

CHAPTER 4 CONCLUSION

4.1 INTRODUCTION

The primary objective of this Thesis is to unravel the history and evolution of Diplomatic Relations between Malaysia and North Korea for the past 48 years within the purview of the Vienna Convention on Diplomatic Relations 1961 (VCDR 1961). The second objective is to identify and analyse the weaknesses in the VCDR 1961 that are identified as the causes of diplomatic rift and severance between the two countries i.e. the abuse of diplomatic immunity by North Korean diplomatic mission. Instances and evidence of such abuse were in the form of disrespecting the laws of the Receiving State and interfering in the internal affairs of the Receiving State [Article 41 (1)], the immunity of diplomatic premises (Article 22), the inviolability of diplomatic bag (Article 27) and *Persona non Grata* [Article 9 (1)]. Thirdly, the study aspires to recommend alternatives for Malaysia and North Korea to repair, rejuvenate and/or restore their strategic diplomatic relations, namely *Tracks of Diplomacy*. This Thesis is organised in four (4) Chapters that attempt to accomplish the aforementioned objectives.

4.2 HISTORICAL DEVELOPMENT OF MALAYSIA'S DIPLOMATIC RELATIONS FROM THE INTERNATIONAL LAW POINT OF VIEW

Chapter 2 introduced the origin and historical development of diplomatic immunity – an essential feature of the VCDR 1961 – especially the evolution of its founding legal theories; from *Representative Character* to *Extra-Territoriality* to *Functional Necessity*. Since the regime of diplomatic immunity is a product of established State Practice (i.e. Customary International Law), the differences of understanding on how the rule of inviolability applies to diplomatic bag, diplomatic courier and diplomatic premises are inevitable. The abuse of diplomatic immunity, particularly the diplomatic bag and diplomatic premises and the proclamation of *Persona non Grata* which are singled out as the sources of diplomatic dispute between Malaysia and North Korea were further discussed in Chapter 2.5.

By measuring on the number of State-Parties involved, Chapter 2 highlighted the fact that the VCDR 1961 and the Vienna Convention on Consular Relations 1963 (VCCR 1963) are often touted by the United Nations as the most successful instrument of international law. Their universal acceptance is reflective of the efficient Codification undertaken by the International Law Committee (ILC). Ununiformed State practice in Diplomatic Relations has

raised the urgency for a streamlined and systematic body of law governing the same. Both the VCDR 1961 and the VCCR 1963 have thus far, accomplished their objectives. Undoubtedly, authoritative State practice was the foundation of the VCDR 1961 and VCCR 1963.

4.3 THE MALAY'S ART OF DIPLOMACY (*SENI DIPLOMASI BANGSA MELAYU*)

Historically, the genesis of all diplomatic relations stems from the country's economic activities. A country that has less economic activities are less attractive for both merchants and diplomats. In short, sovereign States are more interested to forge diplomatic relations with States/Kingdoms that are centres of bustling commercial activities. Chapter 2 in general delved into the history of diplomatic relations in Malaysia prior to her formation in 1963. It further explored on the historical background of diplomatic relations during the era of the Malay Melaka Sultanate and even earlier, during the reign of *Kerajaan Melayu Tua* in the Malay Peninsula.

During the 15th century, the Malay Melaka Sultanate emerged as the most thriving entrepot in the world. The greatness of the Melaka Empire – enormous wealth and formidable political dominance – were the envy of her enemy. Key to this feat was the Sultanate's elegance in the art of diplomacy; other than being expert navigators and rich maritime merchants. Melaka port-city's strategic location between the Indian Ocean and the South China Sea (i.e. the 'Maritime Silk Road') was a major factor for the rapid transformation of once a miniscule fishing village into a globally-known Thalassocratic Sultanate. International maritime trade also brought the Malay people in contact with the Muslims merchants who controlled the treasured spice trade and was a factor in the spread of Islam in the *Alam Nusantara*. At this time, early Thalassocratic Kingdoms like the Srivijayan Empire had already started the practice of exchanging envoys/diplomats especially with their suzerain; the Chinese Empire. Deemed as a source of wealth and political power, vassalage to the Chinese Empire was a method of legitimising a kingdom's rule over the fragmented Malay polities in the Malay Archipelago.

Chapter 2 then unfolded the descriptions of the Malay's Art of Diplomacy (*Seni Diplomasi Alam Melayu*) as being practised during the Melaka Sultanate and later by the offshoots of the Sultanate during the era of Western Colonisation. To the Malay polity, diplomacy has been a treasure that ensures the sustenance of their life, religion and freedom.

Hence, the mastery of diplomatic skills is a pre-requisite for all Malay leaders, especially the Sultans.

Parameswara himself made it a policy to embark on a diplomatic journey to the Chinese Empire as a mark of respect to the Chinese Emperor. His entourage was usually laden with luxurious gemstones, expensive textiles and high-grade quality spices from the Melaka port-city as diplomatic presents. It was a diplomatic tradition continued by his successors. The Malay's ingenuity in diplomatic skills (*Kebitaraan Melayu Berdiplomasi*) were also captured in a number of famous classical Malay literatures. A careful reading of the *Malay Annals (Sulalatus Salatin)* would reveal several strategies employed by the Sultan and his noblemen (*Pembesar Melayu Berempat*). These strategies were employed either to cement an already flourishing bilateral relations or to avoid bloodbath against warring kingdoms. For example, in *Hikayat Hang Tuah*, in accomplishing his duties as the official representative of the Melaka Sultanate to the Siamese Kingdom, *Hang Tuah* had exploited several diplomatic strategies such as responding with implicit answers (*Jawapan Berhelah*) and using his charm offensive to captivate the trust of the ruler. *Hikayat Hang Tuah* also recommended the mastery of foreign languages amongst envoys to smoothen the diplomatic communication process with the Receiving kingdom. Fluency in foreign language will dispel prejudices and discrimination which may hamper the peace-negotiation process.

In *Sulalatus Salatin*, the flair of Malay diplomacy was demonstrated by Melaka's most distinguished nobleman, *Bendahara Tun Perak*. In the face of imminent invasion from the Kingdom of Siam, *Tun Perak* engaged in a diplomatic strategy known as *Strategi Pemujukan (Persuasion Strategy)*. The *Persuasion Strategy* was divided into two (2) phases, firstly, sending an envoy and secondly, sending a diplomatic letter to the Kingdom of Siam. In a diplomatic letter written by *Tun Perak*, the Melaka Sultanate in her bid to pacify the tension between both sides, had commended Siam's military defence system and the kingdom's longevity. The Siamese King was pleased with the Sultanate's humility and sincerity. Such were the contents of the letter despite Melaka's growing superiority over the Siamese Kingdom, under the rule of Sultan Mansur Syah. The courteous tone of the diplomatic letter signified the Sultanate's maturity in diplomacy. The Malay's ingenuity in diplomacy was further illustrated in the variety of policies invented by the Sultanate to suit the dynamism in International Relations, *inter alia*, arranged royal marriages.

The element of Islamic diplomacy was adopted by the usage of Arabic salutation in the diplomatic letterhead which intended to inform the receiver about the religion of the sender. The highlight in *Sulalatus Salatin* was the Melaka Sultanate's policy on *Neutrality*. Although Melaka and Siamese Kingdom were at loggerheads, the Sultanate however, made the first step to be politically neutral and friendly to all nations. *Neutrality* is a recurrent ideology in Malaysia's foreign policy when Malaysia Second Prime Minister Tun Abdul Razak Hussein paid a historic visit to China on 28 May 1974 to normalise the suspended bilateral relations between both countries since the fall of Melaka port-city to the Portuguese in 24 August 1511.

4.4 MALAYSIA'S DIPLOMATIC RELATIONS & FOREIGN POLICY – NEUTRALITY & NON-ALIGNMENT

Neutrality and *Non-Alignment* have been the mainstay of Malaysia's policy on diplomatic relations especially during the *Cold War* (1947-1991). After gaining her independence on 31 August 1957, the Federation of Malaya struggled economically. Political independence merely did so much as the country's agrarian economy was still under the monopoly of several British government-linked companies such Guthrie and Sime Darby. The need to be politically and economically independent were particularly pressing after the bloody racial riot on 13 May 1969. In order to re-engineer Malaysia's economic structure, Tun Abdul Razak implemented the New Economic Policy (NEP) in 1971 with a series of *Affirmative Action* policies favouring the Malays and Bumiputera in order to realign the country's economic pie.

Tun Abdul Razak did the unthinkable by paying a diplomatic visit to China in 1974, at the time when the country was still recovering from the violence during the Communist Insurgency (1948-1960) and the entire world was avoiding China due to her unspeakable human rights violation during the *Chinese Cultural Revolution* (1966-1976). Realising that militant Communism was still alive in Malaysia and the veiled role played by the Chinese Communist Party (CCP) in influencing the Malayan Communist Party (MCP), Tun Abdul Razak was at the eye of the storm by addressing the issue of Malaysia's sovereignty and the loyalty of the Malaysian-Chinese. Being politically neutral to all countries and economically independent are crucial for Malaysia to emerge as a developed nation. Being loyal to one's country is integral towards nation-building which also contributes to economic restructuring.

Over time, as politicians relied heavily on the principle of *Neutrality* to justify Malaysia's stance in foreign policy, *Neutrality* is seen as a mere political tool, hence *politically neutral*. At of the moment, Malaysia is not legally bound under any Treaty to be politically neutral. Thus, allowing the flexibility for Malaysia en route to *Non-Alignment* by joining the Non-Aligned Movement (NAM) in 1970 and founding the Zone of Peace, Freedom and Neutrality (ZOPFAN) in 1971. Be that as it may, it is impossible for Malaysia to remain neutral when she was the victim of the breach of diplomatic law (i.e. VCDR 1961) and contempt of State sovereignty. These issues were the highlights of Kim Jong Nam's murder case at KLIA in 2017. The decision to expel North Korean Ambassador as *Persona non Grata* and temporary severance of diplomatic relations with North Korea were understood as an act of self-defence by any sovereign country.

4.5 THE EVOLUTION & THE FUTURE OF DIPLOMATIC RELATIONS BETWEEN MALAYSIA & NORTH KOREA

North Korea represents a long term investment if the diplomatic dispute is seen in different perspectives. The focus should be directed on the needs of both countries to peacefully co-exist. Malaysia needs not to agree on everything that North Korea aspires but it cannot be gainsaid that both countries aspire for the same objectives – independence, mutual respect and complimentarity. Malaysia's history on forging diplomatic relations with China could serve as a good example. While other countries in the region were hesitating, Malaysia jumped on the opportunity to rejuvenate the bilateral relations that was rich in history. Hence, a proper re-evaluation from the historical, economical and social perspectives is the key to unlock the potential in sustaining diplomatic relations with an isolated State like North Korea.

Historical facts showed that both Malaysia and North Korea were colonised by the same Colonial Master viz. Japan; the former was conquered during the World War II (1940-1945) and the latter was enslaved during the Japanese Occupation of the Korean Peninsula (1910-1945). Unknown to many, North Korea also participated in the *Yom Kippur War* (1973) against the Zionist Israeli regime. In short, both countries had the similar historical experience of Japanese cruelty during World War II, both countries despise the Israeli Zionist regime and both detest Colonialism and Imperialism. Such historical ordeal with foreign aggression has shaped the ambitions of both countries in the same mould. Thus, both countries share the identical historical aspiration that opposes war, conquest and oppression.

In retrospect, the first move towards Malaysia's diplomatic relations was made by North Korea via *Track 1.5 Diplomacy* i.e. *Sports Diplomacy*. It would be sensible if the damaged relations are rejuvenated via *Sports Diplomacy* as well. In fact, Malaysia is not the only country in Southeast Asia that has exploited *Sports Diplomacy* to sustain relations with North Korea. Indonesia, for instance, in 2018, had invited North Korea to a friendly football tournament commemorating PSSI's 88th anniversary. South Korea also exploited *Sports Diplomacy* to cajole North Korea into negotiation for denuclearisation against the backdrop of 2018 Winter Olympics in PyeongChang. The immense influence of sports in North Korea is undeniable when Kim Jong Un specifically stipulated *Sports Diplomacy* as part of the deal to denuclearise North Korea. In addition, *Track 1.5 Diplomacy* is part of an ecosystem supported by other forms of *Tracks of Diplomacy* i.e. *Multi Track Diplomacy*.

4.6 DIPLOMATIC LAW, FUNCTIONAL NECESSITY & DIPLOMATIC IMMUNITY

Diplomatic law recognises the requirement for diplomats to exercise their official functions with reasonable freedom in the Receiving State. Since part of diplomats' official duties are to communicate and implement the policies of the Sending State in the Receiving State, they should not be bothered with the laws of the Receiving State that are irrelevant to them. Hence, the VCDR 1961 has fully embraced the *Functional Necessity* theory as the main guidance in managing the affairs of diplomats and diplomatic mission.

In doing so, the convention places the principle of *Reciprocity in Persona non Grata* as the ultimate punitive measure against recalcitrant diplomats. Regrettably, the absence of other complementary forms of punitive or exemplary punishments in the convention had resulted in the recurrence of abuse of diplomatic immunity. Although the Sending State is allowed to expressly waive the immunity, it has rarely been the case. The intricacy on enforcing certain provisions of the VCDR 1961 on the domestic level (i.e. at the Receiving State) is a stumbling block towards the effective and meaningful implementation of the criminal justice system within the purview of the convention. For instance, although a diplomat is subjected to the criminal jurisdiction of the Sending State, the hassle of prosecuting and conducting the trial in the Sending State may render the entire process as impractical.

The difficulty of securing the attendance of witnesses who are the citizen of the Receiving State is merely one of many reasons that will render the trial itself as complicated.

This was evident in the case of Kang Chol who was expelled from Malaysia as *Persona non Grata*. Until today, there is no update on his status or his fate – whether he has been appropriately punished by the North Korean government for his unruly antics. On the other hand, Sending States are strongly encouraged to thoroughly vet their diplomats for previous criminal and misdemeanour records to ensure only the best candidate is selected as her official representative in the Receiving State.

Territorial Jurisdiction is essential in investigating, prosecuting, and trying trans-boundary crimes. However, the magnitude of such abuse extends over the Territorial Jurisdiction. Such phenomenon occurred in the murder case of Kim Jong Nam and thus, had frustrated the course of criminal justice in Malaysia. Calls for diplomatic immunity to be exercised consistent with universal norms – *erga omnes* – such as the *Rule of Law* and human rights have received mixed response. The murder of Kim Jong Nam is the evidence proving the VCDR 1961 would not be able to serve its purposes effectively without being understood and implemented from fresh perspectives. Clearly, the VCDR 1961 ought to be enforced in harmony with the *Rule of Law*, principles of human rights and in parallel with the dynamism in diplomacy.

4.7 TRACKS OF DIPLOMACY – SPORTS DIPLOMACY

The complexity of diplomatic disputes necessitates the existence of multi-faceted *Tracks of Diplomacy*; *Sports Diplomacy* being one of them. Since the causes of conflicts are varied, the evolution of *Tracks of Diplomacy* ensures that feasible solutions are the ultimate aim of such endeavour. Sustainability of any solutions is attainable only if the mechanism is designed to be inclusive i.e. all stakeholders are involved in the peacemaking process.

Reminiscing on the history of Islamic diplomacy, Rasulullah (Peace be Upon Him) had once showed his wisdom in resolving a dispute amongst the Meccan tribes. The Holy Prophet (p.b.u.h) employed his acumen by adopting an inclusive approach to achieve a win-win situation. The Prophet (p.b.u.h) had invited all leaders of the main tribes in Mecca and each of them held the edge of a cloth meant to place *Hajr Aswad* back to its place in Kaabah. By adopting an inclusive approach (i.e. *Syura*), none of the tribe leaders felt left out or offended and each of them were involved in restoring *Hajr Aswad*. Clearly, inclusiveness stresses on the importance of collaboration and inter-dependency amongst all parties. Inter-dependency and inclusiveness are the foundation of a lasting diplomacy, particularly with the

involvement from the non-actors in international relations such as academicians, religious leaders, entrepreneurs and athletes.

In a nutshell, inclusivity and inter-dependency are the epitome of democratic practice in diplomatic relations and/or diplomacy as such process requires the meaningful involvement of all stakeholders. *Sports Diplomacy* is the suitable platform to reconcile differences especially between States that share little similarities. In modern diplomacy, these non-actors who are experts in their respective fields carry diplomatic significance to the peacemaking process.

Historically, *Sports Diplomacy* was exploited to boast diplomatic triumph; as in the case of East Germany and West Germany of which they competed as a unified team in the 1992 *Barcelona Summer Olympics*, following the fall of the Berlin Wall in November 1991. *Sports Diplomacy* was also explored to initiate diplomatic relations as in China's *Ping Pong Diplomacy* during the 1971 *World Table Tennis Championship* in Japan. The event was remembered as a turning point in formalising bilateral relations between the U.S. and China that culminated in the diplomatic visit by President Richard Nixon in 1972. The effectiveness of *Sports Diplomacy* has seen the policy to be imitated and improvised elsewhere.

In Malaysia's case, *Ping Pong Diplomacy* was not a mere spectacle but a showcase of two politically divergent countries competing on an equal (i.e. neutral) platform that aimed not on winning but forming a lasting bilateral relations. Undeniably, it is easier to sever relations than spending many efforts and years of building and sustaining it. However, the future of diplomatic relations between Malaysia and North Korea is mutually beneficial if both countries could find ways to sustain it.

4.8 CONCLUSION

As a peaceful nation, Malaysia is well-known as amongst the frontliners in promoting viable regional peaceful co-existence. *Neutrality* and *Non-Alignment* are the pillars that underpin Malaysia's efforts in maintaining the aforementioned goal. As such, diplomacy and its art thereof are essential in governing the dynamism in diplomatic relations. Chapter 2 fulfilled this objective by capturing the essence of Malaysia's *Neutrality* and *Non-Alignment* policies which have their roots from the ancient *Seni Diplomasi Bangsa Melayu*. At the time when maritime merchants doubled up as emissaries, the Malay's art in diplomacy infused the local elements of courtesy (*sopan-santun*) and the Islamic virtue of equality. In essence, the

Malay polity was diplomatic at heart. Thus, the Malay Melaka Sultanate prospered with economic policies that were traders-friendly (e.g. low taxes) and foreign policy that was friendly to all. Traces of *Seni Diplomasi Bangsa Melayu* which focused on *Neutrality* and *Non-Alignment* were apparent in the classical texts of Malay literatures such as *Sulalatus Salatin*, *Hikayat Hang Tuah* and *At-Tarikh Salasilah Negeri Kedah*. Chapter 2 showed that the vestige of the Malay's Diplomacy is still relevant and has been improvised since the premiership of Tun Abdul Razak in 1970.

The further discussions in Chapter 2 posited that maintaining diplomatic relations with North Korea is actually a balancing act for Malaysia that requires delicate deliberation amongst the similarities in historical ordeal, the notion of being independent and the abhorrence to flagrant violation of human rights.

The contempt of the VCDR 1961 and the persisting abuse of diplomatic immunity as shown in several case studies in Chapter 2 justified an in-depth study especially on the misuse of diplomatic bag and diplomatic premises by members of diplomatic mission. The analysis in Chapter 3 proposed the alternative (i.e. *Tracks of Diplomacy*) of addressing and resolving legal dispute beyond the conventional legal framework (i.e. *Metanomica*) that encourages inclusiveness, collaboration and democratic practices amongst the stakeholders.

In conclusion, this Thesis proved that in the face of diplomatic crisis, Malaysia always acts objectively and systematically, in coherence of the governing rule of international law (i.e. VCDR 1961). In managing the murder case of Kim Jong Nam and the ensuing diplomatic rift with North Korea, Malaysia has truly acted within the parameters of the VCDR 1961 as discussed in Chapters 2.5.3 and 2.5.4. Such even-handed approach has been praised by geopolitical observers although Malaysia is fully aware of the risk of being embroiled with a Nuclear Armed State – North Korea. Nevertheless, as a peaceful country that is friendly to all nations, it is only wise for Malaysia to pursue or continue amicable bilateral relations with North Korea.

The analysis and discussions in Chapters 2 and 3 showed there is a good chance for both countries to resume their bilateral relations. Therefore, both countries should find ways to make their diplomatic relations sustainable (i.e. *Lestari*). Malaysia's art of diplomacy is best exemplified in *At-Tarikh Salasilah Negeri Kedah's 101 Isyarat Perang* – “the first 100 steps are for negotiation, the last one is for war.”