

11TH MALAYSIAN LAW CONFERENCE
8TH – 10TH November 2001

CLOSING SPEECH

By

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Originally, this conference was scheduled to be officially closed by Y.A.A. Tan Sri Wan Adnan bin Ismail, the President of the Court of Appeal, Malaysia. However, due to unforeseen circumstances, Y.A.A. Tan Sri Wan Adnan is unable to make it. He tenders his sincere apology to all of you.

I too would like to apologise to all of you, in advance, in case I turn out to be a poor substitute.

Let me first make a point. Although I am standing in for the President of the Court of Appeal, I have not been given a prepared speech to read. Indeed, I am given a free hand to say what I want to say. That is an example of the independence of the judiciary.

Whatever it is, my job is quite an easy one. The reason is that, first, all that has to be said and can be said, has already been said. There is not much left to be said. Secondly during the last three days you have heard so many speeches that you are not in the mood to hear another one. So, what I say or do not say, does not really matter.

Be that as it may, I cannot help but make a few observations. First, judging from the topics, the number of participants, from what is said during the discussions, one thing is certain: freedom of speech still exists in this country.

Secondly, the Executive, the Judiciary and the Bar may have different views on certain things. Yet, they can still come together, listen to each other's views with respect and even where they cannot agree, they can still agree that they cannot agree. That is a sign of maturity.

Thirdly, judging from the sumptuous lunches and dinners served, it does not appear that we have been affected by the economic slowdown yet.

Fourthly, in spite of the bashing that the Government of Malaysia often gets from the Bar Council, the Government has contributed RM180,000.00 towards the expenses of this conference, without any strings attached. I wonder how many governments in this world would do that.

Fifthly, look at the wide range of subjects that have been discussed during the conference. We have discussed subjects ranging from children, family, environment, Malaysian law both substantive and procedural, legal profession including foreign lawyers, judiciary, executive, banking both “Islamic” and “conventional” (or “unIslamic”, as some would like to call it) human rights, national security and fundamental liberty, e-commerce and others.

To me, the topics are very well balanced and they are matters that concern us, Malaysians living in Malaysia in this World. In my view, in interpreting, applying and developing our law, that is the order of priority that we should take. No nation in this world, no matter how benevolent it may project itself to be, will ever place another nation’s interest, well-being, security or law and order over and above its own in making a decision, political or otherwise. No legislature, indeed no court in a country in this world even considers the public policy, public morality, sensitivities and “local circumstances” of another country when making, interpreting or developing its own laws. Similarly, I believe that, in making, interpreting or developing our own law, we must always bear these factors in mind.

I observe that in the early years of the introduction of the common law of England and the rules of equity in this country, the colonial judges were very sensitive about what is often referred to as the “local circumstances”. Even section 3 of the Civil Law Act 1956 introduced one year before Malaya obtained her independence that entrenched the application of the English common law and the rules of equity in this country begins with the words “Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia...” and ends with a proviso that “the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.” However, more often than not, the proviso especially, appears to be forgotten. Indeed, at times, I get the impression, rightly or wrongly, that the colonial lawyers and judges, were more sensitive towards our “local circumstance” than many of us.

But, please do not misunderstand me. I do not for one moment say that we should close our eyes, ears and minds as to what is happening in other jurisdictions. I do not say that we should not refer to or apply the authorities from other jurisdictions. No. All I say is that we should think and analyse them first and not just follow them blindly.

Ladies and gentlemen,

I am afraid I have to make one more point. If I am contradicting what I have said at the beginning of this speech that there is not much left to be said, I withdraw my earlier statement. And my sixth point is this. I notice one significant

difference between this conference and those earlier ones that I used to be involved in about twenty years ago. The difference is this. Unlike those earlier conferences, the participants of this conference are a mixture of what we may roughly classify as “civil lawyers” and “syariah lawyers”. Of course, I use the term “lawyers” to include academicians and non-practising lawyers. And, a number of them are quite well-versed in both laws. I think this is an important indicator of the future of the legal and judicial system of this country: a fused or unified system, or by whatever name you may want to call it.

It is most unfortunate that, even until this very day, a line has consciously or unconsciously been drawn separating what is arbitrarily classified as “civil law” and “syariah law” making many to believe that all “civil law” is “unIslamic” and all the so-called “syariah law” is ordained by God and that there is no non-prophet human opinion in it. This is due to the ignorance and prejudice of both groups of the other law. This is made worse by the over-emphasis on the difference rather than similarity of the two laws, for whatever reason, motive or pure ignorance. This has led to a situation where one side fears what it does not know. The other side condemns what it does not know. And both sides reject what they do not know.

Ladies and gentlemen,

I made this call three weeks ago at the Bar Council Auditorium and repeated it this morning at the University of Malaya, on both occasions in Malay and now I am repeating it in English. I suggest that a study be made of all the laws of this country, written or otherwise, so that we know how many percent of the laws now in force in this country are Islamic or unIslamic so that we know what we are really talking about and so that, where the two differ, we will be able to compare them. By the word “unIslamic” I mean contrary to the principles of Islam.

Ladies and gentlemen,

I have now really come to the end of my speech. But, before leaving just allow me to congratulate the organizing committee for the success of this conference.

Ladies and gentlemen,

I now declare the 11th Malaysian Law Conference officially closed.

Thank you.