

The Role of *Sulh* in Cross-Cultural Disputes Resolution and Referrals to ICJ and ICA: An Evaluation

¹Hunud Abia Kadouf and ²A.O. Sambo

¹Professor and Dean, Ahmad Ibrahim Faculty of Laws, International Islamic University Malaysia, Malaysia.

²Ph. D Candidate, Ahmad Ibrahim Faculty of Laws, International Islamic University, Malaysia.

Abstract: The world has become a global village. This makes social interactions inevitable where people of different cultures and religions meet. Disputes in the course of such interactions become unavoidable. This is mainly as a result of cultural conflicts. Despite this, many nations do not put in place effective measures for resolving conflicts across cultures. Rather, some countries put in place legal measures to undermine and suppress the important aspects of other peoples' cultural values in their domain. Based on this, the paper analyses the role of *Sulh* being an Islamic dispute settlement mechanism in the resolution of cross-cultural disputes. In doing this, it analyses burning issues of cross-cultural conflicts that have generated disputes in many countries of the world. From there, it analyses how *Sulh* can help resolve the world's cross-cultural disputes. It also examines whether Muslims' referrals of cross-cultural disputes matters to the present international dispute settlements mechanisms i.e. International Court of Justice (ICJ) and International Court of Arbitration (ICA) are in line with the *Shari'ah*. The nature of the jurisdictions of ICJ and ICA are examined.

Key words: *Sulh*, cross-cultural disputes resolution, ICJ, ICA, peace.

INTRODUCTION

Culture as a concept is to a very large extent a complex phenomenon. The reason appears to be because it has come with many usages over the years. This is despite the fact that we encounter and make use of the term culture several times and in different context. One of the simplest definitions of culture is the way of life: the way we learn, dress, eat, perceive issues, worship, our values, behavioural patterns, how we communicate. It is a mindset that distinguishes member of a group or categories of persons. Almost everything a man does is influenced by his cultural perception. It is in many times unconsciously or inadvertently applied and thus makes the whole behaviour of certain group of people predictable. We find interest in and adopt the holistic approach to the meaning of culture which takes it beyond quasi-kinship grouping such as tribe, ethnic, national and the connected ones but also to grouping derived from religion, profession or class.

It must also be observed that culture could manifest in generic or local ways. It is generic where it is being used in the context of an attribute of all human kind; an adaptive characteristic of man from time immemorial. This shifts attention to universal nature of human behaviour to its nature. Culture manifests itself locally where attention is directed to diversity or difference. It is a way of life created, shared and transmitted by people in a particular social group at a particular period in time. Thus, the two ways are cultures and it is in these senses that cultures are connected to disputes.

Disputes are inevitable in all human social interactions. By cross-cultural disputes, we mean the controversy happening between individuals or social groups that are separated by cultural boundaries. Thus, disputes across cultural borders may take place concurrently at many different levels, not just greater levels of social group- e.g. those that separate the West from the East. Even people in the same society may have many different groups and different ways of life: for instance by kinship becomes families; by language, religion, ethnicity, nationality; by socio-economic features into social class etc. Each group is likely to have cultures and society will have sub-cultures thus making society complex and multicultural. Disputes in this regards is inevitable.

There is therefore a dire need to resolve cross-cultural disputes. This is inevitable in view of globalization, which has impacted on all cultural practices in the world (Anderson, 1991; Conversi, 2012; Capling, et. al, 1998; Castles, 1999; Dale, 1999; Delanty, 2000; Giddens, 1990; Held, 1995). Globalisation is producing a mixed harvest for many cultures. Many nations' popular and political cultures have been transformed by global forces both old and new, thus bringing the fears that the world may descend into mono-cultural vegetation, the diversity and vitality of Islamic culture are as great as they ever have been. This is because Islamic cultures are products of divine guidance. The benchmark of academic work seems to be how to promote world peace in view of the present upheavals in the world as a result of inter cultural and religious conflicts. This has led to various

Corresponding Author: Hunud Abia Kadouf, Professor and Dean, Ahmad Ibrahim Faculty of Laws, International Islamic University Malaysia, Malaysia.
E-mail: hunudabia@gmail.com.

perspectives in this discourse. Many have approached conflict resolution from the Christianity perspective (Augsburger, 2000; Bamba, *et al*, 1978; Brossart, 1980; Keegan, 1987; Buttry, 1994; Driver, 1988; Friesen, 1986; Gangel, 1992; Guinn, 2006; Hadley, 2001; Hauerwas, 1983). Some argue from general or ethical perspective (Augsburger, 1992; Chappell, 1999). Some have also argued from Islamic perspective (Abu-Nimer, 2001; Abu-Nimer, 1996; Abu-Nimer, 2003; Hamzeh, 1997; Irani, 1996; Irani, 2000; Johansen, 1997). There is also an argument that both religions play an important role in the resolution of conflicts (Appleby, 2000; Ashafa, 1999; Bouth, 2005; Chapman, 2004; Gopin, 2000; Gopin, 1997; Johnston, 1994). Also, some are of the view that religion has no role to play as religions are the obstacles to the world peace and that it creates a lot of conflicts (Boulding, 1986). One argument is also that it is through forgiveness and acknowledgement that conflicts will be resolved (Gopin, 2001; Irani, 2002). Many academic works seem to ignore an evaluation of the role of *Sulh* in cross-cultural disputes resolution and the issue of referrals of such disputes to the ICJ and ICA. The paper analyses the role of *Sulh* being an Islamic dispute settlement mechanism in the resolution of cross-cultural disputes. In doing this, it analyses burning issues of cross-cultural conflicts that have generated disputes in many countries of the world. From there, it presents how *Sulh* can help resolve the world's cross-cultural disputes. It also examines whether Muslims' referrals of cross-cultural disputes matters to the present international dispute settlements mechanisms i.e. International Court of Justice (ICJ) and International Court of Arbitration (ICA) are in line with the *Shari'ah* taking into consideration the nature of the jurisdictions of ICJ and ICA.

Cross-Cultural Disputes and Issues of Burqa and Headscarf:

One wonders in this age of globalization and cultural pluralism, many countries are still being found in the act of passing legislations for the purpose of banning the mode of dressing of a particular religion. Legislation, which ought to be directed at enhancing socio-economic growth and development of countries, are now being used as a tool to provoke cross-cultural disputes. One notes with concern the banning of Islamic headscarf in France. The official explanation for banning this in public schools and government facilities is to uphold the secular nature of the French state; a tradition that dates back to French revolution in order to eliminate the influence of religion and religious leaders in people's life. This reason is untenable and very difficult to justify. On the contrary, this law has violated the spirit, letter and intendment of the French state secularism and Article 1 of French constitution, which provides that "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis." The banning of headscarf also violates the freedom of expression and is discriminatory against Muslim women.

Similarly, Belgium not only officially banned *burqa*, it also criminalises it; joining the neighbouring France in passing a law that prohibits people from covering their faces in public places. Muslim women will face fines of 137.50 euros for wearing *burqa* in public places and up to seven days in prison. This is not only repressive; it is a violation of human rights of Muslim women in Belgium. This has also been criticized by the European Council of Human Rights (Katerine, 2011). This is not worth legislating as it discriminates against Muslim women in Belgium. It is crystal clear therefore that France and Belgium banned *burqa* not because they wanted to protect their secular nature. It is purely because of jealousy and hatred they have for Islam. This is because their constitutions protect freedom of religion as earlier stated. There could be many other ways in which their secularity can be protected.

Apart from France and Belgium, issues of Muslim headscarves have been contentions in a number of countries such as Denmark, Turkey, Egypt and Singapore. Courts in Germany and Russia, have however done justice to this issue when matters in this regard were brought before them. In Germany, the issue has come to the fore in recent months after Germany's Supreme Court ruled that a school was wrong to exclude a Muslim teacher because she wore a headscarf. The judges declared that current legislation did not allow for such a decision, but added that individual states would be within their rights to make legal provisions to this effect. The German state of Baden-Wuerttemberg has already given initial approval for a law to stop teachers wearing the veil, and seven other states are considering similar legislation. Legislators believe the veil is a political symbol and that children in state education should be protected from fundamentalist influence. In Russia, Muslim women won the right to wear the headscarf for identification photos, which was banned in Russia in 1997. The women argued in court that the ban infringed upon their civil liberties, and were backed in this by a number of human rights groups, who also alleged that Russia was fermenting anti-Muslim sentiment to aid its mission against separatists in Chechnya. One is even surprised that Tunisia government also enforced a law that says state women can no longer cover their hair by wearing *hijab* (1 Muslim Nation, 2006). Because of its French colonial legacy, Tunisia appears to be the most Western Arab-Muslim country. This is reflected by Tunisian President Zine El Abidine Ali enforcing the ban and describing the *hijab* as "a sectarian form of dress, which had come into Tunisia without invitation (*ibid*). This is however very difficult to justify in a country with 98% Muslim populations (*ibid*). This ban also violates basic personal freedom guaranteed by the Tunisian Constitution which also states Tunisia is an "Islamic country." The law also violates the basic rights enshrined

in the Universal Declaration of Human Rights, which states that everyone has the right to freedom of religion and choose the clothes, which suit him/her. Most of all, the *hijab* is a religious requirement in Islam and every woman should have the right to practice her religious beliefs. Islam therefore presents better ways in resolving issues of cross-cultural disputes.

Sulh and Cross-cultural Disputes Resolution

Historically, Islam has accentuated the importance of *sulh* as a form of dispute resolution. This embodies the Western concepts of “compromise, settlement, reconciliation, and agreement” (Saleh, 1985). This focuses on ascertaining the truth and dispensing justice with least procedural distractions. Islamic tradition has always preferred *sulh* over formal litigation.

The preference for *sulh* in Islam is often a reflection of larger social and cultural perceptions of conflicts generally. In most Middle Eastern countries, for example, the notion of conflict typically carries a highly negative connotation (ibid). Viewed as “disorderly” and “unsafe” to social structure, disputes represent something to be avoided (ibid). This creates strong motivation to minimise all forms of disputes, even those that might be considered “constructive” in other cultures. Thus, this mindset makes formal litigation an unpopular dispute resolution mechanism, given its inherent adversarial elements.

Undoubtedly, *sulh* is the preferred method of dispute resolution in the Islamic law (Iqbal, 2000; Sambo *et al.*, 2012). For example, in the Saudi Arabian legal system over ninety-nine percent of civil disputes end in some form of *sulh*. The most common form of *sulh* involves mediation and conciliation; facilitated by either a *kadi* or prominent member of the community. During the process, the facilitator assists the parties as they attempt to reach a voluntary settlement (Iqbal, ibid). The facilitator can suggest various settlement proposals, but cannot force a final agreement on the parties. Once the parties ultimately reach a settlement, however, it acts with the same force as a binding judgment (ibid). Having effectively surrendered all rights to claims on the matter, subsequent attempts by either party to initiate a related suit will be summarily rejected by an Islamic court (ibid). Thus, in many respects, the process on the surface appears no different than western-style mediations.

Upon careful examination, however, the actual method of accomplishing *sulh* is quite distinct. The most noticeable difference is that a facilitator generally plays a far more proactive role during a *sulh* negotiation. Instead of acting as a mere neutral observer, the facilitator delves deep into the actual substance of the conflict, openly evaluates the arguments of both sides, and actively takes part in negotiating a solution. In many instances, the facilitator must accomplish this without any initial face-to-face interaction among the parties, which raises the risk of embarrassing a party or antagonizing the situation. A *sulh* negotiation also differs with respect to its overall focus. In some other legal systems, mediators emphasise shared-interests and cooperative problem solving in an attempt to “separate the people from the problem.” *Sulh* negotiations, however, take the exact opposite tack. Instead, they prioritise any relational issues, viewing the repair of damaged relationships (whether personal or commercial) as pivotal to the restoration of “harmony and solidarity” among the parties.

Although *sulh* is available to resolve all manner of civil disputes, it is well suited for resolving the cross-cultural disputes. The relationship-based focus of *sulh* makes it particularly attractive to cross-cultural disputes resolution (Lukito, 2006). In fact, *sulh* generally serves as the primary vehicle for resolving this form of disputes especially given the unfavourable standing of Islam to disputes generally. *Sulh* negotiations in the cross cultural context can be slightly different from other negotiations, however. In such instances, members of the country concerned and the experts in that locality will serve as facilitators in cross-cultural disputes. This practice is expressly sanctioned in a Qur’anic verse dealing with family disputes that reads: “If ye fear breach between them twain, appoint two arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation” (Qur’an, 4: *ayah* 35).

In large part, the rationale for this approach stems from Islamic views of commerce and its importance (Qur’an, 2: *ayah* 282.). Thus, the use of facilitators is not perceived as an attempt to gain an unfair advantage, but rather a method of resolving the dispute while reinforcing the importance of Islamic family life.

The Law represents the divine will of Allah (s.w.t.) in the *Shari’ah*. It is perfect and dependable; the Law embodies absolute truth and justice (Qur’an, 2: *ayah* 2-5). However, Islam is at peace with settling conflict through ADR mechanisms. The reason for this difference is that the Qur’an, unlike the Written Torah, expressly promotes the use of such mechanisms – collectively referred to as *sulh*. In one verse, for example, the Qur’an declares: “The Believers are but a single Brotherhood: So make *peace and reconciliation* between your two contending brothers”. In one verse, for instance, the Qur’an says: “The Believers are but a single Brotherhood: So make *peace and reconciliation* between your two contending brothers” (Qur’an 49: *ayah* 10; see also Qur’an 3: *ayah* 103 for similar provision). This demonstrates the preference for *sulh* over more adversarial forms of adjudication in Islamic law. This preference stems from both the virtues of *sulh* itself, and the perceived shortcomings of litigation. One *hadith*, for instance, suggests that the Prophet Muhammad (s.a.w.) was quite skeptical of judicial proceedings, given the potential persuasiveness of self-interested parties and the inherent fallibility of human judges. Addressing two quarrelling neighbours, the Prophet (s.a.w) warned: “I am only a human being and litigants with cases of disputes come to me, and maybe one of them presents his case

eloquently in a more convincing and impressive way than the other, and I give my verdict in his favor thinking he is truthful. So, if I give a Muslim's right to another by mistake, then that property is a piece of fire, which is up to him to take it or leave it."

The *hadith* reveals a clear concern over the prospect of judicial error resulting from the deceptive tactics of self-interested litigants. Indeed, such uncertainty of litigation is frowned at throughout the Islamic law. This is especially true regarding the use of attorneys, known as *wakils*. Islamic law does not generally encourage the use of professional advocates like the ones found in Western legal systems. In many instances, a *wakil* may only appear as the agent or proxy for an absent party; not as their advocate. The rationale underlying this prohibition is that professional attorneys "use dilatory tactics, add complexity to straightforward matters, distract the parties from their 'moral obligations,' and 'subvert the moral mission of the trial' court." In place of attorneys, such systems entrust greater responsibility to the *kadis* presiding over disputes. This is because the *Kadis* can best ascertain the truth when the parties represent themselves, and at the same time, remain available to guide and protect either party during the process. The arrangement also grants a *kadi* significant power and discretion to descend into the arena of conflicts and promote the use of *sulh*. Thus, in many respects, Islamic law embodies a significant incline towards the attainment of *sulh*. At least in part, the preference stems from the fact that *sulh* forces the parties to resolve the disputes, and thus, avoids the concerns of judicial error that are inherent in litigation.

It is useful to add that the essence of *Sulh* is to make peace and reconciliation. This is why even in the period of war, the Prophet (s.a.w) is enjoined to make peace with the disbelievers if they so wish. The Qur'an says in this regard: "And if they incline towards peace, then incline you also and put trust in Allah. Undoubtedly, He is the One Hearing, Knowing" (Qur'an 8: *ayah* 61). Also, *Sulh* having the object of peace is important to the extent that Islamic understanding see it as forming part of *Iman* (belief) itself. For instance, the Prophet (s.a.w.) was reported to have said: "At a time when two Muslims refuse to talk to each other and do not reconcile within three days, both will be out of Islam, and there will not remain any friendship between them. Then anyone of them who takes the initiative to reconcile with the other, would enter Paradise faster (than the other) on the Day of Judgment." (Bihar al-Anwar, vol 75, p 186). This shows that the idea of saying *salam* and making peace is to encourage *Sulh*.

Similarly, for the parties to allow peace to reign, they must be ready to make some compromises in trying to resolve cross-cultural disputes. This was aptly demonstrated by the Prophet (s.a.w.) himself during the *Sulh* of hudaibyyah. The treaty is worth reported *in extenso*. The Prophet (s.a.w.) exhibited exemplary moderation and prudence in the interest of peace. It was reported that the Prophet (s.a.w.) The Prophet (s.a.w.) summoned 'Ali and told him to write: "In the name of Allah, Ar-Rahman 'the beneficent', Ar-Raheem "the Merciful." Suhayl protested, "I do not recognize Ar-Rahman, but write as is customary upon us." The Prophet (s.a.w.) then directed 'Ali, "Write: In thy name, O Allah." Certain Muslims objected, "No We must write: In the name of Allah, the Beneficent, the Merciful." But the Prophet (s.a.w.) said again, "Let it be: In Thy name, O Allah." Then the Prophet (Peace be upon him) asked 'Ali to write: "This is what Muhammad the Messenger of God has decided." Suhayl again objected, "I swear by God, if we had believed that you were God's messenger we would not have driven you away from the House of God nor fought with you; you shall write: Muhammad b. 'Abdullah." "I am God's Messenger even if you disbelieve me", replied the Prophet (s.a.w.); but still asked 'Ali to erase out what he had written earlier. "By God, I cannot do it", replied 'Ali. The Prophet (s.a.w.), however, asked 'Ali to point out the area to be effaced. 'Ali obliged and so the Prophet (s.a.w.) deleted it himself. (Muslim, Kitaab-ul-Jihad-was-siyar, Chap. Sulh Hudaybiyah). The Prophet (s.a.w.) resumed in dictating the clause; "The agreement is made that the Quraysh shall not obstruct the passage of Muslims to the House of God and shall allow them to circumambulate it." Suhayl again raised an objection; 'I fear the Arabs would say that we have been pliant to you in making this agreement. You can visit Ka'ba next year." The Prophet (s.a.w.) agreed to include the clause in the agreement. Suhayl then bravely suggested, "If one of us joins you, he shall be returned to us even if he professes your religion." The Muslims were irked saying, "What? How can we return a man who seeks our shelter and approval as a Muslim?" The deliberation was still going on when Abu Jandal b. Suhayl appeared in chains. He had escaped from Mecca and had come to the Prophet (s.a.w.) strangled in fetters by a rugged, rocky track between the passes. Suhayl lost no time to assert, "Muhammad, this is the first man I demand from you under the Treaty." The Prophet (s.a.w.) replied, "But the Treaty is still being written and has not become final." Suhayl was irritated. He cried in a huff, "If it is so, then I am not prepared to make any agreement with you." The Prophet (s.a.w.) begged again, "Let him go for my sake." But Suhayl refused. He said, "I will not allow him to go even for your sake." Now, the Prophet (s.a.w.) replied, Then do as you please." Suhayl was still growling at the mouth when he retorted, "I can do nothing." Grieved to hear it, Abu Jandal said plaintively, "I have come as a Muslim to you, and I am being returned again to the polytheists. Do you not see what they are doing to me?" Abu Jandal had been put to severe torture for the sake of his faith. (Zad al-Ma'ad, Vol. I, p. 383; Bukhaari, Bab as-Shurut fil-Jihad). The Prophet (s.a.w.) returned Abu Jandal as demanded by his father. The treaty concluded between the Muslim and the Quraysh assured that both the parties would observe a ten-year truce so that men might live in peace and that no party would lift its hand against the other during the

specified period. Another condition of the Treaty was that if anyone from the Quraysh came over to the Prophet (Peace be upon him) without obtaining the permission of his guardian he would be returned to them, but if anyone of those with the Prophet (Peace be upon him) escaped to the Quraysh, they would not be bound to return him. Yet another provision stipulated that anyone, who wished to enter a bond and security with the Prophet (s.a.w.), would be permitted to do so, likewise, anybody could resort to a similar agreement with the Quraysh. (Ibn Hisham, Vol. II, pp. 317-18).

Apart from *sulh*, another way of settling cross-cultural disputes resolution is *Tahkim* (arbitration). Allah (s.w.t.) says: "if you fear a breach between them (husband and wife) appoint two arbiters, one from his family, and the other from hers. If they wish peace, Allah will cause their reconciliation. For Allah has full knowledge, and is acquainted with all things" (Qur'an 4: *ayah* 35). Allah (s.w.t.) also says: "Allah commands you to render back your trusts to those to whom they are due; and when you judge between man and man, judge with justice. Verily, how excellent is the teaching, which he gives you! For Allah hears and sees all things" (Qur'an 4: *ayah* 61). The Prophet (s.a.w.) was also reported to have accepted to judge an arbitration case or he had appointed an arbitrator and accepted his decision and he had advised a tribe to have a dispute arbitrated. The rightly guided caliphs did the same thing in disputes relating to goods and services. The letter of Caliph Umar to Abu Musa al-Ashari on his appointment as a *qadi* states the duties and responsibilities of an Islamic judge (*Qadhi*) when he said: "Consider all equal before you in court. Consider them equal in giving your attention to them so that the highly placed people may not expect you to be partial and the humble may not despair of justice from you."

Thus, based on these lofty principles of dispute resolution mechanisms in the *Shari'ah*, the issue that readily comes to mind is whether matters relating to Islam can be referred any other outlets of dispute resolution system apart from the above. More specifically, we need to examine whether matters on Islam which create cross-cultural disputes can be submitted to International Court of Justice (ICJ) for resolution. In order to answer this question, there is the need to examine the nature of the jurisdiction exercised by the ICJ. Again, that of International Court of Arbitration (ICA) needs consideration.

Nature of the Jurisdiction of the ICJ and ICA:

The jurisdiction of ICJ can be stated as follows:

1. Only States May be Parties to Cases before the Court

Article 34, paragraph 1, of the Statute of the International Court of Justice (the "Statute"), provides that only States may be parties in cases before the Court. This means that the Court lacks jurisdiction in respect of individuals and organisations. States access to the Court is not automatic. Access can be gained to the Court First, by Article 93 of the UN Charter; all members of the UN are automatic members of the Statute. Second, States that are not members may become parties, on conditions to be determined in each case by the UN General Assembly, based on the recommendations of the Security Council. Therefore countries such as Switzerland and San Marino, though not members of the UN, may become parties to the Statute of the Court. Third, any other State that is neither a member of the UN nor a party to the Statute of the ICJ may become a party before the ICJ by depositing a declaration with the Registry of the ICJ. The declaration must state that such State accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions in respect of all or a particular class or classes of disputes. However, becoming a party to the ICJ Statute is entirely different from accepting the Court's jurisdiction. It is merely the first step towards submitting to the Court's jurisdiction.

2. Contentious Jurisdiction and Advisory Jurisdiction

(a). Special agreements (*Compromis*)

The jurisdiction of the Court comprises all cases that the parties refer to it (Article 36, paragraph 1, of the Statute). Such cases normally come before the Court by notification to the Registry of an agreement called a special agreement (*Compromis*). This is concluded by the parties especially for this purpose. This method was used in the *Corfu Channel Case* (Corfu Channel (Merits) (U.K. v. Alb.), 1949 I.C.J., 4(Apr. 9). In some matters, one or more of the involved parties refuse to accept the jurisdiction of the Court, thus making the Court unproductive. For instance, The Court could take no further steps upon an application in which it was admitted that the opposing party did not accept its jurisdiction: *Treatment in Hungary of Aircraft and Crew of United States of America* (United States of America v. Hungary) (United States of America v. USSR); *Aerial Incident of 10 March 1953* (United States of America v. Czechoslovakia); *Antarctica* (United Kingdom v. Argentina) (United Kingdom v. Chile); *Aerial Incident of 7 October 1952* (United States of America v. USSR); *Aerial Incident of 4 September 1954* (United States of America v. USSR); *Aerial Incident of 7 November 1954* (United States of America v. USSR).

(b). Jurisdiction provided for in treaties and conventions

The Statute provides that the jurisdiction of the Court also includes all matters specially provided for in treaties and conventions in force (Article 36, paragraph 1). A good illustration of this type of jurisdiction is the *Lockerbie cases* (Paulus, 1998). In those cases, matters were brought by Libya against the United Kingdom (the "UK") and the United States (the "US") under the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The defendants had claimed that there was no dispute between the parties

concerning the interpretation or application of the Montreal Convention as demanded by Article 14. For example, Convention for the Suppression of Acts Against the Safety of Civil Aviation (Sabotage), Sept. 23, 1971, 24 U.S.T. 565, art.14 providing that any dispute between two or more Contracting States concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall be submitted to arbitration; if within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the ICJ, in case that there is no reservation by any party to the dispute.

In the opinion of the Court, however, several disputes existed between the parties concerning the Montreal Convention: first, on the Convention's applicability to the present case (a jurisdiction which the Court calls "general"); second, on the alleged right of Libya itself to prosecute its nationals (Article 7); and third, on the alleged lack of assistance by the respondents to the Libyan prosecution (Article 11). On a vote of 13 votes to three, the Court upheld its jurisdiction. By maintaining ICJ jurisdiction, the judgment conceals rather than unfolds the disagreements within the Court on the impact of the Security Council (SC) Resolutions. According to a broad interpretation of the judgment, the relationship between the Montreal Convention and the subsequent SC Resolutions is a matter within the jurisdiction of the Court. Another narrower reading is provided by Judges Fleischhauer and Guillaume in their joint declaration: it states that ICJ jurisdiction extends only to the interpretation and application of the Montreal Convention and not to the SC Resolutions. The latter view seems more in line with the treaty-based jurisdiction of the Court in the present case; it would, however, considerably limit judicial review of resolutions of the Security Council by the Court. It has become apparent that there is no agreement within the Court as to whether its jurisdiction is limited to a pronouncement on the rights and duties of the parties pursuant to the Montreal Convention itself, or whether it also enables the Court to decide on the relationship between the Convention and subsequent Security Council resolutions. By a narrow margin, the Court seems to favour the second option.

(c). Declarations Accepting the Compulsory Jurisdiction of the Court ("Optional Clause" System)

Optional Clause System is another means of consent to the Court's jurisdiction. It is described in paragraphs 2 and 3 of Article 36 of the Statute. Paragraph 2 provides that: The States parties to the present Statute¹³ may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. Paragraph 3 of Article 36 of the Statute provides that the declarations referred to in paragraph 2 above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time. A number of states have recognized compulsory jurisdiction of the Court. Some states by reservations to the acceptance of compulsory jurisdiction, which serve to limit their scope. Among those reservations, there are two that are most important. One relates to other methods of pacific settlement, and is found in 33 declarations. The other relates to matters of domestic jurisdiction, and is found in 23 declarations. These two reservations correspond to Article 95 and Article 2(7) of the United Nations Charter, respectively. The declarations are made for a specific period, generally for five years with tacit renewal — as a rule — and usually provide for the declarations to be terminated by simple notice, such notice to take effect after a specified time or immediately. For instance, in 1985, the United States withdrew its acceptance of the ICJ's jurisdiction.

4. Advisory Jurisdiction (Advisory Opinion)

The Court can give advisory opinions on any legal questions at the request of whatever body may be authorized by the UN Charter to make such a request (Article 65 of the Statute). The General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question (Article 96 Charter of the United Nations (June 26, 1945), art. 96 (1)). Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities (ibid). In a case involving the request for an advisory opinion by the World Health Organization (WHO) Legality of the Use by a State of Nuclear Weapons in Armed Conflict 1996 I.C.J. 66 (Advisory Opinion of July 8), the court held that three conditions must be satisfied in order to find that the Court has advisory jurisdiction: first, the agency requesting the opinion must be duly authorized under the Charter to request opinions from the Court; second, the opinion requested must be on a legal question; and third, this question must be one arising within the scope of the activities of the requesting agency. This three-prong test further explains Article 96 of the UN Charter. In the Court opinion, none of WHO's functions, as provided for in Article 2 of the WHO Constitution, had a sufficient connection with the question before it for that question to be capable of being considered as arising "within the scope of the activities" of the WHO. The ICJ therefore lost an opportunity to explain or even develop international law. The ICJ, also in its final paragraph (162) of the July 9, 2004 Advisory Opinion regarding the Israeli wall/fence concluded: "The Court has reached the conclusion that the construction of the wall by Israel in the Occupied

Palestinian Territory is contrary to international law and has stated the legal consequences that are to be drawn from that illegality.”

Furthermore, the International Court of Arbitration organises and supervises arbitration and helps in overcoming obstacles. It does not itself resolve disputes, a task that is carried out by independent arbitrators. The Court makes every effort to ensure that the award is enforceable in national courts if need be, although in practice the parties usually comply.

Reference of Cross-cultural Disputes to the Jurisdiction of the ICJ and ICA:

It can be said from the foregoing that reference of cross-cultural disputes to International Court of Arbitration is in line with the position of Islam. In this case, before any law is made by a country concerned on the issues relating to cross-cultural matters, there is the need for adequate consultations. The *Ulama* in the country concerned will have to be consulted to see how fundamental the issue they seek to ban in a particular culture or religion. This will ensure that they are adequately informed before a law is made in the regards. France should have consulted the Islamic experts in the country to see how fundamental the issue of *Niqab* is in Islam before placing ban on it. The same also applies to Belgium. This will go a long way in solving the issue of cross-cultural disputes in the world.

Islam does not actually favour the reference of matters to International Court of Justice on the other hand. This is because the Quran and *Sunnah* enjoin Muslims judge with what Allah has revealed and to refer matters of disputes to Qur'an and *Sunnah*; thereby making the legal system in ICJ and Islam totally different. The Qur'an says: "But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission" (Qur'an, 4: *ayah* 65). Another verse of the Qur'an says: "Do they then seek the judgment of (the days of) Ignorance? And who is better in judgment than Allah for a people who have firm Faith" (Qur'an, 5: *ayah* 50). Allah (s.w.t) also says: "O you who believe! Obey Allah and obey the Messenger (Muhammad), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last Day. That is better and more suitable for final determination" (Qur'an, 4: *ayah* 59). Also, the Qur'an says: "And in whatsoever you differ, the decision thereof is with Allah (He is the ruling Judge)" (Qur'an, 42: *ayah* 10).

It is not permissible for Muslims to refer matters for judgment to ICJ, or to tribal customs that go against the *Shari'ah* as the judgment therein is not based on the *Shari'ah*. Also, most the judges are from background that does not appreciate the values of Islamic jurisprudence. Muslim states should be aware that no doubt there are so many cross-cultural disputes and many conflicts that have arisen among them and are still continuing. Reference to ICJ is not the only way to resolve these conflicts among their states concerning properties, rights, political boundaries, etc. and cross-cultural disputes. The best is to refer to the laws of Allah (s.w.t.). This may be done by setting up an arbitral panel consisting of experts who must be people of unimpeachable character. They must also be acceptable to all in terms of their knowledge, understanding, fairness and piety, which will look at solutions to the conflicts, then will pass judgment in accordance with what the dictates of the *Shari'ah*. They should realize that referring to the ICJ and similar non-Islamic organizations comes under the heading of referring to laws other than the laws of Allah (s.w.t.). This is not permissible to judge by those laws or to apply them to cases between Muslims. The call by United Arab Emirate on Islamic Republic of Iran to go to ICC in resolving their disputes is not the best. They must avoid doing that; and they should fear Allah (s.w.t.) and take note of the punishment with which He warns those who go against His laws.

Many verses of the Qur'an testify to the above proposition. For instance, Allah (s.w.t.) says: "But whosoever turns away from My Reminder (i.e. neither believes in this Qur'an nor acts on its teachings) verily, for him is a life of hardship, and We shall raise him up blind on the Day of Resurrection. He will say: 'O my Lord! Why have you raised me up blind, while I had sight (before).'" (Allah) will say: 'Like this: Our Ayaat (proofs, evidences, verses, lessons, signs, revelations, etc.) came unto you, but you disregarded them (i.e. you left them, did not think deeply in them, and you turned away from them), and so this Day, you will be neglected (in the Hell-fire, away from Allah's Mercy).'" [Qur'an 20:124-126] ; "And so judge (you O Muhammad) among them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you (O Muhammad) far away from some of that which Allah has sent down to you. And if they turn away, then know that Allah's Will is to punish them for some sins of theirs. And truly, most of men are Faasiqoon (rebellious and disobedient to Allah). Do they then seek the judgment of (the days of) Ignorance? And who is better in judgment than Allah for a people who have firm Faith" [Qur'an 5:49-50] The verses which point to the same meaning are many, all of which reinforce the fact that obedience to Allah (s.w.t.) and His Messenger is the means to happiness in this life and blessing in the Hereafter, and that disobeying His Messenger and turning away from the Reminder of Allah (s.w.t.) and His rulings is the means to a life of hardship and misery in this life and torment in the Hereafter. I ask Allah (sw.t.) to guide us all to the truth, to make us steadfast, to put our affairs right and to help us to do all that is good for our worldly and religious affairs. May He cause us all to accept the judgment of Allah and His Messenger, for He is the Most Generous, Most Kind.

Thus, that of International Court of Arbitration is also preferable as Muslim experts can still be found in the field. For instance, Samir Saleh, Attorney at Law, is a Law Consultant in Islamic and Middle Eastern law, based in London. He is a former Vice Chairman of the International Court of Arbitration of the ICC, Paris (1982-1988) and Member of the International Arbitration Institute, Paris.

Conclusion:

Cross-cultural disputes are inevitable in the modern world. This is as a result of globalization, which has made cross-cultural interactions unavoidable. One culture does not however supersede another. There is therefore the need to appreciate the cultural diversity in the modern world of today in order to resolve cross-cultural differences resulting into series of cross-cultural disputes. As revealed in this paper, one of the most controversial issues brought about by cultural diversity is the mode of dressing for the Muslims. Most Western countries have found it extremely difficult to tolerate the ways of dressing of Muslims in their localities. Some of the countries have banned the ways of dressing of Muslims particularly female Muslims; through the banning of *Burqa*. France and Belgium even criminalised the practice. The only explanation for this was to protect the secular nature of the countries. The countries do not realise however that their constitutions protect the freedom of religion. All these are cross-cultural disputes, which need to be resolved.

The first step therefore is to recognise the diversity of the world's humanistic and cultural traditions while seeking for harmonised ground. There is the need for dialogue and research that is globally oriented in concept which would solve the challenges of peaceful co-existence in today's global village. One of the major challenges today is the presumption by the Western countries that there is an existence of peace and dispute resolution framework only within the Western perspective. This is not the case for the fact that: the idea breeds self-satisfaction and reliance on dominant pattern, which may not solve the problem. Also, it presupposes the fact the approaches on non-Western perspective or religious approach are not valid. This further provokes cross-cultural disputes. Findings have revealed however that since religion is deeply implied in individual and social concept of peaceful co-existence and dispute resolution, religion plays a very important role in this regard.

The paper reveals that Islam presents a very comprehensive way of resolution of cross-cultural disputes. Thus, it presents *Sulh* (mediation, negotiation, compromise), *Tahkim* (arbitration) as acceptable means of dispute resolution of cross-cultural disputes. Thus, International Court of Arbitration may also be referred to for the purpose of resolving cross-cultural disputes since Islam is in harmony with settlement of disputes through arbitration. However, referring to International Court of Justice (ICJ) is not recognised in Islam. Also, before countries place ban on anything having to do with the cultures of others, there is a need for adequate consultations from experts in the religion concerned to see if it is a fundamental aspect of the religion that is sought to be banned or not. Protecting one's secularism does not give right to prohibiting the fundamental aspect of another's religion. This is what happened in France and Belgium. Female mode of dressing in Islam is a fundamental aspect of cultural and Islamic morality for the Muslims. This therefore justifies the need for resolution of cross-cultural disputes from the perspectives of *Sulh*.

REFERENCES

Abu-Nimer, M., 1996. Conflict Resolution in an Islamic Context: Some Conceptual Questions, 21(1) Peace and Change, 22-40.

Abu-Nimer, M., 2001. Conflict Resolution, Culture and Religion: Toward a Training Model of Interreligious Peacebuilding. 38(6) Journal of Peace Research, 685-704.

Abu-Nimer, M., 2003. Nonviolence and Peace Building in Islam: Theory and Practice. Gainesville, FL: University Press of Florida.

Anderson, B., 1991. Imagined Communities, rev. ed., London: Verso.

Andreas, L.P., 1998. Jurisprudence of the International Court of Justice, Lockerbie Cases: Preliminary Objections, 9, E.J.I.L 550.

Appleby, R. Scott, 2000. The Ambivalence of the Sacred: Religion, Violence and Reconciliation. (Lanham, MD: Rowman & Littlefield.

Ashafa, M.N. and M.W. James, 1999. The Pastor and the Imam. Lagos: Ibrash Publications Centre Ltd.

Augsburger, D.W., 2000. The New Freedom of Forgiveness. Chicago: Moody Press.

Augsburger, D.W., 1992. Conflict Mediation Across Cultures: Pathways and Patterns. Louisville, KY: Westminster/John Knox.

Bamba, Nobuya and John F. Howes, 1978. Pacifism in Japan: The Christian and Socialist Tradition Vancouver: UBC Press.

Boulding, Elise. "Two Cultures of Religion as Obstacles to Peace." (1986) 21 Zygon, 501-18.

Bouth, T., S. Ayse Kadayifci-Orellana and M. Abu-Nimer, 2005. Faith-Based Peace-Building: Mapping and Analysis of Christian, Muslim and Multi-Faith Actors. Washington DC: Salam Institute for Peace & Justice and the Clingendael Institute, November. Available:

- <http://www.eldis.org/go/display/?id=21444&type=Document> accessed on 17/11/2011.
- Brossart, D., 1980. *Creative Conflict Resolution in Religious Education and Church Administration*. (Birmingham. AL: Religious Education Press.
- Buttry, D.L., 1994. *Christian Peacemaking: From Heritage to Hope*. Valley Forge, PA: Judson Press.
- Capling, A., M. Considine and M. Crozier, 1998. *Australian Politics in the Global Era*. Melbourne: Addison Wesley Longman.
- Castles, S., 1999. *Globalisation, Multicultural Citizenship and Transnational Democracy*. in G. Hage and R. Couch (eds), *The Future of Australian Multiculturalism*, (Sydney: Research Institute for Humanities and Social Sciences.
- Chapman, R. Audrey and B. Spong, 2004. *Religion and Reconciliation in South Africa: Voices of Religious Leaders*. (Philadelphia and London: Templeton Foundation Press.
- Chappell, D.W., (ed), 1999. *Buddhist Peacework: Creating Cultures of Peace*. Somerville, MA: Wisdom Publications.
- Dale, D., 1999. *The 100 Things We Loved about the 20th Century*, Sydney: Pan Macmillan.
- Daniele, C., 2010. *The Limits of Cultural Globalisation?*. *Journal of Critical Globalisation Studies*, 3(36).
- Delanty, G., 2000. *Citizenship in a Global Age: Society, Culture, Politics*, Buckingham: Open University Press.
- Driver, J., 1988. *How Christians Made Peace With War: Early Christian Understandings of War*. (Scottsdale PA and Waterloo, ON: Herald Press.
- Friesen, D.K., 1986. *Christian Peacemaking and International Conflict: A Realist Pacifist Perspective* Scottsdale: Herald Press.
- Gangel, Kenneth O. and Samuel L. Canine, *Communication and Conflict Management in Churches and Christian Organizations*, (Nashville, Tennessee: Broadman Press, 1992).
- Giddens, A., 1990. *The Consequences of Modernity*. Cambridge: Polity Press.
- Gopin, M., 2000. *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (New York: Oxford University Press.
- Gopin, M., 2001. *Forgiveness as an Element of Conflict Resolution in Religious Cultures: Walking the Tightrope of Reconciliation and Justice*. In Mohammed Abu-Nimer (ed) *Reconciliation, Coexistence, and Justice in Interethnic Conflicts: Theory and Practice*, Lanham, MD: Lexington Books.
- Gopin, M., 2000. *Between Eden and Armageddon: The Future of World Religions, Violence and Peacemaking* New York and London: Oxford University Press.
- Gopin, Marc., 1997. "Religion, Violence, and Conflict Resolution." *Peace & Change*, 22(1): 1-31.
- Guinn, D., 2006. *Protecting Jerusalem's Holy Sites: A Strategy for Negotiating a Sacred Peace*. (Cambridge, UK: Cambridge University Press.
- Hadley, Michael. L., ed., 2001. *Spiritual Roots of Restorative Justice*, New York: SUNY Press.
- Hamzeh, N., 1997. *The Role of Hizbullah in Conflict Management Within Lebanon's Shia Community*. In *Conflict Resolution in the Arab World*, edited by Paul Salem, (Beirut: Lebanon: American University of Beirut. 93-118.
- Hauerwas, S., 1983. *The Peaceable Kingdom: A Primer in Christian Ethics* Notre Dame: University of Notre Dame.
- Held, D., 1995. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Polity Press.
- Iqbal, W., 2000. *Courts, Lawyering and ADR: Glimpses Into the Islamic Tradition*. 28 *FORDHAM URB. L. J.* 1035-1035.
- Irani, G.E., 1989. *The Papacy and the Middle East: The Role of the Holy See in the Arab-Israeli Conflict*. (Notre Dame, IN: University of Notre Dame Press.
- Irani, G.E., 1999. *Islamic Mediation Techniques for Middle East Conflicts*. 3 (2) *Middle East Review of International Affairs*.
- Irani, G.E., 2002. *Acknowledgement, Forgiveness and Reconciliation in Conflict Resolution: Perspectives from Lebanon*. *Chronos*, 5: 195-220.
- Irani, G., 2000. *Rituals of Reconciliation: Arabic-Islamic Perspectives*. *Mind and Human Interaction: Windows Between History, Culture, Politics and Psychoanalysis*, 11(4): 226-45.
- Irani, G. and L. King-Irani, 1996. *Recognizing the Other, Forgiveness, and Reconciliation: Lessons From Lebanon*. (Beirut: Lebanese American University.
- Johansen, R.C., 1997. *Radical Islam and Nonviolence: A Case Study of Religious Empowerment and Constraint among Pashtuns*. *Journal of Peace Research*, 34(1): 53-71.
- Johnston, D., 1994. *Faith Based Organizations: The Religious Dimensions of Peace-building*. In Paul Van Tongeren *et al* (eds) *People Building Peace II: Successful Stories of Civil Society*, Johnston, Douglas, and Cynthia Sampson, eds. *Religion, The Missing Dimension of Statecraft*, New York, Oxford: Oxford University Press.

- Jonathan, P., Globalisation: A Threat To Australian Culture? 48, *Journal of Political Economy*, 47-59.
- Keegan, J.M, 1987. *The Peacemakers: Biblical Conflict Resolution and Reconciliation as a Model Alternative to Litigation*. *Missouri Journal of Dispute Resolution*, 11-26.
- Ratno, L., 2006. Religious ADR: Mediation in Islamic Family Law Tradition. 44, *AL-JAMI'AH* 325, 337.
- Saleh, S., 1985. *The Settlement of Disputes in the Arab World Arbitration and Other Methods – Trends in Legislation and Case Law*, 1 *ARAB L.Q.* 198- 198.
- Sambo, A.O. and M.M. Akanbi, 2012. Sulh as Means of Dispute Resolution. In Adnan Trakic & Hanifah Haydar Ali Tajuddin (eds.) *Islamic Banking & Finance: Principles, Instruments and Operations*, 371-382, Malaysia, *The Malaysian Current Law Journal*.

Websites:

- Headscarves in Headlines at <http://news.bbc.co.uk/2/hi/europe/3476163.stm> accessed on 17/11/2011. On 22 September 2011, *The Telegraph*, 23 September 2011.
- Katerine Nikolas, Belgium Officially bans the burqa, Jul- 23-11, retrieved from: <http://news.helium.com/news/14016-belgium-officially-bans-the-burqa> accessed on 10/5/2011.
- Head scarves in the headlines retrieved from <http://news.bbc.co.uk/2/hi/europe/3476163.stm> Accessed on 17/11/2011.
- Head scarves in the headlines retrieved from <http://news.bbc.co.uk/2/hi/europe/3476163.stm> Accessed on 17/11/2011.
- Head scarves in the headlines retrieved from <http://news.bbc.co.uk/2/hi/europe/3476163.stm> Accessed on 17/11/2011.
- Head scarves in the headlines retrieved from <http://news.bbc.co.uk/2/hi/europe/3476163.stm> Accessed on 17/11/2011.
- Head scarves in the headlines retrieved from <http://news.bbc.co.uk/2/hi/europe/3476163.stm> Accessed on 17/11/2011.
- 1 Muslim Nation, Women's Hijab Banned: Tunisia Government Crushing Islam, Posted on 30/10/2006 <http://1muslimnation.wordpress.com/2006/10/30/womens-hijab-banned-tunisia-government-crushing-islam/> accessed on 17/11/2011.
- 1 Muslim Nation, Women's Hijab Banned: Tunisia Government Crushing Islam, Posted on 30/10/2006 <http://1muslimnation.wordpress.com/2006/10/30/womens-hijab-banned-tunisia-government-crushing-islam/> accessed on 17/11/2011.
- 1 Muslim Nation, Women's Hijab Banned: Tunisia Government Crushing Islam, Posted on 30/10/2006 <http://1muslimnation.wordpress.com/2006/10/30/womens-hijab-banned-tunisia-government-crushing-islam/> accessed on 17/11/2011.
- What was the Advisory Opinion of the International Court of Justice (ICJ), and was it a just verdict? <http://israelipalestinian.procon.org/view.answers.php?questionID=000518> accessed on 20/11/2011.
- <http://www.iccwbo.org/court/arbitration/id4400/index.html>. accessed on 21/11/2011.
- United Arab Emirates calls on Iran to take dispute over islands to UN court <http://www.un.org/apps/news/story.asp?NewsID=39803&Cr=icj&Cr1=> accessed on 20/11/2011.
- <http://www.lexgulf.com/arbitration.php>. Accessed on 20/11/2011.