

## ***Conference Reports***

### **International Conference on Harmonisation of Shari'ah and Civil Law 2**

The International Islamic University Malaysia (IIUM) has been playing an important and active role in contributing towards the process of Islamisation in all fields of knowledge in Malaysia. Ahmad Ibrahim Kulliyah of Laws (AIKOL) is directly involved in this process in the field of law. The Harmonisation and Shari'ah Law Unit (HSLU) was established in AIKOL in 2002 to enhance the Shari'ah content of civil law and to take a reformist approach to the Shari'ah itself.

#### **The Conference Objectives and Participants**

In the spirit of continuing this role, the first International Conference on Harmonisation of Shari'ah and Civil Law was held at the Legend Hotel in November 2003. Being the first conference of its kind, the papers discussed very general approaches to the harmonisation of Shari'ah and civil laws in many fields. For the second conference, the organising committee decided to focus on the methodology for harmonisation. The objectives of this conference were:

1. To articulate methodological guidelines towards the harmonisation of the Shari'ah and civil law.
2. To identify the *modus operandi* towards achieving harmonisation of Shari'ah and civil law.
3. To further refine the existing methodologies in achieving harmonisation of the Shari'ah and civil law.

This second conference was organised by the Ahmad Ibrahim Kulliyah of Laws together with the Harun M. Hashim Law Centre and the Department of Shari'ah Judiciary Malaysia and held on 29<sup>th</sup>

and 30<sup>th</sup> June 2005, at the Pan Pacific Hotel, Kuala Lumpur. There were 204 registered participants where 72 were staff from Ahmad Ibrahim Kulliyah of Laws. Other participants were from local institutions and government agencies, delegates from Singapore, and two large delegations from Indonesia and Nigeria, respectively.

A total of twenty-three (23) papers were presented by local and international speakers in this conference including four keynotes. A majority of the papers were delivered in English, and several were in Bahasa Malaysia and Arabic. Non-English papers were summarised in English in the Proceedings and powerpoint slides. There were a total of eight sessions with four sessions per day. Each day had two keynote addresses.

The conference was officiated by Dato' Abdul Hamid Mohamad, honourable judge of the Federal Court of Malaysia. In his opening speech, the learned judge remarked on how Islamic law has not developed in tandem with new developments and problems as has civil law. He holds the view that the more favourable approach to be taken is to accept existing laws as a basis and adjust them so as to be "Shari'ah-compliant."

### **The Keynote Addresses**

The first keynote address was delivered by Prof. Mohd. Hashim Kamali, the Dean of ISTAC, IIUM, also the founding member of HSLU. He delivered an illuminating paper proposing a new scheme for *Uşul Fiqh* in harmonising the Shari'ah and civil law. He explored the prospects of a revised methodology by revisiting the theory and practice of *Uşul Fiqh* and stressed that "the alternative proposed must seek to strike a balance between the need for continuity and preservation of a valuable heritage and a determined effort to bridge the gap between the Shari'ah and civil law." The audience were also fortunate to listen to Prof. Mahmood Ghazi, President of IIU Islamabad, who spoke at length on "Pakistan's Experience on Harmonisation of Shari'ah and Civil Law through Statutory and Judicial Methodologies." His keynote stressed on the gradual and ongoing nature of the harmonisation process which to him, must include the process of restructuring the society and should emphasise several pivotal areas like the economy, the religious life of a Muslim, the educational system, the law and the constitution. Professor

Abdullah Alwi Hassan of the Academy of Islamic Studies, University Malaya delivered the third keynote. He spoke about “Ijtihād and its Role in Harmonising the Practice of Sharī‘ah in the Contemporary Muslim World.” His keynote, delivered in Bahasa Malaysia, traced the developments in the practice of ijtihād spearheaded by the movements to “open the doors of Ijithād” by Jamal al-Din al-Afghani and Shaykh Muhammad ‘Abduh as well as efforts made in Egypt by Shaykh Ahmad Muhammad Shakir. He observed that most of the aspects of harmonisation between Sharī‘ah and civil law used in the majority of Muslim countries are administrative and procedural in nature without touching on the substantive laws under the Sharī‘ah. He questioned the use of legislative powers as a valid methodology for harmonisation of Sharī‘ah and civil law with specific reference to the qualification of members of the legislature, primary sources of the law as well as the legislative process itself.

The final keynote was delivered by Sheikh Khalid Sayfullah Rahmani, the Secretary-General of the Islamic Fiqh Academy, based in New Delhi, India. Sheikh Rahmani delivered the keynote in Arabic on *Talfīq* (Co-Relation) and *Ijtihād* (Interpretation) as methodologies for harmonising Sharī‘ah and civil law. He gave instances in the area of family law and concluded by cautioning on the impropriety of equalising *Nuṣūṣ* with the interpretation of jurists and ignoring the distinction between interpretative and ultimate matters.

### **The Papers**

There were two papers in the first session both of which touched on the approaches to finding a methodology for the harmonisation. Dr. Muhammad Amanullah, in his paper “Principles to be Followed in Partial Harmonisation Between Islamic Fiqh and Man-made Law” did not agree that there can be total and complete harmonisation between the Sharī‘ah and civil law due to the divine and unchangeable nature of the Sharī‘ah. Thus, he advocated a “partial” harmonisation of Islamic Fiqh (which according to him “is not totally divine”) and civil laws. He offered several instructive principles (broadly categorised as “positive” and “negative”) to follow in the harmonisation process. It is interesting to note that one of those principles was also mentioned by the third keynote speaker, Prof. Abdullah Alwi, namely that “the harmonisation process should not

be left in the hands of the contemporary parliament of any Muslim country because according to Islam, most members of the Parliament are not qualified to do so.”

Professor Abdul Aziz Bari’s paper “Harmonisation of Laws: A Survey of the Issues, Approaches and Methodology Involved” is an interesting take on the various concepts of harmonisation of laws, in general. After pointing out instances where harmonisation may not be necessarily beneficial, he concluded by identifying three situations where harmonisation of laws is relevant, namely: 1) Between laws within a legal system where those laws emanate from different legal systems or civilisations; 2) between the various laws in a new legal system resulting from a merger of states and territories; and 3) in the international arena where the process involves issues of sovereignty.

Professor Ibraheem Sulaiman of Ahmadu Bello University, Nigeria, discussed the “Problems and Prospects Towards a Methodology of Harmonisation” and contended that in general, Islamic law must run *pari passu* with political development. He used examples of the political transformation in West Africa and Sudan to exemplify this general rule. Citing the views of Caliph Muhammad Bello of the Sokoto Caliphate, Dr. Muhammad Iqbal and Sadeq al-Mahdi, Prof. Ibraheem outlined the shape of future Islamic legislation, namely: (1) It should be a synthesis of the principles and precepts embodied in all the Schools of Law; (2) It should be a synthesis of the Islamic legal heritage and the contemporary legal thought and experience world wide; (3) It should aim to solve problems and should not be speculative, neither should it arise out of pressure exerted from outside. The learned professor observed that although the mood in informed circles in the Muslim world today pointed to the desirability of unification, integration and harmonisation, it is also necessary to take note of certain factors that may hinder such efforts, namely, the shrinking frontiers of Islamic law due to the proliferation of international conventions and treaties influenced by donor agencies, and the selective application of Islamic law “that does violence to the integrative and organic nature of the Sharī‘ah itself.”

Dr. Said Bourehaoua’s paper was on “*Siyasah Shar‘iyyah* as an Approach for Harmonisation of Sharī‘ah and Civil Law.” *Siyāsah Shar‘iyyah* connotes the administration of affairs in a harmonious

and positive manner for the government to prevent corruption and to maintain order. The presenter regarded it as a comprehensive methodology processed within the Islamic state that can deal with other laws either by means of harmonisation or Islamisation. He maintained that *siyāsah shar‘iyyah* can play a crucial role in the process of harmonisation by providing an epistemological and methodological framework and outlined several ways in which this was to be done.

Another interesting paper was by Dr. Abdurrahman R.A. Haqqi from the University of Brunei Darussalam. In his paper, Dr. Abdurrahman likened Islamic legal maxims to the fruit of Islamic jurisprudence, they being theoretical abstractions, in the form of short epithetical statements, that express the goals and objectives of the Sharī‘ah. After mentioning several Islamic legal maxims or *Al-Qawā‘id al-Fiqhiyyah* and maxims under common-law, the presenter attempted to show some similarities in the essence of the maxims from both legal systems. Two broad areas where the maxims converge are with regard to “intention” and “custom.” Dr. Abdurrahman concluded by observing that practitioners of Sharī‘ah and civil law that are able to master and appreciate the legal maxims, both under Islamic law and under common law, would most probably be able to find a desirable solution of upholding the law concerned in any area.

Majdah Zawawi discussed the need to harmonise Islamic principles with contemporary bioethics in the area of assisted reproductive technologies (ART). The concern under Islamic law is with regard to protecting the five *Maqāshids* of the Sharī‘ah, particularly, the *maqāshid* of protecting the progeny (*al-nasl*). She explained the approaches under Western bioethics, expounded the concept of responsibility in bioethics and identified the meeting point with Islamic ethical principles. She concluded by advocating that legislation to regulate ART should be based on prevailing ethical principles of the Malaysian people. This may be done by accepting the model set out by the Sharī‘ah by permitting the use of ART to be used between married couples.

The closing ceremony was addressed by the Dean of Ahmad Ibrahim Kulliyah of Laws, Assoc. Prof. Dr. Nik Ahmad Kamal Nik Mahmod. He hoped that the conference had provided a good forum

for the discussion of the various methodologies towards the harmonisation of Shari'ah and civil law and left the participants with some fertile thoughts on the subject.

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## **The Yemeni-Hadramis in Southeast Asia**

The Department of History and Civilisation of the Kulliyah of Islamic Revealed and Human Sciences, International Islamic University Malaysia (IIUM), in collaboration with the Embassy of the Republic of Yemen, organised an international conference on "The Yemeni-Hadramis in Southeast Asia: Identity Maintenance or Assimilation?" The conference was held at the University's main campus at Gombak and the Crown Princess Hotel, Kuala Lumpur, August 26-28, 2005.

### **Rationale & the Channels**

The Conference was based on the recommendations of a joint meeting held in Mukalla, Yemen, in 2004 between the Dean of the Kulliyah of Islamic Revealed Knowledge and Human Sciences (IIUM) and the top management of the Hadramout University of Science & Technology. The Department of History and Civilization of IIUM was then entrusted to organise the conference with the following objectives:

1. To further academic collaborations between the International Islamic University Malaysia and its counterparts in the Republic of Yemen.
2. To offer an opportunity for scholars across disciplines to engage in a multi-disciplinary forum that will illuminate the distinctive aspects of the Yemeni-Hadrami diaspora in Southeast Asia.