

## Towards a unified Arab and Islamic Civil Law: Past Experiences, Present Challenges, and Future Prospects

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### ABSTRACT

The dream of Arab and Islamic unity is still far-fetched in light of the current realities. Legislative unity is considered a manifestation of the unity of the nation, and it has approaches and forms that benefit from past and present experiences at the Arab, Islamic, European and even international levels. This paper comes within the framework of supporting the idea of achieving legal unity at the Arab and Islamic level based on the authority of Islamic Sharia, which is the strongest reference that unites the nation, in addition to many other factors, by shedding light on past experiences, present's time realities, and future prospects. The paper concludes that the best way to achieve legal unity in light of today's realities is model laws as a first stage that gradually leads to legal convergence, with the hope of reaching other, clearer levels of unity, as is the case within the framework of the European Union.

**Keywords:** Civil Law, Islamic Law, Unification of Law

### INTRODUCTION

Law is a tool for developing human societies and addressing the problems they face. A discipline that connects many social and human sciences together to address and solve human problems. In this context, legal studies in general, and comparative law in particular, are closely related to human affairs.

This study aims to provide a perspective that anticipates the future of civil law within the Arab and Islamic framework, in light of past and present experiences. In doing so, it seeks to launch a contemporary legal movement and debate to study and revive the idea of unifying Arab and Islamic civil codes and to present possible approaches and alternatives to this concept.

Majallat al-Ahkam al-Adliyya, "Al-Majalla" issued during the Ottoman era represented an unprecedented historical initiative to codify the provisions of Islamic jurisprudence on matters of financial transactions. It also represented a pioneering attempt to unify the rules of civil transactions across a large group of states and regions that fell under the umbrella of the Ottoman Empire.

However, the political circumstances that the Ottoman Empire and the world experienced in the late nineteenth and early twentieth centuries significantly weakened the momentum of this initiative. Nevertheless, Al-Majalla retained its historical value and, to some extent, remains partially effective today in some countries that were formerly part of the Ottoman Empire, such as Jordan.

This study attempts to monitor efforts to unify civil law rules in Arab and Islamic countries in light of some recent initiatives within Arab and Islamic frameworks, such as the League of Arab States and the Gulf Cooperation

Council, in addition to recent trends across the world to unify private law and the development of comparative law.

This paper reviews the circumstances that led to the launch of the Majallat al-Ahkam al-Adliya and the subsequent developments that occurred in it. It also reviews the developments that occurred - on more than one level - in the idea of unifying the rules of civil law during the twentieth century. It also anticipates realistic approaches to deal with the unification of Arab and Islamic civil codes in response to the needs of the current time and civil transactions, and more importantly to achieve the aspirations of peoples, and to keep the idea of unity alive in the field of civil legislation.

This idea has been and continues to be a dream for many and a valid requirement in a world that is shrinking and converging due to many technological, human, and cultural factors.

## THE ISLAMIC WORLD

The countries of the Islamic world represent a vast geographic and demographic bloc in the world. These countries are distributed across four continents: Asia, Africa, Europe, and Latin America. Although the majority of Islamic countries are concentrated in Asia and Africa, millions of Muslims also reside in other countries around the world. The Islamic world is considered one of the most important global divisions, united by common civilization, history, geography, and political and economic interests. (Malkawi, A, 2000).

It is notable that Islamic countries and countries with Muslims majority established international governmental organization, namely the OIC. The Organization of Islamic Cooperation (OIC) is the second largest organization after the United Nations with a membership of 57 states spread over four continents. OIC was established upon a decision of the historical summit which took place in Rabat, Kingdom of Morocco on 12th Rajab 1389 Hijri/ Islamic Calendar (25 September 1969) following the criminal arson of Al-Aqsa Mosque in occupied land of Jerusalem (Palestine) committed by Zionist extremisms within the Israeli occupation force. The fundamental purpose of the OIC is to strengthen the solidarity and cooperation among the Member States. (The Organization of Islamic Cooperation (OIC), Official website).

From this perspective, the research idea was to examine the possibility of achieving legislative unity among the countries of the Islamic world within the framework of civil transactions. This attempt is based on factors of unity and commonalities among the countries of the Islamic world, on the one hand, and on the other hand, on the experience that the Islamic world experienced in a not-so-distant era. In so doing, the paper will introduce and/or develop contemporary ideas and approaches towards legislative unification, whether at the Arab, Islamic, or even global levels.

## THE LEVERS AND SUPPORTS OF UNIFICATION

The unification of civil law in Islamic countries seems possible and feasible; for these countries have many similarities in its legal systems especially in terms of have Islamic Sharia as the main source –or at least one of the main- source of its legislation. In the regard, there are many encouraging factors to support and guarantee the unification.

### Factors Encouraging the Initiative to Unify Civil Law within the Islamic Framework

The idea of unifying civil legislation within the Islamic world appears feasible for many reasons, most notably:

The unity and/or similarity of the sources of legal systems primarily represented by Islamic law “Shari'a”, as well as the deeply rooted status of Islamic law in people's hearts due to its connection to the eternal faith of the nation.

Harmony in the matter of language. Arabic language, and the most prominent official languages in the Arab and Islamic world, is almost limited, which facilitates communication, understanding, and agreement on the meanings of words and phrases. As for the Arabic language among the peoples of non-Arab Islamic countries, Arabic has a solid status as the language of the Holy Qur'an, the primary and most important source of Islamic law. It should be noted that some acts of worship could only be performed in Arabic i.e. Al Salah “Prayers”; There is a consensus that prayer is not valid without reciting the Holy Quran - at least Surat Al-Fatiha (sunnah website)- and there is almost a consensus that the required recitation should be in Arabic and is not valid in any other language. This is also the case with the rest of the prayer's actions, such as bowing, prostration, the testimony of faith, and the salutation of peace at the end of prayers. (Iifa, 2023)

Civil law is a branch of private law, and is related to civil and financial transactions. Generally, branches of private law are less connected to the idea of national sovereignty and territorial application of law, which states

usually deal with sensitively. This enhances the chances of success of the idea of unifying the provisions of civil and commercial transactions and other matters covered by private law branches.

The similarity of civil transaction patterns and the convergence of the solutions and provisions established for them make it more likely that unifying the provisions in a single Arab and Islamic civil code will be successful and feasible.

It is possible to avoid details and controversial issues, and to suffice with general rules and principles, leaving the door open to resorting to local and national customs, as well as granting the judiciary broad discretionary power to choose the rulings appropriate to the nature of the transaction and the circumstances of the time and place. This discretionary power offered to judges, help establishing justice in a realistic manner, and give the legal system dynamic nature instead of making it a rigid system. Moreover, this gesture reflects the legislator trust in the judiciary and liberate the legal system from definite classification of being Latin or Anglo-American one putting it middle way in between them. (Abdelnaser, Hayajneh, 2015)

The expected harmony resulting from unifying the references and origins of rulings in Islamic law, which will lead to a harmonious regulation for civil transactions. This will have a significant impact on the stability of transactions, the mitigation of disputes, and the facilitation of judicial work.

If unification of the Civil Law is not currently possible, then at the very least, efforts must strive to develop a model draft law that will contribute to the convergence and harmonization of Arab and Islamic civil laws, which will make the idea of unification more feasible in the future.

## CHALLENGES HINDERING UNIFICATION EFFORTS

On the other side, there are some challenges that needs to be overcome before a meaningful unification of Islamic civil laws can be achieved;

### Political Challenges

The countries of the Islamic world are experiencing multiple political crises at the national and inter-governmental levels, and within the framework of their foreign relations with some countries. These crises undermine the chances of success of the idea of unifying legislation. Here, the importance of resolving political differences, or at least neutralizing them, emerges to ensure a suitable basis for the idea of unifying legislation in formulas acceptable to these countries.

In this context, hope is pinned on the Organization of Islamic Cooperation. OIC is the largest Islamic political bloc, and by virtue of this, OIC can play a leading role in resolving political disputes and promoting initiatives to bring together the disputing parties in the Islamic world, thus realizing the true meaning of Islamic cooperation, which will only be possible or fruitful in an atmosphere of reconciliation and peace.

Not anyone following the current state of affairs and contradictions in the Islamic world can be overly optimistic, given the deteriorating and bleak picture. Optimism, if attainable, can be expressed only by the hope that the situation will not deteriorate further. The Islamic nation today is suffering from division, discord, decline, greed, and conspiracy at every level. However. Muslims are forbidden from despairing of God's mercy because God is able to change circumstances and lift the gloom that no one but God can lift; we cling to hope, even if its possibilities seem dim. We pray to God that the nation will regain the spirit of its renaissance and its great Islam, which is capable of bringing about change, and that God will grant success to the nation's elite, both individuals and institutions, to rise to the level of the great historical challenges and responsibilities.

### Economic Challenges

Theoretically, Islamic countries enjoy enormous economic wealth. Development rates in Islamic countries vary greatly depending on their economic resources and development status. Overall, a marked extremism in economic conditions can be seen between Islamic countries with relatively strong and diversified economies and Islamic countries that lack resources or possess them but experience low or negative development rates. Many Islamic countries also face security challenges or climatic conditions that contribute to the failure of their development efforts.

### The challenge of the issue of reference “Marji’eh”

Although there is consensus that the reference for rulings in Islamic law is the Holy Quran and the authentic Sunnah revealed to the Prophet Muhammad, peace and blessings be upon him, margins of disagreement are evident in the area of ijihad based on the sources of rulings and the science of the principles of jurisprudence.

Consensus may not be achieved on many issues, and there are ijtihads, schools of thoughts, analogy, and other methods by which rulings are reached. Moreover, not all Islamic schools of jurisprudence are unanimously agreed upon or accepted. Despite the fundamental nature of this issue, the margins of disagreement can be managed and bridged by relying on the principles of the science of Ikhtilaf, & Tarjeh, and Maqasid.

These differences are in fact factors of enrichment and flexibility that serve the idea of unifying civil law at the level of general rules and governing principles, while leaving the matter of details to be determined based on the prevailing doctrine and in accordance with local customs and real-life circumstances that vary in time and place.

## **A REALISTIC APPROACH TO THE IDEA OF UNIFYING ISLAMIC CIVIL CODES**

In light of the above mentioned regarding the possibility of unifying the rules of private law in general and civil law in particular, and the challenges facing the implementation of this idea. The question that must be asked now is: Can the Organization of Islamic Cooperation, directly or through its specialized bodies - such as the International Islamic Fiqh Academy "Magma' Al-Fiqh Al Islami"- , launch an initiative to unify civil codes within the Islamic framework? What are the chances of success of such an initiative? What are the features of the anticipated unified civil code?

Despite the difficult reality facing the Islamic nation and the many challenges it faces, we believe that any discussion within the context of the unity of the Arab and Islamic nation is important and timely. In 1962, the senior Arab jurist Abd al-Razzaq Al Sanhuri wrote: "I believe that Arab unity is a natural thing as the Arab peoples are one nation; . . . the strongest support of Arab unity is cultural unity and the most important basis for unifying culture is a unified legal culture. (Sara R, 2018) & (Fayez. H. 2014). Therefore. It is imperative to remind people of the unity of the Islamic nation and address the current deterioration in its reality by working to uphold and magnify commonalities and reject or minimize differences. The most prominent of these comprehensive principles is Islamic law "Shari'a", which unites the pillars of the nation and gathers its fragments around the foundations of faith, worship, and the general nature of the rules of financial transactions among its members.

### **Encourage and develop Islamic Studies**

Islamic studies, particularly in the fields principles of jurisprudence, and the science of Ikhtilaf, Tarjeh, and Maqasid., should be encouraged and developed, and these sciences should be integrated into legal studies at the college of Law.

### **Determine the Reference for the Rulings**

In an effort to unify civil legislation across the Islamic world, consensus must be reached on the reference of the rulings. This appears to be a fundamental issue, and if consensus is reached, the path to unification will be clearer. Perhaps the Holy Qur'an and the authentic Sunnah are the definitive references for any Islamic civil legislation. The remaining proposed references should be approached based on their compatibility with what is stated in the Holy Qur'an and the authentic Sunnah of the Prophet, without bias or ignoring another source. Rather, reliance on this or that source should be based on a single criterion, which is its compatibility with the Holy Qur'an and the authentic Sunnah of the Prophet Mohammad PBUH, with preference given to the opinion that achieves the interest more in accordance with Maqasid Al- Shari'a.

### **Flexible Wording of Texts**

In the context of drafting guiding legal texts, it is necessary to focus on using flexible wording of provisions, by employing words and terms capable of accommodating multiple meanings. This is more likely to achieve the highest levels of acceptance and success. Because the flexibility of language means that texts can be interpreted according to real-life circumstances and the requirements of justice. This gives the judiciary a crucial role in interpreting texts and applying them to real-life cases. Flexible language also exempts legislators from the need to amend and revise texts, given their ability to accommodate new situations.

### **Judicial Discretionary Power**

The discretionary power granted by the legislature to the judiciary is one of the most important guarantees for achieving justice when applying legal texts. It reflects the legislator's confidence in the judiciary as an objective, impartial authority entrusted with achieving justice and resolving disputes. The more broad and disciplined the

discretionary power granted to the judiciary, the more likely it is that the law will achieve its objectives. Because the judiciary is closer to reality than the legislator is, and it needs flexibility that enables it to approach disputes facts and its circumstances, far from the rigidity of legal texts. In national laws, the legislator seeks to grant the judiciary discretionary powers in various instances where the legislator considers the importance of the judge's flexibility in applying the provisions of the law. And if this is the case with single national jurisdiction, then this is strongly required in guiding legal texts or those intended to be texts of uniform application in more than one country or society.

### **The Role of Local Customs**

Given the vast expanse of the Arab and Islamic world, the great diversity prevailing within it, and the disparity in levels of economic development among them, in addition to the peculiarities of the local culture prevailing in these countries, local customs and people's practices in the field of civil transactions have a significant impact on the rulings of those transactions. This is something that should be taken into consideration when drafting legal texts and identifying official sources of rulings. This can be achieved by elevating the role of local custom as a source of rulings and drafting legal texts in a way that leaves a role for local custom in determining the ruling or clarifying its content.

### **The Role of Academics**

Researchers and academics play a prominent role in theorizing about the unification of civil law across the Arab and Islamic world. This is achieved by explaining the guiding laws, commenting on their texts, publishing research, holding conferences, and highlighting the advantages of unifying civil legislation and its scientific and practical implications. In this context, it is imperative to recall the need to establish and increase the number of peer-reviewed academic journals in the field of legal and Sharia studies, and to open the door for the publication of sound academic research within them. Priority should be given to studies and research that serve the idea of unity, as opposed to local or national studies and research.

Moreover. A research center for comparative legal studies should also be established. The center should include academics and researchers known for their experience, breadth of knowledge, and solid scientific output. Their specializations should cover various branches of law, comparative law, and Islamic and jurisprudential studies, with the aim of building a comprehensive legal and Sharia jurisprudence.

### **The Role of Legislative Institutions**

In order to achieve a model Arab and Islamic law for civil transactions, the role of legislative institutions in the Arab and Islamic world is indispensable. These legislative bodies, whatever their names, will play a decisive role in bringing the project to fruition. In this context, it is imperative to emphasize the independence and competence of legislative bodies to undertake this noble task. This can be achieved by embracing the idea of unity and convergence, formulating draft laws based on Sharia, and then pushing forward with a proposal to unify civil law across the Arab and Islamic world. To this end, they need to hold meetings and forums that explore the concept and outline the path to its realization.

### **Alternative to the Idea of Unifying Civil Code**

In light of the current realities of the Arab and Islamic world, and the multi-level and multi-dimensional political, security, economic, and cultural crises they are experiencing, the idea of unifying civil law at the Arab and Islamic levels appears ambitious and goes beyond the reality that the priorities of Arab and Islamic countries revolve around security, political, and economic frameworks.

The idea of unifying legislation at the Arab and Islamic levels does not present itself as a priority, at least in the near future. While the study acknowledges this unfortunate reality, it proposes convergence as a possible alternative to unifying legislation on a mandatory basis; this convergence can be achieved by preparing draft model law on civil and commercial transactions. And apply other methods that maximize the chance of such convergence, widening judicial discretion power for example.

The Islamic nation faces unprecedented challenges on more than one level, and in its current state it stands at a critical crossroads. It must either confront these challenges, overcome them, and begin its journey towards stability, development, and integration into the global civilization system, as it did in the past when the Islamic nation rose to lead the world and contributed to the building of human civilization and its progress in various

scientific, moral, and cultural fields. Otherwise, the nation will surrender to the state of fragmentation, alienation, and failure that characterizes the reality of many of its countries.

There is no doubt that the Islamic nation possesses all the elements of integration and unity. Together, they constitute a unique human system in their characteristics and cultural heritage. With sincere efforts from its rulers, wise leaders, scholars, and decision-makers, the nation can regain its wellbeing.

The most prominent factor in the unity of the nation is the single faith shared by the individuals of the Islamic nation. This faith is capable of shaping the nation's identity and character. Another important factor in shaping and highlighting the identity of the Islamic nation is the unity of legislation in general, and legislation relating to civil transactions in particular.

The Islamic nation lived through a period when the Islamic Caliphate existed, with its own laws stemming from the tolerant Islamic Sharia. This occurred during the era of the Rightly-Guided Caliphates after the death of the Prophet Mohammad (peace and blessings be upon him), during the Umayyad and Abbasid Caliphates, and finally during the Ottoman Empire, which prevailed from the thirteenth century until the beginning of the twentieth century.

Although legislation in its contemporary sense was not known in the Islamic state during the Rashidun Caliphate, the Umayyad Caliphate, and the Abbasid Caliphate, advanced and "modern" legislative formulas emerged during the Ottoman Empire, the most prominent of which was *Majallat al-Ahkam al-Adliyya*, which the Ottoman Empire issued as a civil law applicable throughout the Ottoman Empire. (*Majallat al-Ahkam al-Adliyya*, 1868).

## PAST EXPERIENCES

The Ottoman Empire emerged in the thirteenth century and significantly expanded, encompassing numerous regions across Asia, Europe, and Africa. It continued until the early twentieth century, when it weakened and disintegrated. Its regions were divided and occupied by colonial powers, primarily Britain, France, and Italy. etc. Meanwhile, many regions subject to the Ottoman Empire gained independence as independent states, particularly in Eastern and Central Europe.

*Majallat al-Ahkam al-Adliyya* was introduced in the late Ottoman era, in 1882. The Majallah included sixteen books covering all aspects of civil transactions, and was based primarily on Hanafi jurisprudence. Historical sources indicate that the introduction of the Majallah faced significant challenges, given the division of opinion regarding the development of civil legislation based on Islamic law and the adoption of Western experience in legislation for civil transactions. The view that civil transactions in the Ottoman Empire should be based on Islamic law and that it was inappropriate to introduce foreign legislation and concepts to the Islamic context in which the Ottoman Empire and its dependent territories operated was successful. *Majallat al-Ahkam al-Adliyya* was a pioneering legislative initiative of its time.

However, the political circumstances that the Ottoman Empire and the world experienced at the beginning of the twentieth century greatly weakened the momentum of this initiative. Nevertheless, the Majallah retained its historical value and, - to some extent - still partially effective today in some countries that were formerly part of the Ottoman Empire, such as Jordan.

Among the manifestations of the lack of welcome for the *Majallat al-Ahkam al-Adliyya* and the desire to get rid of it and make it fail

1- The successive cancellation of the *Majallat al-Ahkam al-Adliyya* in various countries that were subject to the Ottoman Empire, such as Egypt, Syria, Iraq, and Kuwait. Unfortunately, Turkey itself, the successor state to the Ottoman Empire, abolished the Majallah in 1926 and issued a civil code that was based on the Swiss Civil Code, which had a Latin nature and content.

2- The issuance of national civil laws in some countries that were part of the Ottoman Empire even before the fall of the Ottoman Empire, such as Tunisia, Morocco, and Lebanon. The strength of French influence in these countries during that period is evident, confirming that France desired to see French civil law replicated by the Ottoman Empire.

As for Jordan, *Majallat al-Ahkam al-Adliyya* remained in effect until 1-1-1977, when the Jordanian Civil Law entered into force. This Law revoked from Majallah any provision conflicted with its provisions, which means that the provisions of the Majallah that do not conflict with the provisions of the Jordanian Civil Code remain in effect in Jordan.

In my consideration, *Majallat al-Ahkam al-Adliyya* was not necessarily a manifestation of legislative unity in diverse states, but rather a manifestation of the unity of the state itself. The Ottoman Empire was a single sovereign state encompassing numerous regions and districts, and Majallah constituted the civil law of this state, applicable in all these regions and districts. According to some commentators, "Al Majallah was a significant and important addition to the library of Islamic knowledge. Among the advantages of the Majallah is that it has transformed the

Islamic jurisprudence from its texts, elucidations, commentaries and divergent opinions to a single opinion. It has articulated the opinion on each case in a form of legal binding article. Moreover, it is a way to get rid of various differences regarding the applications and it has determined the legal references for the judges while passing the judgment on various issues". (Habibur Rahman, M, Mohammad Osmani. N, 2018). Other researcher consider it as a "comprehensive compendium of Islamic law and was also codified in with western structures in mind" . . (Sara R, 2019).

## CURRENT EXPERIENCES AND CHALLENGES

Unification initiatives have recently emerged within the framework of the League of Arab States and the Gulf Cooperation Council. These initiatives include the development of a draft unified Arab civil code as a guiding and model law at the level of the member states of the League of Arab States. Besides Kuwait Document for the Unified Gulf Civil Code Project serves as a model law for the Gulf Cooperation Council (GCC) countries. Below is a summary of these initiatives in terms of their historical context, current reality, and future prospects.

### **The Unified Arab Model Civil Code Project within the League of the Arab States.**

The League of Arab States was established in 1945 and is therefore considered one of the oldest regional international organizations. (The League of Arab States, Official website). However, after about 80 years since its founding, it is still unable to achieve the basic goals for which it was established. Unity has not been achieved among its member Arab states, and the Arab Common Market has not been established. Moreover, the League has also failed to address many, if not all, of the political crises that have plagued Arab countries, most notably the issue of the Zionist entity's occupation of Arab State of Palestine. Those following Arab affairs note the prevalence of political disputes in the relations of many of the League's member states.

Despite the general weakness of the League of Arab States' role in its historical and political context, some of the League's institutions are attempting to fulfill their role according to approaches that reflect the status of Arab countries. It is worth mentioning that, one of the objective of the legal affairs department within the League is to Develop and implement plans to unify Arab legislation and develop joint Arab action in the legal and judicial fields. (Arab Center for Legal and Judicial Research, Official website)

Perhaps the most prominent effort undertaken by the Legal Office of the League of Arab States is to develop guiding Arab legislation. To date, the office has developed more than thirty draft guiding laws in various fields, including family law, civil law, criminal law, maritime law, and others.

The drafting of unified Arab laws comes within the framework of the Sana'a Plan for Arab Law Unification, a pioneering initiative launched by the League of Arab States. The plan aims to provide a solid and stable foundation for establishing unified Arab legislation in accordance with the provisions of Islamic Sharia, while taking into account the circumstances of Arab society in each country. The Sana'a Plan clarified the general foundations for the process of unifying Arab legislation, and decided in this regard that the process of unifying Arab legislation requires considering the following matters:

The objective methodological difficulties related to the unification process. This process requires similarity in circumstances, motives, needs and aspirations, and the need to codify Islamic law, which requires abundance of jurisprudential and legal knowledge and the adoption of scientific methodology.

Linking the intellectual and theoretical vision of the unification process with a well-thought-out systematic planning, and determining the priorities of legislative objectives based on interim capabilities.

Utilizing from the efforts undertaken by some Arab countries, in implementing Islamic law, analyzing their results, and conducting a comparative study with other countries.

Establishing the initial rules by which legislation is structured and unified, in a way that ensures compliance with the following principles:

A. Adopting the Holy Qur'an and the Prophetic Sunnah, and whatever leads to them in terms of consensus, analogy, or public interests, without being bound by a specific school of jurisprudence, as well as the principles of justice that do not conflict with the provisions of Islamic law, as sources for the unified Law.

B. Following the rule of gradualism in the unification process. (Sana'a Plan for Arab Law Unification)

In implementation of the plan, dozens of Model laws were developed within the framework of the League of Arab States, the most prominent of which is the draft unified Arab civil law.

This Model Law was completed in 1996, it was intended to be a model civil code for Arab countries, with the hope that it would serve as a prelude to unifying civil law across the League of Arab States. However, and despite the passage of thirty years since its completion, the project remains a project awaiting agreement by the Arab League countries to adopt it as a unified Arab civil code. (Proposal for Unified Arab Civil Law, 1996).

Perhaps the most notable feature of this project is that it was influenced by Islamic law. It is considered an advanced version of Jordanian civil law, which is closer to Islamic law than any other Arab civil law, due to its strong influence from the Ottoman Majallat al-Ahkam al-Adliyya, which is its historical source.

Jordanian Civil Law is the only Arab civil law that has kept the provisions of Majallat al-Ahkam al-Adliyya in effect within the limits of their non-contradiction with its provisions. Unlike many Arab civil codes that have abolished the Majallah in completely or in part. Moreover, those countries did not implement the Majallah in their legal system, even during the Ottoman rule or the mandate and colonial era that all Arab countries experienced during the period of Ottoman rule and the period following its collapse.

The Model Arab Civil Law developed some of the provisions that had previously been criticized in Jordanian civil law. It also responded to the demands of jurisprudence and judicial trends on certain issues. Overall, the Model Unified Arab Civil Code can be considered as a contemporary advanced legislative version of Majallat al-Ahkam al-Adliyya.

### **Kuwait Document for the Draft Unified Civil Law for the GCC States**

In a similar vein to the draft Unified Arab Civil Law, and within a more limited framework, the General Secretariat of the Gulf Cooperation Council issued the Kuwait Document, which includes the draft Unified Civil Law for the Gulf Cooperation Council States. (Kuwait Document for the draft Unified Civil Law for the Gulf Cooperation Council States, 1998).

The Gulf Cooperation Council is a regional international organization founded in 1981. Its membership includes six Arab countries bordering the Arabian Gulf: the Kingdom of Saudi Arabia, the State of Kuwait, the State of Qatar, the Sultanate of Oman, the Kingdom of Bahrain, and the United Arab Emirates. In this regards, it is worth mentioning that the Republic of Yemen enjoys the benefits of membership in some GCC institutions and bodies, but it is not a full member state. Iraq also has limited participation in the GCC bodies without being a member state. (Gulf Cooperation Council website)

## **FUTURE PROSPECTS**

The Islamic nation is a nation with a tremendous cultural and human heritage, accumulated since its beginnings with the emergence of Islam and the establishment of the first Islamic state during the era of the Prophet Muhammad (PBUH) and the era of the Rightly-Guided Caliphs. This great cultural and human heritage extended during the Umayyad and Abbasid caliphates, with a noticeable decline in the nation's status and its ability to continue contributing to human civilization. Until the nation regained some of its glory during the era of the Ottoman Empire, which lasted for six centuries, during which the Islamic state grew stronger and expanded across the continents of Asia, Europe and Africa.

Then calamities and misfortunes befell it from within and without, and it lost its influence and retreated, leaving behind countries subject to multiple foreign occupations, some of which still loom large over its heart in the Arab State of Palestine, occupied by the Western-backed Zionist entity.

With the fading of the traditional manifestations of foreign occupation and colonialism, and the independence of the countries of the Arab and Islamic world, attempts have emerged and continue to emerge to build unification formulas within various frameworks. Some of these attempts are based on Arabism or geography, and some, most notably, are based on the dominant religion in the country. Namely the Organization of Islamic Cooperation, which is the most extensive and fundamentally profound unification formula now and in the near future.

The Organization of the Islamic Cooperation (OIC) was established in 1969 following the attack and burning of Al-Aqsa Mosque by the Zionist entity. It established its temporary headquarters in Jeddah, Saudi Arabia, pending the liberation of Palestine and its relocation to its permanent headquarters in Jerusalem, the capital of the Palestinian state.

The organization's charter clarifies its objectives and specifies the conditions and types of membership. It also establishes several subsidiary bodies affiliated with the organization to carry out its work and achieve its goals.

The most prominent of these bodies is "Majma' al-Fiqh" the International Islamic Fiqh Academy (IIFA Website). According to the statute of the Islamic Fiqh Academy, one of the Academy's objectives is to express legal opinions on issues related to daily life facts and practices, to develop legislation, laws, and regulations and ensure they are compatible with the provisions of Islamic Sharia. And more importantly, drafting model laws in various areas (in the three official languages, Arabic, English, French) that require the codification of Shariah provisions, taking into consideration differences between schools of law, and ensuring their translation and dissemination throughout the Muslim world for easy reference in the amendment process of existing legislations, laws, and regulations.

## Recommendation

In light of the current circumstances and challenges, Unification of Civil Law within the Islamic Countries seems difficult. Therefore, the optimal approach is convergence and a move toward model laws, guiding legislation, and documents of best legal and judicial practices prepared by experts in law, sharia'a "Islamic law & Fiqh", languages, translators and other disciplines

The establishment of a specialized academic and research center/s concerned with legal studies, comparative law, and legislative policy. Its objectives include providing concepts and formulas for unifying civil legislation in Arab and Islamic countries in the form of guiding model laws. This proposed center/s could be a government-led center representing the member states of the Organization of Islamic Cooperation, or an independent center serving as a research body. Its mandate could include providing advice and support to legislative bodies in Islamic countries in the areas of legislation, research, training, and capacity building specialized in legislative affairs. It is important to emphasize the possibility of utilizing from the experience of the Arab Center for Legal and Judicial Research within the Arab League of Arab States.

At the end of this paper, it is notable that, major legal systems converge, despite their differences in roots, sources, and many other details. Moreover, in the case of Europe different countries with different national legal traditions unite in many legal aspects despite of their many differences. Therefore, it is more appropriate for Arab and Islamic countries to converge and even unify their civil transactions law, given all the available factors of convergence and unity and certainly Islamic Sharia' on the top. It is hoped that, this particular goal should be placed on the agenda of political leaders, public policy makers, legislators, judiciary members and academician. Besides admitting the important role of governmental organizations within Arab and Islamic world.

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