



Diversity & Inclusion Youth Conference

# RESEARCH REPORT

## DIYC Governance and Rule of Law Council

*“Democracy and Good Governance as Tools to Development of Peace”*  
Chairperson : Kriishand A/L Gopala Krishnan

**Diversity and Inclusion Youth Conference 2018**  
**Universiti Teknologi Malaysia , Johor, Malaysia**  
**6<sup>th</sup> March 2018 – 11<sup>th</sup> March 2018**  
**“Young Moderates for Global Peaceful Co-existence”**

**Organized By:**



**In Collaboration With :**



## **DIYC 2018 THEME : “Young Moderates for Global Peaceful Coexistence”**

**Peaceful Co-Existence** - The aim of peaceful co-existence is to establish a foundation where all sides, having found the creed to respect each other, can enhance and enrich their respective philosophical and religious traditions. This is achieved by adopting moderation as a way of life steeped in the search for justice, equilibrium and equity.

### **ABSTRACT**

The Diversity and Inclusion Youth Conference (DIYC) seeks to gather the youth together to understand how the values and practice of moderation, among themselves, can have a significant contribution towards peaceful co-existence in a multi-ethnic and multi-religious environment. By bringing together youth from various countries, this conference seeks to dissect and analyze the varied, multifaceted and evolving meanings of what it takes to create and maintain the peaceful co-existence between communities in their respective countries and regions.

The collective voices of the moderates needs to be heard to quell the extremist rhetoric that completely contradicts with the culture of peace. The rising threat of terrorism and violent extremism across the globe was a grim reminder of the need for sustained efforts to combat this phenomenon. The seeds of intolerance, hatred and extremism must not be allowed to take root and eradicating terrorism requires a collective global effort through moderation as an age-old principle embodied in all the great world religions and personified by many leaders, including Martin Luther King, Jr., Nelson Mandela and Malala Yousafzai.

Promoting a culture of peace was one of the ASEAN’s intrinsic values, as affirmed by its “Community Vision 2025” plan and other policies that are firmly committed to do its part to inculcate and uphold the values and norms of peace, harmony, intercultural understanding, and the rule of law, good governance, tolerance, inclusiveness and moderation. ASEAN’s endorsement of moderation via the Langkawi Declaration on the Global Movement of Moderates attests that it is very much an ASEAN value, deeply entrenched within the *ASEAN Way*.

What can the world learn from Malaysia and ASEAN that is otherwise lacking in other regions where conflict is rife? Moderation is the pillar of Malaysia's success in dealing with ethnic and religious diversity. The UNGA Resolution on Moderation tabled by Malaysia during the 72nd UNGA is a testament to the country’s well-known track record of being a society which practices moderation, tolerance and mutual respect as this initiative was well-received by UN member states. Malaysia believes that moderation could complement the mission and work of the United Nations to proclaim 2019 as the International Year of Moderation, and DIYC aims to emphasize the promotion of

dialogue and education in fostering inter-religious, inter-ethnic and intercultural understanding and dialogue, with broad participation amongst youths from around the world.

During the conference, participants will acquire the knowledge and tools to strengthen their ability to communicate across differences, interact with one another and look at diversity as an asset for cross-fertilization and inter-cultural exchange from which mutual trust; better understanding and a global mindset can emerge and proliferate.

## **CONCLUSION**

The Diversity and Inclusion Youth Conference seeks to highlight the pertinent issues at play. Indeed, the above is by no means easy to answer. But taking the first step, in the right direction, can add to the clarity. The Conference seeks to gather youths to understand the lessons of Malaysia with the attendant aim to understand how the voices of the youth from other regions can jointly enrich this debate too.

The outcome of the deliberations from the conference can also be shared and disseminated to various regional and international agencies, especially if the discourse is rendered into a form of memorandum



## **DIYC Governance and Rule of Law Council**

Kriishand A/L Gopala Krishnan

*“Democracy and Good Governance as Tools to Development of Peace”*

**Governance and Rule of Law** - Democracy and the rule of law seek to promote moderation through better understanding of democratisation, and legalisation of disputes, especially with specific reference to international law.

### **Introduction**

Peace should never be seen as an achievement, but a duty. Recognising that the Rule of Law sets itself as a cornerstone of good governance in the pursuit of democratic peace, this Council shall aim to promulgate such legal guidelines to a form of governance that may best obtain national and to some extent, global, peace.

This report will briefly run through the many talking points concerned with the general topic to assist delegates in understanding status quo and the current position of certain legal matters. With this brief run-through of key issues, delegates are expected to form resolutions which serve as a legal guideline depicting the ideal form of ‘good governance’ that best upholds this Council’s definition of what the Rule of Law may be.

### **Key Issues**

- **Rule of Law**

It is a bold statement for one to make, as Mark Elliot points out, when something is said to be “contrary to the rule of law”. In the pursuit of a constitutional reality emboldened by proper governance, the Rule of Law stands at the core of it all. One must therefore ask, what *is* the Rule of Law and how shall it be defined? It is worth mentioning at this juncture, that there is no single universal definition of the ‘Rule of Law’ and appreciation of this fact is pivotal. It generally is only seen to be understood as a principle of legality, with a list of essential characteristics relating to law attached to this phrase that ought to exist in a ‘good’ constitutional system. It is further generally accepted that when a public body or a devolved legislature does something exceeding its legal powers, it contravenes the rule of law.

To further analyse this rather intriguing and complex principle, one must appreciate the fact that these complexities stemmed from something as simple as what ought to be included within the notion of the Rule of Law.

The first view, called the 'Content Free' rule, dictates that the Rule of Law should only be about the form of the law and the procedures by which the law is made. As Joseph Raz explains, all laws should be prospective, open and clear, stable, made following a clear set of rules and that the courts should be easily accessible. In essence, Raz argues for a 'thin' version of the law - where only a standard form of law making procedure should be complied with, wherein the content is a matter of subjective debate as per the morality and laws of respective lands. Opponents of this content-free Rule of Law argue that an evil legal system can still be considered to be in compliance with the Rule of Law - for example, a law is passed through proper parliamentary procedures, which effectively removes the right to education of a certain minority group. Immense power will be placed at the hands of political elites where they are able to dictate laws by virtue of controlling the majority seat in parliament. All laws will be seen to be Rule of Law compliant should it be passed using the proper methods.

On the other hand, defenders of this form of the Rule of Law argue that this adds objectivity and independence to the concept in its entirety. At the end of the day, the processes should never be abused and it is in the state's interest to ensure a standard and fair means by which laws are passed in a country. Similarly, they argue, the development of the law may be hampered should there be a universal definition of 'good laws' as morality is subjective in nature. Professor Paul Craig gave some insights on this matter to the House of Lords Constitution Committee; he mentioned - "the message is therefore that if you wish to argue about the justness of society do so by all means. If you wish to defend a particular type of individual right then present your argument. Draw upon the wealth of literature which addresses these issues directly. It is however on this view not necessary or desirable to cloak the conclusion in the mantle of the rule of law, since this will merely reflect the conclusion which has already been arrived at through reliance on a particular theory of rights or the just society." [Craig, P. Sixth Report from the House of Commons Select Committee on the Constitution, HL 151 of 2006-07]

In essence, one might argue that law makers need only to follow rigidly the means by which laws ought to be promulgated and passed, but it is open to them to debate the merits of prospective laws and to decide democratically if it is fit to be the law of the land. This concept seems to sit well with the idea that Parliament represents the conscience of the nation - wherein the elected representatives have the legitimate mandate to decide the merits of policies and laws on a case-by-case basis.

The second view, called the 'Content Rich' rule, is a more complex and idealistic view of the rule of law. Ronald Dworkin summarised it as:

"I shall call the second conception of the rule of law the 'rights' conception...it assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognised in positive law, so that they may be enforced upon the demand of individual citizens through the courts and other judicial institutions of the familiar types, so far as this is practicable." [*A Matter of Principle*. (Boston, MA: Harvard University Press, 1985)]

In essence, this version dictates that there ought to be a universal moral code as to what laws must be present in a state. It is concerned not with just the form of the law, but the substance too. Opponents of this view suggest that this is a farce as the moral principles mentioned are not universally agreed upon. For instance, there is no universally agreed upon standard for police powers, infringement of certain rights by the state in the face of national security issues or even the morality of abortion.

Beyond these interpretations of the Rule of Law, delegates are advised to read up on **Prof. A.V. Dicey's** concept of the rule of law, and **Lord Bingham's** description of the rule of law via his eight sub-rules.

A discussion on the Rule of Law will not be complete without some reference to the concepts of constitutional supremacy and parliamentary supremacy. The former has much to do with a set of rules being the sole point of reference as to how a nation ought to run, affording the Courts the power to strike down Acts of Parliament that contravene any aspect of the Constitution. The latter deals with Parliamentarians who possess the power to pass laws as they so deem fit with little to no control by the Courts. Parliament in this instance has the final say, being able to pass laws that either undermine, or uphold the Rule of Law. Delegates are advised to consider here, thoroughly, the merits of each concept.

- **International Humanitarian Law**

Recognising that good governance extends beyond borders, it is necessary for delegates to understand briefly this area of International Humanitarian Law, particularly in times of conflict. It is to be distinguished from, but overlaps with/has similarities to the law on the use of force (*ius ad bellum*) and international human rights law. This concept balances the need of humanitarian considerations and considerations of military necessity.

The key principle of the law in this area is that people who - for whatever reason - are not engaged in active fighting must be treated humanely and that conflicts must be conducted in a

manner that reflects this. The Geneva Conventions, Additional Protocol I 1977, Article 1(2) states:

“In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.”

Delegates are advised to pay close attention to the Geneva Conventions and IHL in general, to dissect and question its validity and effectiveness in handling conflict in the modern era.

- **The International Court of Justice**

The International Court of Justice (ICJ) is the primary and principal judicial organ of the United Nations. The court was established in 1945, upon the establishment of the United Nations and enforced in 1946. The ICJ is seated in the Peace Palace in The Hague, Netherlands.

The mechanism that the court relies on is laid down in Article 36 of the Statute of the International Court of Justice where it is stated that it works on the basis of consent. It is thus the duty of the court to sought legal disputes between two consenting countries to enlighten any conflicting interpretations or breaches of international law and to come to a peaceful resolution.

There are a total of 15 judges presiding in the ICJ, where these judges come from different parts of the globe ranging from the Western part, Africa, Asia, Latin America and Eastern Europe. They are elected by the United Nations General Assembly and the United Nations Security Council by means of a ‘secret ballot’. It is a given that the elected judges would have to possess some qualification such as but not limited to - international law expertise, qualification as the highest member of the judiciary in their respective countries and high moral character. However, in the best interest of the court, the elected judges must not have any affiliation to their state governments and must be independent in nature.

Upon nations consenting to the jurisdiction of the Court, it goes without saying that they also consent to the decision or verdict of the court. They must, under any circumstance, accept the Court’s verdict as a ‘single opinion’ and their judgement is final. The decision by the Court cannot be appealed by any parties in trial. However, a revision of their judgement can still be made for any further points of clarification as provided by Article 61 of the statute of the court.

It is important for delegates to note that the Court decides in accordance to international law as a legal source and backbone when deciding contentious cases as summarised in Article 38 of the Statute of the International Court of Justice. In doing so, Article 38 provides the applicable

sources of International Law that will be regarded in Court. International conventions and treaties would be the primary source of law that is applicable. Next, international customs or practices as well as general principles of law recognised by civilised nations are also applicable in the proceedings of the court. Lastly, this Article also provides that precedents and renowned and international academic opinions by means of publication will be regarded as a subsidiary mean to determine the rule of law. The ICJ also decides the case '*ex aequo et bono*', that is to decide based on the principles of 'equity' or 'fairness and justice' (in other words: depart from the strict rules of international law based on what is fair in the given circumstances) should the parties consent to it.

However, delegates should keep in mind that the common law concept of '*stare decisis*' (translated to: 'stand by what has been decided') or more commonly known as the doctrine of judicial precedent, namely binding precedents, will strictly not apply in international judicial decision-making. This is in light of Article 59 of the Court's statute that provides that "the decision of the Court has no binding force except between the parties and in respect of a particular case". However, past decisions may be used as a strong persuasive authority.

The Court aims to develop the principles of international law that will potentially provide an adequate framework for the settlement of any disputes that may arise in light of international peace and cooperation.

Delegates are advised to question the workings of the ICJ and look into instances of member states defying the decisions of this Court.

### **Questions to Consider**

- Content Free ROL v. Content Rich ROL
- Constitutional Supremacy v. Parliamentary Supremacy
- The feasibility of IHL and Geneva Conventions in the modern era
- The question of the workings of the ICJ and sanctions against non-compliant states
- The independence of the judiciary
- Limitations to the powers of Government when dealing with national security issues
- Infringement of human rights

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