

## THE CALIPHATE HAD ICERD TOO: A RESPONSE

By

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I do not normally respond to other people's articles or statements. However, this time it is different. Now, we have a foreigner who flies in, comment on a local issue regarding which he seems not to know the relevant facts. Since he was described as "a prominent US-based Turkish scholar" and "an award-winning author on contemporary Muslim issues", there is a likelihood that readers will believe what he said and will be misled by it. Besides, there are also groups and individuals who might want to use him to support their agenda.

I refer to the report by Abder Rahman Koya "The caliphate had ICERD too, Turkish scholar reminds Malaysian Muslim groups" in Free Malaysia Today on November 16, 2018 of his interview of Mustafa Akyol. Apparently, Akyol was asked to comment on the opposition by "Muslim groups" to the ratification of ICERD by Malaysia.

Before going any further, the title itself is likely to mislead Muslim readers in Malaysia. First, as they have no means to compare the provisions of ICERD and "the ICERD of the Caliphate", they might think that the two are the same.

Secondly, I believe that the use of the word "Caliphate" instead of the Ottoman Empire by the reporter was done on purpose to make Malaysian Muslims readers think that the Ottoman Empire was more "Islamic" (if not holy) than it really was and since it too had ICERD, so, as Akyol himself asked, "*Why should Malaysia stay behind?*" Clearly, there was a motive in the choice of the word "Caliphate", indeed even in choosing Akyol to be interviewed on the subject. Note that the word "Caliphate" was not used even once by Akyol in his quoted passages. Instead, he used the term "Ottoman Empire". How "Islamic" was the "Ottoman Empire" is debatable.

For easy reading, I shall reproduce what Akyol is supposed to have said in parts and comment on it:

*"I would recommend that all those in Malaysia who oppose the ICERD on Islamic grounds read the Ottoman Constitution of 1876. It reads:*

*"All subjects of the empire are called Ottomans, without distinction whatever faith they profess... [And] All Ottomans are equal in the eyes of the law. They have the same rights, and owe the same duties towards their country, without prejudice to religion."*

*"This was the ICERD that the Ottoman Empire, the very seat of the caliphate, accepted 150 years ago. Why should Malaysia stay behind?"*

*“If those who argue against ICERD have Islamic arguments in their mind, there are counter Islamic arguments as well,” he added.*

So, that is the ICERD of the Ottoman Empire that Aykol wants us to study and adopt. That one paragraph does not justify to be called ICERD. Even the content differs. Has he read the whole convention (ICERD)? Being a Turk, he could be forgiven for being proud of the Ottoman Empire, however, as “a prominent scholar” he should not be saying everything that the world now has, the Ottoman Empire had, if not better. That seems to be the line of thought of Turkish scholars that I have come across.

I wonder whether he has read the Federal (Malaysian) Constitution. There are more provisions there on personal liberty than in the Ottoman Constitution that he reproduced. It is nice to read the printed words, what more when they are 150 years old. How was it implemented? I admit I do not know. Neither did he tell us. But were there no slaves during the Ottoman Empire? What about harems? Do they have the right to marry men of their own choice?

Of course, in this part of his comments, he was referring to those “*who oppose the ICERD on Islamic grounds*”. Admittedly, in Malaysia there are groups and individuals who oppose on “Islamic grounds.” PAS and the muftis are good examples.

But I do not. I object on constitutional grounds as it affects Articles 8(4)(f), 89 and 153. So my ground is not traversed.

We now come to the second part of his statement.

*“He said the argument that ICERD would abolish Bumiputera rights was counter-productive in lifting the community economically.*

*“Relying on an advantageous status granted by the state is actually not beneficial for any group,” said Akyol. “It makes members of that group lazy, rather than pushing them to work He gave the analogy of a football match with rules favouring a particular team.*

*“Not only would that be unfair to other teams, it would also make the favoured team much less dedicated and disciplined than what it could be.”*

Note that he was merely giving his general personal opinion without referring to the Federal Constitution, particularly, Articles 8(4)(f), 89 and 153. Most probably, he had not even read the Constitution. I am very sure too that he knows nothing about the history of the Malay Peninsular (Semenanjung Tanah Melayu), at least from the time it was colonised by the British (by whatever name you call it) that led to the influx of Chinese and Indian emigrants; the negotiation for independence; the social contract that was written into the Constitution and, now, after six decades, one party to the contract is trying to challenge it. Ratification of ICERD is a means to challenge those constitutional provisions after the ratification.

Comparing the position to a football match merely shows his ignorance of the facts surrounding the issue. The issue is, a party to a social contract the terms of which have been written into the Constitution wants to abolish the said terms through the ratification of ICERD. If he does not know the history of the country, the social contract and provisions of the Constitution, the best thing for him to do is not to make any comment. It is not worth traversing the arguments put forward by him as they are clearly out of context.

Next, he was reported to have said:

*“Akyol said the opposition by some Muslim groups to the ICERD could be due to an inability to emerge from the classical Islamic system which divides Muslim and non-Muslim citizens.*

*He said such a system had been overtaken by historical realities.*

*“Yes, that was the historical experience of Muslims, but not a divinely ordained blueprint valid for all ages,” said Akyol.*

*He said the Ottoman empire realised this in the middle of the 19th century and abolished the dhimmi system, giving Christians and Jews of the empire equal citizenship with Muslims.*

*He said it was time that Muslims learnt to accept values that are Islamic even though they originate from the “un-Islamic” West.*

*“Western norms will tell you that every religious community has the right to worship freely. Is this un-Islamic? No, it is in harmony with the Quranic principle of ‘no compulsion in religion’.”*

*He said besides religious texts and traditions, humanity was expected to act with reason and conscience.*

*“And those who use them in good faith, no matter which religion or culture they come from, can come up with good ideas and principles.”*

Here again we have a “prominent scholar” talking with his feet in the air, not knowing the facts and the context to which the theories are to be applied. What he said is either irrelevant or are already provided for in the Federal Constitution.

The Federal Constitution is more modern than the constitution of the Ottoman Empire. It was written by five common law Judges, three of whom were from England, one from Australia and one from Pakistan. Four of them were Christians and only one, a Muslim.

The dhimmi system is foreign to it. Indeed, it contains the most up-to-date constitutional law principles regarding freedom and equality of all citizens except for some privileges

being reserved for the Malays and the natives of Sabah and Sarawak in exchange for the granting of citizenship to the others.

He assumes the reasons why “the Muslim groups” object to ratification of ICERD. His arguments may be valid if those were the reasons for their objection. Since he is an authority on contemporary Muslim issues, I leave it to him and “the Muslim groups” to argue among themselves.

However, the issue here, as I have stated above, is a constitutional issue: What is the effect of ratification on the discriminatory constitutional provisions which have been agreed to by the parties in exchange for the rights to citizenship to the other party? That is the issue he should address. If he does not know the subject matter and the facts, he should have just said so. It is better to say “I don’t know” than for other people to say “You don’t know.”

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