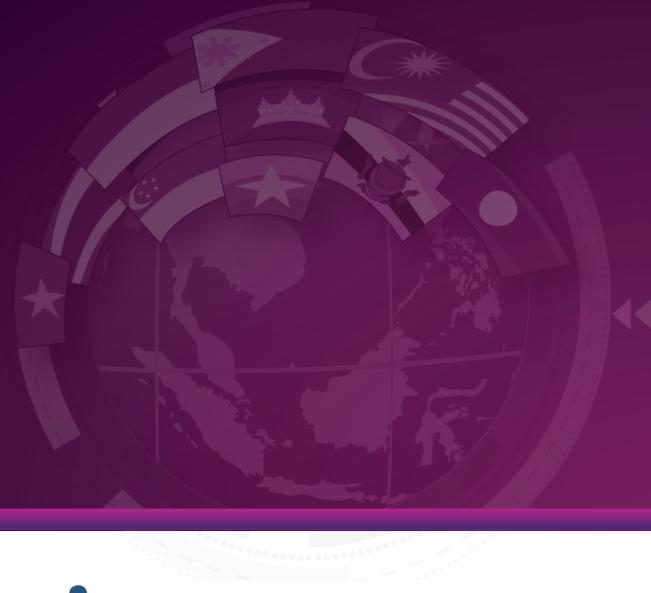




**INTERNATIONAL
MALAYSIA
LAW
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CREATING PRECEDENCE

INTERNATIONAL MALAYSIA LAW CONFERENCE

**Challenges of an ASEAN Community:
Rule of Law, Business, and Being People-Oriented**



ASEAN Economic Community: Is the Malaysian Legal Profession Ready?

Welcoming Address by Steven Thiru
President of the Malaysian Bar

By Clinton Tan and Anneliz Reina George



The President of the Malaysian Bar, **Steven Thiru**, warmly welcomed participants to the International Malaysia Law Conference (“IMLC”) 2016 with an address focused on the challenges faced by the

rule of law in Malaysia; such challenges forming the underlying theme of IMLC 2016 — “Challenges of an ASEAN Community: Rule of Law, Business and Being People-Oriented”.

Mr Thiru rhetorically questioned: *“Are we, in the Malaysian legal profession, ready to deal with the challenges that [the ASEAN Economic Community] presents, and to seize the multitude of opportunities and reciprocities that may be open to us?”*

In recognising the Malaysian legal community’s pursuit of making its mark in ASEAN, Mr Thiru observed the paramount need for continuous professional development. This, he said, must be addressed by the implementation of the Common Bar Course to deal with the perennial concerns over quality and standards.

Mr Thiru then observed that in seeking access to regional growth opportunities, *“... we cannot be oblivious to the overarching and permeating concerns on the rule of law...”* A critical aspect of the rule of law, he said, is the existence of laws that recognise and protect the fundamental rights of individuals, including access to justice.

In that context, Mr Thiru highlighted the successes of the Yayasan Bantuan Guaman (“YBGK”) — National Legal Aid Foundation — in providing access to justice in over 500,000 cases to date. Mr Thiru pointed out that these achievements were particularly commendable in light of the unfortunate payment controversies that affect YBGK lawyers.

It was then remarked by Mr Thiru that there are ongoing efforts and proposals to amend the Legal Profession Act 1976, which would undermine the Bar Council’s ability in discharging its functions. Such efforts, he said, *“brings into question the very rationale of an independent legal profession in Malaysia.”*

Mr Thiru recorded the Bar Council’s appreciation in the face of such challenges for the support given to its campaign — “HANDS OFF the Malaysian Bar!” — which *“has today garnered worldwide support from 19 international and national law organisations and countless local civil society groups.”*

Mr Thiru reaffirmed the Malaysian Bar’s resolve to ward off attempts to interfere with its

independence in its fight for justice, and in that vein informed the audience that he received a letter two days ago from the Union Internationale des Avocats (“UIA”) which read:

During its 60th Annual Congress in Budapest, the Union Internationale des Avocats (“UIA”), in cooperation with LexisNexis, will award its first Rule of Law award to recognise an outstanding contribution to the advancement of the rule of law within the legal community.

On behalf of the UIA, it is a great pleasure and honour for me to inform you that the Malaysian Bar has been selected by our Association as the first recipient of this Prize, in order to recognise its strong and unfailing commitment to the defence and promotion of human rights and the rule of law.

In closing, Mr Thiru, wished the delegates an edifying conference and stressed the need to step out into the unknown, in these challenging times.

Keynote Address by the Chief Justice of Malaysia

By Syamsuriatina Ishak

A highlight of the first morning of IMLC 2016 was the keynote address delivered by the Chief Justice of the Federal Court of Malaysia, **Tun Arifin Zakaria**. In line with the theme of the conference — “Challenges of an ASEAN Community: Rule of Law, Business and Being People-Oriented” — Tun Arifin expounded on the challenges confronting the ASEAN community.

Tun Arifin spoke of ASEAN — now the seventh-largest economy in the world and third-largest in Asia — and the institution of the ASEAN Economic Community (“AEC”) pillar, which seeks economic integration, aims to establish a common market, and purposes to enhance economic performance in the region. The Chief Justice touched on the Trans-Pacific Partnership Agreement (“TPPA”), which aims to integrate participating Asia-Pacific Economic Cooperation (“APEC”) countries into a single market by eliminating tariff and non-trade barriers, while harmonising rules and regulations among those countries.

On a regional level, Tun Arifin spoke of the joint collaborations between the judicial and legal

communities of the ASEAN member states through organisations such as the ASEAN Law Association (“ALA”) and the Council of ASEAN Chief Justices (“CACJ”). He also touched on ASEAN’s part in the promotion and protection of human rights and fundamental freedoms in the region via the ASEAN Intergovernmental Commission on Human Rights (“AICHR”), the adoption of ASEAN’s first human rights instrument (the ASEAN Human Rights Declaration (“AHRD”)) and the ASEAN Socio-Cultural Community (“ASCC”). Due to the differences — an incredible diversity in terms of religion, ethnicity and culture, and wide-ranging levels of development — across ASEAN member states, Tun Arifin remarked that any plan for economic integration would be an uphill task filled with challenges.

Next, the Chief Justice focused on the role played by the Judiciary and legal communities within ASEAN to improve the legal infrastructure as well as to harmonise laws and judicial processes in the region. On judicial reforms in Malaysia, Tun Arifin elaborated on the transformation programme embarked on by the Malaysian Judiciary since



2009 with the goal of creating a smooth and efficient administration of justice. These efforts clearly bore fruit, as Malaysia was placed 18th in both the World Bank’s “Doing Business 2016” report and the latest “Global Competitiveness Report 2015–2016” by the World Economic Forum. Regarding environmental cooperation, Tun Arifin

spoke of the ASEAN Chief Justices’ Roundtable on Environment and the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in 2011 and 2010, respectively. At the 6th Roundtable that took place this year, different environmental issues and challenges were discussed, including climate change, deforestation and illegal logging, biodiversity and illegal wildlife trade, ocean destruction, as well as transboundary issues such as haze pollution.

On the way forward, Tun Arifin discussed the lesson which ASEAN could gain from the BREXIT (British Exit) experience, in tackling issues of development inequalities and improving the human rights mechanism, for ASEAN. He concluded by expressing his belief that, with its strong foundation and remarkable achievements, ASEAN would confidently face the future as it pursues greater economic integration, while promoting a more caring and cohesive community.

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Exploring the Rule of Law: The Malaysian Experience in an ASEAN Context

By Firdaus Husni



The Chairman of the Human Rights Commission of Malaysia (“SUHAKAM”), **Tan Sri Razali Ismail** — in his Conference Address — began by saying that despite the wide diversity of ASEAN members, country leaders can find common ground towards improving the lives of their citizens, and for ASEAN to be people-oriented.

Tan Sri Razali pointed out the need for key institutions such as the law-making assembly, the Judiciary, the Bar, and a national human rights institution to aid governments to respect, protect and fulfil the civil, political, social, economic and cultural rights of its peoples. These institutions must be founded on the rule of law.

Tan Sri Razali referred to the characteristics of the rule of law set out by Lord Bingham. These are:

- (1) Laws must be accessible. They must be intelligible, clear and predictable;
- (2) Disputes should be resolved by applying the law, and not by exercising discretion;
- (3) Laws must apply equally to all, unless there are objective differences that justify differentiation;
- (4) Ministers and public officers at all levels must exercise their powers in good faith, fairly, and for the purpose for which the powers were conferred. Such powers must be proportionate and not exercised unreasonably;
- (5) Laws must afford adequate protection of fundamental human rights;
- (6) There should neither be inordinate delay nor prohibitive costs in accessing justice through the law;
- (7) All adjudication procedures provided by the government should be fair; and
- (8) Governments must comply with obligations under international law.

In illustrating the above, Tan Sri Razali highlighted the work done by SUHAKAM under its collaboration programme with the Ministry of Education entitled “Human Rights Best Practices in School”, and cited India as an example.

Tan Sri Razali elaborated on SUHAKAM’s training programmes for enforcement agencies, and stressed how the police must be the face of human rights and not of intimidation, even when acting as the bulwark of security.



Tan Sri Razali remarked that Malaysia has only acceded to three out of the nine core human rights treaties, and raised concerns on the protection of rights of indigenous communities; the alarming statistics of deaths in police custody; and the possible abuse of laws such as the Prevention of Terrorism Act 2015 and the National Security Council Act 2016. He hoped that proposed amendments to the Law Reform (Marriage and Divorce) Act 1976 would resolve issues concerning unilateral conversion.

Tan Sri Razali emphasised the need for an independent Judiciary as a prerequisite to the rule of law, and the need for adequate protection of the independence and impartiality of the Judiciary. He applauded the work done by the Government and the Bar Council in running legal aid programmes, and appealed to the Government that the amendments to the Legal Profession Act 1976 would not curtail the independence of the Bar.

Tan Sri Razali highlighted ASEAN’s commitment to human rights, with the setting up of the ASEAN Intergovernmental Commission on Human Rights (“AICHR”) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (“ACWC”).

Tan Sri Razali concluded his speech with a reminder to delegates to not lose sight of the “real value and contribution” they could make in ensuring that the rule of law is upheld.

This session was moderated by **George Varughese**, Vice-President of the Malaysian Bar.

TPPA for Lawyers: Benefit or Blight?

By Gregory Das

The Trans-Pacific Partnership Agreement (“TPPA”) has been heralded as a milestone in international trade and commerce. However, many have denounced the agreement as a step towards the curtailment of the legislative and judicial sovereignty of the signatory nations on important matters of state.

The first plenary session of the International Malaysia Law Conference 2016 was set against this backdrop of controversy, which no doubt explained the large audience in attendance.

The session, moderated by **David Peter**, included a panel of speakers with direct knowledge of the TPPA and its effects on the legal framework of the country.

The first speaker was **Datuk J Jayasiri**, Secretary-General of the Ministry of International Trade and Industry. In his official capacity, Datuk Jayasiri was directly involved in presenting Malaysia’s position at the negotiations that preceded the signing of the TPPA. During his address, Datuk Jayasiri stated that the TPPA was beneficial to the legal profession as it provided law firms with the opportunity to exploit the markets of the new areas of practice that the TPPA would introduce. It was mentioned that the TPPA would result in the liberalisation of the country’s investment sector, which would in turn give rise to the need for specialist legal services to be provided to investors.

The session’s second speaker was **Mohd Arif Abdul Hamid**, Head of the Legal Advisory Department at the Land Public Transport Commission. Mr Mohd Arif’s address focused on the TPPA’s impact on the intellectual property landscape of the country. In this respect, Mr Mohd Arif referred to a series of domestic statutory amendments that would be necessitated by the implementation of the TPPA. One such amendment would be to the Copyright Act 1987 to provide for the extension



of the duration of a copyright in literary, musical or artistic works from 50 to 70 years following, amongst others, the death of the author.

The session’s final speaker was the widely known **Gurdial Singh Nijar**. Mr Gurdial’s presentation focused on the Investor State Dispute Settlement (“ISDS”) terms of the TPPA. These terms embodied the enforcement mechanisms under the TPPA that ensured compliance with the agreement’s provisions. Mr Gurdial noted that the ISDS terms allowed private companies to

challenge the legislative, governmental and judicial actions of a signatory nation at an international level. Mr Gurdial concluded his address by referring to the widespread criticism of the ISDS terms, which have been labelled as a threat to a signatory nation’s sovereignty in occasioning the usurpation of its domestic courts in an array of matters that require judicial determination.

The session ended with a brief question-and-answer segment that included a discussion on the

propriety of the ISDS terms. Datuk Jayasiri insisted that the ISDS terms were not a novel concept in agreements of this nature, as similar terms have been included in other international trade agreements in the past. In contrast, Mr Gurdial cautioned against the effect of the ISDS terms, as they have the potential of causing significant economic detriment to countries ordered to pay prohibitive sums in damages for acting in breach of the TPPA.

In Search of Common Ground: Reconciling Religion and Human Rights

By Surendra Ananth

Religion and human rights, the two are generally perceived as dichotomous. A further nuance is injected in the local context, where Islam is defined by a certain group of individuals, with almost little or no regard to equality and justice. Any room for public discourse is often shut down. This has strengthened the said perception.

The 4th Raja Aziz Addruse Memorial Lecture, entitled “In Search of Common Ground: Reconciling Religion and Human Rights”, was by no means an easy topic to handle in the current political climate. Zainah Anwar was the ideal candidate to tackle this delicate issue, and she did a commendable job in refuting this perceived dichotomy, living up to the high expectations inherent in the topic and the keen minds of the audience, evidenced by the clear display of support and approval.

The founding member of Sisters in Islam (“SIS”) and the Director of Musawah is an internationally-acclaimed activist who advocates an administration of Islam that centres on equality and justice. The backdrop of the lecture was aptly laid out by Steven Thiru, President of the Malaysian Bar, in his introductory remarks, where he said, “It also troubles [Zainah] that human rights are often pitched as being incompatible with the religion of Islam. She disagrees, of course!”

The much-anticipated lecture finally took off, and Zainah started with taking the bull by its horns. The secularists posit that religion should have no role to play in public life. The human rights activists argue that justice and equality should only be fought through a universal human rights framework. “All fair arguments, but I do not believe they are strategic”, Zainah quipped.



These approaches do not address the reality of the situation, which was aptly put by Zainah.

“Let’s get real here. We do not live in a country where there is a strict separation of religion and state, let alone religion and politics. The reality is we live in a country where religion, and in this particular context, Islam, is a source of law and public policy.”

The lecture proceeded against this setting, that is, the actuality many refuse to acknowledge. By doing so, as Zainah noted, we have left the fields of religion and public policy wide open for the conservative and authoritarian forces within Islam to define what the religion is and is not. The religion is now used for politics, power and privilege.

Zainah then posed the following questions: “Why must I choose between being a Muslim or a feminist, a Muslim or a human rights activist? Or for that matter, why should you, if you are a lawyer, choose between being a Muslim or a lawyer who believes in justice and equality, a Muslim or a judge upholding the rule of law and the Constitution as the supreme law of the land?”

The audience sat up, with visible eagerness for answers to these questions. Zainah then said, “It was the most liberating experience to discover numerous verses in the Qur’an that provide for an ethical version of Islam, advocating the absolute moral and spiritual equality of women and men.” What? Is this the very Qur’an that the authoritative forces use to paint a patriarchal version of Islam? The audience became more anxious.

Zainah explained, by reference to various verses in the Qur’an, that all are equal in the eyes of God. “Why are we not equal in the eyes of men?”, Zainah asked. This led to the question many have been asking — whose interests are these authoritative forces serving? Is it really about living the will of God?

Zainah then took the audience through a brief history on how so much injustice, cruelty and violence are perpetrated in the name of Islam. Through this dark tunnel, light was shed at the end, when Zainah said, “What I want to do today is to give you hope ...” She poignantly observed:

“What could be more Islamic than the first article of the UN Declaration on Human Rights which states, ‘All human beings are born free and equal in dignity and rights.’”

This statement resonated strongly with the audience. Zainah explained the history and inception of SIS, and how they discovered words and messages in the Qur’an that advocated gender equality. By way of example, Surah an-Nisa 4:3 (verse on polygamy) states, “... if you fear you shall not be able to deal justly with women, then marry only one”. However, when men read the verse, they only see “marry two, three or four”. “They stopped reading after that, for in that phrase, they saw the word of God that validated their desire for and their experience for multiple sexual partners”, Zainah remarked, to a roar of applause and laughter from the audience.

This led to further questions raised by Zainah, which clearly struck a chord with her listeners. Who decides which interpretation of Islam to follow? On what basis is this decision made? Is it for the public, or for certain individuals? She clarified a pertinent point that “while all Muslims accept the Qur’an as one, the human effort in interpreting the Qur’an had always led to diverse and differing opinions”.

The point was put across clearly. The principles of justice, equality and compassion permeate the Qur’an. Yet the conservative ulama, who dominate the religious authorities, adopt a traditional approach based on the beliefs of

scholars during the classical period who lived closer to the time of the Prophet. The fallacy of that approach was incisively pointed out by Zainah: “But to adopt such an attitude is totally untenable in today’s world where we face new and different challenges ...” The result is that there “is a disconnect between law and reality, between dogma and ideology, and reality.” Zainah highlighted the various efforts by SIS and Musawah in bringing change by creating a collective international public voice demanding the right to equality and justice.

The shift in the mindset of the audience became perceptible. The crowd became keen on its role in the path moving forward and bringing change. The public space to debate on Islam has to open up. However, Zainah cautioned by urging all “to exercise some clarity in the terms we use to engage publicly on Islamic matters and its role in public law and policy”. She clarified the distinctions between Shari’ah, fiqh, hukum and qanun. Ultimately, most Islamic laws in this country are based on fiqh, which is a “process by which humans attempt to derive legal rules from the Qur’an and the Sunnah ...” Fiqh, which is decided by men and not God, changes with time and circumstances, unlike Shari’ah, which is embodied in the Qur’an. Zainah emphasised that Islam “is packed with rich and sophisticated juristic concepts that make reform towards equality and justice possible”.

Yet the authoritative forces refuse to apply these concepts, and continue in their wilful resistance to the changing realities on the ground. Instead they defile it with the notion that Islam is under threat. “It’s your authoritarian will that is under threat. Not Islam”, Zainah retorted to such a facile notion. The audience erupted into applause.

In the end, it all boils down to one question. As Zainah put it, “What we need to ask is what is the purpose of Islam in public life and what is the purpose of these Islamic laws?” It is apposite to reproduce the words of the 14th-century jurist, Ibn Qayim al-Jawziyyah, which were quoted by Zainah.

“The fundamentals of the Shari’ah are rooted in wisdom and promotion of the welfare of human beings in this life and the Hereafter. Shari’ah embraces justice, kindness, the common good and wisdom. Any rule that departs from justice to injustice, from kindness to harshness, from the common good to harm, or from rationality to absurdity cannot be part of Shari’ah ...”

It is this vision of Islam that SIS and Musawah fights for. As Zainah drew her compelling lecture to a close, she encouraged her listeners to fight for justice and equality.

“But for many of us, there is no other choice. We don’t wish to emigrate and live in foreign lands. We must stay and fight for the country we love, we want to live in and leave for our children. The challenge is to expand this public space we have created, to open up the debate, to turn the dissenting voices into a clamour for justice and equality, for freedom and dignity at the national, regional and international levels.”

Such galvanising words immediately roused the audience. By this lecture, Zainah had moved and lifted the spirits of her listeners, mostly consisting of young lawyers. This is what the country needs in such disquieting times. It is timely to be reminded of what Zainah said, during the opening of the lecture, of the words of the late Raja Aziz Addruse that “no matter how tough the battle is, we must never give up — to stand up and speak out for what is right and what is just ...” She ended her lecture by saying, “Thank you for listening”. The audience clearly disagreed.

Thank YOU, Zainah, for inspiring us.

Come Support the #AbolishDeathPenalty Campaign! Take a Photo with Us!



In 2011 the Bar Council, the Delegation of the European Union to Malaysia, and the Human Rights Commission of Malaysia (“SUHAKAM”), embarked on a long-term campaign for the abolition of the death penalty in Malaysia. In 2013 and 2014, the British High Commission and Amnesty International, respectively, joined the campaign, further enhancing the strength of the coalition. This coalition has organised public fora, university debates, stakeholder roundtables, and meetings with government officials and parliamentarians.

The coalition launched its social media campaign this year with the hashtag #AbolishDeathPenalty.

Come support the campaign by taking a photo with the special “photo frame” located at the Bar Council booth or at the Speakers / Moderators Room (Tun Lanang 1) at IMLC 2016. Tag yourselves with the hashtag as well as IMLC2016 in Facebook or Instagram!

Legal Professional Privilege – Bedrock of the Administration of Justice!

By Syahredzan Johan



Legal professional privilege is about the fundamental right of a client to obtain skilled advice about the law.

The session on this topic at the IMLC 2016 was moderated by **Christopher Leong**, President-Elect, LAWASIA; 30th President, Malaysian Bar (2013-2015). The two speakers for the session were **The Honourable Justice Datuk Nallini Pathmanathan**, Judge of the Court of Appeal and **Stephen L Dreyfuss**, Former President of the Union Internationale des Avocats (“UIA”) and also a practising lawyer in New Jersey, USA.



Justice Datuk Nallini gave a comprehensive overview of the law relating to legal professional privilege. She started off with the United Nations Basic Principles on the Role of Lawyers which provides, amongst others, that governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

In Malaysia, legal professional privilege is primarily protected by the Evidence Act 1950, specifically Sections 126 to 129. Justice Datuk Nallini then

went through several cases relating to legal professional privilege.

The question of how far legal professional privilege is recognised was also discussed in Justice Datuk Nallini’s presentation. She explored several cases and legislation which appear to allow the privilege to be dispensed with. However, even in those legislation, there are saving provisions.

Justice Datuk Nallini drew the conclusion that the law here has more or less kept

in line with the United Nations Basic Principles. The courts have been happy to uphold privilege where it is possible, by interpreting in favour of privilege. It would be interesting to see how the courts would deal with a situation where there are no saving provisions.

Stephen Dreyfuss started by laying down the importance of confidentiality between the lawyer and the client. The obligation comes in two forms. The first is that all private information obtained by the lawyer from the client must be

kept confidential, regardless of whether it is in connection with the matter the lawyer is advising the client on.

The second is that both the attorney and the client cannot be compelled to disclose the communications to anyone.

The common law position is that the attorney-client privilege belongs to the client, not the attorney. The client can, for example, waive that privilege. However, in civil law traditions, the right belongs to both the attorney and the client: neither can waive it unilaterally.

Both Justice Datuk Nallini and Stephen Dreyfuss raised the issue of in-house counsel, ie whether legal professional privilege is accorded to them. In Malaysia, communications of such counsel are not privileged, in contrast with the position in the United States of America. Since other common law jurisdictions have recognised this privilege for in-house counsel, it may be time for Malaysia to consider to take the same route.

At the end, the foremost conclusion from the session is that legal professional privilege is sacrosanct to all lawyers and forms the cornerstone of the legal profession, and is the bedrock of the administration of justice.

Investment Arbitration: The Asian-Pacific Landscape

By Louis Liaw



The first breakout session of IMLC 2016 under the Business Law stream, entitled “Investment Arbitration”, focused on Investor State Dispute Settlement (“ISDS”), also known as treaty arbitration. **Associate Professor Michael Ewing-Chow**, WTO Chair of National University of

Singapore, began by first stating that ISDS has been used as a major point of criticism against international trade agreements, including the TPPA. It is because it is included in these trade agreements that when there are disputes, including when states are sued by corporations

for failing to fulfil the corporation’s legitimate expectation when it invested in the state, the dispute shall be resolved through ISDS, which is adjudication through an international arbitrator as opposed to the normal court system. Considering the high stakes involved, for example the precedents of countries being ordered to pay billions out of these suits, ISDS does not use a precedent system as courts do, and thus lacks the predictability and certainty of outcome. Furthermore, the supranational nature of ISDS also leads to the possibility of a suit against a government that lost in national courts getting a second bite of the cherry through ISDS.

However, Mr Ewing-Chow argued that ISDS is necessary for various reasons such as the lack of confidence in a states’ Judiciary, especially among those of the Asian countries, and the perception of bias when a suit against the government of a particular state is heard before the judiciary of the state.

Lucy Reed, Professor and Director at National University of Singapore, was the second to speak and began by saying she was surprised at the criticisms towards ISDS. Ms Reed argued that ISDS has improved greatly since it first started and is now a much more balanced and fair adjudication system that takes care of the interest of the state, the corporations, and the public. Furthermore, trade agreements have also improved by including clauses that allows self-judging. Finally, Ms Reed also argued that the jurisprudence for treaty arbitration has matured

so much, and that there is now consistency and predictability.

In addition to what Ms Reed said, **Avinash Pradhan** from Rajah & Tann Singapore LLP reminded delegates that governments will only be sued and resort to ISDS when they breach minimal standards such as failing to provide fair and equitable treatment towards investing corporations. Therefore, the provision of ISDS should not cause a fear as being a supranational adjudication system, but instead be treated as an incentive for governments to behave. He urged a focus on the improvement of ISDS instead of its elimination.

The last speaker was **Kamraj Nayagam** from Mah-Kamariyah & Philip Koh, who stated that investment arbitration is a growing sector in the Malaysian legal industry, as more companies and individuals are only beginning to recognise this form of dispute resolution, as well as due to the increasing international trade agreements that countries enter into, including Malaysia.

The panel then concluded by stating that if there is international trade and there are trade agreements, there are bound to be disputes, which are best resolved through an independent mechanism like ISDS.

This session was moderated by **Philip Koh** of Mah-Kamariyah & Philip Koh.

Technology and Legal Practice

Session sponsored by Microsoft



Andrew Cooke



Jarom Britton



HR Dipendra

Plenary Session 7

14:45 - 16:00 | 23 Sept 2016 (Friday) | Taming Sari 1, 2 & 3

Organisations today are moving beyond the early promise of the cloud and using its speed, scale, and economic benefits to transform their business — reshaping how they engage with customers, enabling employees to do more productive work, and driving new and more rapid sources of innovation. The scale and reach of the cloud is, for example, helping companies leverage massive amounts of data to provide better business insights. Marketers are using those insights to forge better alignment with their customers. Mobile employees are sharing data and applications to improve collaboration and overall work effectiveness. Executives are developing new business models and inventing

Trafficking in Persons: Modern Slavery?

By Seira Sacha Abu Bakar



The United Nations defines human trafficking as the recruitment, transportation, transfer, harbouring, or receipt of persons by improper means for an improper purpose, including forced labour or sexual exploitation. Human trafficking is the second-biggest crime in the world after drug trafficking. Under the US Trafficking in Persons (“TIP”) Report, a majority of ASEAN countries are placed in the lower tier. In its efforts to combat trafficking in persons in the region, ASEAN has established the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (“ACTIP”). But what are the challenges that lie ahead?

In collaboration with the ASEAN Law Association (“ALA”), IMLC 2016 featured a session on the ASEAN Plan of Action to combat human trafficking in the region. Experts in their respective fields — **Richard Towle**, Representative of the UN High Commissioner for Refugees (“UNHCR”) in Malaysia; **Saiful Edris Zainuddin**, the State Prosecution Director from the Serious Crimes Unit of the Attorney General’s Chamber; **Syuhaida Abdul Wahab Zen**, Undersecretary of the National Strategic Office to the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (“MAPO”), Ministry of Home Affairs; and **Dato’ Ramachelvam Manimuthu**, Member of the Bar Council and Chairperson of the Bar Council Migrants, Refugees and Immigration Affairs Committee, were the speakers for this captivating and informative session.

The session was moderated by **Brenndon Keith Soh**, President of the Sabah Law Association, who commenced the session by stating that human trafficking is a complex issue and involves a host of stakeholders. But within the ASEAN context, there has been great progress in signing and ratifying the convention on human trafficking.

According to Richard Towle, no single agency or country can combat trafficking in persons on its own. Drawing from his substantial experience working with trafficking victims, Mr Towle pointed out that we should put the victims first by giving them more protection. Apart from the government agencies, Mr Towle stressed that the roles of the rule of law, judges, and lawyers are important in helping to combat trafficking.



The second speaker, Mr Saiful Edris, informed the delegates that the offences of trafficking in persons are covered under sections 12, 13 and 14 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (“ATIPSOM 2007”). However, if one were to look at the meaning of trafficking in ATIPSOM 2007, its definition of “purpose” is not the same as what is covered under the UN definition. He shared on some statistics that have been collected from the local enforcement agencies: since 2008 until 2016, a total of 1,320 raids have been conducted. From these raids, 8,845 persons are suspected to be victims of human trafficking.

Next, Ms Syuhaida informed the delegates how the Bali Process Working Group on Trafficking in Person works, and pointed out that the challenges faced were coordination, due to the involvement of various agencies, and getting the cooperation from these agencies.

The last speaker, Dato’ Ramachelvam, revealed the differences between trafficking and smuggling. Trafficking is a crime against individuals, whereas smuggling is a crime against the state. He further emphasised that we should aspire to be on a higher tier in the US TIP Report. Dato’ Ramachelvam added that the Bar Council has called on the Malaysian Government to set up a Royal Commission of Inquiry on the “death camps” near Thailand. A similar call was also made to the Human Rights Commission of Malaysia (“SUHAKAM”).

Social Media Has Landed: Reap or Weep?

By Khaizan Sharizad Abd Razak



The session on social media at the International Malaysia Law Conference 2016 was sponsored by Shearn Delamore & Co.

Praveen Rajan, Chief Digital Officer of Digi.com Berhad shared what the company is currently doing in using social media to support the business that it runs, as it serves 12 million customers and is a part of the Telenor group. As a business entity, it has changed the way it markets its services, by using social media. It has categorised three major components of social media usage: curated content and trending stories/pop culture, event sponsorships/testimonials and crowdsourcing, and brand information. Among the biggest challenges it faces are how to maintain interactivity between the brand and customers, and the brand being used without any agreement. In essence, the company has placed certain safeguards where there is a need to find a balance between the commercial entity and users.

Indran Shanmuganathan, a partner from Shearn Delamore & Co, started off his segment by explaining how times have changed and how social media dictates the tone of how we now lead our lives. He then expounded on intellectual property rights,

which include copyrights, trademarks, patents, confidential information, goodwill and industrial designs. Mr Shanmuganathan elaborated on the use of social media in the context of intellectual property rights, and how social media presents potential legal issues. For example, downloading films from the Internet or streaming films poses concerns of copyright infringement. In Malaysia, we have Section 43H of the Copyright Act 1987 to deal with copyright infringement. Social media can also give rise to trademark infringement issues such as selling counterfeit items online and comparative advertising. He talked about the passing-off requirement and the issues involved, such as brandjacking, false impersonation and false endorsement. Mr Shanmuganathan ended his presentation by saying that we cannot run away from social media, and therefore the usage of social media “must be regulated to ensure we do not weep”.

The Honourable Justice Tan Sri Datuk Ramly Hj Ali, Judge of the Federal Court of Malaysia was unable to attend and present for the session. His written speech was read by the moderator, **Michelle CY Loi** of Shearn Delamore & Co. Entitled “Cross-Border Theft and Social Media: An Intellectual Property Perspective”, it addressed how intellectual property rights are created by law that protects the creations, and detailed the various categories of intellectual property rights and statutes regulating them. Besides statutory provisions incorporated by the Government, these rights are also strengthened by way of bilateral or multilateral treaties. He also presented the various intellectual property rights infringements due to the “global shopping mall” via the Internet and the dangers to users. His speech concluded by saying that the continuously evolving social media can give rise to problems, and the rationalisation of laws is meaningless without constant surveillance of the market.

new service-based revenue streams. Examples like these are digitally transforming businesses and government entities in ways that are redefining our global economy.

With the global nature of the cloud, customers want to know their privacy is assured. Microsoft Azure sets and adheres to stringent privacy standards which, among other things, assures customer data is never used for advertising. In addition, Microsoft does not provide any third party with direct or unfettered access to customer data, and always redirects government requests for data to the customer. Finally, tenant isolation and strict access

controls help ensure that only customers can access their data by default.

At Microsoft, we understand that trust is paramount, and we take very seriously our commitment to protect our customers in today’s mobile-first, cloud-first world.

The Government and regulators need to balance the benefits of cloud technology against the risks, as they seek to manage the flexibility of regulatory frameworks and the regulatory perimeter. Financial institutions and cloud services providers need to ensure compliance, security and performance standards are well-documented and addressed.

This session seeks to find that balance by sharing the experience of Microsoft and its interaction with regulators, policy makers and customers around the world. It will also examine some of the best practices as a way forward through a principles-based framework for banking lawyers, regulators, financial institutions and cloud services providers to consider.

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Joint Session with



Breakout Session 3

**Stream A | Taming Sari 2
Legal Profession, Practice and Ethics**

**The Times are A-Changing:
The Bar Council – Gatekeeper or Facilitator?**

Speakers

1. Melissa Kaye Pang, *Vice-President, Law Society of Hong Kong*
2. Peter Cuthbert Low, *Peter Low LLC, Singapore*
3. Karen Cheah Yee Lynn, *Secretary, Malaysian Bar*
4. Khaizan Sharizad Ab Razak, *AmerBON*

Moderator

Syahredzan Johan
Member, Bar Council; RamRais & Partners

**Stream B | Taming Sari 1
Business Law**

**Arbitration II:
Issues in Statutory Adjudication**

Speakers

1. Michael Heihre, *Panellist, KLRCA*
2. Rammit Kaur Charan Singh, *Head of Legal Services, KLRCA*
3. Lam Wai Loon, *Harold & Lam Partnership*
4. Raymond Mah, *MahWengKwai & Associates*

Moderator

Belden Premaraj, *Belden*

Session Sponsored by
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Centre for Arbitration
("KLRCA")



**Stream C | Taming Sari 3
International Law and Human Rights**

Hazy Days Ahead: Legal Rights under International and Domestic Law

Speakers

1. The Honourable Justice Tan Sri Azahar Mohamed, *Judge, Federal Court of Malaysia*
2. Etelle Higonnet, *Campaign and Legal Director, Waxman Strategies, Washington; Former Regional Research Manager, Greenpeace Southeast Asia*
3. Dr Azmi Sharom, *Associate Professor, Faculty of Law, University of Malaya*

Moderator

Roger Chan Weng Keng
Member, Bar Council; Chan Weng Keng & Associates

Breakout Session 4

**Stream A | Taming Sari 2
Legal Profession, Practice and Ethics**

Advocacy and the Handling of Expert Witnesses

Speakers

1. The Honourable Mrs Justice Audrey Campbell-Moffat, *Judge, Court of First Instance, High Court of Hong Kong*
2. Robert Low, *Ranjit Ooi & Robert Low*
3. Andrew Chiew Ean Vooi, *Lee Hishammuddin Allen & Gledhill*
4. James Khong Yoon Hong, *James Khong*

Moderator

Ira Biswas, *Chooi & Company*

**Stream B | Taming Sari 1
Business Law**

**ASEAN Integration:
Creating Islamic Finance Opportunities**

Speakers

1. Elias Moubarak, *International Banking and Finance Department, Trowers & Hamlins*
2. Mohamad Safri Shahul Hamid, *Senior Managing Director & DCEO, CIMB Islamic Bank*
3. Dr Engku Rabiah Adawiah Engku Ali, *Professor, IIUM Institute of Islamic Banking and Finance ("IIBF"), International Islamic University Malaysia ("IIUM")*
4. Jal Othman, *Shook Lin & Bok*

Moderator

Nicholas Edmondes, *Trowers & Hamlins (Malaysia)*

Session Sponsored by
Trowers & Hamlins



**Stream C | Taming Sari 3
International Law and Human Rights**

**Independence of Media Ownership and Press Freedom:
The Law and the Challenges**

Speakers

1. Tan Lee Chin, *Chief Content Officer, Media Chinese International Limited Group ("MCIL Multimedia")*
2. Malek Ali, *Chief Executive Officer, BFM 89.9: The Business Radio Station*
3. Shanmuga Kanesalingam, *Director, Malaysian Centre for Constitutionalism and Human Rights; Kanesalingam & Co*

Moderator

Gayathry Venkiteswaran
Independent media researcher

**Special Address | Plenary Session 2 | Taming Sari 1, 2 & 3
The CIMB Journey into ASEAN: Knowledge, Expertise and Foresight**

Speaker: Tengku Dato' Sri Zafrul Tengku Abdul Aziz, *Group Chief Executive Officer, CIMB Group Holdings Berhad*

Moderator: HE Edmund Bon Tai Soon, *Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights ("AICHR"); Member, Bar Council; AmerBON*

Networking Lunch | Taman Mahsuri

**Plenary Session 3 | Taming Sari 1, 2 & 3
Harmonisation of Laws in ASEAN for the Legal Services Industry**

Speakers

1. Locknie Hsu, *Professor of Law, School of Law, Singapore Management University*
2. Haliza Aini Dato' Othman, *Deputy Head of International Affairs Division 1, Attorney General's Chambers*

Moderator

Dato' Mah Weng Kwai, *24th President, Malaysian Bar (2001-2003); MahWengKwai & Associates; Judge, Court of Appeal (Rtd)*

Joint Session with
ASEAN Law Association



Coffee Break | Exhibition Area

**Hard Talk | Plenary Session 4 | Taming Sari 1, 2 & 3
Challenges of Enhancing Democratic Space at Federal and State Levels**

Speakers

1. The Right Honourable Lim Guan Eng, *Chief Minister of Penang*
2. Dr Terence Gomez, *Professor of Political Economy, Faculty of Economics and Administration, University of Malaya*
3. Maria Chin Abdullah, *Chairperson, BERSIH 2.0 (Coalition for Clean and Fair Elections)*
4. Dato' Dr Ahmad Farouk Musa, *Chairman and Director, Islamic Renaissance Front*

Moderator

Dato' Ambiga Sreenevasan, *President, National Human Rights Society ("HAKAM"); 27th President, Malaysian Bar (2007-2009); Sreenevasan*

GALA DINNER | INTERCONTINENTAL KUALA LUMPUR

★

**IMLC 2016 Online Survey
Win Complimentary Passes to
the Malaysian Bar
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("ADD 2017")**

We encourage delegates to participate in the daily IMLC 2016 online survey. Registered delegates will receive an SMS each day, which provides a link to the survey form for that day.

Fill in the survey form (only for the IMLC 2016 sessions you attended), and stand to win these prizes:

- Grand Prize: 2 complimentary passes to ADD 2017
- Two Runner-Up Prizes: 1 complimentary pass each to ADD 2017

You must participate in all three days of the survey in order to be eligible to win a prize. Don't forget to include your name and email address in your survey form each day, so that we can contact you if you are one of the lucky winners!

LEARNING WITH THE COLLEGE OF LAW

WHAT TO EXPECT WHEN YOU STUDY AT THE COLLEGE

The College of Law programs are all about practical law or the law as applied to legal practice. As the school of professional practice for the legal profession, we focus on equipping law graduates and practising lawyers with the skills and knowledge to:

- enter the legal profession, and
- develop their career within the profession.

Whether you want to specialise, make partner, set up your own practice or go in-house, we are here to help you achieve your goals.



THE IMPORTANCE OF GRADUATE ATTRIBUTES

Studying for a postgraduate qualification at The College of Law is not just about acquiring knowledge and skills for use in practice.

The College designs its courses and delivers them in a way that promotes the acquisition of qualities and attributes that distinguish our graduates from those of other postgraduate law schools and help make our graduates attractive to employers and to clients.

Most fundamentally, we are an Applied Law institution, so the three qualities we try to encourage in our graduates are:

- Being professional (who we are)
- Being effective (how we work)
- Being practical (what we achieve)

CAREER DEVELOPMENT

At The College of Law, we offer structured programs for each stage of a lawyer's career.

CROSSING BORDERS



SPECIALISATION



CONSOLIDATION



FOUNDATION

CAREER FOUNDATION

Our foundation programs are designed for law graduates wishing to enter practice.

In Australia, we have the PLTPlus Program leading to the **Graduate Diploma of Legal Practice**.

In New Zealand, law graduates undertake our **Professional Legal Studies Course**.

Both programs equip law graduates with the legal professional and business skills required as an entry-level lawyer.

Both programs are the leading programs in their jurisdiction.

We also have the **International Legal English & Professional Skills Program (ILEPS)**, designed to equip law students and young lawyers to be confident in international commercial legal practice where English is the *de facto* language.

The legal English communication skills focus in ILEPS is on improving reading, writing, listening and speaking skills to levels B1 | C2 on the Common European Framework of Reference.

CAREER CONSOLIDATION

The College assists lawyers to consolidate their career through short programs that provide skills development in a range of areas. For lawyers wishing to become principals of firms, we run **Legal Practice Management Courses** in New South Wales, Queensland and Western Australia. In these states, the College is accredited to provide the course as a prerequisite for applying to become a partner or sole practitioner.

The College is making a selection of its **Continuing Professional Development** programs available to members of the Malaysian Bar, as part of its collaboration agreement.

CAREER SPECIALISATION

For lawyers wishing to move from competency to specialisation in a particular practice area, the College offers the **LLM (Applied Law)** and the **Master of Applied Law (Family Law)**.



"You can tell lawyers that have done the course as they practise at a completely different level." Master of Applied Law (Family Law) graduate.

Majors can be taken in the following areas:

- Commercial Litigation
- Commercial Transactions
- Dispute Resolution
- Estate Planning
- Family Law
- In-house Practice
- Property Law
- Wills and Estates

From 2017, the College will offer LLM (Applied Law) subjects in Malaysian Law. These will give Malaysian lawyers the opportunity to develop skills in discrete areas of practice.

CROSSING BORDERS



Increasingly lawyers are practising across borders. The College recognises this, particularly within the ASEAN region and is developing new programs to equip lawyers in the region to take advantage of the opportunities created by the new ASEAN Economic Community and its free trade and investment agreements with Australia-New Zealand, China, Japan, Korea and India - the ASEAN+6.

Read more in the next issue.