each successive programme so as to familiarise them with
the didactic approach of the Max Planck Institute and to prepare them for the subsequent cooperation with the Africa Team. Following this, the Sudanese instructors will prepare the first workshops with support from members of the Africa Team. For this purpose, the instructors will prepare presentations independently and present them in front of a small group. The content of the subsequent workshops will be prepared by members of the Africa Team and the workshops themselves will be taught by team members and the Sudanese instructors together.

The emphasis of the workshops is constitutional law in general, the foundations of international law, fundamental and human rights on an international level and laws on the organisation of the Sudanese state. Matters discussed included, for example, questions about the relationship between Sharia and constitutionally guaranteed rights, questions about the meaning of restraints on fundamental rights and questions about the direct applicability of ratified international human rights treaties.

In addition to this, knowledge relating to questions on fair trials will be communicated with particular attention given to the individual rights of the defendant during different stages of a criminal procedure. Another point that will be emphasised is that of ensuring the independence of the judiciary in general and of judges in particular. Additionally, there will be an introduction to the systems of the United Nations and of other international organisations which could play an important role for the future of Sudan (e.g. the World Trade Organisation, the International Monetary Fund, The International Bank for Reconstruction and Development). The participants will be familiarised with international courts, tribunals and institutions of international arbitration. In view of the partition of the country, areas of international law were discussed which were of vital importance during the transitional period in Sudan. These areas included the emergence and recognition of new states, the succession of states to treaties, international humanitarian law and state responsibility. In addition to this, the participants deal with international environmental law, which is of great importance in view of the intensive production of oil in a society which is otherwise highly oriented towards
agriculture and has a large amount of nomadism. This is also the case because the long civil war has left serious environmental damage in its wake.

e. The Heidelberg Darfur Dialogue

The Darfur projects of the Max Planck Institute date back to 2006. Since this time, the Max Planck Institute has been supporting internal dialogue in Darfur’s civil society in cooperation with local partners and with funds from the Federal Foreign Office and from the Max Planck Institute itself. This has been done so that representatives of civil society could make a contribution to a lasting and peaceful solution to the conflicts within Darfur and between Darfuris and the GoS. To this end, the Max Planck Institute in cooperation with the Institute for Peace Research at the University of Khartoum organised a total of three symposia with lawyers, academics and representatives of civil society. The conferences were headed by Prof. Wulfrum and Prof. Al-Tayeb Haj Atya who were supported by a team of internationally experienced mediators. The team consisted of Dr. Kamal Hossain (Bangladesh), Prince Ra’ad bin Zeid (Jordan), Prof. T. Mensah (Ghana), Prof. T. Eitel (Germany), Prof. R. Khan (India) and Judge Tafsir Ndiaye (Senegal).

The event enabled the participants to discuss their views in relation to the future internal order of Darfur on neutral ground and to reach a consensus which could be discussed with the Sudanese government within the framework of the official peace process. The involvement of all of Darfur’s ethnic, social and political groups broadened the legitimising basis of the conclusions reached in relation to a lasting and peaceful solution to the conflict.

The participants of the Heidelberg Darfur Dialogue continued their cooperation in Sudan on the basis of contacts established in Heidelberg and founded a Heidelberg committee. This committee has since expanded its network and has gained a considerable influence on groups in civil society which are dedicated to finding a solution to the conflict in Darfur.
At the third and final symposium, it was possible to complete the Heidelberg Darfur Dialogue Outcome Document which had resulted from the first two symposia. At the third Heidelberg symposium in February/March 2010, heretofore unclarified individual aspects of questions in relation to the legal and economic order in post-conflict situations and the division of exclusive powers and competing legislative competencies between the central government in Khartoum and Darfur were discussed. The resulting Heidelberg Darfur Dialogue Outcome Document is a comprehensive draft for a future peace treaty, which takes not only the complex background of the conflict into account but also incorporates the legal customs which exist in Darfur and additionally constitutes a draft constitution for the Darfur region. This means that for the first time there is a concept of how civil society can participate actively in the debate with the warring parties. The document was presented in a marginal capacity at the peace negotiations and it was also addressed by the General Secretary of the United Nations in a report to the Security Council. If both sides show the political will necessary, the document could become the first step towards a lasting peace agreement in the region.
The draft document encompasses criteria and guidelines for the division of powers and also contains guarantees on human rights. As well as this, it contains regulations for ensuring Darfur’s involvement on all levels of Sudan’s federal government, its involvement in Sudan’s development and prosperity and also its involvement in the management of land and natural resources. Regulations which deal with legal procedures in relation to the Darfur conflict and the compensation for the conflict’s victims are also included.

3. Further planning

In regard to Darfur, the working group (now operating through the foundation) plans to continue fostering and supporting the peace process and civil society of the region. Following the signing of a peace treaty in Doha between the Sudanese government and Darfur’s Liberation and Justice Movement (LJM), it is necessary to create the correct conditions for the treaty’s implementation in the region. To this end, the working group is involved in talks with Sudanese institutions and the mission of the United Nations and the African Union in Darfur (the African Union/United Nations Hybrid Operation in Darfur, UNAMID). It is planned to provide support for lawyers locally by means of a capacity-building programme.

As a result of South Sudan’s declaration of independence on 9 June 2011, the Republic of Sudan also faces the task of reacting to the new situation. The INC remains in force until a new constitution is adopted and in accordance with Article 226 (10) INC, those parts of the INC which are related to South Sudan automatically cease to be in force. Nevertheless, it should be expected in the near future that an amendment to the constitution or even the adoption of a new constitution will occur. The working group has already offered its support to the Sudanese partners in relation to this matter.
4. Academic works and publications

Numerous publications and research projects have resulted from the working group’s Sudan projects.

a. Handbooks and teaching materials

The following publications and teaching materials are the result of the Sudan projects during the period covered by this report:


b. Publications

Essays

Dr. Markus Böckenförde published the essay


Charles Majinge is responsible for the article

- The International Criminal Court and the Question of Alternative Justice System in Africa, in Verfassung und Recht in Übersee 42 (2) 2009.
The Heidelberg Darfur Outcome Document

The outcome document, which resulted from the Heidelberg Darfur Dialogue, provides for the possibility of a transitional period in which Darfur would be an autonomous region with its own responsibilities and institutions. These would be established as an additional level of government to the government of Sudan. It is envisaged that the internal order will be based on the rule of law, principles of democracy and responsible governance. The outcome document also contains regulations for the strengthening of local government. In the document, it is specified that Darfur will be represented in the central government in Khartoum by either a second vice president or by an advisor to the president. In response to the past marginalisation of Darfur, Darfuris are to be included at all levels and branches of the government and civil service, including the military.

It is envisaged that involvement in economic affairs and use of state revenues will take place on a fair basis and make equitable social and economic development possible. The necessity for reconstruction, as well as regeneration and development of the social and physical infrastructure which was affected by the war is also to be taken into consideration. The document, therefore, provides for the establishment of the Darfur Reconstruction and Development Board, which is to be responsible for the administration of reconstruction funds and the administration of regional development projects. In addition to this, the document also contains detailed regulations in relation to the transfer of financial competencies as well as regulations on the allocation of revenue bases and on revenue transfers at different levels of government, in particular those between the GoS and Darfur.

In the outcome document, there is a comprehensive chapter regulating development, land management and the administration of natural resources with the aim of ensuring sustainable and equitable utilisation. It includes regulations on traditional and historical rights to land, on communal landownership, and on the appropriation of land for natural persons and legal entities, in particular for municipal authorities. The
Darfur Land Planning Commission is to deal with the development and administration of land. Furthermore, the outcome document presents strategies for facilitating the peaceful settlement of land disputes.

The document’s regulations on legal processes for the Darfur conflict itself are based on the traditional values of Darfuri society as well as on the principles of justice, accountability and reconciliation which are established through their usage and are enshrined in national and international law. In order to make the processing of crimes committed in the context of the Darfur conflict possible, including crimes committed by high-ranking persons, the document identifies national and international institutions which are to be responsible for the adjudication of such crimes. The document also contains a chapter dealing with the question of compensation, both of individuals and groups who suffered during the Darfur conflict.

In May 2010, the Heidelberg Darfur Dialogue Outcome Document was presented in Berlin. At this event, the joint mediator of the African Union and the United Nations for Darfur, Djibril Yipênë Bassolé, delivered a message from the General Secretary of the United Nations in which the General Secretary expressed his support of the Max Planck initiative and his appreciation of the efforts of participants of the Heidelberg Darfur Dialogue.

c. Works for academic qualifications

Katharina Diehl is dealing with the legal framework of the elections in Sudan in her thesis. As part of this research, she is also investigating the role of the elections in the implementation of the peace treaty of 2005 as well as their effects on the state structure of South Sudan following its independence.

During his work with the Sudan Team, the Sudanese academic Dr. Noha Ibrahim wrote a thesis under the guidance of Prof. Wolfrum entitled
“Constitutional Reform as a Means of Democratic Transformation in Sudan”.
D. South Sudan

1. Background

On the basis of the independence referendum of 9 January 2011, in which 98.83% of the electorate voted in favour of secession of the south, South Sudan declared its independence on 9 July 2011.

As mentioned earlier, the semiautonomous region of South Sudan was guaranteed with its own constitutional framework for the transitional period of 2005-2011 through the Comprehensive Peace Agreement (CPA). In order to convert the regional Interim Constitution of South Sudan (ICSS) into a national constitution, President Salva Kiir set up the Technical Committee for the Review of the Interim Constitution of Southern Sudan. The Southern Sudan Legislative Assembly (SSLA) approved the revised constitution on 6 July 2011.

Building on projects already carried out in the region, the Max Planck Institute Africa Team offered its assistance to the South Sudanese institutions, in particular the new parliament, the National Legislative Assembly (NLA). The Africa Team is currently carrying out capacity-building programmes for the NLA and the Ministry of Justice. In these programmes, emphasis is placed on the general challenges that face a young nation and the challenge of the pending constitutional process for creating a final and definitive constitution.

As is provided for in the new Transitional Constitution of the Republic of South Sudan (TCSS), the president of South Sudan appointed members to the National Constitutional Review Commission (NCRC) on 9 January 2011 by presidential decree.

As well as this, the new Council of States was also created through the new TCSS. This institution, which did not previously exist in South Sudan, raises new questions, especially in regard to its responsibilities. Both chambers of parliament will be assisted by the Sudan Team through the capacity-building programmes until the end of 2013. These programmes
will primarily deal with questions of constitutional law. A further capacity-building programme in international law for civil servants is also being prepared.

2. Projects

a. **Meeting of high-ranking legal experts on the constitutional order of South Sudan**

Prof. Wolfrum invited representatives from South Sudan to take part in a forum at the Max Planck Institute from 8 March to 11 March 2011 at which the necessary changes to the ICSS, in view of the country’s imminent independence, would be discussed.

The aim of this initiative was to provide a neutral platform for the discussion of technical changes to the constitution to the different interest groups invited and to establish relations between North and South Sudan following the referendum. During the four day conference, members of the South Sudanese judiciary, in particular judges of the supreme court and members of the SSLA revised the ICSS of 2005 and discussed technical and formal changes with regard to the imminent independence of South Sudan. More than anything else, it was necessary to address the sovereignty of the state in the text of the constitution and transfer all responsibilities exercised at the national level to the level of the South Sudanese government.
With the assistance of a team of internationally renowned mediators (Prof. Dr. Tono Eitel, Judge Albert J. Hoffmann, Dr. Kamal Hossain, Prof. Dr. Thomas Mensah), the discussions lead by Prof. Dr. Wolfrum focused on purely technical changes to the ICSS. Constitutional changes which would have required political decisions for their implementation remained intentionally excluded from the discussion because they would not have adhered to the frame of reference of the conference. The responsibility for the revision of the ICSS was exclusively one of the GoSS. Therefore, the working document which resulted from the meeting was made available to the Technical Committee to Review the Interim Constitution of Southern Sudan of 2005.

The succession of states in relation to international treaties, debts, assets, archives, membership of international organisations, matters related to natural resources (e.g. the water of the River Nile) and cross-border migration were all issues for which further political consultation was deemed necessary.
The document was presented to the Minister for Legal Affairs and Constitutional Development on 23 March 2011. It was also discussed internally by the technical committee and presented by members of the Africa Team to the chamber of the SSLA at a sitting that was broadcast on South Sudanese television.

b. Workshops for the National Legislative Assembly

Following a request by the NLA, the Africa Team of the Max Planck Institute is conducting a capacity-building programme on legal issues in Juba.

The aim of this programme is to assist the NLA in exercising its competencies which have been established in the constitution. In accordance with the principle of political neutrality and the restriction of assistance to legal advice, all issues are analysed from a purely academic perspective and without influencing the political decisions of the participants. Following the adaptation of the TCSS on 6 July 2011, the NLA now faces the task of establishing and asserting itself within the new government structures. A well-functioning parliament would be able to make a valuable contribution to ensuring peace and stability in South Sudan.

The programme consisted of six workshops on the themes of horizontal and vertical division of powers, decentralisation, the foundations of international law, international treaties, international humanitarian law and the foundations of international criminal law. These workshops are held over four or five day periods in Juba.

In light of the pending constitutional process, different options for federal and decentralised government structures and the related scope of competencies of the president were of particular interest to the participating parliamentarians. Another point focused on was that of secession and its consequences for state succession to treaties, for debts and assets and for the membership of international organisations. The
system of the United Nations and other treaty systems of regional and international organisations were explained to the participants. The history of international criminal law, international criminal offences and the role of the International Criminal Court were also discussed.

Comparative studies of countries served to clarify the different structuring options. Every workshop was accompanied by discussions about prospects for South Sudan.

One consequence of South Sudan’s secession was the integration of members of the Khartoum national parliament into the newly founded NLA in addition to the presidential nomination of 66 new deputies. The working group will therefore continue the assistance programme in 2012 and expand it to the Council of States which was created through the transitional constitution to function as a second house of parliament.

c. Participation at the “Speakers Forum”

The Speakers Forum was established in 2007 for members of the parliaments of South Sudan’s constituent states to deliberate over the political and legal challenges facing the semiautonomous region of South Sudan. The goal of this initiative was to improve the coordination of cooperation between the state parliaments and the GoSS.

The Ministry of Parliamentary Affairs requested the Africa Team to send a representative to the Speakers Forum from 8 to 11 June 2011 in order to give a presentation on options for decentralised and federal government structures and on the development and adoption processes for a constitution.

The discussions and presentations focused primarily on the running debate over changes to the ICSS and on the relationship between the governments of constituent states and the central government.

As the only non-Sudanese institution invited to participate actively in this forum, this was a considerable honour for the Africa Team.
3. Academic works and publications

During the period covered by this report, Dr. Daniel Gruss and Katharina Diehl published the following essays:

- A New Constitution for South Sudan, in *Yearbook of Islamic and Middle Eastern Law* 16, 2012 (forthcoming).
E. Mongolia

The research and consulting project “The Reform of Administrative Law in Mongolia”, which was initiated at the request of the Mongolian Parliament, served to create the foundations for a modern body of laws on administrative processes and administrative organisation; laws which implement the constitution’s provisions on decentralised administrative organisation and on the effective legal protection of citizens from public authorities, while also improving Mongolia’s international competitiveness and fitting in seamlessly with the broader framework of the Mongolian legal system. The issues addressed over the course of the project included the requirements for functioning structures in order to perform the decentralised government duties which arise from the constitutional provisions on finances and organisation. The importance of a differentiated range of instruments of administrative law action to facilitate the effective fulfilment of administrative tasks was also dealt with, as were the position of the individual in relation to public authority and the consequences of this conceptual orientation for the protection of administrative law. The project was carried out using a comparative legal approach. This was done in order to broaden the discussion on the questions dealt with as much as possible while also improving the conditions for the successful implementation of the reform legislation.

Strong ties to Mongolia are still being maintained since the end of the project in 2005. It is planned to continue activities in Mongolia in the near future.
F. Afghanistan

1. Background

Following the end of the Taliban regime in Afghanistan, the country faced the necessary challenge of establishing a new and functioning political system. In particular, the construction of an effective justice and administration system, consistent with the country’s obligations under constitutional and international law, was and still is a vital prerequisite for the peaceful coexistence of the various groups that make up Afghanistan’s population as well as for sustainable political stability.

The Afghanistan Team of the Max Planck Institute has been contributing to a series of projects for the establishment of institutions for the rule of law through consulting and training. In this manner, a valuable contribution is being made towards the creation of peace in the country.

In addition to this, the project’s staff are gaining direct insights into the normative traditions, into the understanding of the law and into the real cases of conflict resolution that exist in this heterogeneous society. This is of particular importance for theoretical research.
2. Projects

The projects in Afghanistan can be divided into different areas which are closely related to each other. The first series of projects, in which numerous subject areas of law are taught, is targeted towards the further training of judges, public prosecutors and lawyers in the country’s provinces. The second series of projects is aimed at training the growing number of new Afghan legal professionals through a training programme for candidate judges on the one hand and through the supporting of legal faculties on the other. The third series of projects deals with the establishment of administrative law in Afghanistan. Activities for supporting academic research make up the fourth series of projects. Smaller series of seminars
are also organised as required including, amongst others, seminars for Afghan diplomats.

Handbooks that are compiled by project staff serve as the basis for most project activities and are available in English as well as the languages of instruction, Dari and Pashto. In Afghan provinces and districts where there are no libraries, these handbooks are, for most lawyers, the only materials they can draw on to ascertain the law. The series, which is the best description of applicable Afghan law available, is being prepared in book form at the request of the Higher Education Minister and it is expected to be added to the library collections of law faculties, ministries, courts and many other institutions in the future.

The lecturers are predominantly Afghan university lecturers and judges with a precise knowledge of the problems of Afghan legal practice. Prior to their assignment, they were intensively prepared by Max Planck academics using the handbooks. Communicating through the national languages had significant advantages, primarily because the losses of linguistic exactness, directness and training time associated with interpretation were avoided.

The Afghanistan Team consists of a group of academics in Heidelberg as well as five lawyers and other support personnel in Kabul. The team has close connections to academics in the Max Planck Institutes for law in Freiburg, Hamburg and Halle.

a. Further training programme for lawyers with particular focus on the provinces

Fair Trial Trainings

Since 2004, the Afghanistan Team has been carrying out a project for the further training of Afghan judges and public prosecutors in criminal trial law. Focus is being placed on fair trial principles, i.e. the principles for the protection of suspects and defendants. These principles include the prohibition of torture, the right to a defence and the presumption of
innocence. The ultimate aim is to prevent violations of human rights through the judiciary. Police officers, prison officers, staff of the Ministry of Women’s Affairs and representatives of non-governmental organisations also take part in the training in addition to judges and public prosecutors. In this context, the team works closely with the Supreme Court of Afghanistan, the central public prosecutor’s office and the Ministry of Justice.

Further training courses usually last two weeks. Around 2,500 people have taken part in the courses in Kabul, Kunduz, Fayzabad, Bamyan, Jalalabad, Herat, Mazari-i-Sharif, Lashkar Gah, Kandahar and other locations. This means that more than half of all legal decision-makers in the field of criminal justice have been reached through these programmes. This is an important criterion given that the courses’ goal is to effect a change in legal culture. Most of these decision-makers work in provinces and districts far away from the country’s larger cities. The basis of instruction is always the *Max Planck Manual on Fair Trial Standards* which all course participants are given for their own personal use. This manual describes the underlying principles of a fair trial on the basis of relevant Afghan norms (in particular the constitution and the transitional code of criminal procedure) while clarifying them with reference to case studies. The fair trial training was primarily financed by the Federal Foreign Office of Germany and to a lesser extent by the EU as well as by the Dutch, British and Canadian governments.

**Regional projects in north-east and south Afghanistan**

The Afghanistan Team has been carrying out a regional priority project in north-east Afghanistan since 2007 which has been financed by the Federal Foreign Office and has received additional funding from the Dutch government since 2011. As the public justice sector in this part of the country has not yet been able to sufficiently assert itself, training has been provided to judges, public prosecutors, staff of the consultancy office “Huquq” at the Ministry of Justice and to lawyers in the provinces of
Kunduz, Takhar and Badakhshan. The themes dealt with during training range from family law to criminal law and state law. A sound knowledge of these areas of law will help to prevent mistakes in legal proceedings and thus strengthen the population’s trust in the work of the state court system.

A similar regional project with British and Canadian financing has been in operation in the Pashtun provinces of south Afghanistan (Urozgan, Nimruz, Zabul and in particular Helmand and Kandahar) since 2010.

The foundations of the courses on family law, which took place in different locations, were established at the Max Planck Institute for Comparative International and Private Law in Hamburg. It was here that the handbook on Afghan family law was developed and Afghan lecturers received training. The courses on criminal law are based on handbooks which were developed in cooperation with the Max Planck Institute for Foreign and International Criminal Law in Freiburg, where one of the preparatory courses also took place.

*Participants of a Max Planck Institute legal seminar in Fayzabad (Afghanistan)*
b. Training of aspiring members of the judiciary

Candidate judges

The Afghanistan Team has been assisting the Supreme Court of Afghanistan in the initial training of candidate judges since 2006. This extensive project is financed by the Federal Foreign Office.

It is intended that candidate judges gain in-depth knowledge of constitutional principles as quickly as possible through the intensive training which lasts several months. The project staff have compiled a large number of textbooks for the training of up-and-coming members of the judiciary in Kabul and update these textbooks regularly. On this basis, specially trained lecturers teach the subjects of constitutional law, fundamental and human rights, the organisation of the courts, judicial ethics, fair trial principals, criminal law (both general and particular sections), administrative law and property law. In later phases of the legal training, a French cooperation partner from the Institut International Pour les Etudes Comparatives (International Institute for Comparative Studies) teaches, among other things, civil procedure law. Other parts of the programme are financed by USAID.

986 candidate judges, 20% of whom are female, have taken part in the Max Planck team’s courses since 2006. In November 2012, the Max Planck team will start training the next 120 future judges.

Candidate lawyers, public prosecutors and Ministry of Justice staff

The Max Planck Institute is making efforts to provide its training to all aspiring lawyers. Candidate lawyers, candidate public prosecutors and candidates for the Ministry of Justice are trained at the Independent National Legal Training Center (INLTC) in Kabul. This is done separately from the training of judges. Requests for the assistance of the Max Planck Institute are continuously being made in regard to this project as well. To date, such assistance has only been possible on a limited basis. At the end of 2008, the Max Planck Institute conducted a fair trial training course for
lawyers from the public prosecution service. Furthermore, in 2009 Max Planck lecturers also presented all the handbooks on Afghan law completed to date at one-day seminars at the INLTC and distributed them to future public prosecutors, lawyers and ministry staff. Since then, the INLTC library has been continuously supplied with the updated versions of the handbooks.

**Training of multipliers**

The training of so-called “multipliers”, those who can pass on legal knowledge to different target groups, is a vital factor for the sustainability of projects. For this reason, the Afghanistan Team does not just instruct lecturers who live and work in the country, but also appoints them to teach their own courses as a matter of importance. In this way, lecturers from Afghan legal faculties, for example, can further communicate the knowledge they have acquired to their students all year round at their regular classes, thus supplementing the classes of the project. High-ranking judges, who apply their knowledge of the law practically and from whom other judiciary personnel can learn, are also a good example of important multipliers.

Since 2004, intensive training of lecturers and other multipliers has been taking place in Kabul, Heidelberg and various other locations.

Furthermore, the Afghan and Iranian lecturers from the Max Planck Institute have trained specially qualified Afghan lawyers in the subject areas of constitutional law, fundamental and human rights, organisation of the courts, legal ethics, fair trial principals and criminal law. The participants were lecturers from the INLTC, leading public prosecutors, ministry officials and Afghan staff of the United Nations and non-governmental organisations. The classes took place in the conference room of the project office in Kabul.

The first comprehensive training of multipliers in the area of administrative law was carried out in June 2012.
c. Foundations of administrative law in Afghanistan

In recent years the issue of administrative law has been neglected by both Afghan authorities and by the international community despite the fact that it is a vital component for the realisation of constitutional principles. This is particularly true given the state of political turmoil in which Afghanistan still finds itself.

Conference on Afghan administrative law

The Afghanistan Team organised their first conference on administrative law in Afghanistan from 12 to 14 August 2010. The conference was led by Prof. Wolfrum and the then Deputy Minister of Justice of Afghanistan, Dr. Mohammad Qasim Hashimzai. The conference gave the Afghan experts the opportunity to describe the problems and challenges for Afghan administrative law and to develop approaches on how to overcome them together with international experts.

The structure and organisation of administration, the concept of administrative law, administrative procedure, forms of administrative action and the internal and judicial control of administration were all important discussion points. In addition to this, the issues of combating corruption, the initial and further training of administrative staff and the need for further legal regulations were also discussed. Along with the Afghan participants, experts such as Prof. Dr. Rainer Grote, (Max Planck Institute for Comparative Public Law and International Law), Prof. Dr. Karl-Peter Sommermann (German University for Administrative Sciences Speyer) and Prof. Dr. Pierrick Le Jeune (Université de Bretagne Occidentale) took part in the conference and made valuable contributions on matters of comparative law.

There are three important results of this conference, which can be noted. First of all, the participants concluded that there is no uniform or coherent understanding of “administrative law” in Afghanistan. While some participants considered the legal relationships between citizens and
administrative bodies to be the central issue, others were orientated towards the Iranian way of thinking, which takes the rights and duties of administrative staff as its starting point. Secondly, the conference demonstrated that Afghan administrative law is regulated only in a fragmented manner. During the conference, Dr. Mohammad Qasim Hashimzai pointed out the necessity for a consistent legal system of administrative procedure, which follows the German example and requested that the Max Planck Institute advise the Afghan Ministry of Justice on the drafting of such a law. Thirdly, the participants recognised the necessity of raising awareness on this issue in Afghanistan through training. The assistance of the Afghanistan Team was requested in relation to this matter.

**Handbook on administrative law in Afghanistan**

Between 2009 and 2010 the project staff composed a handbook on administrative law in Afghanistan. This handbook has been used in the training of candidate lawyers since 2011. It has been used for the training of lawyers, other legal professionals and of administrative staff since 2012. The Afghan Civil Science Institute (ACSI), which is a type of administrative school in which the personnel of state institutions are trained, plays an important role in this process. Similar administrative schools are being established in Mazari-i-Sharif and other locations. The Afghanistan Team of the Max Planck Institute uses instructors from this institution to act as multipliers in its training programmes. The same is true in the case of university lecturers who are now lecturing on the new subject area of administrative law at law faculties and as stand-alone university courses on the subject.

**Legislative advice**

The Afghanistan Team has also been advising the Independent Afghan Reform and Civil Service Commission (IARCSC) and the Afghan Ministry of Justice on the drafting of bills on administrative law. One member of the
project’s staff is working on a full-time basis with these institutions. Workshops take place at least once a year at which group advice is given on specific issues, progress is evaluated and further steps are agreed on.

At the first workshop in April 2011, the participants dealt primarily with the examination and classification of administrative legal issues. There was a consensus that two separate sets of law would be necessary: administrative laws to encompass the rules on internal administrative processes and relationships to citizens and, in addition to this, laws to make provisions for administrative disputes at courts or court chambers.

As is generally the case in all activities of the Global Knowledge Transfer Working Group, it was necessary to follow the principle of “local ownership” while carrying out this legislative work. According to this principle, it is the task of the Afghan participants to draft laws and bear the responsibility for them. The team staff and other non-Afghan experts only have an advisory function in the drafting process. With a view to this, all participants take part in the workshop discussions in the morning, while the conclusions of these discussions are incorporated into the drafting of administrative law by the Afghan participants in the afternoon.

Using a similar approach, the Afghan and international experts prepared a draft administrative law text in January 2012. The text was considerably improved at the workshop sessions. Since then, staff of the IARCSC in Kabul have continued to work on the draft with advice from Heidelberg. The draft law is due to be completed at the next workshop in autumn 2012.

d. Support of legal faculties and PhD students

Years of war have also led to a collapse of academia and education in Afghanistan and it is necessary to improve the quality of the legal studies courses currently offered at universities. Improvement is vital in light of the fact that the graduates are the future decision-makers of the judiciary and of governmental administration. These graduates will, therefore, play a vital role in the stabilisation of the state and in the establishment of the
rule of law. They will also face the task of gaining the trust of the population.

The cornerstone of this project was laid in 2004 with the holding of a “winter school” for deans and vice-deans of Afghan legal faculties and faculties of Sharia.

Consultation on the establishment of MA courses

Between 2009 and 2010 institute staff, in cooperation with Kabul University and the Afghan Ministry of Education, developed a concept for a university course offering a degree entitled “Master for International and Comparative Legal Studies”. This process resulted not only in the development of the concept and curricula, but also the renovation of classrooms and library rooms at Kabul University, which were supplied with furniture, technical equipment and specialised literature. The Max Planck Institute assisted Herat University in a similar manner in 2011. In this case, the construction of an extensive library with literature on international law and comparative law in English and Persian is particularly noteworthy. Contrary to the original plans, it is now expected that the universities themselves will take responsibility for the realisation of MA courses.

Support of PhD students

The support of PhD students, which began at the end of 2011, is of particular importance for the future of legal studies in Afghanistan. Due to the current state of legal education, which results from the circumstances in the country, very few Afghan lawyers and professors hold a doctoral degree. Legal faculties need, nonetheless, lecturers with doctoral degrees so that they can request the establishment of MA courses. With the assistance of the Federal Foreign Office of Germany, the Afghanistan Team is able to support three or four PhD students each year by facilitating stays abroad. The first candidates were selected in 2012.
e. Other training programmes

In order to improve Afghanistan’s competencies in the area of international legal dealings and diplomacy, the Afghanistan Team has been training parliamentarians (in particular those from committees on international affairs) and staff from the Ministry of Foreign Affairs in international law. This training programme started in 2011 and is being carried out in cooperation with the Friedrich Ebert Foundation. Lecturers are also being continuously trained in this programme in order to improve their teaching skills. The course is being led by a staff member of the institute who holds a doctoral degree. The programme will be continued in 2012 with the support of the Federal Foreign Office, although only diplomats will be taught.

In addition to this, Max Plank academics are preparing training courses in labour law. This area has also been overlooked in the past, despite its practical relevance. Lawyers and trade unionists are the main target groups for these future courses. With this in mind, the team is working closely with Afghan trade unions and the Friedrich Ebert Foundation.

3. Further planning

Both in spite of and due to the uncertain political future of the country, it is planned to continue the Afghanistan project even after the withdrawal of international armed forces. The decisive reason in this regard is that the projects are yielding results and gaining recognition. Having received several months of training, individuals who completed the Max Planck courses for candidate judges are now working as judges and in some cases in other capacities in all of the country’s provinces. It is such individuals that can bring about a substantive change in the country.

The administrative law project is also only beginning. After the first training sessions in 2012, it is planned to search for as many administrative staff members and lawyers as possible from 2013. This will be done so that
both the awareness and the application of principles of constitutional administrative processes will become more widespread.

In addition to this, the project team is developing numerous further approaches for the promotion of constitutional rule of law in Afghanistan. One interesting theme is, for example, the rights of politically and economically marginalised groups such as children or the disabled.

*The oldest and the newest legal literature in the Supreme Court: a copy of the Ottoman Mecelle next to a Max Planck Manual*
4. Academic works and publications

a. Handbooks and teaching materials

The main purpose of the Max Planck team’s handbooks on Afghan law (published in English, Pashto and Dari) is to facilitate the further training of lawyers in Afghanistan. However, they also have the objective of making Afghan law accessible to a wider audience of interested parties. The handbooks are highly valued in Afghanistan and are used outside of the workshops. They are not only given to participants of the workshops but are also distributed to universities, government ministries, human rights organisations and the staff of international and foreign organisations. The English edition makes broader international academic discourse on Afghan law possible beyond the workshops themselves.

The handbooks have been thus far successfully edited by the Afghanistan Team. The following titles are available:


- **Max Planck Manual on Afghan Criminal Law and Criminal Justice.** Revised second edition 2009 (in cooperation with the Max Planck Institute for Foreign and International Criminal Law), Dari and English.

- **Max Planck Manual on Fair Trial Standards.** Revised fourth edition 2009, Dari, Pashto and English.

- **Max Planck Materials on Fair Trial Standards in the Military Justice Sector.** 2010, Dari and Pashto.

- **Max Planck Manual on Family Law in Afghanistan.** Revised second edition 2011 (in cooperation with the Max Planck Institute for Comparative and International Private Law), Dari, Pashto and English.

• Max Planck Manual on Public International Law in Afghanistan. 2011, Dari and English.


• Max Planck Manual on the Special Part of Afghan Criminal Law. 2011 (in cooperation with the Max Planck Institute for Foreign and International Criminal Law), Dari and Pashto.

• Max Planck Materials on Property and Ownership in Afghanistan. 2011, Dari and Pashto.

• Max Planck Manual on Administrative Law in Afghanistan 2011, Dari and English.

b. Publications

In addition to the handbooks published for the purpose of practical project work, the following publications can be named:

Dr. Tilmann Röder has published the following contributions on Afghanistan:


• Der schwierige Weg Afghanistans zu einem stabilen Staat, in Max Planck Forschung 1/2009.


Julia Pfeiffer has published:


• Ein langer Weg zur Rechtsstaatlichkeit, in *Sicherheit und Frieden* 3, 2010.

• The relationship between traditional dispute resolution mechanisms and the national justice sector in Afghanistan, in *Verfassung und Recht in Übersee* 1, 2011.

Ramin Moschtaghi has published:


• Aktuelle Probleme beim Rechtsstaatsaufbau in Afghanistan - Das Gutachten des Obersten Gerichtshofes zum Misstrauensantrag des Unterhauses gegen den Außenminister, in *ZaöRV* 68 (2) 2008.

Mandana Knust Rassekh Afshar wrote the essay:


c. **Works for academic qualifications**

For the purposes of her thesis, Mandana Knust Rassekh Afshar is researching “constitutional guarantees on human rights in Islamic states...
using the example of the right to a fair trial”. This research project considers the constitutional guarantees on human rights in Afghanistan and other selected Islamic states and compares them with the minimal standards of international law.

Julia Pfeiffer is dealing with the responsibilities of international actors in state building missions under international law for her doctoral project. The author is working on the assumption that efforts of this kind are an infringement of state sovereignty and could therefore have consequences under international law. The reconstruction process in Afghanistan serves as one of her examples.

In his doctoral project, Tarek Azizy is researching the question of citizenship according to Article 25 of the Convention on the Settlement of Investment Disputes of 1965. The author is analysing, which requirements must be fulfilled for a natural person and in particular a legal person to claim the citizenship of a member state of the ICSID.

Martina Spernbauer has completed her PhD studies and dealt with the role of the EU in post-conflict peacebuilding using the example of reforms of the law enforcement and justice sectors in Kosovo and Afghanistan. Her work dealt with questions of lawfulness, legitimacy and accountability in the context of external aid and ESDP missions.
G. Somalia

1. Background

Having gained recognition in the region through its Sudan missions, the Max Planck Institute was requested by Somali decision-makers in 2003 for assistance in the constitutional process in Somalia.

After Somalia’s transitional constitution, the Transitional Federal Charter (TFC) came into force at the start of 2004, the exchange of ideas became more substantial, especially with the Somali president, the speaker of the parliament, and the minister for constitutional affairs. The Institute’s Africa Team organised the first “Symposium on Federalism and Other Forms of Decentralisation” for Somali parliamentarians in Nyeri, Kenya in 2005. Following on from the establishment of this knowledge exchange, the Max Planck Institute conducted a workshop for the newly founded Independent Federal Constitutional Commission (IFCC) in Yemen in 2005. The team’s cooperation with the IFCC was subsequently resumed through a consortium of international partners and intensified through a capacity-building programme in 2008 and 2009. In order to structure the constitutional process as inclusively and integratively as possible, the team organised an extra conference on the subject of Sharia law in the future Somali constitution in 2010. The attendees of the conference were mostly Muslim scholars, who up until that point had not participated in the negotiations.

After the continuation of the capacity-building programme ceased to be viable due to political circumstances in 2011, the Max Planck Institute intensified its cooperation with the United Nations Development Programme Somalia (UNDP). Since the end of 2011, the Max Planck Institute has been regularly sending members of the Somalia Team to Nairobi as legal advisors to assist the Joint Constitutional Unit (JCU), a working group established by the UNDP and the United Nations Political Office for Somalia (UNPOS).
The team’s main objective is to inform the Somali actors in a neutral and unbiased manner about different constitutional options as well as their consequences. This is done on the basis of comparative legal research and analysis. In this way, the team is enabling the Somali actors to make political decisions in the form of constitutional regulations that meet international standards. The team also makes use of its expertise in international law and comparative constitutional law in this context. Examples of constitutional law in Islamic and African states usually serve as the basis of discussion and work for this knowledge exchange with the Somalis. In this process, the Max Planck Institute team integrates the specific social, cultural, political and religious interests and needs of the Somali actors into the discourse on constitutional and legal issues.

As participation and inclusivity are fundamental requirements of all successful constitutional processes, it is essential that the Somali people draft their future constitution themselves. The team gives active support in this process but does not contribute in relation to political matters. Nevertheless, human rights standards and standards of democratic legitimacy are dealt with in order to reinforce the constitutional process’s peacemaking effect.

The legal support given to the constitutional process in Somalia is of considerable interest to the development of international legal studies. In such a case, issues like the duties of the international community (e.g. “the responsibility to protect”) or the standards for modern constitutions set in international law (e.g. “the right to democracy”) can be discussed with reference to a textbook example of a “failed state”.

In addition to this, the region of Somaliland, which declared independence from Somalia 20 years ago, raises questions about both the emergence and recognition of states. The inclusion of the Somalia projects in the broader agenda of academic research results in synergy effects which are reflected in the results of theoretical research.
2. Projects

a. Symposium on federalism and other forms of decentralisation

The Max Planck Institute Somalia Team held the first week-long symposium on different forms of decentralisation for Somali parliamentarians in April 2005. The event took place in Nyeri, Kenya and was organised in consultation with the Intergovernmental Authority on Development (IGAD) and with financial support from the German Organisation for Technical Cooperation (GTZ). 25 parliamentarians, who were selected by the parliament speaker in a representative manner, as well as five representatives of civil society took part at the symposium.

The subject matter of the symposium was a comparative legal overview of federal forms of government with special consideration given to the challenges which Somalia must face in its constitutional process and which were not dealt with on the TFC of 2004. In view of this, the objective was to present the participants with options which could serve as solutions to problems in the drafting of a constitution.

The symposium also resulted in production and distribution of the first edition of the “Max Planck Manual on Different Forms of Decentralization”.

b. Further training of IFCC members

In 2007, the Max Planck Institute organised a workshop in Yemen in order to assist members of the newly established IFCC in their work. The workshop was financed by the GTZ and was organised in cooperation with the UNDP and IGAD. As the TFC expressly provides for the establishment of a federal system, the workshop focused on the various options for decentralised government structures.
The IFCC made a request for more further training courses. The Max Planck Institute Somalia Team fulfilled this request by designing a capacity-building programme within the framework of the constitutional process, which was supervised by an international consortium led by the UNDP. Together with international partners, which included the UNPOS, the National Democratic Institute, Oxfam Novib (a Dutch organisation for international development cooperation) and Interpeace, as well as the UNDP, the Max Planck Institute took on the responsibility of the further training of the IFCC in constitutional law. In addition to this, the Max Planck Institute assisted in the development of a draft constitution.

To these ends, the Max Planck Institute Somalia Team organised a series of workshops for members of the IFCC in Kenya and Uganda. The aim of this programme was to work out and compare different options in relation to constitutional law and thus give an overview of the different possibilities for the formation of a constitution. The constitutional structures of federal and decentralised states, the formation of government institutions, the horizontal separation of powers and the fundamental characteristics of federalism were analysed using a comparative law approach. In this way, the Somalis’ particular interest in questions of federal order was taken into account. This interest reflects the specific problems of the country in
respect to the integration of centrifugal powers and independent or partially independent regions. The question of the future status of Somaliland and Puntland were intensively analysed. Different options for a future Somali constitution were worked out and the implications they would have for the country’s constitutional structure were discussed. Following a request from the IFCC, the Max Planck Institute Somalia Team offered a workshop on the integration of Sharia and customary law into the future Somali constitution.

The successful peace efforts in Djibouti between the Transitional Federal Government (TFG) and the Alliance for the Re-liberation of Somalia (ARS) in 2008 resulted not only in new presidential elections being held and the nomination of a new prime minister, but also in the expansion of the parliament and IFCC. However, the agreed restructuring and expansion of the IFCC was delayed. This meant that the Max Plank Institute’s capacity-building programme with the commission had to be postponed for some months.

Nonetheless, during this transitional period the Max Planck Institute was active in the different activities of the UNDP-led international consortium, which gave assistance in the constitutional process. Members of the Max Planck Institute Somalia Team were therefore able to contribute their expertise on international law to the consortium by contributing at conferences in Naivasha and Mombasa. The team was also able to assist the parliament with the “Draft Act to Provide for the Draft Constitution of the Republic of Somalia”.

Following the restructuring of the IFCC, the Max Planck Institute Somalia Team began holding refresher workshops in Nairobi in 2009. These were especially aimed at new members of the IFCC.

Simultaneous interpreting was used for all workshops. In order to make participation and understanding easier for attendees, the Somalia Team prepared handbooks and PowerPoint Presentations which were also translated into Somali. In addition to this, the Max Planck Institute compiled readers which contained texts from the constitutions of different
countries that dealt with the subject areas. With the help of these texts, the different options for the formulation of a constitution could be discussed in smaller groups.

c. Visit of the Somali Minister of Constitutional and Federal Affairs

The Max Planck Institute maintains close contact with the Somali institutes involved in the constitutional process. One result of the continuous exchange of ideas was a visit by the Somali Minister for Constitutional and Federal Affairs, Madobe Nunow Mohamed, to the Max Planck Institute from 30 April to 1 May 2009.

The meeting in Heidelberg served the purpose of giving the minister a comprehensive and direct impression of the expertise of the Max Planck Institute as well as its activities and its approach in relation to the Somali constitutional process. During his visit, the minister requested that the Max Planck Institute contribute to this process by defining the roles and functions of the different institutions involved in the constitutional process more clearly. With a view to this, it was necessary to specify the respective responsibilities of the ministry itself (MCFA), the Parliamentary Constitutional Commission (PCC) and the IFCC. The Max Planck Institute fulfilled this request by taking steps to deepen the coordination and cooperation between these different actors through advice and recommendations.

d. Workshop for members of the IFCC, the PCC and the MCFA

At the request of the Somali government, the Max Planck Institute invited representatives of the IFCC, the PCC and the MCFA to Heidelberg. A workshop was held here from 24 to 30 July 2009 to develop ideas for supporting cooperation between these different parties, all of whom are important actors in the Somali constitutional process.

The event was aimed at improving the structures, processes and workflow between the institutions in order to enable them to cooperate in the most
efficient, result-orientated and expedient way possible in relation to the constitutional process. Therefore, the workshop offered the different parties a platform to formulate their respective positions and to promote understanding between the institutions. Representatives of the IFCC also used this opportunity to present the progress made to that date on the development of a first draft constitution. In discussions on further approaches to the constitutional process, the participants agreed that extensive cooperation between the different institutions was necessary. In addition to this, there was a need for the PCC and the MCFA to be included in future events so as to ensure that all the institutions involved in the Somali constitutional process would have the same level of knowledge.

e. Symposium on Islamic law in the constitutions of Muslim countries

The Max Planck Institute organised a symposium on the subject of “Sharia Law in Constitutions of Muslim Countries: Challenges for the Somali Constitution-Building Process” in Djibouti from 6 to 10 February 2010. The aim of the event was to involve further sections of Somali society in the constitutional process and thus to ensure the inclusivity and increase the legitimacy of the future constitution. The participants were Somali ulema (legal scholars), members of the Transitional Federal Parliament (TFP) and members of the TFG.

As the Somali ulema were the main target audience of the symposium, the event presented an opportunity to initiate a constructive dialogue between Islamic groupings, the TFG and the TFP. This dialogue served to overcome the prejudices of the ulema in relation to the constitutional process and the constitution. Important actors, who were formerly not involved in the constitutional process, could be addressed and drawn into the discussion in this way.

In a discussion presided over by Prof. Wolfrum, the Somali participants and a team of international legal experts dealt with questions on the integration of Sharia law into the future Somali constitution. A lecture on

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“Sharia and the separation of powers” was given by the renowned expert on Islamic law, Prof. Kamali (Malaysia). He described regulations from Sharia law, which reflect and confirm the basic concept of the separation of powers. Building on this basis, he outlined different prospects for the development of the constitution with reference to numerous examples from the constitutions of different Muslim countries. Other contributions dealt with the subjects areas of “Sharia and Human Rights” (Prof. Khalil, Sudan) and “The Judiciary in Constitutions of Muslim States” (Prof. Ebeku, Nigeria, and Prof. Khan, Pakistan). Prof. Wolfrum contributed to the symposium with a presentation on the subject of “Lawfulness and the Compatibility of Laws with Sharia and the Constitution”.

The symposium acted as the starting point of a political training programme which was planned and carried out by the UNDP-led consortium for the Somali constitutional process. It was financed by the Federal Foreign Office of Germany and organised in cooperation with the Somali Ministry for Constitutional and Federal Affairs.

f. Cooperation with UNDP Somalia and UNPOS

In 2011, the Max Planck Institute continued its support of the Somali constitutional process, including collaboration with UNDP within the project’s framework to support the Somali constitutional process. Political changes in Somalia, such as the extension of the TFP’s mandate, the resulting election of a new president, the subsequent reshuffle of the Somali government and, last but not least, the humanitarian disaster caused by the drought made the implementation of the support projects more difficult. Nevertheless, the Max Planck Institute brought its legal expertise into the Somali constitutional process.

Staff from the Africa Team created an options paper for UNDP (Max Planck Paper on Constitutional Adoption and Transition Options for Somalia) as an internal working document. This paper presents options for adopting a constitution from a comparative perspective. With the use of examples, adoption of a constitution by referendum, parliament,
presidential decree and a constituent assembly were explained, while different design models for a constituent assembly were also presented. In addition, the options paper deals with design options for an interim period against the background of the TFC. Options for the realisation of constitutions in particular are presented as well as for the (re-)building of state powers in terms of structure and personnel.

Furthermore, the Max Planck Institute has been regularly sending staff to Nairobi since the end of 2011 to work with the joint UNDP and UNPOS, Joint Constitutional Unit (JCU) working group stationed there. Members of the Africa Team aided the JCU with the textual preparation of the various conferences that were carried out in the context of the constitutional process, including the National Constitutional Conferences Garowe I & II, the International Expert Forum in Djibouti, the International Contact Group Meeting in Djibouti and the Civil Society Conference in Entebbe, Uganda. The Max Planck Institute provided support with the creation of the draft constitution and is involved in the preparation and organisation of the constituent assembly.

3. Further planning

The region of Somaliland, which unilaterally declared its independence in 1991, published a “ten-point agenda of reform strategy for justice” in 2008 to improve the quality of the judicial and extra-judicial settlement of disputes in Somaliland. Following this, an international justice conference was held in Hargeisa from 14 to 16 June 2011, which served as a discussion forum for national and international experts regarding the various judicial reform options.

Ten members of the Max Planck Institute Africa Team took part in this conference and this, as well as the first journey to Hargeisa in March, served to provide an overview of the status quo of the judicial system in Somaliland and, based on this, to develop a strategy for how the Max Planck Institute could support the implementation of a potential judicial reform in Somaliland. The Somalia Team of the Max Planck Institute plans
to develop a capacity-building programme to improve the legal qualifications of officials and thereby contribute to the development of democracy and rule of law in Somaliland.

At the same time, the Somaliland region is posing interesting jurisprudential questions. In Somaliland, there are partially conflicting legal systems, such as Sharia, different common law regulations as well as laws remaining from the Italian or British colonial period. This means that questions arise regarding the resolution of these conflicts and the systematisation of tribal laws. The lack of recognition of Somaliland as a state and the matters of international law associated with this are also, in light of the independence of South Sudan, becoming topical once more.

4. Academic works and publications

a. Handbooks

Several publications and research projects have arisen from the Max Planck Institute’s Somalia Project. The Africa Team put together the following comparative handbooks which were made available to members of the IFCC at each workshop:

b. Publications

Jan Schmidt wrote the following article during period covered by this report:


c. Works for academic qualifications

Alongside the documents compiled by the Africa Team, the team's members dealt with thesis projects on topics relevant in a Somali context, where knowledge gained during practical work was integrated into the theoretical research.

Jan Schmidt’s work compares the interim constitution of Somalia with that of Sudan in its role as an instrument for peacekeeping.
H. ICC Project

1. Background

On 1 July 2002, the Rome Statute of the International Criminal Court (ICC) came into force and the first permanent international criminal court in history became operational. However, in many countries there is considerable demand for information regarding the functionality and responsibilities of the ICC.

In 2006, the Global Knowledge Transfer working group together with German partners – the Gustav Stresemann Institut e.V, European Academy (Bonn) and Pro NGO! e.V. (Cologne) – declared itself ready to improve the information flow and pave the way for the ratification and implementation of the ICC Statute in Russia, Turkey and several Central Asian countries. The project entitled “Information and Ratification Campaign on the ICC in Russia, Turkey and Central Asian Countries” began with financial support from the EU in 2006.

2. Projects

First of all, the project members, together with decision-makers from the target countries, advised on the course of action and developed training materials in several national languages as well as a training programme for multipliers. Local lawyers, who were assisted by the project team at the subsequent seminars, discussion groups, lectures and public initiatives, were trained on this basis.

All events were carried out in close cooperation with local partners such as the Institute of Law and Public Policy in Moscow, the Corporate Technologies Center in Bishkek and the Uzbek Association of International Law in Tashkent. A broad spectrum of content was covered, ranging from the historical development of international criminal law and the political process for creating the International Criminal Court, individual offences (genocide, crimes against humanity, war crimes and the not yet included
Global Knowledge Transfer 2002-2012

offence of aggression), procedural regulations, the enforcement of punishments, implementation and cooperation to the role of NGOs in international criminal law and aspects that could be important for military personnel.

In order to reach the various individuals with the ability to influence the ratification and implementation process, different target groups were chosen. In Turkey, for example, seminars and discussion groups were held for lawyers, NGO staff, the press and academics from various universities. In Russia, members of Moscow’s military academy were also invited to participate alongside members of the Duma, ministerial workers and courtroom staff. The content of each event was adjusted depending on the profile of the target groups. In total, over sixty seminars, lectures, discussion groups and press conferences were held.

In addition to the information events, the project enabled an in-depth discussion of the problems and particularities of implementing the Rome Statute in national law. As a result of the intensive research by Max Planck academics and local experts, national reports arose in which the current status of the implementation process, hurdles encountered during implementation and particularities of each national law were presented. The discussion included not only matters of national criminal law and criminal trial law, but also constitutional hurdles and problems such as the Article 98 (2) agreement of the ICC Statute favoured by the USA, which makes extradition to the court more difficult.
1. Iraq

1. Background

In Iraq, the implementation of the 2005 constitution has still not been completely successful. The reasons for this are varied and can be found in Iraqi society but also in the constitution itself.

Inspired by Iraqi lawyers and politicians, the Iraq Team began its work at the beginning of 2009. The projects focused on the wishes of the Iraqi partners. The key aspects were seminars on constitutional issues, judicial training and the strengthening of democratic institutions. The overall aim of the project is the promotion of the rule of law and therefore the stabilisation of Iraq’s fragile state structure. In particular, conferences and training seminars on constitutional jurisdiction, basic rights, federalism and similar fundamental issues are held in Iraq in this context. At individual events in Heidelberg, the participants also find out about how German constitutional bodies function.

2. Projects

The project is comprised of three main components: the Constitutional Colloquia in Heidelberg, the seminars for judges and other lawyers and the Rule of Law Conferences in Erbil.

a. Constitutional Colloquia in Heidelberg

In the context of its advisory role, the project team supports Iraqi institutions in the further development of constitutional practice. At seminars and conferences, institute members work together with leading Iraqi lawyers and politicians to find solutions to the numerous constitutional problems. This includes federalism, for example, which is established in the constitution but in reality is not implemented coherently. While the focus was originally on supporting the constitutional revision
committee of Iraq’s National Assembly, the project team has held colloquia in Heidelberg with the Iraqi Federal Supreme Court since 2010, as the court is able to implement the jointly developed ideas more effectively. The Iraq Team invites internationally renowned constitutional lawyers to the discussions in order to give impetus to the search for solutions by means of comparative law.

The first Heidelberg colloquium, held in August 2010, dealt with the topic “The Role of the Iraqi Supreme Court in Solving the Iraqi Constitutional Crisis”. An urgently required constitutional reform was not successful in the National Assembly before the elections in March 2010. After the election, conflict first broke out because of the election result and later due to the forming of government. The constitution only offered a weak framework for orientation. It was against this backdrop that the judges of the Iraqi Supreme Court wanted guidance as numerous constitutional questions were brought to them. German Constitutional Court judges also took part in the event along with renowned international constitutional experts.
In July 2011 the project team organised a second colloquium on a range of topics entitled “Separation of Powers - Relations between the Judiciary and Legislature in Iraq”. The participants discussed, amongst other things, the constitutional and legislative foundations of the Federal Supreme Court, administrative jurisdiction in Iraq, the establishment of a state council as well as the competency and legitimacy of constitutional jurisprudence. The participants at the event included the Chief Justice of the Iraqi Constitutional Court, Chairman of the Constitutional Reform Commission of the Iraqi Council of Representatives and a judge from the ECtHR.

b. Seminars for judges and other legal professionals

The project team holds seminars for Iraqi judges, public prosecutors and other lawyers with the aim of strengthening the rule of law and, in particular, the safeguarding of human rights in Iraq. The specific goal of these events is to bring about a rethink of the justice system and bring citizens and their rights to the centre of the administering of justice, rather than state interest as was the case during the Baath regime.

For the series of seminars, the Iraq Team compiled the *Max Planck Manual on Constitutional Law for the Judiciary of Iraq*, which forms the basis of the seminars and the content of which is discussed with the help of case studies. The handbook, produced by the project staff, was translated into Arabic. The focal points are Iraqi state principles, particularly the division of powers and federal structure, the development of Iraqi justice, fair trial principles, constitutional and human rights, the role of Islam in Iraqi law and the international contracts embedded in the Iraqi constitution.

In 2010, following a planning conference, Arabic- and Kurdish-speaking lecturers were prepared for deployment by project staff, who trained participants from all over the country. The lecturers are high-ranking judges from the Iraqi Federal Supreme Court, university lecturers and other experienced legal professionals from Iraqi institutions. Lawyers and Ministry of Justice personnel also take part in the seminars, alongside judges and public prosecutors. The Iraqi Supreme Judicial Council, the
national Bar Association and the corresponding institutions in the Kurdistan region are responsible for the selection of participants.

The first seminar took place in December 2010 in Erbil and the second in February 2011 in Basra. The theme was, as in subsequent events, “Constitutionalism in Iraq – from theory to practice”. In November and December 2011, the team organised further seminars in Najaf and Erbil. In April 2012, more seminars followed in the north Iraqi locations of Dukan and Suleimaniye, where legal professionals from the whole country took part as usual. The composition of these seminars has an important side effect, namely the creation of trust between participants of different backgrounds, e.g. Arabs, Kurds, Turkmen and also Shiites, Sunnis, Christians and members of diverse minorities. In total, 416 people have taken part in the seminars to date.

c. Rule of Law Conferences in Erbil

The series of Rule of Law Conferences goes beyond the constitutional law focus of the Iraq project.

To date, the series comprises three conferences, which all took place in Erbil. The topics dealt with at the first conference in autumn 2009 were the challenges for the justice institutions, the relationship of state and citizens and the fair trial principles. The events also aimed to improve contact with decision-makers on a national level and in the Kurdistan region, in order to attain precise information about the situation regarding justice institutions in Iraq. This information is important to determine the future strategy of the Iraq project.
The second conference in autumn 2010 addressed mainly lawyers and dealt with the importance and development of an organised legal profession in a constitutional state. This could make an important contribution towards counteracting threats to stability and freedom in society. In addition, individual contributions broached the issues of criminal law and business law.

The third Rule of Law Conference took place in Erbil in November 2011. The theme "Unity and Diversity of the Judiciary and Law in Iraq" reflects a core problem in the development of rule of law, namely the inconsistencies not only in the normative foundations, but also in practice. Three main topics were dealt with: The relationship between courts, legislation and the Bar Association in Kurdistan and Central Iraq; transitional justice using the example of the Iraqi High Tribunal and International Criminal Court and their relationship with ordinary criminal justice as well as the international settlement of disputes and enforcement of arbitration awards in Iraqi law. Numerous Iraqi and international (German, Swiss and US) constitutional law experts took part, including the President of the Iraqi Federal Supreme Court and several judges from the FSC and Iraqi High Tribunal, officials and politicians such as the Justice Minister of the Kurdistan region, the
Vice President of the International Criminal Court Dr. Hans-Peter Kaul and the Swiss Professor Thomas Fleiner.

d. Further projects

The Iraq Team remains in constant contact with Iraqi legal professionals and politicians and meets many of them to exchange information and give counsel in Iraq and Germany.

By working closely with the Iraqi partners, it was possible to compile an online database in which judicial and, in particular, constitutional documents are recorded. The database contains, amongst other things, English translations of Iraqi laws and decisions made by the Iraqi Federal Supreme Court.

In the framework of the institute's cooperation with the Kurdish Regional Parliament, German documents, including the Baden-Württemberg regional constitution and the Rules of Procedure of the German Bundestag, as well as numerous decisions made by the German Federal Constitutional Court, were translated into Arabic and made available to the Iraqi partners.

e. Summary

The project activities are being very well received in Iraq and the Iraqi project partners are explicitly requesting that the conferences and training continue. The materials, compiled by the team at the Max Planck Institute (e.g. on "Constitutional Law" and "International Human Rights Treaties"), are also being well received. In particular, the role of the Max Planck team as a neutral point of contact and as a provider of comparative law knowledge is appreciated and the acquired knowledge is being used in practice. The security risks in Iraq are partially hindering the work. On the other hand, relations with high-ranking officials and politicians built up over several years facilitate the work and also provide a basis for continued knowledge transfer with Iraq in future.
3. Further planning

Despite much progress, Iraq is still a long way from achieving rule of law. From a judicial point of view, several factors are responsible, including the unstable constitutional structure (even after seven years, neither federalism nor the institutions laid down by the constitution have been established), the gap between citizens and state and the considerable difficulties encountered by political figures in agreeing on reforms and implement them. In light of this finding, the Max Planck team plans to concentrate on three subject areas as of 1 January 2013. Firstly, continuing to guide the Supreme Court which, due to the ineffectiveness of legislative and executive authority, plays a key role in the stabilisation of the state. Secondly, federalism is to play a central role in the project because attempts are currently being made in some parts of the country to form federal entities (so-called "regions"). Thirdly, the topic of administrative law is becoming increasingly important; perhaps the project staff can also make a meaningful contribution in this area.

The first measures to these ends were already implemented during the current project phase. A constitutional colloquium on the theme of federalism took place in July 2012 in Heidelberg and a further Rule of Law Conference on administrative law took place in November 2012 in Erbil.

4. Academic works and publications

a. Handbooks and compilations of legal texts


The *Max Planck Manual on Constitutional Law for the Judiciary of Iraq* forms the basis for all events dealing with current problems pertaining to the
functioning of the state. The handbook covers Iraqi constitutional history and the hierarchy of norms as provided by the Iraqi constitution of 2005. Additionally, the book concentrates on the fundamental constitutional principles of the Iraqi state, the separation of powers and the federal structure of Iraq as derived from these principles. The structure and functioning of the Iraqi judiciary is described in great detail.

b. Works for academic qualifications

Alongside the practical project work handbooks is the following thesis project:

J. Water conflicts in international law

1. Background

The Max Planck Institute for Comparative Public Law and International Law has increasingly focused on international systems of regulation for the management of international waters and the allocation of water resources as a subject of its research. In many cases, countries quarrel predominantly over usage rights for transboundary water resources. From an international law perspective, however, the protection of water must also be regulated along with the issue of just and sustainable allocation and use. Cooperation agreements between countries and the establishment of joint river commissions have proven to be a sensible basis for regulated cooperation between countries bordering a water resource. In both of these cases, international law offers a legal framework. Yet it is not always sufficiently well-known and not used constructively by the regional bodies.

The aim of the Water Project is to work together with academics and decision-makers from selected regions to develop solutions to help solve conflicts over the use of transboundary water resources through international law.

In the period 2010-2012 the conflict over the water resources of Euphrates and Tigris has been a central issue. There have already been initial approaches towards joint management of both rivers. However, negotiations have not yet resulted in an agreement. The basic prerequisite for a solution to the disputes is (in addition to the options offered by international law) mutual trust, willingness to cooperate and, above all, political resolve.

The institute can fall back on its long-standing and intensive academic expertise in international environmental law, and water law in particular. One staff member is currently researching regulatory systems for European rivers under international law, while another is researching the
human right to water and two more academics are dealing with matters relating to water law in the framework of their studies into environmental law. Other academics from the institute and its academic environment are working on similar themes.

Disputes over water resources are increasingly leading to international conflicts

2. Projects

The Max Planck Institute has carried out the following activities in the framework of the project on the legal dimensions of the water conflict in Euphrates and Tigris:

a. International network on water conflicts in international law

The institute has created a network on the theme of "water conflicts in international law" around Euphrates and Tigris in particular. The project team established contacts with numerous experts in the area and informed international institutions and academic organisations about the project.
The aim of the network is to bring together the relevant political figures, experts and lawyers amongst others to promote the joint search for solutions.

b. Collections of applicable law and online database

In addition, a team from the Max Planck Institute has built up a freely accessible online database with relevant international law treaties, national legislative texts and references to literature. This should make it easier for people to access information on the issue. The database is constantly being expanded. The national law texts are available in their respective national languages and English. The institute is supported by academics and experts from Iraq, Syria and Turkey.

c. Lectures and workshops on international water law

In the context of two “International Water Weeks” in Erbil, Iraq (27/09-30/09/2010) and in Homs, Syria (21/02/2011-24/02/2011) the project staff held lectures and led workshops on international water law for decision-makers and academics from the region.

d. Study visits in Heidelberg

Furthermore, the institute invited selected, highly-promising guest researchers from the region to research visits in Heidelberg. The visits aimed to prepare contributions for the conference and cooperation with the project team as well as forging close contacts between academics and neighbour countries.
e. International Conference on the Water Issues in the Euphrates and Tigris region

From 2 to 4 May 2012, the Max Planck Institute carried out a key project component: a conference on the allocation of the Euphrates and Tigris water resources between Iraq, Syria and Turkey. The event “Advancing Cooperation in the Euphrates-Tigris Region: Institutional Development and Multidisciplinary Perspectives” was held in cooperation with Okan University in Istanbul (Prof. Aysegül Kibaroğlu) and the “Euphrates-Tigris Initiative for Cooperation” (ETIC). It took place at Okan University in Istanbul. In around 20 lectures renowned researchers and practitioners, predominantly from the region, gave presentations on the technical and scientific aspects as well as the legal frameworks. Conflicting opinions and problems were also discussed. Certain similar international conflicts concerning water were analysed to find possible solutions to solve the Euphrates-Tigris conflict. The conference also served as a basis for future exchanges between the relevant experts. The results of the conference will be published in a newly created conference publication.

3. Further planning

At the end of 2012, the Institute invited guest researchers from Turkey, Iraq and Syria for research visits in Heidelberg in order to promote the exchange of research between the three countries.

For the years 2013 and 2014, there are plans to extend the project to other conflicts, carrying out project activities similar to the Euphrates-Tigris conflict. In particular, these plans will centre on analysing the legal dimensions of each conflict. The focus will be on the international law perspective. National law (and EU law if applicable) will be considered in the analysis where possible and appropriate.
4. Academic works and publications

a. Project-related studies and compilations of legal texts

The project team produced a comprehensive jurisprudential written study on the subject “The Waters of Euphrates and Tigris: An International Law Perspective”, which serves as a working basis for the water project. The core content of the study is the presentation of geographical and technical problems, the background and history of the conflict in international law, an analysis of the current legal situation, the presentation of current attempts to solve the conflict and finally the project team’s opinion. The study will appear in the Max Planck Yearbook of United Nations Law, Volume 16 in the near future.

The project staff also wrote a study on water law in Germany, which was then forwarded to the Iraqi Embassy (at their request) by the Federal Foreign Office of Germany. The study was submitted in German, English, Turkish and Arabic and is available in the online database.

In addition, a Max Planck Compilation of International Water Law Treaties (2011) was compiled and edited. The compilation contains a selection of international law treaties and further relevant documents from the field of water law. Another collection, the Max Planck Compilation of International Treaties and Other Documents Relative to the Euphrates and Tigris (2012) was also completed by the project staff. This complements the 2011 compilation and contains a selection of relevant regional international treaties and legislative texts. The documents were uploaded online, in order to make them more accessible to interested members of the public.
b. **Publications**

Adele Kirschner is researching the human right to water and sanitation and has already published an essay on the subject:


Katrin Tiroch researched and published on the following themes relating to water law and environmental law:


Both project members worked together on the following pieces published in 2012:


c. **Works for academic qualifications**

Furthermore, Katrin Tiroch dealt with the water law issue of sea pollution due to rivers in her thesis project, using the example of the Danube and the Black Sea. In her thesis, Adele Kirschner is analysing the water law regime around the Nile.
K. Constitutional reforms in Arab countries

1. Background

In the framework of the Constitutional Reform in Arab Countries (CRAC) project, members of the working group have been following and analysing issues relevant to international and constitutional law that have arisen from the Arab Spring since the beginning of 2011. The Max Planck Institute has been dealing intensively with the Arab legal domain for some time. The enduring and dynamic results of the Arab Spring have further increased the institute’s commitment to and academic interest in the constitutional developments in the region.

The public protests which spread through the Middle East and North Africa (MENA) at the beginning of 2011 have had many different outcomes. In many Arab countries, fundamental reforms of both the political system and the relationship between state and citizen were demanded, albeit not with equal force in every country. The CRAC project focuses on 17 countries where the call for reforms in society and the media was particularly strong and, correspondingly, sustainable reforms are possible. In the framework of the CRAC project, the transformation and constitution processes in Algeria, Bahrain, Iraq, Yemen, Jordan, Qatar, Lebanon, Libya, Mauritania, Morocco, Oman, the Autonomous Palestinian Territories, Saudi Arabia, Sudan, Syria and Tunisia are being observed. The stages of transformation that have been achieved so far take different forms in different countries of the MENA region.

Firstly, all protests have one thing in common: the demand for fundamental constitutional reforms. This is where the project comes in. The reform attempts in these countries manifest themselves in various ways. Constitutional changes without a change in regime (Morocco) as well as the establishment of constituent assemblies following revolutions (Tunisia, Egypt, Libya) can be observed. Occasionally, a strategy of limited concessions is followed. This includes promises to step down made by long-term rulers (Yemen) and replacing the executive power (Jordan,
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Oman). Individual rulers promise either constitutional reforms under sustained pressure (Yemen) or the introduction of new constitutions (Syria). In addition, the international dimension of certain conflicts (Bahrain, Libya, Syria), which sometimes resulted in statements from the UN Security Council or military support for regimes or opposition movements, is of note. The fact remains that all protest movements in their different forms shared a demand for fundamental constitutional reform.

The Max Planck Institute’s many years of experience as well as the networking done by the project management have proven to be important building blocks in the successful initiation of the project and in creating links in the region. There is also a large network of contacts to Arabic lawyers in almost all countries in the region. This became active during the preparatory works for the project. In a short period of time, an effective, active network to Arabic legal and constitutional experts was built up and an active dialogue could begin. The main aim of the project is the promotion of constitutional dialogue and ultimately to make a contribution to the creation of sustainable constitutional structures leading to the stabilisation of the fragile government structures in the affected Arab states. This is made possible by facilitating an intensive exchange of ideas and experiences between the key opinion leaders. Alongside the project activities, a publicly accessible internet database with information, documents and references to literature was put together and a network was created amongst the actors. The reform of existing constitutions and the creation of new ones are processes that do not allow direct interference, as this would damage the legitimacy of new structures, amongst other things. The project team follows this maxim when organising conferences and seminars.

2. Conference on constitutional development following the “Arab Spring”

From 22 to 24 February 2012, the Global Knowledge Transfer working group held a conference in Heidelberg where problem issues, one year
after the beginning of the “Arab Spring”, were discussed in detail as well as the classification of state and constitutional structural relationships. Over 70 actors from almost every Arab state took part in the Heidelberg conference. Amongst these were ministers, influential professors, senior judges and representatives of civil society. The three-day conference covered different constitutionally relevant problem areas. Controversial issues such as the role of religion in a democratic state, human rights and the role of the military were also addressed. The participants were given a discussion forum where they could find ideas and possible solutions for the reforms in their own countries. All panels covered issues relevant to transformation. As the conference spanned three days, participants from almost all of the countries involved made a contribution. The debate contributions were not so much oriented towards the form of national reports, but rather specific problems. Contributions on topics relevant to state structure and organisation (e.g. separation of powers, decentralisation) but also human rights and issues of fundamental rights (e.g. freedom of the press) formed the core of the debate.

Alongside legal experts from the Arab region, selected experts from other legal spheres also took part in the conference, in order to strengthen the event’s comparative law approach. Many of the conference contributions are being compiled and published in an edited form.

3. Projects

The project contains a monitoring element (project website: www.mpil.de/red/crac) as well as a component to actively support and analyse constituent processes. The project website contains regularly updated information regarding the transformation processes in the countries observed. For many actors, the website is a reference point for acquiring documents, materials or references to literature for an in-depth study of specific problems. In practice, new constitutions do not only originate from a return to political and legal traditions; in fact, it is largely due to the comparative study of various constitutional systems, their
functionality and also their advantages and disadvantages. Yet access to this currently urgently needed knowledge is limited in the Arab region, as most lawyers do not have the sufficient command of foreign languages required to study different constitutional systems (or their view is limited to a small number of systems because there are very few translations of foreign legal literature into Arabic). Members of constitutional commissions and other institutions often find the orientation difficult, as they are normally not lawyers and often do not have, or are not able to have, prior understanding of constitutions. The CRAC project is therefore geared towards the public in the affected countries via the freely accessible website. This not only refers to intellectuals, the legally trained and western-oriented elite in the Arab states, but other groups, too, including representatives of Islamic movements (e.g. Salafists) and parties that have large public support and form an important or even dominating current amongst the reform forces.

Academic staff from the project team are entrusted with the task of monitoring and legally assessing the developments, while student assistants are responsible for implementing and updating the website.

Along with providing virtual resources, another important starting point of the project is enabling an actual exchange of ideas between actors. As part of the project, a conference took place in February 2012 on “Constitutional Reform in Arab Countries” in the Max Planck House in Heidelberg. The conference’s aim was the exchange and networking of actors from different Arab countries involved in the constitutional process.

4. Further planning

The CRAC project’s working group sees itself as a neutral mediator between the different Arab actors, serving to provide impetus in the region. Thus the aim of the Heidelberg CRAC conference, for example, was the exchange of viewpoints and ideas between the Arab participants. This was assisted by the inclusion of international experts on selected topics (e.g. Said Mahmoudi for human rights; Hashim Kamali for the role
of Sharia in Islamic constitutions). The project team plans to follow this approach and expand it in the future through the institution. A further international conference is planned on the relation between Sharia and constitutional law for the beginning of 2013.
L. Libya

1. Background

After the downfall of the regime of Muammar Gaddafi, a new state is developing in Libya. Academics at the Max Planck Institute have been studying the country’s political and judicial system since 2006, when the son of the self-proclaimed “leader of the revolution”, Saif al-Islam Gaddafi announced the creation of a modern constitution.

In the years 2008 and 2009, the focus was on Libyan constitutional law. In regard to the constitution, Libya was organised in a remarkable way. Political decision-making took place at so-called “Basic People’s Congresses” to which every Libyan who was entitled to vote belonged. Any representation of the people by members of congress, for example in terms of parliamentary democracy, was seen as distorting the will of the people. Thus a parliament, parties or a government in the classical sense did not exist. The 350 “Basic People’s Congresses” presented their decisions with imperative mandate to the “General People’s Congress”, which convened several times per year, and this is where the decision-making was coordinated. A constitution did not materialise until 2011, even though one had already been announced in the revolutionary constitutional declaration of 11 December 1969. Policies similar to constitutions were spread out over four laws in 1977, 1988, 1991 and 2001. Occupying public office was also insecure in the ministries known as “secretariats”, for example. Each position could be filled with someone new at any time. The law-related decisions made by congress were also insufficiently prepared. The participants often felt insufficiently informed; there was frequently not enough time for functional debate.

The desire to reform the political system increased in 2008 and 2009. The main emphasis, as evidenced by the discussions, was the strengthening of legal security and fighting against judicial corruption. In 1998/1999, the commission compiled a draft constitution but the handover to the Basic People’s Congress was blocked. There were further attempts at reform in
March 2009; Saif Al-Islam Gaddafi announced the adoption of a constitution, yet this was never introduced.

The revolution, which began in Benghazi in mid-February 2011 and swept the entire country shortly after, targeted decades of despotic rule in particular. The revolution resulted in an interim constitution from the National Transitional Council in which human rights are clearly stressed as a reaction to the previous despotism. Based on this interim constitution, structures of the new Libyan state are starting to form; in the meantime, parliament has taken over government duties and is working on a constitution for Libya. A group from the institute is involved in this process.

2. Projects

The transformation of Libya into a constitutional state raises many questions. Most Libyan politicians, lawyers and judges do not know about modern forms of statehood, neither from their own personal experience nor from their studies and are not informed about international law standards in the constitutional and judicial sector. During the revolutionary changes, a fact-finding mission led institute staff to Benghazi where they held the first information and advisory discussions with representatives of the National Transitional Council and its executive committee, judges and lawyers, members of revolutionary committees, imams and other population groups. The mission, financed by the Federal Foreign Office of Germany, aimed above all to analyse which requirements are to be expected after the fall of the Gaddafi regime. In addition, institute staff led the first advisory discussions to ascertain, for example, whether the National Transitional Council represented a capable “de facto regime” under international law.

In March 2012, the discussions with the National Transitional Council intensified and cooperation with many Libyan institutions was agreed upon, including the National Transitional Council, the highest Libyan constitutional court and the University of Benghazi.
In the discussions, led by the Libya Team on location in Tripoli and Benghazi with representatives of the National Interim Council and executive committees, judges and lawyers, members of revolutionary committees, imams and other population groups, it became apparent how great the need for knowledge transfer really is.

A clear plan of how to contribute to the successful transformation of Libya originated from this. The working group’s project deals with state-building and judicial reform. The aim of the project is to make a positive contribution to Libya’s transformation into a democratically formed constitutional state.

a. State-building sub-project

Several seminars in Libya and a study trip made by Libyan politicians to Germany serve as a way of communicating knowledge about the structure and function of democratic constitutional states. The participants gain knowledge on a number of areas which arose during the transition process. Flexible advice visits in Germany and Libya aim to support Libya’s key figures by providing them with neutral legal expertise on various constitutional and legal topics. The main themes of the study visit are the separation of powers, function and competency of parliament and government as well as the monitoring of compliance with constitutional norms via the Federal Constitutional Court of Germany and other institutions.
To support the development of the constitution, the members of parliament and the constituent assembly are therefore to be trained in the area of separation of powers, fundamental rights, the position of international law in the national legal system and decentralisation.

From 21 to 24 May 2012, one of the conferences organised by the working group took place in Tripoli. At the conference, over 80 participants discussed various areas of the forthcoming constitutional process. The panels dealt with human rights issues, decentralisation and the role of Sharia in the new constitution, amongst other things. International experts from other Arab countries (Egypt, Tunisia) also presented their legal opinions with Libyan experts from the universities in Tripoli and Benghazi. The conference attracted widespread media attention and the working group’s mediating role in identifying and approaching constitutionally relevant issues was praised by the Libyan participants at the event.
b. Judicial reform sub-project

The planned judicial reform demands that judges and potentially other lawyers working in the field of justice be trained in international law (e.g. fundamental right to justice according to ICCPR) and constitutional law (initially on a comparative basis).

The seminars carried out by the working group aim to convey constitutional principles and reinforce the corresponding attitudes and values of judges and other legal professionals working in court (public prosecutors and lawyers). These actors must learn the international standards of their profession, which the population and the international community are expecting them to meet. These standards are contained in international law but also in the applicable Libyan law and in documents such as the Constitutional Declaration of 3 August 2011. They concern first and foremost regulations for adhering to fundamental and human rights and lawyers must learn how to deal with this. In particular, the fundamental right to justice (fair trial principles), principles of judicial independence, the relationship between the institutions and ethical rules are included. Constitutional principles must be demonstrated to Libyan lawyers so that the efficient transformation into a constitutional state after the constitution comes into force can be successful.

The judicial reform sub-project helps the named actors to acquire a systematic understanding of the fundamental changes to their work and apply the relevant norms correctly. The main aim of the sub-project is ultimately to strengthen the judicial sector by embedding rule of law in the courts in order to create trust in the new, democratic state. The Libya Team is currently producing a handbook on constitutional principles as a teaching material.
3. Further planning

There are plans to considerably expand the projects in Libya through the institution as of 2013. Alongside the additional constitution and legislation consultation, extensive teaching programmes based on the Iraq project are envisaged. The focus here is on educating in the field of rule of law and human rights protection.
M. Pakistan

1. Background

In autumn 2009, a young Pakistani lawyer visited the institute as a research intern. This led to contact with his Pakistani employer, the non-governmental organisation “Community Appraisal and Motivation Programme” (CAMP). CAMP has been active in the Khyber Pakhtunkhwa province of Pakistan and the Federally Administered Tribal Areas (FATA) in the north-west of the country since 2002.

In early 2010, the Max Planck Institute and CAMP developed ideas in consultation with the Federal Foreign Office of Germany regarding ways to improve legal conditions for the people living in Khyber Pakhtunkhwa and FATA and strengthen the rule of law in this crisis-hit region as a whole. As the institute has dealt with South Asian states in a research capacity (including Pakistan) time and again since its foundation in 1924 – most recently with three contributions to Pakistan within the framework of the publication project “Constitutionalism in Islamic Countries: Between Upheaval and Continuity” (ed. T. Röder, R. Grote; 2011) and an essay on Kashmir by Tilmann Röder in the Max Planck Encyclopedia of Public International Law – the opportunity arose to utilise its academic competence once more by providing advice on specific development projects in Pakistan. Furthermore, the experience gained from long-term project work in Afghanistan can also be useful in this volatile region on the Afghan border.

2. Projects

a. Supporting judicial reform in tribal areas

The tribal areas in the region of Pakistan on the Afghan border have traditionally had special legal status since the colonial era. As such, Pakistani federal laws, for example, do not apply in the FATA, unless the
Pakistani President declares that the laws are applicable there. The President can also govern by decree in the tribal regions. Moreover, the administrative structure is different to that of the rest of Pakistan. The judicial system is also subject to its own regulations. Great importance is given to Jirga, a traditional non-governmental system for settling disputes. Jirgas are “councils of elders” comprising socially recognised tribal leaders who can intervene in civil and criminal law disputes to establish peace between the parties involved. Experiences show that such informal, traditional structures can endanger the human and civil rights of the individuals involved time and time again.

To get a more accurate picture of the function and importance of Jirgas, CAMP systematically investigated the situation in the region using interviews, discussion groups and a detailed survey (CAMP, Understanding Jirga: Legality and Legitimacy in Pakistan’s Federally Administered Tribal Areas, 2011). On this basis, CAMP started an awareness campaign in 2011 which aimed to bring about better consistency between human rights standards and the Jirga system. Additionally, discussion groups were held with a target group of around 700 participants, radio stations were developed and broadcast in the FATA and information materials were compiled and distributed. The Max Planck team also developed materials with CAMP in 2011 which educate about the advantages and disadvantages of Jirgas and explain the human rights standards to which the Jirgas must also comply. CAMP held training sessions for tribal elders on this basis.

Because many national and international actors deal with Jirgas in Afghanistan, where they are very widespread, the institute led a Jirga workshop in Kabul so CAMP could contact these experts and initiate stronger networking. CAMP workers were also able to gain more experience with pluralistic legal systems by participating in the conference on legal pluralism in Berlin mentioned below.
b. **Improving the legal environment of Afghan refugees**

Pakistan is still host to the largest number of refugees worldwide. Around 1.7 million registered Afghan refugees live in Pakistan. Yet Pakistan has not acceded to the central international treaty laws for the protection of refugees and does not have a national refugee law. This contributes to the difficult living conditions for Afghans in Pakistan. To find out which specific legal problems they have recently had to face, CAMP worked on a study on this topic (CAMP, The Legal Environment in Pakistan for Registered Afghans, 2012) from the middle of 2010 to its publication in January 2012 with the help of the Max Planck Institute. As part of the study, interviews were conducted and both the administration of justice and media reports were evaluated. In addition, 1,500 registered Afghans who live outside of the refugee camps in Khyber Pakhtunkhwa were interviewed in detail. On the basis of this new information, three handbooks aimed at different people were also produced by CAMP with the help of the Max Planck Institute in 2011/2012. One handbook was aimed directly at registered Afghans in Pakistan, to inform them about their rights and increase awareness about law enforcement (CAMP, Accessing Justice for Registered Afghan Citizens Living in Pakistan – A Guide to Pakistani Institutions, Laws and Procedures, 2012). Two more handbooks are for the training of government and non-government figures whose work focuses on Afghan refugees (CAMP, Researching Forced Migration in Pakistan: An Introduction to Research Ethics, Quantitative & Qualitative Methods, 2011; CAMP/MPIL, International Human Rights Protection for Registered Afghans in Pakistan – An Introduction to International Mechanisms and Procedures, 2012). With the help of these handbooks, training sessions for these target groups were held in Pakistan at the end of 2011 and the start of 2012 with the support of institute staff.

3. **Further planning**

In light of the similar modes of operation of the traditional Jirga dispute settling system on both sides of the Afghan-Pakistani border and other
partially comparable challenges, and with regard to the Max Planck Institute’s excellent networking in Afghanistan and Pakistan, stronger transboundary projects in the field of judicial reform are planned. The Max Planck Institute would also like to continue working towards improving the legal situation for Afghan refugees.
N. Egypt

1. Background

Mass protests in early 2011 led to the resignation of autocratic president Hosni Mubarak. The Supreme Council of the Armed Forces (SCAF) assumed power in a constitutionally questionable way and has since then been leading the transitional process. Significant – and not uncontroversial – additional steps included dissolving parliament, suspending the constitution and the successful vote on constitutional changes, which was the basis for the SCAF to implement an interim constitution.

For the parliamentary and presidential elections, which finally took place at the beginning of 2012, Egypt’s electoral law had to be modified according to the guidelines laid out in the interim constitution.

2. Projects

a. Advice on Egypt’s electoral law

At the beginning of June 2011 an Egypt Team, formed at short-notice, began aiding the development of a new electoral law. This started with the visit of Constitutional Reform Committee member and Deputy Chief of the Supreme Constitutional Court Hatem Bagato to Heidelberg. A further workshop followed in Cairo a few weeks later.

Many specific matters of electoral law were discussed, such as the construction of a mixed proportional representation and first-past-the-post system based on the German model and taking the Egyptian interim constitution into consideration. Other matters discussed included the idea that 50% of the members of parliament must be “workers and farmers”, the admission of parties and individual candidates, campaign financing, monitoring of the voting process and the conversion of election results into parliamentary seats.
b. Study visit for members of the Egyptian Electoral Commission

In May 2012, a working group organised a study trip for members of the Egyptian presidential elections committee; the presidential elections were of great significance to the future of the country. Even more important was that the elections were carried out in a careful and correct manner. The project activities aim to help in this area.

The fact-finding visit initially brought the delegation to Kiel where they met the Land Returning Officer of Schleswig-Holstein. On the day of the German state elections (6 May 2012), the Egyptian electoral commission visited a polling station in the state capital of Schleswig-Holstein. The delegation familiarised themselves with the organisation of election processes in the context of the German state elections. Additionally, the delegation visited the Federal Returning Officer at the Federal Statistical Office as part of the programme. The Federal Returning Officer, Mr. Egeler, reported to the members of the Egyptian electoral commission on his tasks and the function of the Federal Returning Officer in a discussion lasting several hours. This was met with great interest amongst the Egyptian guests and a stimulating discussion followed regarding, for example, the political position of the Federal Returning Officer, his status as a civil servant and his independence.

Overall, the Egyptian delegation found the study visit to be extremely informative and enriching. The Egyptian electoral system and the mechanisms for election management are only limited in comparison with the German processes. Yet this study visit helped to illustrate how an independent electoral commission functions in a pluralistic and democratic system.
3. Further planning

The Max Planck team currently has no plans for further project activities in Egypt. But as Egypt is politically and economically the most important country in North Africa, and traditionally functions as a legal role model, it will continue to play a role within the framework of the regional project “Constitutional reform in Arab countries”.
O. Tunisia

1. Background

Tunisia is in a transitional phase towards democracy. One of the most important moments on this path was the election of a constitutional assembly on 23 October 2011. The main task of this assembly is drafting a new constitution. The constitutional assembly (Assemblée Constituante/Constituent Assembly) plays a key role in creating a new political order in Tunisia. There are a number of themes that dominate the lively public debate on the constitution. One of which is the fundamental decision on the political system. Because the autocratic regime of Ben Ali was formally conceived as a presidential system, sceptical and dismissive attitudes dominate the discussion on this model. Interest is therefore directed towards the parliamentary systems of Germany, Spain, Italy and Portugal. The structure of the new state is also unclear, with the matter of the structure of parliament being a key part of the discussion. Additional questions include the matter of decentralisation, the role of the army and security services in constitutional structures and the role of Sharia in the state system, which is currently an issue in all Arab transition processes.

2. Projects

In the context of the aforementioned issues, the Tunisia Team is carrying out support measures in Tunisia. In September 2011, staff from the Global Knowledge Transfer working group visited Tunisia to collect information regarding the constitutional situation in the country and to hold discussions with people connected to the constitutional process. Further discussions were held in Tunis in March 2012, and the Max Planck team was received by the president of the Constituent Assembly who promised to support the project activities planned by the working group. In the context of this visit, the group agreed upon close cooperation with the Association Tunesienne de Droit Constitutionnel (Tunisian Association of Constitutional Law).
The aim of the project is, first and foremost, to educate the members of the Constituent Assembly on important constitutional topics and raise awareness about the far-reaching decisions they will make when developing the new constitution. However, the project also aims to consolidate the principles of democracy, rule of law, human rights and compliance with international law in the emerging state institutions. Thus, a positive contribution to Tunisia’s transition into a democratic constitutional state should be made.

The working group’s legal expertise in matters of comparative constitutional law in particular will be made available to the new Tunisian Assemblée Constituante in various forms. Legal support will take the form of conferences, seminars and study visits for Tunisian lawyers and members of the Assemblée Constituante.

One of the working group’s conferences took place from 4 to 6 June in Tunis. The participants and target group were members of the Assemblée Constituante. International experts gave presentations on matters related to state structure during the three-day event. Here, particular importance was attached to a comparative perspective, which illustrated the various options of state formation to the members of the Assemblée Constituante. The conference was carried out in cooperation with the Association Tunesienne de Droit Constitutionnel, which also provided its own experts.

Additional seminars in Tunis deal with issues related to the development of new constitutional norms e.g. system of government, decentralisation, federalism and the role of the military in a democratic state. Furthermore, consultation visits to Germany by Tunisian participants and visits to Tunisia from German and international experts form part of the project. At these visits, specific legal questions can be covered by small groups of experts, such as individual matters of constitutional law, electoral law, parliamentary law or the regulation of the inner workings of individual constitutional bodies using laws or rules of procedure.

The Tunisia Team implements the seminars and study visits together with the Association Tunesienne de Droit Constitutionnel (administratively rooted
in the Université Tunis II). The Association was asked by many party leaders to organise further training and requested the MPI for this. The Association has an excellent reputation for the scope and level of its research work and has many years of experience of international cooperation in constitutional development. Moreover, it builds bridges with other important players such as the Académie Internationale de Droit Constitutionnel.

Furthermore, the Tunisia Team remains in close contact with other influential lawyers and the information exchange with them helps the Max Planck researchers form a comprehensive picture of the constitutional developments. The necessary advice can only partially be given by Tunisian lawyers, though; a broader approach based on comparative law is both necessary and desirable. Designated constitutional experts from other Arab countries, as well as international experts from countries such as France, Switzerland and Germany took part in the conference.

3. Further planning

The project is part of a regional strategy that includes the “Constitutional Reform in Arab Countries” project and other national projects and aims to promote the constitutional dialogue in the region.

Because of its importance as the most successful and stable transition country to date, project staff will continue to deal with Tunisia after the end of 2012. Decisions regarding topics and approaches will be made in autumn 2012.

4. Academic works and publications

Project worker Omar Hamady wrote the following article:

P. Yemen

1. Background

In events related to the so-called Arab Spring, there were also a large number of protests in Yemen as of January 2011. The police and military took violent action against the demonstrators, with government troops and tribal fighters engaging in violent skirmishes. On 23 November 2011, President Ali Abdullah Salih signed an agreement signalling his resignation within 30 days.

On 22 January 2012, Ali Abdullah Saleh formally handed over power to Abed Rabbo Mansour Hadi and travelled via Oman to the USA, where he received medical treatment. The presidential elections took place on 21 February 2012. The only presidential candidate, Abed Rabbo Mansour Hadi was elected president of Yemen. The southern part of the country called for a boycott of the election. With the election, a two year transitional period began in accordance with the Gulf Cooperation Council Initiative. The new president is obliged to initiate a structured National Dialogue, and the future state is to be founded according to the consensus on the degree of decentralisation, the future political system and other principles. This consensus is to be codified in the form of a new constitution, a law on local government and administration (“Local Government Law”), an electoral law and other necessary laws by February 2014. The task of composing these laws will be in the hands of a subcommittee of the National Dialogue.

It is expected that the future state will be based on a parliamentary democracy and a high degree of decentralisation, potentially even with federal structures.
2. Projects

The project follows the study visits made by a Yemeni delegation to Karlsruhe, Berlin and Heidelberg in February 2012, organised by the Max Planck Institute. The project’s components were discussed and developed together with the representatives of the Yemeni delegation during the study visits. Subsequently, a regular exchange took place, including exchanges via the German Embassy in Sanaa. Due to the pre-project, the team at the Max Planck Institute is aware of the needs of the Yemeni partners in the context of the National Dialogue. This prior knowledge means the team can cater the project activities to Yemeni needs.

The aim is to equip the participants with sufficient knowledge to make the decisions required for the construction and reconstruction of the state. The key players should be put in the position to choose – in their opinion – the best state structures for Yemen on the basis of the abstract knowledge given to them. Therefore, it will be necessary for Yemen to develop a reconciliation strategy for the north and south of the country, for example. In this central process of reforming state structure, the institute’s task consists of highlighting the south’s options for political participation, presenting the experiences of various countries in this area and transferring the potential implications to Yemen. Arab states whose experiences could be useful include Libya, Iraq and Sudan. A central topic will be the designing of federal models and their effects on the coherence of the political system.

The project also aims to encourage approaches that correspond to the principles of democracy, rule of law, human rights and compliance with international law. This will be achieved through intensive capacity-building at workshops. The Max Planck Institute will assist the key players in an advisory capacity for the entire duration of the project.

The ultimate aim of the project is to make a positive contribution to Yemen’s transition into a democratic, constitutional state. This can only be achieved if the practices of relevant players are brought closer to international standards (e.g. human rights, which Yemen is bound to as a
member of the international community) and if these standards are demonstrated to them. Anchoring the Yemeni constitutional process in the events of the transition process from the whole region (Egypt, Libya, etc.) also seems wise. The project is part of a regional strategy that includes the regional project “Constitutional Reform in Arab Countries” and further national projects (Libya, Tunisia, Jordan) and aims to promote constitutional dialogue in the region.

In February 2012, a study visit from a Yemeni delegation to Germany took place. Firstly, the delegation took part in the working group’s CRAC conference before visiting the Federal Constitutional Court in Karlsruhe. Judge Mrs. Baer presented German constitutional tradition and reported on the court’s current work as well as some relevant judgements made by the court recently. This was followed by a visit to Berlin. During their three-day stay, the Yemeni delegation was received by members of the German Bundestag, including the chairman of the Committee on Foreign Affairs. A round table discussion with experts on the situation in Yemen took place in the Federal Foreign Office. Finally, the delegation visited the Federal Council, where they received an instructive introduction to the German bicameral system.

Continuing from the study visits, workshops are taking place in 2012 in Sanaa where the foundations are being laid for a comprehensive understanding of the important topics during the transitional phase. The foundations of the political system are to be put across in a way that is based on comparative law. This includes the concrete implementation of the principles of rule of law, democracy and protection of fundamental rights, amongst others. It will be important to communicate the idea that adhering to fundamental rights in this reform phase is particularly important, especially to maintain legitimacy in the eyes of the public. Finally, at the end of the National Dialogue, a state structure should emerge that has the widespread approval of the people. As it concerns controversial issues amongst religious and social interest groups (who, in light of the existing tension and conflicts in Yemen, should be treated with caution), close consultation and analysis of content with the Yemeni
partners is imperative before these topics are introduced into the project activities curriculum.

3. Further planning

A series of workshops is planned in Sanaa for the second half of 2012. The institute will provide long-term, sustainable support for the constitutional reforms within the framework of the “National Dialogue”.

Max Planck Team during the workshop on Civil and Political Rights in Sanaa, Yemen
Q. Kyrgyzstan

1. Background

In comparison with other CIS states, Kyrgyzstan is economically underdeveloped and, unlike other Central Asian countries, has relatively little in the way of natural resources. Since its independence from the Soviet Union in 1991, there has been constant unrest and political change in the country. Most recently, in April 2010, the public’s dissatisfaction with the president led to demonstrations and an ultimately violent change of government. The constitutional referendum held in June 2010 made Kyrgyzstan the first parliamentary republic in Central Asia.

Kyrgyzstan may have signed several human rights agreements and guaranteed fundamental rights in its constitution, but the actual enforcement of human rights laws is inadequate. In order to improve the situation for vulnerable groups in Kyrgyzstan in particular, such as children, women and the disabled, the Global Knowledge Transfer project team has been carrying out a project funded by the European Union to protect these minorities since 1 May 2012. The legal situation in the country is to be analysed in close contact with local partners, and multipliers are to be educated on human rights.

2. Projects

Only a few days after the beginning of the project in May 2012, the first coordination meetings took place in Bishkek, Kyrgyzstan. At the meetings, Global Knowledge Transfer staff were able to exchange opinions with the local cooperation partner, the Kyrgyz NGO “Kyz Ayim”, regarding the particularities of the legal situation in Kyrgyzstan and begin the coordination of the project. The former Kyrgyz constitutional judge, Chynara Musabekova is working on the side of Kyz Ayim as a correspondent and project coordinator in the project country.
At a later round table in the judicial faculty of the university in Bishkek, the discussions were intensified and the aims of the project – strengthening the rights of children, women and the disabled – came into focus. The local Kyrgyz experts, who will examine the status of legislation concerning these disadvantaged groups in academic essays, presented their exposés before discussing them with Global Knowledge Transfer staff. In the further course of the project, the Heidelberg team of experts will evaluate the essay results and check the legal situation in Kyrgyzstan for compliance with international law. Current legislation can thus be analysed to draw up proposals to improve the situation and improve how executive bodies apply applicable law.

The participants at the round table included former constitutional judges, parliamentary lawyers, law professors from the university in Bishkek, representatives of the Kyrgyz Bar and lawyers from Kyrgyz NGOs.

The first journey to Kyrgyzstan therefore provided an important insight into the legal situation in the country and enabled the preparation of the project activities that followed. These began in summer 2012 with the creation of six studies on the project themes and continued in September 2012 when lecturers were prepared for future seminars.
3. Further planning

Along with the aforementioned analysis of the legal situation, developing proposals for improvement and improving how executive bodies apply applicable law, a series of training activities to strengthen the rights of children, women and the disabled in Kyrgyzstan is planned. In seminars lasting several days, planned in five oblasts of the country (Chui, Talas, Osh, Naryn, Issyk-Kul), around 100 lawyers from NGOs specialising in protecting the rights of children, women and the disabled, 25 defence lawyers specialising in human rights protection, 25 judges, 200 law students and 25 representatives of stakeholders are to be trained. The main topics will include:
a) Fair trial principles: International standards and legislation in Kyrgyzstan, specific elements of the fair trial principle, the right to the administration of justice and practice in Kyrgyzstan, independence and impartiality of the court (international standards and national legislation in Kyrgyzstan), fair trial guarantees in criminal trials in Kyrgyzstan (compliance with international standards).

b) Protection of children’s rights in court: children’s rights compared to national and international standards, rights of young people in civil proceedings in Kyrgyzstan, rights of young people in criminal proceedings in Kyrgyzstan.

c) Protection of women’s rights in court: women’s rights compared to national and international standards, women’s rights in civil proceedings in Kyrgyzstan, women’s rights in criminal proceedings in Kyrgyzstan.

d) Protection of the rights of the disabled and minorities in court: rights of the disabled compared to national and international standards, rights of the disabled in civil proceedings in Kyrgyzstan, rights of the disabled in criminal proceedings in Kyrgyzstan.

These seminars are able to reach more than 300 multipliers and, in intensive training activities, these participants can broaden their knowledge about the current law in Kyrgyzstan, discuss and stimulate recommendations for improving the legal situation, acquire practical guidelines, become acquainted with the function and role of civil society, exercise existing rights or support third parties in exercising their rights and in doing so improve human rights protection and protection of minorities in Kyrgyzstan.
R. Academic support and analysis

1. Symposium on Constitutional Law in Islamic Countries

From 12 to 16 February 2009, the Global Knowledge Transfer working group held two symposia on “Constitutional Law in Muslim Countries” and “Challenges for the Afghan Constitution – Impulses from a Comparative Perspective”.

The aims of this event were to analyse constitutional law in states with predominantly Muslim populations from a comparative perspective, record current developments and discuss specific problem areas. The knowledge acquired is to be applied to an Afghan context by the same experts in order to achieve academic cooperation and to help prevent the participating Afghans from seeing the situation in an isolated manner. In this way, the project team wanted to give fresh impetus to the development of the Afghan constitution. Correspondingly, alongside experts from the Islamic world, Asia, Africa, Europe, North America and Australia, a large delegation from Afghanistan took part, consisting of members from legislative, executive and judicial branches.

An important and controversial topic was the relationship between constitutional law and Sharia. This was first brought up by Prof. Dr. Mohammad Hashim Kamali (Malaysia) with regards to an Islamic governmental reform and by Prof. Wolfrum (Max Planck Institute for Comparative Public Law and International Law) in relation to international legal frameworks for constitutions. The relationship between Sharia and constitutional law in Egypt (Dr. Adel Omar Sherif), Kazakhstan (Prof. Dr. Zhenis Kembayev), Nigeria (Prof. Dr. Asem Khalil), the Maghreb countries (Conseiller d’Etat Thierry Le Roy) and the Palestinian Autonomous Area (Prof. Dr. Asem Khalil) was then debated. Here it was made clear that there is a lack of uniform standards for the relationship between constitutional law and Sharia, as every form of this relationship depends greatly on the particular religion, culture and legal tradition.
The models for institutionally safeguarding compliance to constitutional norms (e.g. with constitutional courts or human rights commissions) were also looked at from a comparative perspective (Prof. Dr. Rainer Grote, Max Planck Institute for Comparative Public Law and International Law) and discussed using national studies on Tunisia (Dr. Imen Gallala, MPI for Private Law in Hamburg), Pakistan (Dr. Hamid Khan), Malaysia (Prof. Dr. Hoong Phun Lee), Iran (Prof. Dr. Seyed Mohammad Hashemi) and Iraq (Dr. Feisal al-Istrabadi). The participants concluded that effective control mechanisms were lacking almost everywhere and this would make strengthening constitutional culture and the rule of law considerably more difficult.

The separation of powers presented another important discussion topic that has caused problems in many Islamic countries. Building on an historic and comparative overview of the different forms that separation of powers can take in Islamic countries (Dr. Tilmann Röder, Max Planck Institute for Comparative Public Law and International Law), the concrete application of separation of powers in Pakistan (Dr. Martin Lau) and in Lebanon (Dr. Cordelia Koch) was explained.
The final day of the event dealt exclusively with problems related to the Afghan constitution and a symposium was held on the issue. Speakers included the Deputy Minister of Justice Dr. Mohammad Qasim Hashimzai, Deputy Chief Justice of the Afghan Supreme Court Bahauddin Baha, parliamentarian Shukria Barakzai and Prof. Dr. Ali Wardak as an expert in tribal law and its relationship with the constitution. Important aspects included the controversial interpretive sovereignty of the constitution, violations of the separation of powers as well as the triangular relationship between constitution/law, Sharia and tribal law. The symposium ended with a podium discussion about the Afghan constitution which may have revealed a sobering picture overall, but also indicated progress in constitutional practice. The participants were largely united in the view that constitutional amendments are too risky a method for resolving the problems; it is more a matter of trying to implement the existing regulations.

2. Conference on legal pluralism

From 17 to 19 May 2011, a working group from the Max Planck Institute organised a conference in Berlin on the topic “Decision-Making on Pluralist Normative Ground” in cooperation with Berlin’s Collaborative Research Center 700, which deals with governance in areas of limited rule of law, and the “WZB Rule of Law Center”, which deals with the problem of legitimate political rule in particular. The event was funded by the Institute for Foreign Cultural Relations (ifa-zivik).

Based on the finding that traditional arbitration methods and institutions still dominate many rural areas of Africa and Asia and that state legislation and jurisdiction play only a minor role at best, the relationship between traditional conflict management on one side and modern western-style legal systems on the other was paramount. It was therefore necessary to examine whether the plurality caused by the parallelism of different dispute settling mechanisms described above leads to – or must lead to – a normative fragmentation of society in an area of limited rule of law, or
whether it can, in fact, work satisfactorily. Pakistan, South Sudan, Ethiopia and South Africa served as case studies.

The organisers chose an innovative, methodical approach in which they made the local decision-makers themselves the focus. Representatives of different non-government arbitration institutions and judges from the four countries themselves therefore reported from experience and discussed the aforementioned issues with the conference participants. This allowed not only an understanding of the essence and future of conflict resolution, but also enabled comparisons between colonially formed states and non-
colonialised states, African and Asian states and finally Muslim and non-Muslim states and societies.

Several participants are currently working on a book with the working title *Justice between Tradition, Religion and the State: Decision-making on Pluralist Normative Ground*, which is expected to be published by Palgrave Macmillan in the middle of 2013.
S. Other publications and projects

Numerous academics from the Max Planck Institute have worked on research projects that were inspired by the Global Knowledge Transfer projects but cannot be assigned to a national project.

Philipp Dann’s post-doctoral project examined the structures of administrative law for cooperative development projects. It aims to analyse instruments, processes and benchmarks of this cooperation on a German, European and global level and to conceptualise such legal matters as a development of administrative law. The project is therefore devoted to an area largely unexplored in law. The post-doctoral project is part of the Schumpeter project “Law and Governance of Development Cooperation”.

Nele Matz-Lück’s post-doctoral project “The Integrative Power of the Constitution” deals with the normative question of how state constitutions must be formed to establish solidarity in a state’s political community – and as a result also in the state itself – and ensure this in the long term. The description of the role and power of the constitution as “integrative” in this paper focuses on questions of assembly and solidarity of government unity in situations following armed conflicts and in the case of diverging states.

In her doctorate project, Johanna Mantel is analysing “Reservations of Islamic States to International Human Rights Treaties”. The project deals with the so-called “Sharia reservations”, which result from reservations of selected Islamic states, and examines these for compatibility with the principles of international law. The paper compares these reservations with those of non-Islamic states to highlight the specific characteristics of the “Sharia reservations”.

Dr. Ramin S. Moschtaghis’s thesis was published in 2010 with the title “Die menschenrechtliche Situation sunnitischer Kurden in der Islamischen Republik Iran: Probleme der Verwirklichung der Menschenrechte in einer stark religiös geprägten Rechtsordnung im Spannungsfeld zwischen Völkerrecht, iranischem
Verfassungsrecht und schiitischem religiösem Recht. The author deals with specific human rights issues for members of the Kurdish and Sunni minority in the country. The main themes include restricted access to public office for Sunnis, restrictions on exercising freedom of religion and the linguistic rights for members of the Kurdish minority, which are only granted on a highly restricted basis.
T. Building of academic networks

1. International visitor groups

Finally, numerous visits of international groups as well as those of guest scholars can be noted. These visits were overseen by the staff of the Global Knowledge Transfer project and include amongst others:


05-06/12/2002 Visit of the president of the Inter-American Court of Human rights

09/04/2003 Visit of the chairperson of the tax committee of the Mongolian parliament.

04/06/2004 Visit of a delegation from Korea.

19/10/2004 Visit of a delegation from the legal committee of the Chinese National People’s Congress.

08-09/11/2004 Visit of a delegation from the legal office of the State Council of the People’s Republic of China.

06/02/2006 Visit of a delegation from Ethiopia.

03/04/2006 Visit of a delegation from Mongolia.

16/05/2006 Visit of a delegation from Latin America.

04/06/2007 Visit of a delegation of high-ranking lawyers from the worldwide rule of law programmes of the Konrad Adenauer Foundation (Konrad-Adenauer-Stiftung/KAS).
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tr>
<td>08/01/2008</td>
<td>Visit of a delegation from Uzbekistan and Kyrgyzstan.</td>
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<td>09/05/2008</td>
<td>Visit of four rapporteurs from the Constitutional Court of Turkey.</td>
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<tr>
<td>22/10/2008</td>
<td>Visit of high-ranking lawyers from the Middle East and North Africa.</td>
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<tr>
<td>04/02/2009</td>
<td>Visit of a delegation from the Constitutional Court of Albania.</td>
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<tr>
<td>05/03/2009</td>
<td>Visit of a delegation of legal experts from Namibia (KAS).</td>
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<tr>
<td>16-20/03/2009</td>
<td>Visit of a delegation from Kazakhstan.</td>
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<tr>
<td>26/03/2009</td>
<td>Visit of a delegation from the USA.</td>
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<tr>
<td>11/09/2009</td>
<td>Visit of a delegation from Switzerland.</td>
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<tr>
<td>03/12/2009</td>
<td>Visit of a delegation from the rule of law programme of the Hanns Seidel Foundation.</td>
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<tr>
<td>02/02/2010</td>
<td>Visit of a delegation from the Kingdom of Bhutan.</td>
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<td>05/03/2010</td>
<td>Visit of a delegation from the Constitutional Court of Kosovo.</td>
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<tr>
<td>19/03/2010</td>
<td>Visit of a delegation from Mozambique and Angola.</td>
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<tr>
<td>20-21/04/2010</td>
<td>Visit from the Constitutional Court of the Republic of Moldova.</td>
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06/05/2010  Visit of a delegation from the advisory council of the Constitutional Court of Ethiopia.

17/11/2010  Visit of constitutional experts from Benin and Mali.

15/02/2011  Visit of a delegation from the Constitutional Court of Moldova.

10/03/2011  Visit of a delegation from the “Protection Project” of the John Hopkins University, USA.

27/06-01/07/2011  Visit of staff from the Constitutional Court of Moldova and the Constitutional Court of Ukraine.

22-24/02/2012  Visit of a delegation from Yemen.

02/04/2012  Visit of a delegation from Saudi Arabia.

10/12/2012  Visit of a delegation from Syria.

14/12/2012  Visit of a delegation from Senegal.

From 4 October to 28 November 2009, Mr. Hamin Jan from Peshawar, Pakistan studied the principles of academic methodology as a guest scholar at the Max Planck Institute as part of a Cross-Culture Internship operated by the Institute for Foreign Cultural Relations (Institut für Auslandsbeziehungen /ifa- zivik). In his homeland he works as a lawyer for the “Community Appraisal & Motivation Programme” (CAMP).

From 24 November to 23 December 2009 Prof. Dr. Badiul Alam Majumdar from Bangladesh visited the Max Planck Institute as a guest scholar. Prof. Badiul is the vice-president of and country director of the “Hunger Project Bangladesh”. He is also the secretary of the citizens’ initiative “SHUJAN –
Citizens for Good Governance\(^\text{\textcircled{\textregistered}}\). He used his visit for the intensive study of constitutional and international law.

2. Participation in international conferences (selection)

The Global Knowledge Transfer working group took part in numerous conferences on themes relevant to Global Knowledge Transfer, organised by the Max Planck Institute itself or by external parties.

The issue of establishing and promoting rule of law was the focus of the 21st Global Issues for Promoting Rule of Law forum in the Federal Foreign Office where, for example, Prof. Wolfrum lectured on promoting the rule of law, an issue reflected in the institute's projects. Dr. Tilmann Röder presented research results on the militarisation of judicial reconstruction in Afghanistan at an event held by the Hague Rule of Law Network in Utrecht under the general theme of “Civil-Military Cooperation in Building the Rule of Law”.

Dr. Kathrin Maria Scherr gave a presentation on “Elections, Referendum and Tough Choices in Sudan” at the meeting of the African Studies Association. In addition, Jan Amilcar Schmidt presented a comparative study on the topic “Federalization Process and Institutional Set-up” within the framework of the Constitutional Expert Forum for Somalia, held in Djibouti from 6 to 11 January 2012.
U. Additional working group staff

In order to organise project coordination more effectively, the working group set up an independent secretariat, in which Marina Filinberg et al are responsible for communication and taking care of visitors.

At the end of 2011, this was supplemented by an additional coordinations office that assumes full management responsibilities and lightens the workload of the institute administration. Simone Malz and Johannes Krusemark-Camin are responsible for various cross-cutting tasks.

Christine Letkemann is responsible for finance and accounting, Iris Füll for staff issues.

The institute administration, library, IT team and other units of the Max Planck Institute for Comparative Public Law and International Law also support the project work.

Particularly noteworthy are the chief administrator Klaus Zimmermann and the (former) librarians Petra Austen and Joachim Schwietzke who helped with book acquisition, library development in several countries and supporting visiting groups.

Many interns are supervised and many student teachers trained within the framework of the Knowledge Transfer projects.
V. Further publications by the project staff

The following list comprises the publications of current and former project staff in addition to the publications already named in this report.


Constitution-Making in Islamic Countries – A Theoretical Framework, in R. Grote and T. Röder (eds.), Constitution-
Making in Islamic Countries: Between Upheaval and Continuity, New York 2011.


Markus Benzing


Markus Böckenförde


“Constitutional Engineering” and Decentralization –


*FES Manual on The Power of States in a State – The Case of Sudan, Friedrich Ebert Stiftung (FES)*, Khartoum 2007: 19 (translated into Arabic by the FES).


**Philipp Dann**


Accountability in Development Aid – the World Bank, UNDP and Emerging Structures of Transnational


Entwicklung verwaltungsrecht, Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit, untersucht am Beispiel der Weltbank, der EU und der Bundesrepublik Deutschland, Tübingen 2012.

Verfassungsberatung in Afrika als Grenzgang zwischen

Hatem Elliesie


Clemens Feinäugle


Hoheitsgewalt im Völkerrecht – das 1267-Sanktionsregime der UN und seine rechtliche Fassung, Heidelberg 2011.

Imen Gallala


Rainer Grote

Editorial staff member of the Journal Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law/ ZaöRV)

Coeditor of the series Constitutions of the Countries of the World (Oxford University Press).


**Daniel Gruss**


**Alexandra Hilal Guhr**


Omar Hamady


Constitutional Processes in Post-Arab Spring Context, in ZaöRV 2012 (forthcoming).


**Stefan Häußler**


**Daniel Heilmann**


The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes, in *ZaöRV* 70, 2010: 619-624.


*Max-Planck Encyclopedia of Public International Law* (Managing Editor), 10 Volume Set, Oxford 2012.

**Cristina Hoss**


Noha Ibrahim


The Sudanese Bill of Rights, in International Journal of Human Rights 12 (4) 2008: 613-635.


Adele Kirschner

Johanna Mantel

Ramin Moschtaghi


*Die menschenrechtliche Situation sunnitischer Kurden in der Islamischen Republik Iran*, Heidelberg 2010.


Naseef Naeem


Matthias Reuss

*Menschenrechte durch Handelssanktionen - die Durchsetzung sozialer Standards im Rahmen der WTO,*


Volker Röben


The Enforcement Authority of International Institutions, in A. v. Bogdandy, R. Wolfrum et al. (eds.), The Exercise of Public Authority by International Institutions, Heidelberg 2010: 819-842.

**Tilmann J. Röder**

Constitutionalism in Islamic Countries: Between Upheaval and Continuity, Oxford 2011.

**Kathrin Maria Scherr**


**Jan Schmidt**


**Martina Spernbauer**


