

CHAPTER 2 THE HISTORICAL DEVELOPMENT OF MALAYSIA'S DIPLOMATIC RELATIONS

2.1 INTRODUCTION

International trade activities played a major factor in shaping the diplomatic relations in the Southeast Asia region and the Malay Archipelago.¹ Other factors such as politics, military and religion also played their parts in influencing diplomatic relations.² The Malay Archipelago (*Alam Nusantara*)³ was exposed to various external influences including *Islamisation*.⁴ The Malay Peninsula is surrounded by the Indian Ocean in the south and the South China Sea in the north; two of the world's most important maritime trading and shipping routes.⁵ Early information about the Malay Peninsula was recorded by foreign traders who plied the maritime trade links between India and China and reached the river mouths in the Malay Peninsula.⁶ In the Malay Peninsula, the point of contact between the locals and the foreign traders was at the ports located at the coast/coastal areas where traders congregated with their goods.⁷ There was an ample evidence that before the 15th century, the Malay Kingdoms existed in the northern part of the Malay Peninsula especially in southern Kedah.⁸ The capital of the ancient Malay Kingdom that was located in Sungai Merbok was

¹ Thaib, L. & Pa, B.C. (2013) *Regional Cooperation: Malay World & the Formation of ASEAN Community*, Global Journal of Human Science, Political Science, Volume 13, Issue 2, Version 1.0, 2013, Global Journals Incorporated, Massachusetts, United States of America (USA) at page 9. Source:

https://umexpert.um.edu.my/file/publication/00004886_95694_74997.pdf

² Sodhy, P. (1983) *The International Relations of the Malay Peninsula from the 7th to the 14th Century*, AKADEMIKA, Journal of Southeast Asia Social Sciences & Humanities, Volume 23, No.1, Julai 1983, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 22. Source: <http://ejournal.ukm.my/akademika/article/view/3823/2188>

³ Gungwu, W. (2017) *Southeast Asia & Continental and Maritime Powers in A Globalised World, ASEAN @ 50, Volume 4, Building ASEAN Community: Political-Security and Socio-Cultural Reflections*, ASEAN 50 Philippines 2017, Economic Research Institute for ASEAN & East Asia (ERIA), Jakarta, Indonesia at page 20. See also Thaib, L. & Pa, B.C. (2013) *Regional Cooperation: Malay World & the Formation of ASEAN Community*, Global Journal of Human Science, Political Science, Volume 13, Issue 2, Version 1.0, 2013, Global Journals Incorporated, Massachusetts (USA) at page 10

⁴ El-Fadl, K.A. (2019) *International Law and Islam: Historical Explorations*, Brill's Arab & Islamic Laws Series, Volume 14, Brill Publishers, Leiden, The Netherlands (NED) at page 250

⁵ Andaya, B.W. & Andaya, L.Y. (2017) *A History of Malaysia*, 3rd Edition, Palgrave, Macmillan Education, Macmillan Publishers Limited, London, United Kingdom (UK) at pages 15-16

⁶ Sheppard, M.C.F. (1956) *Historic Malaya: An Outline History*, Eastern Universities Press Limited, Singapore (SIN) at page 5

⁷ Bulliet, R.W. et. al. (2008) *The Earth and Its Peoples: A Global History – Volume I*, Houghton Mifflin Company, Boston, United States of America (USA) at page 420. See also Sodhy, P. (1983) *The International Relations of the Malay Peninsula from the 7th to the 14th Century*, AKADEMIKA, Journal of Southeast Asia Social Sciences & Humanities, Volume 23, No.1, Julai 1983, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor, Malaysia (MAS) at page 25

⁸ Whitehouse, R.D. (1983) *Macmillan Dictionary of Archaeology*, Macmillan Press, The Macmillan Press Limited, London, United Kingdom (UK) at page 301

referred to by the Indian traders as *Kataha*, *Kadaram* or *Kidara*⁹ whilst the Arab traders referred it to as *Kalah*.¹⁰ The Chinese name for Kedah was *Kie-tcha* as mentioned by the famous Buddhist pilgrim and scholar I-Ching (Yi Jing, I-Tsing) who visited Kedah in the 7th century (671 A.D.).¹¹ On his sojourn to Nalanda India, he mentioned that *Kedah Tua* was already a vassal State to the Srivijayan Empire.¹²

Starting from the 3rd century, the ancient northern Malay Kingdom was influenced by the Funan Kingdom – the most powerful Thalassocracy¹³ in that era.¹⁴ Diplomatic relations between the early kingdoms in the Southeast Asia region with India, China and East Africa were due to the Malays' ingenuity (*kebitaraan*) in navigation and as sea-faring traders.¹⁵ According to the Chinese records, the Chinese vessels were unable to traverse the Indian Ocean and it was the Malay navigators who brought the Chinese traders to India.¹⁶

During the 7th until the 12th centuries, the entire Malay Peninsula was part of the Srivijayan Empire.¹⁷ The Srivijayan Empire was a Thalassocracy in the Southeast region¹⁸

⁹ Miksic, J.N. & Goh, G.Y. (2017) *Ancient Southeast Asia*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 287

¹⁰ Sahai, B. (2006) *Indian Navy – A Perspective from the Earliest Period to Modern Times*, Publications Division, Ministry of Information & Broadcasting, Government of India, New Delhi, India (IND) at page 31

¹¹ Reger, K.H. et. al. (1997) *Malaysia-Singapore-Brunei*, Explore the World, Nelles Guide, Second revised Edition, Nelles Verlag GmbH, Munich, Germany (GER) at page 83

¹² Ramli, Z. et. al. (2014) *Pembentukan Kerajaan Awal di Nusantara Antara Abad 1 Masihi Hingga 5 Masihi Berdasarkan Sumber Bertulis & Data Arkeologi*, Jurnal Arkeologi Malaysia, Ikatan Ahli Arkeologi Malaysia (IAAM), Institut Alam & Tamadun Melayu (ATMA), Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 9.

Source: <http://spaj.ukm.my/jurnalarkeologi/index.php/jurnalarkeologi/article/view/156/95>

¹³ Gillis, J.R. (2012) *The Human Shore: Seacoasts in History*, The University of Chicago Press, University of Chicago, Illinois, United States of America (USA) at page 55

¹⁴ Suhaimi, N.H. (1999) *Kerajaan Melayu Tua di Utara Semenanjung*, Jurnal Arkeologi Malaysia, Volume 12, Ikatan Ahli Arkeologi Malaysia (IAAM), Institut Alam & Tamadun Melayu (ATMA), Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 98.

Source: <http://spaj.ukm.my/jurnalarkeologi/index.php/jurnalarkeologi/article/view/70/38>

¹⁵ Lockard, C.A. (2011) *World: Volume 1*, Student Edition, Wadsworth, Cengage Learning, Boston, United States of America (USA) at page 326. See also Minahan, J. (2002) *Encyclopaedia of the Stateless Nations: Ethnic & National Groups Around the World, Volume III, L-R*, Greenwood Press, Greenwood Publishing Group Incorporated, ABC-CLIO, Connecticut, United States of America (USA) at page 1225

¹⁶ Lockard, C.A. (2011) *Societies, Networks & Transitions: A Global History, 2nd Edition, Volume I*, Wadsworth, Cengage Learning, Boston, United States of America (USA) at page 124. See also Suhaimi, N.H. (1999) *Kerajaan Melayu Tua di Utara Semenanjung*, Jurnal Arkeologi Malaysia, Volume 12, Ikatan Ahli Arkeologi Malaysia (IAAM), Institut Alam & Tamadun Melayu (ATMA), Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at pages 98-99

Source: <http://spaj.ukm.my/jurnalarkeologi/index.php/jurnalarkeologi/article/view/70/38>

¹⁷ Hampson, R. (2000) *Cross-Cultural Encounters in Joseph Conrad's Malay Fiction*, Palgrave, St. Martin Press LLC Scholarly & Reference Division, Palgrave Publishers Limited, New York, United States of America (USA) at page 34

¹⁸ Wolters, O.W. (1975) *The Fall of Srivijaya in Malay History*, Oxford University Press, Oxford University, Kuala Lumpur, Malaysia (MAS) at pages 8-10

whereby the huge bulk of its wealth came from commercial activities¹⁹ on top of the taxes imposed and collected from various ports within its control.²⁰ At its peak, Srivijaya monopolised the commercial activities in the Southeast Asian region through its control over the trans-Asian shipping line.²¹ Due of their status as part of the vast Srivijayan colony, kingdoms in the Malay Peninsula had conducted diplomatic relations with foreign countries, especially with China and India.²² These diplomatic relations were usually based on economic relations since the Srivijaya Empire was a Thalassocracy supported by commerce.²³ The exchange of envoys between kingdoms to strengthen trade relations was part of ancient State practice as being employed by the Srivijayan Kingdom and the Chinese Empire.²⁴ As the official representative of a trading nation, an envoy was usually presented at the palace's court.²⁵ Srivijaya's diplomatic relations with China was vital since the Malay World (*Alam Melayu*) was part of China's tributary system.²⁶ The Malay kingdoms were willing to be the vassals for the Chinese Empire as their diplomatic relations was the source of the former's economic wealth and political power.²⁷ The Chinese Emperor needed to maintain a harmonious diplomatic relations with the Malay Archipelago as she required oversea kingdoms overseeing its strategic interests in the Southeast Asian region.²⁸ Thus, the tributary philosophy was mutually beneficial.

¹⁹ Cleary, M. & Chuan, G.K. (2005) *Environment & Development in the Straits of Malacca*, Routledge Studies in Development and Society, Routledge, Taylor & Francis Group, London, United Kingdom (UK) at pages 85-86

²⁰ Bulliet, R. et. al. (2015) *The Earth and Its People: A Global History*, Brief Edition, 6th Edition, Cengage Learning, Connecticut, United States of America (USA) at page 152

²¹ Zainun, N. & Khaw, N.R. (2015) *Sejarah Arkeologi Nusantara: Cerakinan Arkeologi & Sejarah*, PTS Akademia, Batu Caves, Selangor Darul Ehsan, Malaysia (MAS) at pages 63-70

²² Bell, C.V. (2015) *Tragic Orphans: Indians in Malaysia*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Singapore (SIN) at page 4

²³ Hussin, N. (2007) *Trade and Society in the Straits of Melaka: Dutch Melaka & English Penang 1780-1830*, NIAS Press, Nordic Institute of Asian Studies (NIAS), Copenhagen, Denmark (DEN) at page 283

²⁴ Andaya, B.W. & Andaya, L.Y. (2015) *A History of Early Modern Southeast Asia 1400-1830*, Cambridge University Press, University Printing House, Cambridge University, Cambridge, United Kingdom (UK) at page 44

²⁵ Reid, A. (2011) *Asia Tenggara Dalam Kurun Niaga 1450-1680, Jilid 2: Jaringan Perdagangan Global*, Yayasan Pustaka Obor Indonesia, Jakarta, Indonesia (IND) at page 273

²⁶ Ferguson, R.J. & Dellios, R. (2017) *The Politics & Philosophy of Chinese Power: The Timeless and Timely*, Lexington Books, The Rowman & Littlefield Publishing Group Incorporated, Maryland, United States of America (USA) at page 104

²⁷ Teo, V.E. (2012) *Southeast Asia Between China and Japan: A Historical Survey, Southeast Asia Between China and Japan*, Cambridge Scholar Publishing, Newcastle upon Tyne, United Kingdom (UK) at page 15

²⁸ Dar, K.B. (2016) *Preserving the Cultural Bond Towards Strengthening Sino-Malaysian Relationship*, Jurnal Antarabangsa Alam & Tamadun Melayu (JATMA)/International Journal of the Malay World & Civilisation (IMAN), Institut Alam & Tamadun Melayu (ATMA), Jilid 4, No.3, September 2016, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 88. Source:

<http://www.ukm.my/jatma/wp-content/uploads/makalah/IMAN-2016-0403-09.pdf>

Ironically, although international trade is crucial in moulding and developing diplomatic relations, the Malay Peninsula themselves did not supply many goods, merchandise or produce traded at their emporia or ports.²⁹ Such phenomenon was unsurprising as they were an entrepot where goods and produce were brought in for the import-export purposes whilst also functioning as the centre for regional collection and distribution of merchandise.³⁰

Diplomatic relations can also be established on the basis of religious ties³¹ and royal marriages.³² Since these domestic and external factors are dynamic, often they might affect each other.³³ For instance, the Chinese Empire's tributary system was subjected to change³⁴ and decline.³⁵ It was especially so in cases of insubordination to the Chinese Emperor³⁶ or a decline in trade relations with China that directly impacted the ruler's economic wealth and political power.³⁷ This situation invariably led to the ruler's subjects to resort to piracy as an alternative for economic resources and wealth.³⁸ Srivijaya lost its monopoly over the marine

²⁹ Ibid No. 2 at page 31

³⁰ Keyes, C.F. (1995) *The Golden Peninsula: Culture & Adaptation in Mainland Southeast Asia*, University of Hawai'i Press (UH Press), Honolulu, Hawai'i, United States of America (USA) at pages 261-262. See also Hergoualc'h, M.J. (2002) *The Malay Peninsula: Crossroads of the Maritime Silk Road (100 BC-1300 AD)*, Koninklijke Brill N.V., Leiden, The Netherlands (NED) at page 257

³¹ Seng, A.W. (2008) *Rahsia Islam di China: Gemilang Di Sebalik Tembok Besar*, PTS Islamika, PTS Publications & Distributors Sdn. Bhd., Batu Caves, Selangor Darul Ehsan, Malaysia (MAS) at pages 104-106

³² Sabbahy, L.K. (Editor) (2019) *All Things Ancient Egypt: An Encyclopaedia of the Ancient Egypt World, Volume I: A-K*, Greenwood, ABC-CLIO, LLC, California, United States of America (USA) at page 139. See also Hooker, V.M. (2003) *A Short History of Malaysia*, Allen & Unwin, New South Wales, Australia (AUS) at page 71

³³ Johnson, L. & Allison, R. (2001) *Central Asian Security: Internal & External Dynamics, Central Asian Security: The New International Context*, Royal Institute of International Affairs, London, Brookings Institution Press, Brookings Institution, Washington D.C., United States of America (USA) at page 10

³⁴ Kim, S.S. (1979) *China, the United Nations & World Order*, Princeton University Press, Princeton University, New Jersey, United States of America (USA) at page 25. See also Qing, W. (2010) *Trade & Exchange Relations Between China and the Ryukyus During the Reign of Emperor Kangxi (1662-1722), Trading Networks in Early Modern East Asia*, Otto Harrassowitz GmbH & Company KG, Wiesbaden, Germany (GER) at page 156

³⁵ Baoyun, Y. & Juntaronanont, P. (2019) *China & Mainland Southeast Asian Countries Relationship: From the History to the Future, China's Rise in Mainland Asian – New Dynamics and Changing Landscape*, World Scientific Publishing Company Private Limited, Singapore (SIN) at page 92

³⁶ Wang, Y.K. (2015) *The Historical Legacy of the Chinese Security Policy, Chinese National Security, Part I, Routledge Handbook of Chinese Security*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 21-23

³⁷ Tamura, E.H. et. al. (1998) *China: Understanding Its Past*, Curriculum Research & Development Group, University of Hawai'i, University of Hawai'i Press, Honolulu, United States of America (USA) at page 80

³⁸ Musa, M. (2011) *The Socioeconomic History of the Orang Kanaq of Johor*, *Kajian Malaysia, Journal of Malaysian Studies*, Volume 29, No.1, 2011, Penerbit Universiti Sains Malaysia, Universiti Sains Malaysia (USM), Gelugor, Pulau Pinang, Malaysia (MAS) at page 52

trade line with the Chinese Empire when the latter established the Chinese Mercantile Fleet³⁹ and its political power further declined⁴⁰ with the rise of the Majapahit Empire.⁴¹

2.1.1 THE DIPLOMATIC STRATEGIES OF THE MALAY SULTANATES

Diplomatic skills were treasured in the Malay Sultanate as diplomacy would avoid conflict and bloodshed with other kingdoms.⁴² The ingenuity (*kebitaraan*) of the Malay Sultanate was shown in their diversified strategies in diplomatic relations.⁴³ Such strategies were complex since the Sultan and his noblemen had to be vigilant by observing the motives and the background of all foreign countries.⁴⁴ The diplomatic strategies were implemented by the Sultanate and its envoy⁴⁵ in their mission to either spur budding foreign relations or strengthen the existing ones.⁴⁶ In short, variation in diplomatic policies was the Malay Sultanate's response to the dynamism in geopolitics and economy in the Malay Archipelago.⁴⁷ The epitome of the Malay Sultanate's diplomacy was manifested in diplomatic letters by using courteous language and envoys who presented diplomatic gifts.⁴⁸

³⁹ Forshee, J. (2006) *Culture & Customs of Indonesia*, Greenwood Press, Greenwood Publishing Group Incorporated, Connecticut, United States of America (USA) at page xvi

⁴⁰ So, B.K.L (2000) *Prosperity, Region & Institutions in Maritime China: The South Fukien Pattern 946-1368*, Harvard University Asia Center, President & Fellows of Harvard College, Harvard University Press, Harvard University, Massachusetts, United States of America (USA) at pages 220-221

⁴¹ Sen, T.T. (2009) *Cheng Ho & Islam in Southeast Asia*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Singapore (SIN) at page 159

⁴² Hooker, V.M. (2003) *A Short History of Malaysia*, Allen & Unwin, New South Wales, Australia (AUS) at pages 70-71

⁴³ Noor Muhammad, S.J. (2015) *Strategi Diplomati Bervariasi: Suatu Kearifan Lokal Dalam Pemerintahan Kesultanan Melayu*, Jurnal Antarabangsa Alam & Tamadun Melayu (JATMA)/International Journal of the Malay World & Civilisation (IMAN), Institut Alam & Tamadun Melayu (ATMA), Volume 3, No.2, Mei 2015, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 81. Source:

[http://www.ukm.my/jatma/wpcontent/uploads/makalah/IMAN%203\(2\)%20Mei%202015%20%20\[08\]%20salmah%20jan.pdf](http://www.ukm.my/jatma/wpcontent/uploads/makalah/IMAN%203(2)%20Mei%202015%20%20[08]%20salmah%20jan.pdf)

⁴⁴ Saari, H. (2016) *Hubungan Luar Kesultanan Melayu Kedah Menerusi Surat Raja-Raja 1882-1911*, Seminar Institusi Raja (SIRAJ IV), Hubungan Luar Kesultanan Melayu, 29 September 2016, Perpustakaan Negara, Pusat Kajian Institusi Raja Malaysia (PKIRM), Universiti Malaysia Perlis (UniMAP), Arau, Perlis at pages 1-21. Source: http://melayu.library.uitm.edu.my/158/1/K_HASLINDAWATI%20SAARI%20IPSAH%2016.pdf

⁴⁵ Noor Muhammad, S.J. (2014) *Strategi Utusan Kerajaan Dalam Menjalin Hubungan Diplomati Pada Zaman Kesultanan Melayu*, PENDETA, Journal of Malay Language, Education & Literature, Volume 5, 2014, Fakulti Bahasa & Komunikasi, Universiti Pendidikan Sultan Idris (UPSI), Tanjung Malim, Perak, Malaysia (MAS) at pages 122-136. Source: <http://ejournal.upsi.edu.my/index.php/PENDETA/article/view/1198>

⁴⁶ Noor Muhammad, S.J. (2019) *Strategi Pemujukan Pemerintah Kesultanan Melayu Dalam Komunikasi Diplomati*, e-Prosiding Persidangan Antarabangsa Sains Sosial & Kemanusiaan 2019, 24-25 April 2019, Kolej Universiti Islam Antarabangsa Selangor (KUIS), Selangor Darul Ehsan, Malaysia (MAS) at pages 1-8. Source: http://conference.kuis.edu.my/pasak4/images/kk/politik/038-KK_SALMAH_JAN.pdf

⁴⁷ Ibid No. 43

⁴⁸ Musa, H. et. al. (2013) *Unsur Diplomasi Dalam Penulisan Warkah Kesultanan Melayu*, Jurnal Antarabangsa Alam & Tamadun Melayu (JATMA)/International Journal of the Malay World & Civilisation (IMAN), Institut Alam & Tamadun Melayu (ATMA), Volume 1, No.3, Januari 2013, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 6. Source:

For instance, after the signing of the *Treaty of London* on 17 March 1824, Sultan Ahmad Shah I of Terengganu sent a letter dated 19 March 1824 to a Dutch General Baron van der Capellen in Batavia, Indonesia (present-day Jakarta) out of his economic and political concerns. The contents of his letter highlighted on His Highness' intention to continue their harmonious diplomatic relations that influenced Terengganu's thriving trading activities with the Dutch in Semarang, Indonesia.⁴⁹

Diplomatic gifts were sent in two (2) phases, *viz.* at the initial stage and the existing stage. In the former, the gifts were meant to stimulate a cordial diplomatic relations and in the latter, it was aimed at bolstering the existing bilateral relations.⁵⁰ For example, Sultan Iskandar Muda Johan Mahkota Alam of Aceh (r.1590-1636) sent his envoy to Turkey with a diplomatic gift. The envoy was warmly welcomed by the Caliph of the Ottoman Empire and in return, the Caliph sent a cannon and a military advisor to enhance Aceh's military defense system.⁵¹ These kingdoms exchanged their diplomatic gifts for their geopolitical, economic and social interests.⁵² The proliferation of commerce in the Malay Archipelago also depended on friendly relations with the foreign traders⁵³ who would never hesitate to shift their business elsewhere if they felt either disrespected by the host nation⁵⁴ or their security was threatened (e.g. piracy).⁵⁵

http://www.ukm.my/jatma/wp-content/uploads/makalah/IMAN_13_Sept_2013_-_01.pdf

⁴⁹ Ibid No. 48 at page 5

⁵⁰ Noor Muhammad, S.J. (2014) *Bingkisan Hadiah Pencetus Keberlangsungan Hubungan Diplomatik Pada Zaman Kesultanan Melayu*, Jurnal Antarabangsa Tamadun & Alam Melayu (JATMA)/International Journal of the Malay World & Civilisation (IMAN), Institut Alam & Tamadun Melayu (ATMA), Volume 2, No. 2, May 2014, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 91. Source: [http://www.ukm.my/jatma/wp-content/uploads/makalah/IMAN_2\(2\)%20Mei%202014%20-%20\[08\].pdf](http://www.ukm.my/jatma/wp-content/uploads/makalah/IMAN_2(2)%20Mei%202014%20-%20[08].pdf)

⁵¹ Reid, A. (2006) *The Pre-Modern Sultanate's View of Its Place in the World, Verandah of Violence: The Background to the Aceh Problem*, NUS Press, National University of Singapore (NUS), Singapore (SIN) at page 55

⁵² Abouseif, D.B. (2014) *Practicing Diplomacy in the Mamluk Sultanate: Gifts & Material Culture in the Medieval Islamic World*, I.B. Tauris Company Limited, London, United Kingdom (UK) at page 17

⁵³ Heoh, Y.L. (2007) *European Trades in Regional Trade of Malay Archipelago 1681-1792*, Thesis-Master of Arts, June 2007, Repository@USM, Open Access Repository of USM Research & Publication, Universiti Sains Malaysia (USM), Pulau Pinang, Malaysia (MAS) at pages 8-9. See also Lim, Y.P. (2019) *Chinese Junk Trade in Early Singapore, Junk Trade & Gambier Industry, Chapter 2, A General History of the Chinese in Singapore*, Singapore Federation of Chinese Clan Associations, World Scientific, Singapore (SIN) at page 24

⁵⁴ Abel, S.C. (2016) *A Covert War at Sea: Piracy & Political Economy in Malaya 1824-1874*, Dissertation-Doctor of Philosophy, Department of History, Northern Illinois University, DeKalb, Illinois, United States of America (USA) at pages 102-103. Source: https://www.academia.edu/31098769/A_COVERT_WAR_AT_SEA_PIRACY_AND_POLITICAL_ECONOMY_IN_MALAYA_1824-1874

⁵⁵ Turnbull, C.M. (2009) *A Modern History of Singapore 1819-2005*, NUS Press, National University Singapore (NUS), Singapore (SIN) at page 60. See also Roelofs, M.A.P.M (2012) *Asian Trade & European Influence in*

2.1.2 THE ISLAMIC CRAFT IN MALAY DIPLOMACY

Ever since the port-city of Melaka functioned as the hub for the spread of Islam in the *Malay World*,⁵⁶ Islamic teachings had been systematically integrated into the local traditions of State governance.⁵⁷ Thus, the connection between the *Malayness* (*Kemelayuan*) and Islam was evident during the height of the Malay Melaka Sultanate.⁵⁸ *Hukum Kanun Melaka*⁵⁹ and *Undang-Undang Laut Melaka*⁶⁰ were often cited as the best known *Syariah*-based laws during the Golden Age of the Sultanate.⁶¹ The Sultan of Melaka was assisted and advised⁶² by the Malay noblemen (*Pembesar Melayu Berempat*) in a modern governing structure.⁶³ The leadership of the Malay Sultanate was also famous for its inclination towards consultation or *Syura* as evident in the Malay proverbs, such as '*Bersendal seciap bak ayam, berdenting bagai besi*' and '*Hati kuman sama dicecah, hati gajah sama dilapah*'.⁶⁴ This Malay traditional consultative-inclusive approach is a reflection of the Islamic *Syura* method (i.e. consultative body) that has long been practised during the life of Prophet Muhammad (p.b.u.h) and his Companions (*Khulafa ar-Rasyidin*).⁶⁵

the Indonesian Archipelago Between 1500 and about 1630, Springer, Springer Nature Switzerland AG, Switzerland at page 29

⁵⁶ Tong, J. (2014) *Education Dilemma in Malaysia: Past, Present & Future*, Partridge, A Penguin Random House Company, Partridge Singapore, Singapore (SIN) at page 12. See also Ramakrishna, K. (2009) *Radical Pathways: Understanding Muslim Radicalisation in Indonesia*, Praeger Security International, Westport, Connecticut, United States of America (USA) at pages 40-41

⁵⁷ Ali, S.H. (2008) *The Malays: Their Problems & Future*, The Other Press (TOP), Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) at page 62. See also Pecotich, A. & Shultz II, J. (Editors) (2006) *Handbook of Markets & Economies: East Asia, Southeast Asia, Australia and New Zealand*, M.E. Sharpe Incorporated, Armonk, New York, United States of America (USA) at page 67

⁵⁸ Abdul Wahab, M.R. et. al. (Editors) (2018) *Selected Topics on Archaeology, History & Culture in the Malay World*, Springer, Springer Nature Singapore Private Limited, Gateway East, Singapore (SIN) at page 214

⁵⁹ Bottoni, R. et. al. (Editors) (2016) *Religious Rules, State Law and Normative Pluralism – A Comparative Overview*, Springer, Springer Nature, Springer International Publishing AG, Switzerland at page 265

⁶⁰ Abdullah Sani, K.S. (2007) *Bahasa Melayu: Apa Sudah Jadi?* PTS Professional Publishing Sdn. Bhd., Wangsa Melawati, Kuala Lumpur, Malaysia (MAS) at page 73

⁶¹ Nathan, K.S. & Kamali, M.H. (Editors) (2005) *Islam in Southeast Asia: Political, Social & Strategic Challenges for 21st Century*, Yusof Ishak Institute of Southeast Asia Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 112

⁶² Abdul Hamit, N.S. et. al. (2008) *Teks & Rujukan Lengkap: Sejarah Kertas 1, Soalan STPM 2007*, Arah Pendidikan Sdn. Bhd., Shah Alam, Selangor Darul Ehsan, Malaysia (MAS) at page 33

⁶³ Abdul Wahid, Z.A. (1997) *Kesultanan Melayu Melaka: Pentadbiran Kuno atau Moden?* Institut Kajian Sejarah & Patriotisme Malaysia (IKSEP), Batu Berendam, Melaka, Malaysia (MAS) at page I

⁶⁴ Zain, S.M. (2013) *Perkembangan Teori Kepimpinan Islam-Melayu di Pascabima Sejak Kedatangan Islam Hingga Kini*, International Journal of the Malay World & Civilisation (IMAN)/Jurnal Antarabangsa Alam & Tamadun Melayu (JATMA), Institut Alam & Tamadun Melayu (ATMA), Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 24.

Source: http://www.ukm.my/jatma/wp-content/uploads/makalah/IMAN1_2.pdf

⁶⁵ Salleh, M.J. (2014) *An Analysis of Administrative Staff's Participatory Decision-Making Through Syura at International Islamic Tertiary Institution*, International Journal of Humanities, Social Sciences & Education (IJHSSE), Volume 1, Issue 9, September 2014, Rajasthan, India (IND) at pages 33-34

The Malay Sultanates incorporated several features of Islamic Diplomacy in their diplomatic documents such as the Arabic expression in the letterhead, decency in language style,⁶⁶ the ruler's personal seal and diplomatic gift.⁶⁷ In the Malay Archipelago, Sultan Alauddin Syah of Aceh (r.1589-1604) was amongst the first Malay Sultans known to use a personal seal in diplomatic relations.⁶⁸

2.1.3 DIPLOMATIC RELATIONS OF THE MELAKA SULTANATE

Malaysia has started to implement policies on diplomatic relations since the era of Melaka Sultanate in the 15th century.⁶⁹ Melaka was transformed from a fishing village into a thriving entrepot in the Southeast Asian region during the early part of the 15th century.⁷⁰ The Melaka Sultanate's intelligence in managing diplomatic relations is a legacy for the *Malay World*.⁷¹ Some of Melaka's diplomatic policies (e.g. *Neutrality*) are still being practised in modern diplomacy.⁷² As international trade was crucial in Melaka's evolution as an entrepot,⁷³ traders' interests were central in the formulation of its diplomatic relations.⁷⁴

⁶⁶ Lewis, B. (1991) *The Political Language of Islam*, The University of Chicago Press, University of Chicago, Illinois, United States of America (USA) at page 79

⁶⁷ Noor Muhammad, S.J. (2018) *Islamic Diplomatic Mechanism in Malay Sultanate Letter*, International Journal of Academic Research in Business & Social Sciences, Volume 8, No.8, August 2018, Human Resource Management Academic Research Society (HRMARS), Bahawalpur, Pakistan (PAK) at page 600. Source: http://hrmars.com/hrmars_papers/Islamic_Diplomatic_Mechanism_in_Malay_Sultanate_Letter.pdf

⁶⁸ Gallop, A.T. (2016) *The Early Use of Seals in the Malay World*, Bulletin de l'École Française d'Extrême-Orient, 102 (2016), Paris, France (FRA) at page 148. Source:

https://www.persee.fr/doc/AsPDF/befeo_0336-1519_2016_num_102_1_6233.pdf. See also Gallop, A.T. (2004) *Ottoman Influences in the Seal of Sultan Alauddin Riayat Syah of Aceh (r.1589-1604)*, Indonesia & The Malay World, Volume 32, No.93, July 2004, academia.edu., San Francisco, United States of America (USA) at pages 176-187. Source:

https://www.academia.edu/1363524/Ottoman_influences_in_the_seal_of_Sultan_Alauddin_Riayat_Syah_of_Aceh_r.1589-1604

⁶⁹ Abdul Wahid, Z.A. (1990) *Kerajaan Melaka Dalam Hubungan Antarabangsa*, Malaysian Journal of History, Politics & Strategic Studies (JEBAT), Volume 18, No.71-87, Center for Policy & Global Governance (GAP), Faculty of Social Sciences and Humanities, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 71. Source: <http://journalarticle.ukm.my/466/1/1.pdf>

⁷⁰ Aman, A. & Aros, A.M. (2016) *Sejarah Perdagangan Maritim Ryukyu Serta Hubungannya Dengan Melaka*, SEJARAH, Journal of the Department of History, University of Malaya (UM), 2016, Volume 25, No.2, Faculty of Arts & Social Sciences, University of Malaya (UM), Kuala Lumpur, Malaysia (MAS) at page 63. Source: <https://ejournal.um.edu.my/index.php/SEJARAH/article/view/9343/6630>

⁷¹ Abu Bakar, A.L. (2012) *Sulalatus Salatin: Sejarah Melayu – Empayar Kesultanan Melayu Melaka*, Balai Seni Visual Negara, Kuala Lumpur, Malaysia (MAS) at pages 25-26. Source:

http://lib.perdana.org.my/PLF/PLF2/Digital_Content/PLF/000025_Pre/OCRed/1010626.pdf

⁷² Ahmad, A.S. (1978) *Sulalatus Salatin (Sejarah Melayu) - Edisi Pelajar*, Dewan Bahasa & Pustaka (DBP), Kuala Lumpur, Malaysia (MAS) at pages 107-108. Source: <http://www.sabrizain.org/malaya/library/sulatus.pdf>

⁷³ Ahmad, A.T. (2015) *Museums, Culture & History in Malaysia*, NUS Press, National University Singapore (NUS), Singapore (SIN) at page 105

⁷⁴ Hillman, J. (2010) *The International Tin Cartel*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 19. See also Hooker, V.M. (2003) *A Short History of Malaysia*, Allen & Unwin, New South Wales, Australia (AUS) at page 66

Uniquely for Melaka, the security of the Sultanate was not solely hinged on her military might but primarily on her dominance on the *Free Market* economy.⁷⁵

During its heyday, the Melaka Sultanate also served as the centre of propagation of Islam in the Southeast Asian region.⁷⁶ Amongst the reasons the Melaka Sultanate established diplomatic relations with a powerful suzerain such as the Chinese Empire was for the protection against security threats from regional enemies (e.g. Siam) that might affect her trade and domestic governance adversely.⁷⁷ Part of Melaka's diplomatic policy in international trade was to ensure the continuous supply of food to all foreign traders who lived and traded in the entrepot. Since the port-city did not produce sufficient supply to sustain such demographic, it maintained a good diplomatic relations with the Javanese Islands.⁷⁸ Islam was a factor that appealed to the Muslim traders and other Muslim countries to trade at Melaka entrepot.⁷⁹ Aside from functioning as a hub for Islamic activities,⁸⁰ they also felt secure and comfortable trading in the Melaka port-city.⁸¹ Moreover, a stable government was another attraction to trade in Melaka.⁸² The fall of the Melaka Sultanate to the Portuguese in 1511, however, had wavered Melaka's standing as a powerful economic

⁷⁵ Gilley, B. (2014) *The Nature of Asian Politics*, Cambridge University Press, Cambridge University, New York, United States of America (USA) at pages 1-2

⁷⁶ SarDesai, D.R. (2018) *Southeast Asia: Past & Present*, 7th Edition, Routledge, Taylor & Francis Group, New York, United States of America (USA) at pages 56-57. See also Mishra, P.P. (2010) *The History of Thailand*, The Greenwood Histories of Modern Nations, Greenwood, An Imprint of ABC-CLIO, LLC, California, United States of America (USA) at pages 54-55

⁷⁷ Adam, A. (2016) *Antara Sejarah dan Mitos: Sejarah Melayu & Hang Tuah dalam Historiografi Malaysia*, Strategic Information and Research Development Center (SIRD), Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) at page 86

⁷⁸ Cortesao, A. (Editor) *The Suma Oriental of Tome Pires: An Account of the East, From the Red Sea to China, Written in Malacca & India in 1512-1515, In Two Volumes, Volume II* (2005) Asian Educational Services, New Delhi, India (IND) at pages 245-246. Source: <http://www.sabrizain.org/malaya/library/pires.pdf>. See also Meilink-Roelofs, M.A.P. (1962) *Asian Trade & European Influence in the Indonesian Archipelago Between 1500 and About 1630*, The Hague, Martinus Nijhoff, The Netherlands (NED) at page 32. Also at Ricklefs, M.C. (1993) *A History of Modern Indonesia Since Circa 1300*, Second Edition, The Macmillan Press Limited, London, United Kingdom (UK) at page 19. And also at Bosworth, C.E. (2007) *Historic Cities in the Islamic World*, Koninklijke Brill NV, Leiden, The Netherlands (NED) at page 311

⁷⁹ Schellinger, P.E. & Salkin, R.M. (Editors) (1996) *International Dictionary of Historic Places, Volume 5, Asia & Oceania*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 584. See also Johns, A.H. (2002) *The Religious Traditions of Asia: Religion, History & Culture*, RoutledgeCurzon, Taylor & Francis Group, London United Kingdom (UK) at page 171

⁸⁰ Aljunied, K. (2019) *Islam in Malaysia: An Entwined History*, Oxford University Press, University of Oxford, New York, United States of America (USA) at page 79. See also Aljunied, K. (2017) *Muslim Cosmopolitanism: Southeast Asian Islam in Comparative Perspective*, Edinburgh University Press, Edinburgh University Press Limited, University of Edinburgh, Edinburgh, Scotland at pages 5-6

⁸¹ Ibid No. 59 at page 83

⁸² Lockard, C.A. (2008) *Societies, Network & Transitions: A Global History, Volume I*, Cengage Learning Incorporated, Houghton Mifflin Company, Boston, Massachusetts, United States of America (USA) at page 380

and geopolitical force in the Malay Archipelago.⁸³ During the Portuguese occupation, diplomatic relations between Melaka and its neighbours was mainly in the form of temporary truce and unstable alliance.⁸⁴

When the Dutch captured the Melaka port-city from the Portuguese in 1641, the Dutch was considered as a new European power in Straits of Melaka.⁸⁵ The Dutch East Indian Company's (VOC) diplomatic relations with the Malay Sultanates ranged between two extremes – from the relatively cordial with the Johor Sultanate to the comparatively hostile as in the case of the Aceh Kingdom.⁸⁶ Soon, the VOC had started signing commercial contracts with Perak and Kedah to control the tin ore business in those States.⁸⁷ Later, the Dutch had resorted to its military prowess to control the coastal areas along the Straits of Melaka to ensure the tin ore would be delivered to the VOC in Melaka.⁸⁸ This was done after realising the future control of the tin industry could not be materialised via diplomacy.⁸⁹

2.1.3.1 MELAKA SULTANATE & MING DYNASTY

Chinese traders had been in contact with the Malay Archipelago as early 221 B.C.⁹⁰ The diplomatic relations between the Melaka Sultanate and the Chinese Empire as documented in *Ming Shi Lu*⁹¹ was formally forged during the Ming Dynasty in the early 15th century.⁹²

⁸³ Adam, R. (2016) *Hubungan Luar Kesultanan Melayu Melaka Dengan Kawasan Sekitar & Antarabangsa*, Seminar Institusi Raja (SIRAJ IV), Hubungan Luar Kesultanan Melayu, 29 September 2016, Perpustakaan Negara, Pusat Kajian Institusi Raja Malaysia (PKIRM), Universiti Malaysia Perlis (UniMAP), Arau, Perlis, Malaysia at page 1.

Source: http://melayu.library.uitm.edu.my/445/1/K_RAMLAH%20ADAM%20UniMAP%202016.pdf

⁸⁴ Sousa Pinto, P.J.D. (2012) *The Portuguese & The Straits of Melaka 1575-1619: Power, Trade and Diplomacy*, NUS Press, National University of Singapore (NUS), Singapore (SIN) at page 135

⁸⁵ Barr, D.M. (2019) *Singapore: A Modern History*, I.B. Tauris & Company Limited, London, United Kingdom (UK) at pages 54-55

⁸⁶ Aziz, N. (2006) *Diplomatic Corpus: Between the Dutch in Tanah Melayu & the Northern Malay Courts, 1641-1699*, Journal of Southeast Asian Studies (JATI), Volume 11, December 2006, Department of Southeast Asian Studies, Faculty of Arts & Social Sciences, University of Malaya (UM), Kuala Lumpur, Malaysia (MAS) at page 128. Source: <https://jati.um.edu.my/article/view/5907/3624>

⁸⁷ Khan Sher, B.A.L (2017) *Aceh-India Commercial & Literary Relations in the 17th Century*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 146-147

⁸⁸ Ibid No. 76 at page 131

⁸⁹ Seavoy, R.E. (2003) *Origins and Growth of Global Economy: From 15th Century Onward*, Praeger, Greenwood Press, Greenwood Publishing Group Incorporated, Connecticut, United States of America (USA) at page 39

⁹⁰ Laderman, C. (1993) *Taming the Wind of Desire: Psychology, Medicine & Aesthetics in Malay Shamanistic Performance*, University of California Press, Los Angeles, United States of America (USA) at page 21

⁹¹ Wade, G. (2005) *Southeast Asia in the Ming Shi Lu: An Open Access Source*, Singapore (SIN). Source: <http://epress.nus.edu.sg/msl/>. See also Dar, B.K. (2016) *Preserving the Cultural Bond Towards Strengthening*

It was officially initiated during the reign of Emperor Cheng Zhu of the Ming Dynasty.⁹³ The foundation of diplomatic relations between the Melaka Sultanate and the Chinese Empire was the maritime trade links between China and India⁹⁴ whereby the Malay Peninsula's strategic location on the route of China and Indian maritime line turned the Peninsula as a transit between these two continents.⁹⁵ Melaka's popularity as an international entrepot which was spread from the Indian Muslim traders had persuaded the Chinese Empire to place the Sultanate as its strategic partner in commercial and diplomatic relations.⁹⁶

By 1403, the Melaka Sultanate received the first diplomatic mission from the Chinese Empire.⁹⁷ In 1404, a large Chinese trade and diplomatic mission arrived in Melaka and the Sultanate reciprocated by dispatching its envoys to the Chinese Empire.⁹⁸ Parameswara made the crucial diplomatic visit to China in 1411 to meet Emperor Yung Lo – the third Emperor of the Ming Dynasty whereby Melaka polity was officially recognised by the Emperor.⁹⁹ During this visit, the Melakan ruler's status was elevated with the investiture of a yellow umbrella, a seal and a set of clothing as a sign of recognition from the Chinese Emperor to the budding Melaka Sultanate.¹⁰⁰ Between 1404 and 1435, twenty (20) diplomatic missions were dispatched from Malacca to China; several of which led by the ruler himself.¹⁰¹ Similar to the Srivijayan Empire, the Melaka Sultanate had control over the harbour chiefs, the *Orang*

Sino-Malaysian Relationship, Jurnal Antarabangsa Alam & Tamadun Melayu (JATMA)/International Journal of the Malay World & Civilisation (IMAN), Institut Alam & Tamadun Melayu (ATMA), Jilid 4, No.3, September 2016, Penerbit UKM, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at page 89

⁹² Liji, L. (1996) *Lembaran Sejarah Gemilang: Hubungan Empayar Melaka-Dinasti Ming Abad ke-15*, Penerbit Universiti Kebangsaan Malaysia (UKM), Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Darul Ehsan, Malaysia (MAS) at pages 10-12

⁹³ Mujani, W.K. et al. (2012) *The Chinese Muslim Community: Their Economic, Political & Social Involvement in Malaysia*, Advances in Natural & Applied Sciences (ANAS), ANAS Volume 6, No.3, January, Special 2, 2012, American-Eurasian Network for Scientific Information (AENSI), Amman, Jordan at pages 417-418.

Source: <http://www.aensiweb.com/old/anas/2012/417-422.pdf>

⁹⁴ Ke, X. (2006) *Anti-Piracy Cooperation Dilemma: ASEAN & China, Part III: China – ASEAN on Non-Traditional Security Issues, China – ASEAN Relations: Economic and Legal Dimensions*, World Scientific Publishing Company Limited, Singapore (SIN) at page 76

⁹⁵ Iqbal, U. et. al. (2014) *The Historical Development of the Malay Nationalism Before Independence*, Research Paper, GRIN Verlag, Munich, Germany (GER) at page 4

⁹⁶ Gupta, A.D. (2001) *The Maritime Trade of Indonesia: 1500-1800, South East Asia – Colonial History, Volume I*, Routledge, Taylor & Francis Group, London, United Kingdom (UK) at page 96

⁹⁷ Lehman Jr., D. (2015) *The Rise and Fall of Southeast Asia's Empires: History, Literature, Religion & Architecture*, 5th Edition, Lulu Press Incorporated, North Carolina, United States of America (USA) at page 256

⁹⁸ Lynn, A.M. (2004) *Muslims in China*, University of Indiana Press, University of Indiana, East Hanna Avenue, Indiana, United States of America (USA) at page 35

⁹⁹ Daniels, T.P. (2013) *Building Cultural Nationalism in Malaysia: Identity, Representation & Citizenship*, Routledge, London, United Kingdom (UK) at page 14

¹⁰⁰ Muzzi, G.A. (2014) *The Portuguese in Malay Land*, Edicoes Vercial, Portugal (POR) at page 11

¹⁰¹ Ibid at No. 88

Laut (nomadic sea and riverine people) and had a special relation with Chinese Empire which safeguarded her international trade.¹⁰² When the Melaka Sultanate was no longer disturbed by the Siamese Kingdom by virtue of the Imperial Chinese protection,¹⁰³ the Melaka port-city thrived as a world-class entrepot.¹⁰⁴ Vassalage to the Chinese Empire meant that the tribute presented was reciprocated by gifts and marks of honour,¹⁰⁵ whereas Siamese Kingdom levied its tribute in gold but gave nothing to Melaka in return.¹⁰⁶ Melaka's monopoly over the China's commodity¹⁰⁷ was an attraction for more international traders to trade in Melaka.¹⁰⁸ It was the era when China, under the Ming Dynasty, implemented a policy of expansion with commercial relations.¹⁰⁹ Diplomatic relations with the Chinese Empire ensured the protection of Malacca port-city from a powerful suzerain.¹¹⁰ Amazingly, the Chinese Empire was never motivated to conquer or colonise the Melaka Sultanate.¹¹¹ Therein laid the uniqueness of Melaka Sultanate-Chinese Empire diplomatic relations that was found upon mutual respect and socio-economic symbiosis.¹¹² Moreover, despite China's superiority, coercion was never

¹⁰² Dick, H.W. (2002) *The Emergence of a National Economy: An Economic History of Indonesia, 1800-2000*, Allen & Unwin, New South Wales, Australia (AUS) at page 42

¹⁰³ Hoon, H.S. (2012) *Zheng He's Art of Collaboration: Understanding the Legendary Chinese Admiral from a Management Perspective*, International Zheng He Society, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Singapore (SIN) at pages 83-84

¹⁰⁴ Giraldez, A. (2015) *The Age of Trade: The Manila Galleons & The Dawn of the Global Economy*, Rowman & Littlefield, New York, United States of America (USA) at page 1. See also Lach, D.F. & Van Kley, E.J. (1993) *Asia in the Making of Europe, Volume III: A Century of Advance – Book I: Trade, Missions, Literature*, The University of Chicago Press, University of Chicago, Illinois, United States of America (USA) at page 12

¹⁰⁵ Parmer, J.N. (2012) *Historical Perspectives on Chinese in Southeast Asia, Chinese Populations in Contemporary Southeast Asian Societies: Identities, Inter-dependence & International Influence*, Routledge, Taylor & Francis Group, New York, United States of America (USA) at pages 19-20. See also Virginia Matheson Hooker (2003) *A Short History of Malaysia*, Allen & Unwin, New South Wales, Australia (AUS) at page 60

¹⁰⁶ Meilink-Roelofs, M.A.P. (1962) *Asian Trade & European Influence in the Indonesian Archipelago Between 1500 and About 1630*, The Hague, Martinus Nijhoff, The Netherlands (NED) at page 31

¹⁰⁷ Abinales, P.N. & Amoroso, D.J. (2005) *State & Society in the Philippines*, Rowan & Littlefield Publishers Incorporated, New York, United States of America (USA) at pages 41-42

¹⁰⁸ Curtin, P.D. (1984) *Cross-Cultural Trade in World History*, Cambridge University Press, Cambridge University, New York, United States of America (USA) at pages 132-133

¹⁰⁹ Findlay, R. (2019) *Asia & The World Economy in Historical Perspective, Asian Transformations: An Inquiry into the Development of Nations*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 88

¹¹⁰ Wiryomartono, B. (2019) *Liveability & Sustainability of Urbanism: An Interdisciplinary Study on History and Theory of Urban Settlement*, Palgrave Macmillan, Springer Nature Singapore Private Limited, Gateway East, Singapore (SIN) at pages 207-208

¹¹¹ Shih, T.H. (2017) *Is China an Empire?* World Scientific Publishing Company Private Limited, Singapore (SIN) at page 13. See also Vanhaute, E. (2013) *World History: An Introduction*, Routledge, Oxon, United Kingdom (UK) at page 101

¹¹² Winter, T. (2019) *Geocultural Power: China's Quest to Revive the Silk Roads for the Twenty First Century*, The University of Chicago Press, University of Chicago, Illinois, United States of America (USA) at page 178

part of her foreign policies; the kingdoms that submitted to Chinese suzerainty did so voluntarily.¹¹³

However, tribute missions between Melaka and China were discontinued in the course of the 15th century.¹¹⁴ After the fall of the Melaka port-city in 1511 to the Portuguese, the Sultan of Melaka sent a petition for assistance to Emperor Wuzong in 1520 to reclaim his throne but to no avail.¹¹⁵

2.2 MALAYSIA'S DIPLOMATIC RELATIONS AFTER INDEPENDENCE

Malaysia's diplomatic relations are now founded upon her strategic geography, dynamic economy and unique demography.¹¹⁶ This is reflective on her stable bilateral relations with Singapore,¹¹⁷ Indonesia¹¹⁸ and China.¹¹⁹ Other than regional bilateral relations, Malaysia also founded regional associations such as ASEAN¹²⁰ and approached regional groups like NAM and OIC¹²¹ as part of her stand on multilateral relations.¹²² The evolution of diplomatic relations in Malaysia could be summarised under different premierships, viz. Tunku Abdul Rahman (1957-1970), Tun Abdul Razak (1970-1976), Tun Hussein Onn (1976-1981), Tun. Dr. Mahathir Mohamad (1981-2003 & 2018-February 2020), Tun Abdullah

¹¹³ Rush, J.R. (2018) *Southeast Asia: A Very Short Introduction*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 47. See also Hobson, J.M. (2004) *The Eastern Origins of Western Civilisation*, Cambridge University Press, Cambridge University, New York, United States of America (USA) at pages 63-64

¹¹⁴ Ford, G. (2019) *The Uses of Persian in Imperial China: Translating Practices at the Ming Court, Part I – Pan-Eurasian Expansions Circa 1400-1600, The Persianate World: The Frontiers of a Eurasian Lingua Franca*, University of California Press, University of California, Oakland, California, United States of America (USA) at page 121. See also Lach, D.F. (1994) *Asia in the Making of Europe, Volume I: The Century of Discovery, Book 2*, The University of Chicago Press, University of Chicago, Illinois, United States of America (USA) at page 732

¹¹⁵ Dake, L. (2019) *The Portuguese Occupation of Malacca in 1511 & China's Response, China and Southeast Asia: Historical Interactions, Routledge Studies in the Modern History of Asia*, Routledge, Oxon, United Kingdom (UK) at pages 141-145

¹¹⁶ (2020) *Malaysia's Foreign Policy*, Official Portal of Ministry of Foreign Affairs Malaysia, Wisma Putra, Putrajaya, Malaysia (MAS). Source: <https://www.kln.gov.my/web/guest/foreign-policy>

¹¹⁷ Wei Boon, C.D. et. al. (2018) *ASEAN 50: Regional Security Cooperation Through Selected Documents*, S. Rajaratnam School of International Studies, Nanyang Technological University (NTU), World Scientific Publishing Company Private Limited, Singapore (SIN) at page 10

¹¹⁸ Chan, H.Y. (2018) *Special Relationship in the Malay World: Indonesia & Malaysia*, ISEAS Publishing, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 165

¹¹⁹ Hong, L.S. et. al. (2018) *China and Malaysia Cooperation Report 2014, Series on China-ASEAN Relations: Cooperation & Development, Volume 1*, China Social Science Press, World Scientific Publishing Company Private Limited, Singapore (SIN) at pages 107-108

¹²⁰ (2012) *The Report: Malaysia 2012*, Oxford Business Group, London, United Kingdom (UK) at page 18

¹²¹ (2011) *The Report: Malaysia 2011*, Oxford Business Group, London, United Kingdom (UK) at page 20

¹²² (2009) *U.S. Alliances & Emerging Partnerships in Southeast Asia: Out of the Shadows, A Report of the CSIS Southeast Asia Initiative, July 2009*, Center for Strategic and International Studies (CSIS), Washington D.C. United States of America (USA) at page 62

Ahmad Badawi (2003-2009), Najib Razak (2009-2018) and Muhyiddin Yassin (February 2020-present).

As a newly independent nation, Malaysia's foreign policy under Tunku Abdul Rahman Putra Al-Haj gravitated towards building its nascent economy, politics and national security.¹²³ The independence of Malaya and creation of Malaysia had temporarily ruptured her diplomatic relations with Indonesia and the Philippines.¹²⁴ Hence, Malaysia had embarked on efforts to revitalised regional relation via membership of several economic associations such as ASA,¹²⁵ MAPHILINDO¹²⁶ and finally ASEAN.¹²⁷ It also signified Malaysia's breaking away from the Western economic dependency¹²⁸ and exploring new markets for Malaysian commodities.¹²⁹ Unlike her neighbours Indonesia¹³⁰ and the Philippines¹³¹ that had to endure bloodshed, rebellion and violent revolution to attain independence from their Colonial Masters, Malaysia chose the peaceful diplomatic path to

¹²³ Harun, R. (2011) *Beyond the UK: Looking at Contemporary Malaysian-European Relations, Part II: Bilateral & Multilateral Relations – Foreign Policy, Economic, Finance, Trade and Higher Education, Malaysia and the European Union: Perspectives for the 21st Century*, LIT Verlag GmbH & Company KG Wien, Zurich, Switzerland at pages 28-29

¹²⁴ Barr, M. et. al. (2008) *World & its People: Eastern and Southern Asia, Volume 9 – Malaysia, Singapore, Brunei & The Philippines*, Marshall Cavendish Corporation, New York, United States of America (USA) at pages 1215-1216

¹²⁵ Saravanamuttu, J. (2010) *Malaysia's Foreign Policy: The First Fifty Years – Alignment, Neutralism, Islamism*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 67

¹²⁶ Ba, A.D. (2009) *(Re)Negotiating East and Southeast Asia: Region, Regionalism & the Association of Southeast Asian Nations*, Stanford University Press, Stanford University, Palo Alto, California, United States of America (USA) at pages 47-48

¹²⁷ Jones, D.M. & Smith, M.L.R. (2006) *ASEAN & East Asian International Relations: Regional Delusion*, Edward Elgar Publishing Limited, Cheltenham, United Kingdom (UK) at pages 46-47. See also Clark, M. & Pietsch, J. (2014) *Indonesia-Malaysia Relations: Cultural Heritage, Politics & Labour Migration*, Routledge, Taylor & Francis Group, London, United Kingdom (UK) at pages 25-26

¹²⁸ Yusof Ahmad, M. (2008) *50 Years of Malaysia's 'Economic Diplomacy': The Continuing Struggle for Peace, Security & Development*, The Journal of Diplomacy and Foreign Relations, Volume 10, No.1, 2008, Institute of Diplomacy and Foreign Relations (IDFR), Ministry of Foreign Affairs Malaysia, Wisma Putra, Kuala Lumpur, Malaysia (MAS) at pages 46-48.

Source: <https://www.idfr.gov.my/images/stories/publication/2008/jdfrv10.pdf> . See also Jonathan J. Howlett (2016) *'Decolonisation' in China, 1949-1959, Britain & China, 1840-1970: Empire, Finance & War*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 228

¹²⁹ Lankester, T. (2013) *The Politics & Economic of Britain's Foreign Aid: The Pergau Dam Affair*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 48-49

¹³⁰ Ganesan, N. & Kim, S.C. (Editors) (2013) *State Violence in East Asia*, The University Press of Kentucky, Lexington, Kentucky, United States of America (USA) at page 161. See also Graft, A. et. al. (Editors) (2011) *Orientalism & Conspiracy: Politics and Conspiracy Theory in the Islamic World*, I.B. Tauris, Fifth Avenue, New York, United States of America (USA) page 146. Also at Leifer, M. (2001) *Dictionary of the Modern Politics of Southeast Asia, Third Edition*, Routledge, New Fetter Lane, London, United Kingdom (UK) at page 263

¹³¹ Mehta, S.R. (Editor) (2018) *Language & Literature in a Glocal World*, Springer, Springer Nature Singapore Private Limited, Gateway East, Singapore (SIN) at pages 82-83

negotiate her independence from the British Imperialist.¹³² This phenomenon has created a diplomatic advantage for Malaysia over Indonesia (in spite of their similar cultural kinship)¹³³ especially in terms of political stability and economic development.¹³⁴ However, the violent Communist movement led by the Communist Party of Malaya (CPM) was deemed a threat to Malaysia's security¹³⁵ that necessitated Malaysia to seek military assistance from Britain, Australia and New Zealand via the Anglo-Malayan Defence Agreement (AMDA) in 1957.¹³⁶ Malaysia's policy in Diplomatic Relations at this stage was thus, pro-Western and anti-Communism.¹³⁷ Crucial events like the Indonesia's *Konfrontasi* (1963-1966) and Singapore's expulsion from Malaysia on 9 August 1965 laid the foundation of Malaysia's dynamic stance on international relations.¹³⁸

Under the leadership of Abdul Razak as the second Prime Minister (1970-1976), Malaysia shifted its diplomatic relations towards *Neutrality*.¹³⁹ Malaysia already led the way by founding the Zone of Peace, Freedom and Neutrality (ZOPFAN) in 1971 with other ASEAN countries.¹⁴⁰ Tun Abdul Razak's groundbreaking visit to the People's Republic of

¹³² Ali, S.H. (2018) *A People's History of Malaysia: With Emphasis on the Development of Nationalism*, Pusat Sejarah Rakyat, Strategic Information & Research Development Center (SIRD), Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) at page 121. See also Lentz III, H.M. (2013) *Heads of States & Governments: A Worldwide Encyclopaedia of Over 2,300 Leaders, 1945 Through 1992*, Routledge, Taylor & Francis, Oxon, United Kingdom (UK) at page 534. Also at Berman, E.M. (Editor) (2011) *Public Administration in Southeast Asia: Thailand, Philippines, Malaysia, Hong Kong & Macao*, CRC Press, Taylor & Francis Group, Boca Raton, Florida, United States of America (USA) at page 143

¹³³ Chong, A. (Editor) (2018) *International Security in the Asia-Pacific: Transcending ASEAN Towards Transitional Polycentrism*, Palgrave Macmillan, Springer Nature, Springer International Publishing AG, Cham, Switzerland page 50

¹³⁴ Mat Yazid, M.N. (2014) *Colonial Policy & the Impact of Politico-Economy Stability After Independence: The Case of Indonesia Under the Dutch and Malaysia Under the British*, Review of History & Political Science, December 2014, Volume 2, No. 3 & 4, American Research Institute for Policy Development, Madison, Wisconsin, United States of America (USA) at pages 69 & 80

¹³⁵ *National Security Policy*, Majlis Keselamatan Negara (MKN), Jabatan Perdana Menteri Malaysia, Putrajaya, Malaysia (MAS) at page 4. Source: <https://www.mkn.gov.my/media/story/English-National-Security-Policy.pdf>. See also Jones, D.M. & Smith, M.L.R. (2006) *ASEAN & East Asian International Relations: Regional Delusion*, Edward Elgar Publishing Limited, Cheltenham, United Kingdom (UK) at page 46

¹³⁶ Benvenuti, A. (2017) *Cold War & Decolonisation: Australia's Policy Towards Britain's Ends of Empire in Southeast Asia*, NUS Press, National University of Singapore (NUS), Singapore (SIN) at pages 66-67

¹³⁷ Teng, F.W. (2004) *The Peace Movement & Malaysian Foreign and Domestic Policy, Social Movements in Malaysia: From Moral Communities to NGOs*, RoutledgeCurzon, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 181. See also Iqbal, U. (2014) *Japanese Blood Debt Issue During the Era of Tunku Abdul Rahman*, Research Paper, GRIN Verlag, GRIN Publishing GmbH, Munich, Germany (GER) at page 1

¹³⁸ Jeshurun, C. (2007) *Malaysia: Fifty Years of Diplomacy 1957-2007*, The Other Press (TOP), Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) at pages 68-70

¹³⁹ Kheng, C.B. (2002) *Malaysia: The Making of a Nation*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 150

¹⁴⁰ Hanggi, H. (1991) *ASEAN & The ZOPFAN Concept*, Pacific Strategic Papers, Regional Strategic Studies Programme, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at pages 12-15. See also Ngoei, W.Q. (2019) *Arc of Containment: British, the United States and Anti-Communism in*

China (PRC) on 31 May 1974¹⁴¹ was an illustration of both countries' acceptance of *Neutrality* in diplomatic relations.¹⁴² Malaysia's *Neutrality* was the reason for bilateral relations she forged with other Communist countries like North Korea.¹⁴³ Malaysia's third Prime Minister, Tun Hussein Onn (1976-1981) maintained the *Neutrality* in diplomatic relations which was consistent with the global trend of relaxing the intense international relations amongst conflicting countries.¹⁴⁴ In tandem with Malaysia's *Neutrality*, Tun Hussein Onn had reached out to the Socialist Republic of Vietnam (SRV) – a Communist-Socialist country in the Indo-China – to establish formal bilateral relations in 1976.¹⁴⁵ He also continued on bolstering regional cooperation through ASEAN, particularly in regional security issues. For instance, Malaysia had cooperated with Thailand in combating the Communist attacks in the Malaysia-Thailand border.¹⁴⁶

Prime Minister Tun Dr. Mahathir Mohammad (1981-2003, 2018-2020) is a reformer with new policies on diplomatic relation which focused on the international trade, investment and economic development issues.¹⁴⁷ The biggest change was the *Look East Policy* launched in 1982 which emulated the developed East Asian countries like Japan and South Korea as

Southeast Asia, Cornell University Press, Cornell University, Ithaca, New York, United States of America (USA) at page 173

¹⁴¹ Weatherbee, D.E. (2019) *ASEAN's Half Century: A Political History of the Association of Southeast Asian Nations*, Rowman & Littlefield, The Rowman & Littlefield Publishing Group Incorporated, London, United Kingdom (UK) at page 43

¹⁴² Stubbs, R. (2016) *The Foreign Policy of Malaysia, The Political Economy of Foreign Policy in Southeast Asia*, Palgrave Macmillan, Springer (Springer Science+Business Media), Berlin, Germany (GER) at pages 108-109

¹⁴³ Hazis, F.S. (2018) *Malaysia in 2017: Strong Economic Growth Amidst Intense Power Struggle*, *Southeast Asian Affairs 2018*, Yusof Ishak Institute of Southeast Asia Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 212

¹⁴⁴ Mahyiddin, W.M. & Mustaffa Yusof, H.N. (1997) *Ucapan Tun Hussein Onn di Perhimpunan Agung UMNO, Hotel Hilton, Kuala Lumpur pada 1, 2 & 3 Julai 1977, Amanat Presiden: Landasan Bagi Pembinaan Bangsa dan Negara, Jilid II*, Penerbit Fajar Bakti Sdn. Bhd., Shah Alam, Selangor, Malaysia (MAS) at pages 230-231.

Source: http://lib.perdana.org.my/PLF/PLF2/Digital_Content/PLF/000006/A3/1005817.pdf

¹⁴⁵ Jaafar, F. (2003) *Peribadi Politik Tun Hussein Onn dan Dasar Luar Malaysia 1976-1981*, *SEJARAH: Journal of the Department of History, University of Malaya (UM)*, 2003, Volume 11, No.11, University of Malaya (UM), Kuala Lumpur, Malaysia (MAS) at page 68.

Source: <https://ejournal.um.edu.my/index.php/SEJARAH/article/view/9134/6459>

¹⁴⁶ Carment, D. et. al. (2006) *Who Intervenes? Ethnic Conflict & Inter-State Crisis*, The Ohio State University Press, Ohio State University, Columbus, Ohio, United States of America (USA) at page 125. See also Wan Mohd. Mahyiddin & Haji Nik Mustaffa Yusof (1997) *Ucapan Tun Hussein Onn di Perhimpunan Agung UMNO, Hotel Hilton, Kuala Lumpur pada 1,2 & 3 Julai 1977, Amanat Presiden: Landasan Bagi Pembinaan Bangsa dan Negara, Jilid II*, Penerbit Fajar Bakti Sdn. Bhd., Shah Alam, Selangor Darul Ehsan, Malaysia (MAS) at page 229

Source: http://lib.perdana.org.my/PLF/PLF2/Digital_Content/PLF/000006/A3/1005817.pdf.

¹⁴⁷ Omar, R. & Mukhtaruddin, M.J. (2014) *Dasar Luar Malaysia Era Dato' Seri Najib Tun Razak: Keutamaan Dalam Aspek Hubungan Dua Hala*, Seminar on National Resilience, Political Managements & Policies in Malaysia 2014, Institute of Dr. Mahathir's Thoughts (IPDM), Universiti Utara Malaysia (UUM), Sintok, Kedah, Malaysia (MAS) at pages 176-177. Source: <https://core.ac.uk/download/pdf/12118563.pdf>

Malaysia's future economic model¹⁴⁸ with the aim of transforming Malaysia as a developed country in the 21st century.¹⁴⁹ Under Tun Dr. Mahathir's leadership, Malaysia was proactive in preserving international peace by serving United Nations Security Council (UNSC) as part of peacekeeping missions in war-torn countries such as Bosnia,¹⁵⁰ Kosovo¹⁵¹ and Timor Leste.¹⁵² Malaysia's commitment towards international peace and security was duly recognised when Malaysia was elected as a non-permanent member to the UNSC on four (4) separate occasions, namely in 1965, 1989-1990, 1999-2000 and 2015-2016.¹⁵³

Malaysia, under the premiership of Tun Dr. Mahathir experienced several transformative phases in a resilient outlook on diplomatic relations.¹⁵⁴ Malaysia's diplomatic relations under the reign of Tun Abdullah Ahmad Badawi as the fifth Prime Minister (2003-2009) was dormant with domestic political issues taking the centre stage.¹⁵⁵ During his reign, however, Malaysia became the Chair of the Non-Aligned Movement (NAM) from 2003 until

¹⁴⁸ G. Sivalingam (2013) *The Second Phase of Malaysia's "Look East Policy"*, ISEAS Perspective, No. 48, 19.08.2013, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at pages 2-3. Source: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2013_48.pdf

¹⁴⁹ Hiroyuki, Y. (2013) *An Evaluation of & Recommendation for the 'Look East Policy': 'Toward the Discovery of Japan's Second Wave'*, JAMS Discussion Paper No.2, JAMS' "Look East Policy Research Project (JAMSLEP), Japan Association for Malaysian Studies (JAMS), Kyoto University Research Information Repository (KURENAI), Kyoto University, Japan (JPN) at page 8. Source: https://repository.kulib.kyoto-u.ac.jp/dspace/bitstream/2433/228279/1/jamswp02_004.pdf

¹⁵⁰ Mohamad, M. (2011) *Dr. Mahathir's Selected Letters to World Leaders, Volume 1*, Marshal Cavendish Editions, Marshall Cavendish (M) Sendirian Berhad, Shah Alam, Selangor Darul Ehsan, Malaysia (MAS) at page 179. See also Johan Saravanamuttu (2010) *Malaysia's Foreign Policy: The First Fifty Years – Alignment, Neutralism, Islamism*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 195

¹⁵¹ Krieger, H. (Editor) (2001) *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge International Documents Series, Volume II, Islamic Conference on Bosnia and Herzegovina and Kosovo, Statement & Declaration by the Contact Group of the Organisation of the Islamic Conference (OIC) on Bosnia and Herzegovina and Kosovo, 7th April 1999, Cambridge University Press, Cambridge University, New York, United States of America (USA) at page 494

¹⁵² Weiss, M.L. (Editor) (2015) *Routledge Handbook of Contemporary Malaysia*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 436

¹⁵³ (2016) *Malaysia at the UNSC: Background*, United Nations Security Council 2015-2016, Malaysia, Ministry of Foreign Affairs, Wisma Putra, Putrajaya, Malaysia (MAS).

Source: <http://malaysiaunsc.kln.gov.my/index.php/malaysia-at-the-unsc/background>

¹⁵⁴ Dhillon, K.S. (2009) *Malaysian Foreign Policy in the Mahathir Era 1981-2003: Dilemma of Development*, NUS Press, National University of Singapore (NUS), Singapore at pages 266-268

¹⁵⁵ Khalid, K.M. (2009) *Malaysian Foreign Policy Orientation & Relations Post-Mahathir Years*, International Conference on Malaysia: Malaysia in Global Perspective, 27-28.09.2009, Cairo University, Egypt, University of Malaya Research Repository, University of Malaya Library, University of Malaya (UM) Kuala Lumpur, Malaysia (MAS) at page 316.

Source: http://eprints.um.edu.my/10906/1/11_Malaysian_Foreign_Policy_Orientation_and_Relations_in_the_Post-Mahathir_Years.pdf

2006¹⁵⁶ and was known as a tolerant and progressive Islamic State via the concept of *Islam Hadhari*.¹⁵⁷

Najib Razak's contribution as the sixth Prime Minister (2009-2018) on shaping diplomatic relations was leaning towards effective bilateral relations (i.e. personalised, leader-centric communications) with influential countries like the United States,¹⁵⁸ China¹⁵⁹ and Singapore.¹⁶⁰ His diplomacy succeeded in resolving several protracted issues with Singapore such as the water supply agreement¹⁶¹ and relocating the *Keretapi Tanah Melayu* (KTM) station from Tanjong Pagar, Singapore to Bukit Timah in Singapore.¹⁶²

2.3 THE EVOLUTION OF DIPLOMATIC INVIOABILITY

Since ancient times, it has been a practice amongst States that the position of an envoy or a diplomat is highly revered¹⁶³ and protected whereby a diplomat could travel safely in order to negotiate the terms or to settle conflicts.¹⁶⁴ The concept of diplomatic inviolability was first practised by the Greek civilisation that afforded honour and protection to envoys

¹⁵⁶ Lansford, T. (Editor) (2017) *Political Handbook of the World 2016-2017, Volume 1*, CQ Press, SAGE Publications Incorporated, London, United Kingdom (UK) at page 1789

¹⁵⁷ Reid, A. & Gilson, M. (Editors) (2007) *Islamic Legitimacy in Plural Asia*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 176

¹⁵⁸ Mukhtaruddin, M.J. (2016) *Malaysia-US Bilateral Relations in the Aftermath of the 2008 Global Financial Crisis, Handbook of Research on Impacts of International Business & Political Affairs on the Global Economy*, A Volume in the Advances in Finance, Accounting and Economics (AFAE) Books Series, Business Science Reference, IGI Global, Hersey, Pennsylvania, United States of America (USA) at page 288. See also Rusdi Omar & Juliana Mukhtaruddin (2014) *Dasar Luar Malaysia Era Dato' Seri Najib Tun Razak: Keutamaan Dalam Aspek Hubungan Dua Hala*, Seminar on National Resilience, Political Managements & Policies in Malaysia 2014, Institute of Dr. Mahathir's Thoughts (IPDM), Universiti Utara Malaysia (UUM), Sintok, Kedah, Malaysia (MAS) at page 180. Source: <https://core.ac.uk/download/pdf/12118563.pdf>

¹⁵⁹ Lean, H.H. & Smyth, R. (2016) *The Malaysia-China Economic Relationship at 40: Broadening Ties & Meeting the Challenges for Future Success, Understanding China – Chinese Global Production Networks in ASEAN*, Springer, Springer International Publishing, Switzerland at pages 39-40. See also Kishore Mahbubani, & Jeffrey Sng (2017) *The ASEAN Miracle: A Catalyst for Peace*, Ridge Books, NUS Press, National University of Singapore (NUS), Singapore (SIN) at page 111

¹⁶⁰ Er, L.P. (2019) *Singapore as a Small State: Surmounting Vulnerability, Part VI B – Foreign Policies of Asian States – Southeast Asia, The SAGE Handbook of Asian Foreign Policy, Volume 1*, SAGE Reference, SAGE Publications Limited, London, United Kingdom (UK) at page 759

¹⁶¹ Kog, Y.C. (2015) *Transboundary Urban Water: The Case of Singapore & Malaysia, Part III – Water Governance and Integrated Management, Understanding & Managing Urban Water in Transition*, Springer, Springer Science+Business Media Dordrecht, New York, United States of America (USA) at page 590

¹⁶² (2017) *Singapore Country Study Guide, Volume 1: Strategic Information & Developments*, International Business Publications, Washington D.C., Lulu Press Incorporated, North Carolina, United States of America (USA) at page 102

¹⁶³ Paul, D. (2018) *Political Science & International Relations*, ED-Tech Press, Waltham Abbey Essex, United Kingdom (UK) at page 150

¹⁶⁴ Frey, L.S. & Frey, M.L. (2016) *Diplomatic Immunity, The SAGE Handbook of Diplomacy*, SAGE Publications Limited, London, United Kingdom (UK) at page 200

between the Greek cities¹⁶⁵ and in ancient India.¹⁶⁶ Its objective was the peaceful co-existence amongst the ancient empires instead of domination or conquest.¹⁶⁷ Hence, the importance of preserving diplomatic immunity in sustaining harmonious diplomatic relations amongst nations was demonstrated.¹⁶⁸ After the fall of the Roman Empire,¹⁶⁹ diplomatic relations and the Arts of Diplomacy regained their significance during the period of *Renaissance*.¹⁷⁰ By this time, the envoys were provided with immunity that protected them against the criminal jurisdiction in their host country.¹⁷¹ It protected the diplomats from suspicion and allegation of committing crimes against the subjects and/or conspiracy against the Sovereign of the Receiving State.¹⁷²

Hugo Grotius – widely known as the *Father of International Law*¹⁷³ – contributed through his work in *Right of Legation*¹⁷⁴ and Emmerich de Vattel's book *The Law of Nations*¹⁷⁵ of which made significant improvement to the development of diplomatic relations with several theories to justify diplomatic immunities and privileges namely, the *Representative Character*,¹⁷⁶ *Extra-Territoriality*¹⁷⁷ and *Functional Necessity*.¹⁷⁸ The

¹⁶⁵ Barker, J.C. (2016) *The Protection of Diplomatic Personnel*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 29-30

¹⁶⁶ Baumann, C.E. (2012) *The Diplomatic Kidnappings: A Revolutionary Tactic of Urban Terrorism*, Martinus Nijhoff, The Hague, The Netherlands (NED) at pages 32-33

¹⁶⁷ Elliot, J.M. & Reginald, R. (2007) *The Arms Control, Disarmament and Military Security Dictionary*, Borgo Press/Wildside Press, Wildside Press LLC, Rockville, Maryland, United States of America (USA) at page 17

¹⁶⁸ Feltham, R.G. (2012) *Diplomatic Handbook, Eight Edition*, Martinus Nijhoff Publishers, Koninklijke Brill NV, Leiden, The Netherlands (NED) at page 35

¹⁶⁹ Sen, B. (2012) *A Diplomat's Handbook of International Law & Practice*, Martinus Nijhoff, The Hague, The Netherlands, Springer, Springer Nature Switzerland AG at page 199

¹⁷⁰ Kydd, A.H. (2015) *International Relations Theory: The Game – Theoretic Approach*, Cambridge University Press, Cambridge University, Cambridge, United Kingdom (UK) at page 149

¹⁷¹ Mislán, D.B. & Streich, P. (2019) *Weird IR: Deviant Cases in International Relations*, Palgrave Macmillan, Springer International Publishing AG, Springer Nature, Cham, Switzerland at page 148

¹⁷² Bederman, D.J. (2006) *The Spirit of International Law*, The University of Georgia Press, Athens, Georgia, United States of America (USA) at page 158

¹⁷³ Westseijn, A. (2017) *Provincialising Grotius: International Law & Empire in the 17th Century Malay Mirror, I. Epistemologies of Empire and International Law, International Law and Empire – Historical Explorations*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at pages 21-22

¹⁷⁴ Grotius, H. (1853) *Grotius on the Rights of War & Peace: An Abridged Translation*, University Press, London, United Kingdom (UK) at pages 210-211

¹⁷⁵ Berridge, G.R. (2010) *Diplomacy: Theory & Practice, Fourth Edition*, Palgrave Macmillan, Fifth Avenue, New York, United States of America (USA) at page 109. See also Cumfer, C. (2007) *The Minds of Cherokees, Blacks and Whites on Tennessee Frontier: Separate Peoples, One Land*, The University of North Carolina Press, The University of North Carolina at Chapel Hill, North Carolina, United States of America (USA) at page 42

¹⁷⁶ McClanahan, G.V. (1989) *Diplomatic Immunity: Principles, Practice, Problems*, Institute for the Study of Diplomacy, Georgetown University, Washington D.C., United States of America (USA) at page 28

¹⁷⁷ Pasic, M. (2017) *The Appropriate Scope of Diplomatic Immunity*, Master's Degree Thesis, GRIN Verlag, Munich, Germany (GER) at page 10

¹⁷⁸ Lynch, T.J. (2013) *The Oxford Encyclopaedia of American Military & Diplomatic History, Volume 2*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 330

Representative-Character theory acknowledged that the ambassadors are considered as representatives of a sovereign State which has sent them to the Receiving State.¹⁷⁹ Similarly, diplomats are the representatives of the independent States¹⁸⁰ and their immunities and privileges are derived from the fact that the sovereignty of their masters has to be respected.¹⁸¹ *Extra-Territoriality* posits that the beneficiaries of the diplomatic immunities are deemed to be outside of or beyond the territory of the Sending State. Hence, the immunities and privileges are extended to the ambassadors who are serving outside of the territory/boundary of the Sending State.¹⁸²

Hugo Grotius in *Law of War and Peace* opined that if the ambassadors are only protected from violence and illegal constraint *per se*, that would render no legal advantage to the diplomatic immunity's regime at all.¹⁸³ Such immunity that protected ambassadors from Criminal prosecution had separated the natural legal protection available to all men emanating from the *Natural Law* and the greater scope of legal protection was conferred only to diplomatic agents by international law (i.e. Law of Nations).¹⁸⁴ Diplomatic immunity went through rapid growth during the 17th until 20th centuries with, *inter alia* the inception of permanent diplomats.¹⁸⁵ The *Functional Necessity* principle was relatively new compared to the other two and its foundation was the extension on *Natural Law*'s emphasis on the necessity of maintaining diplomatic relations and the need to protect the individuals who performed/involved in international relations.¹⁸⁶ However, the unchecked powers of diplomats had often led to diplomatic abuse and disputes.¹⁸⁷ This issue was later curtailed

¹⁷⁹ Michals, D.B. (2012) *International Privileges & Immunities: A Case for Universal Statute*, Martinus Nijhoff, The Hague, The Netherlands, Springer Science+Business Media, Berlin, Germany (GER) at pages 47-48

¹⁸⁰ Black, J. (2001) *British Diplomats & Diplomacy 1688-1800*, University of Exeter Press, University of Exeter, Exeter, United Kingdom (UK) at page 7

¹⁸¹ Spies, Y.K. (2018) *Global Diplomacy & International Society*, Palgrave Macmillan, Springer Nature, Switzerland Ag at page 117

¹⁸² Fox, H. & Webb, P. (2013) *The Law of State Immunity, 3rd Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 580

¹⁸³ Neff, S.C. (Editor) (2012) *Hugo Grotius on the Law of War & Peace, Student Edition*, Cambridge University Press, Cambridge University, Cambridge, United Kingdom (UK) at page 262. See also Vollerthun, U. (2017) *The Idea of International Society: Erasmus, Vitoria, Gentili & Grotius*, Cambridge University Press, Cambridge University, Cambridge, United Kingdom (UK) at pages 187-188

¹⁸⁴ Parker, C.J. (2006) *The Protection of Diplomatic Personnel*, Ashgate Publishing Limited, Farnham, United Kingdom (UK) at page 41

¹⁸⁵ Hampton, T. (2009) *Fictions of Embassy: Literature & Diplomacy in Early Modern Europe*, Cornell University Press, Cornell University, Ithaca, New York, United States of America (USA) at page 3

¹⁸⁶ Langholtz, H.J. & Stout, C.E. (Editors) (2004) *The Psychology of Diplomacy*, Praeger Publishers, Greenwood Publishing Group Incorporated, Westport, Connecticut, United States of America (USA) at page 245

¹⁸⁷ Jonsson, C. & Hall, M. (2005) *Essence of Diplomacy*, Palgrave Macmillan, New York, United States of America (USA) at page 62. See also Mwenda, K.K. (2011) *Public International Law & The Regulation of*

during the *Congress of Vienna 1815* – the first multinational conference attempting to regulate diplomatic relations.¹⁸⁸

The first step towards better management of diplomatic relations was by designating specific positions in diplomatic mission such as ambassadors, diplomatic agents and *Charge d'affairs* which resolved the issue of precedence amongst the diplomatic agents.¹⁸⁹ The abuse of diplomatic inviolability was collectively decided during the *Vienna Congress 1815*¹⁹⁰ by adopting a qualified immunity and privileges structure against the unfettered regime protecting the diplomats.¹⁹¹ *Functional Necessity* is now the dominant theory on diplomatic immunities and privileges in modern diplomacy.¹⁹² Prior to the codification via the Vienna Convention of Diplomatic Relations 1961 (VCDR 1961), the practice of diplomatic immunity was founded and expressed in the form of Customary International Law¹⁹³ and influenced by the principles of *Natural Law*.¹⁹⁴

2.4 THE FORMATION OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961

Prior to the *Vienna Conference 1961*, the *Congress of Westphalia* in 1648 had earlier established the practice of accepting permanent diplomats as a norm in international relations and trading activities.¹⁹⁵ This custom was followed by a detailed set of rules and regulations

Diplomatic Immunity in the Fight Against Corruption, Pretoria University Law Press (PULP), Faculty of Law, University of Pretoria, South Africa at page 39

¹⁸⁸ De Magalhaes, J.C. (1988) *The Pure Concept of Diplomacy*, Contributions in Political Science, No. 214, Global Perspectives in History & Politics, Greenwood Press Incorporated, Connecticut, United States of America (USA) at page 43

¹⁸⁹ Hare, P.W. (2016) *Making Diplomacy Work: Intelligent Innovation for the Modern World*, CQ Press, SAGE Publications Incorporated, California, United States of America (USA) at page 4

¹⁹⁰ Osmanczyk, E.J. (2003) *Encyclopaedia of the United Nations & International Agreements, 3rd Edition, Volume 2: G to M*, Routledge, New York, United States of America (USA) at page 977

¹⁹¹ Mansell, W. & Openshaw, K. (2019) *International Law: A Critical Introduction, 2nd Edition*, Hart Publishing, Bloomsbury Publishing PLC, Oxford, United Kingdom (UK) at page 63

¹⁹² Burke, R.S. (2014) *Sexual Exploitation & Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility Under International Law*, Brill Nijhoff Publishers, Leiden, The Netherlands (NED) at pages 78-80. See also Oelfke, C. (2018) *Vienna Convention on Diplomatic Relations of 18 April 1961: Commentaries on Practical Application*, Berliner Wissenschafts-Verlag (BWV), Berliner Wissenschafts-Verlag GmbH, Berlin, Germany (GER) at page 15

¹⁹³ Arend, A.C. (2004) *International Law & the Pre-emptive Use of Military Force, Part I: Pre-emption, Reshaping Rogue States – Pre-emption, Regime Change and U.S. Policy Toward Iran, Iraq & North Korea*, A Washington Quarterly Reader, The Center for Strategic and International Studies (CSIS), The MIT Press, Massachusetts Institute of Technology (MIT) Massachusetts, United States of America (USA) at pages 20-21

¹⁹⁴ Orakhelashvili, A. (2015) *Research Handbook on Jurisdiction & Immunities in International Law*, Edward Edgar Publishing Limited, Cheltenham, United Kingdom (UK) at page 187

¹⁹⁵ Nathan, J.A. (2002) *Soldiers, Statecraft & History: Coercive Diplomacy and International Order*, Praeger Publishers, Greenwood Publishing Group Incorporated, Connecticut, United States of America (USA) at page 17

that entailed a wider inviolability to the ambassadors, their family members and staff against both criminal and civil litigation, the immunity of their premises from legal suit and their exemption on taxes and custom duties.¹⁹⁶ The codification process of diplomatic relations and diplomatic immunity was a difficult task.¹⁹⁷ The *Congress of Vienna* in 1815, for instance, had adopted only the rule of diplomatic precedence¹⁹⁸ and the codification continued in the *Havana Convention* in 1928¹⁹⁹ and later in the *Draft Convention of Harvard Research in International Law 1932*.²⁰⁰ Thus, the establishment of the International Law Commission (ILC) in 1947 had simplified the arduous task of codification.²⁰¹

In 1927, the then League of Nations drew up a list of items deemed suitable to be codified; chief amongst them was diplomatic privileges and immunities.²⁰² Later in 1928, the *Havana Convention on Diplomatic Officers* was signed by the United States²⁰³ and in spite of it being brief, it catered for the foundation of obligations amongst diplomatic agents.²⁰⁴ In 1952, former Yugoslavia proposed to the United Nations (UN) that the process of codifying State practice on diplomatic immunities and privileges shall be given a priority²⁰⁵ and after consultation with the ILC, the United Nations General Assembly (UNGA) appointed Mr. Sandstrom from Sweden as the UN Special Reporter.²⁰⁶ His report formed part of the basis of

¹⁹⁶ Bartholomees, Jr., J.B. (2006) *U.S. Army War College Guide to National Security Policy & Strategy*, Diane Publishing Company, Pennsylvania, United States of America (USA) at pages 179-180. See also Dunn, C.C. & Lerro, B. (2016) *Social Change: Globalisation from the Stone Age to the Present*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 253

¹⁹⁷ Olowu, D. (2010) *International Law: A Textbook for the South Pacific*, CD Publishing.org, Washington D.C., United States of America (USA) at pages 45-46

¹⁹⁸ Kish, J. (1995) *International Law & Espionage*, Martinus Nijhoff Publishers, The Hague, The Netherlands (NED) at page 51

¹⁹⁹ Bjola, C. & Kornprobst, M. (2013) *Understanding International Diplomacy: Theory, Practice & Ethics*, Routledge, Oxon, United Kingdom (UK) at page 64

²⁰⁰ Berridge, G.R. & Lloyd, L. (2012) *The Palgrave Macmillan Dictionary of Diplomacy, 3rd Edition*, Palgrave Macmillan, Macmillan Publishers Limited, Hampshire, England, United Kingdom (UK) at page 178

²⁰¹ Haraszti, G. (Editor) (1980) *Questions of International Law, Volume 1*, Akademiai Kiado, Hungarian Academy of Sciences, Budapest, Hungary at page 22. See also McLachlan, C. (2014) *Foreign Relations Law*, Cambridge University Press, University of Cambridge, Cambridge, United Kingdom (UK) at page 100

²⁰² Hill, M. (2003) *Immunities & Privileges of International Officials: The Experience of the League of Nations*, The LawBook Exchange Limited, New Jersey, United States of America (USA) at page 12

²⁰³ Ronning, C.N. (2012) *Diplomatic Asylum: Legal Norms & Political Reality in Latin American Relations*, Springer Science+Business Media, Berlin, Germany (GER) at page 108

²⁰⁴ Behrens, P. (2016) *Diplomatic Interference & The Law*, Hart Publishing Limited, Bloomsbury Publishing PLC, London, United Kingdom (UK) at pages 34-35

²⁰⁵ Bruns, K. (2014) *A Cornerstone of Modern Diplomacy: Britain & The Negotiation of the 1961 Vienna Convention on Diplomatic Relations*, Bloomsbury Academic, Bloomsbury Publishing Incorporated, Broadway, New York, United States of America (USA) at pages 24-25

²⁰⁶ Duquet, S. & Wouters, J. (2019) *Diplomatic & Consular Relations, Part II Practice – Scholarly and Practitioner accounts of U.N. Treaty-Making: D. International Law*, *The Oxford Handbook of United Nations Treaties*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at pages 571-572

the draft *Articles of a Convention* adopted by the ILC in 1957.²⁰⁷ In March 1961, 81 States partook in the *United Nations Conference on Diplomatic Intercourse and Immunities* held in Vienna, Austria where they deliberated on the actual text of the *Convention on Diplomatic Intercourse and Immunities* which was later known as the *Vienna Convention on Diplomatic Relations 1961* (VCDR 1961).²⁰⁸ It was adopted on 18 April 1961²⁰⁹ and enforced on 24 April 1964.²¹⁰ The success of the VCDR 1961 could be attributed to the grace period granted for States to adequately adopt and adapt to the new system²¹¹ and the acceptance of *reciprocity* between States as the ultimate punishment for its violation.²¹²

2.4.1 THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961

The VCDR 1961 provides a dynamic and comprehensive legal framework in various aspects of diplomacy such as the establishment, maintenance and termination of diplomatic relations.²¹³ It is the bedrock for diplomatic relations in a modern world.²¹⁴ Its universal acceptance is a testament to its effectiveness and popularity in managing diplomatic relations.²¹⁵ The VCDR now has 60 signatories and 192 State-parties.²¹⁶ Diplomacy is a

²⁰⁷ Duquet, S. & Wouters, J. (2017) *From Vienna to New York and Back: The UN's Contribution to International Treaty-Making on Diplomatic & Consular Relations*, Ku Leuven, Leuven Center for Global Governance Studies, Humanities & Social Sciences, Catholic University of Leuven, Flanders, Belgium (BEL) at page 10. Source: <https://ghum.kuleuven.be/ggs/wp191duquetwoutersfinal.pdf>

²⁰⁸ Dhokalia, R.P. (1970) *The Codification of Public International Law*, Manchester University Press, Manchester, United Kingdom (UK) at pages 312-313

²⁰⁹ Rehman, J. (2005) *Islamic Practices, International Law & The Threat from Terrorism: A Critique of the 'Clash of Civilisations' in the New World Order*, Hart Publishing, Portland, Oregon, United States of America (USA) at page 112

²¹⁰ Shelton, D. (Editor) (2013) *The Oxford Handbook of International Human Rights Law*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page xxxix.

²¹¹ Foakes, J. (2014) *The Position of Head of States & Senior Officials in International Law*, The Oxford International Library, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at pages 18-19. See also Engdahl, O. (2007) *Protection of Personnel in Peace Operations: The Role of 'Safety Convention' Against the Background of General International Law*, Martinus Nijhoff Publishers, Koninklijke Brill NV, Leiden, The Netherlands (NED) at page 50

²¹² Kutting, G. (Editor) (2009) *Conventions, Treaties & Other Responses to Global Issues, Encyclopaedia of Life Support Systems (EOLSS), Volume 1*, Division for Science Policy & Cultural Organisation UNESCO, United Nations Education, Science and Cultural Organisation (UNESCO), EOLSS Publishers Company Limited, Oxford, United Kingdom (UK) at page 43

²¹³ Evans, M.D. (Editor) (2014) *International Law, 4th Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 383. See also Egede, E. & Sutch, P. (2013) *Politics of International Law & International Justice*, Edinburgh University Press, Edinburgh University, Edinburgh, United Kingdom (UK) at page 232

²¹⁴ Krasnyak, O. (2018) *National Styles in Science, Diplomacy & Science Diplomacy*, BRILL, Leiden, The Netherlands (NED) at page 9

²¹⁵ Chatterjee, C. (2013) *International Law & Diplomacy*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 71

²¹⁶ Status as at 03 February 2020.

Source: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iii-3&chapter=3&lang=en

classic art²¹⁷ that transcends time, religions, and politics²¹⁸ and even underpins an interdisciplinary approach.²¹⁹ It has also been defined as the utilisation of one's intellect in managing international relations in a harmonious way.²²⁰ Surprisingly, despite diplomacy being pervasive in modern living, it remains an under-developed science that displays a gap between the theory and practice.²²¹

While diplomatic law remains the oldest division of international law,²²² regulating diplomacy and diplomatic relations was only achieved via codification that resulted in the VCDR 1961.²²³ *Reciprocity* which is central in the VCDR 1961 ensures compliance by State-parties which results in diplomatic stability.²²⁴ However, *reciprocity* may culminate in the severance of diplomatic relations especially when diplomats are expelled on the ground of *Persona non Grata*.²²⁵ In addition, the VCDR 1961 is yet the definitive legal instrument to govern diplomatic relations since other actors in international relations like international organisations (e.g. the United Nations-UN) remain outside its ambit.²²⁶ The provision in Article 41 (1) of the VCDR 1961 is undoubtedly amongst the most disputed between the

²¹⁷ Holland, H.M. (1984) *Managing Diplomacy: The United States & Japan*, Hoover Institution, Board of Trustees of Leland Stanford Junior University, Stanford University, Hoover Press Publication 300, Stanford, California, United States of America (USA) at page xi

²¹⁸ Sharp, P. (2009) *Diplomatic Theory of International Relations*, Cambridge Studies in International Relations, Cambridge University Press, Cambridge University, Cambridge, United Kingdom (UK) at page 81

²¹⁹ Ismail, M.B.A. (2016) *Islamic Law & Transnational Diplomatic Law: A Quest for Complementarity in Divergent Legal Theories, Philosophy, Public Policy & Transnational Law*, Palgrave Macmillan, Macmillan Publishers Limited, Hampshire, England, United Kingdom (UK) at page 20

²²⁰ Roberts, I. (2017) *Satow's Diplomatic Practice, 7th Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 3

²²¹ Bolewski, W. (2007) *Diplomacy and International Law in Globalized Relations, Introduction: Practitioner's Perspective of Diplomacy*, Springer-Verlag Berlin Heidelberg, Springer Science+Business Media, Berlin, Germany (GER) at page 5

²²² Bockslaff, K. & Koch, M. (1983) *The Tabatai Case: The Immunity of Special Envoys & the Limits of Judicial Review*, German Yearbook of International Law, Volume 25, 1982, Dunker & Humblot, Berlin, Germany (GER) at page 539

²²³ Kuijper, J. et. al. (2015) *The Law of EU External Relations: Cases, Materials & Commentary on EU as an International Legal Actor, Second Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 40

²²⁴ Barker, C.J. (2009) *Mechanism to Create & Support Conventions, Treaties and Other Responses, Conventions, Treaties & Other Responses to Global Issues, Volume 1, Encyclopaedia of Life Support Systems*, UNESCO Division for Science Policy and Sustainable Development, United Nations Educational, Scientific & Cultural Organisation (UNESCO), EOLSS Publishers Company Limited, Oxford, United Kingdom (UK) at pages 42-43

²²⁵ Jonsson, C. & Aggestam, K. (2009) *Diplomacy & Conflict Resolution, Part I: History and Methods of Study*, The SAGE Handbook of Conflict Resolution, SAGE Publications Limited, London, United Kingdom (UK) at page 37

²²⁶ Bordin, F.L. (2019) *The Analogy Between States & International Organisations*, Cambridge University Press, Cambridge University, Cambridge, United Kingdom (UK) at page 216

Sending and Receiving State.²²⁷ Conflicts often occur when interference is justified on matters relating to violations of human rights in the Receiving State.²²⁸ Thus, modern diplomacy strives to strike the balance between guarding the universal human rights and refraining from interfering in Receiving State's domestic affairs.²²⁹

Throughout the years, the public's attention on diplomatic relations has shifted from the abuse of diplomatic immunity to the risk of diplomats being exposed to violence, terrorism²³⁰ and political persecution.²³¹ One incident to illustrate the vulnerability of diplomatic mission to terrorism was the *U.S.-Iran Hostage Crisis* in 1979.²³² The siege of the American embassy was acknowledged as the longest hostage crisis in the world history accounting for 444 days.²³³ It ended with the severance of diplomatic relations between the U.S. and Iran and the release of the American hostages via the *Algiers Accords 1981*.²³⁴ The issue of diplomatic asylum on the other hand was omitted from the VCDR 1961 due to lack of consensus amongst States on its legality.²³⁵ Hence, the greatest challenge in diplomatic relations is not the requirement of States' consensus²³⁶ but rather the need for diplomats to

²²⁷ Murty, B.S. (1989) *The International Law of Diplomacy: The Diplomatic Instrument & World Public Order*, Martinus Nijhoff Publishers, New Haven Press, Connecticut, United States of America (USA) at page 413. See also Aust, A. (2005) *Handbook of International Law*, Cambridge University Press, Cambridge University, New York, United States of America (USA) at page 152

²²⁸ Berridge, G.R. (2016) *Diplomatic Interference & The Law*, DiploFoundation, Geneva, Switzerland. Source: <https://grrberridge.diplomacy.edu/diplomatic-interference-and-the-law-book/>. See also Kamminga, M.T. (1992) *Inter-State Accountability for Violations of Human Rights*, University of Pennsylvania Press, Philadelphia, United States of America (USA) at pages 55-56

²²⁹ Zhu, Z. (2010) *China's New Diplomacy: Rationale, Strategies & Significance*, Ashgate Publishing Limited, Surrey, United Kingdom (UK) at page 212

²³⁰ Drephal, M. (2019) *Afghanistan & The Coloniality of Diplomacy: The British Legation in Kabul, 1922-1948*, *Cambridge Imperial & Post-Colonial Studies*, Palgrave Macmillan, Springer Nature Switzerland AG, Cham, Switzerland at page 243

²³¹ Liu, X. (2001) *Chinese Ambassadors*, University of Washington Press, University of Washington, Seattle, United States of America (USA) at page 109

²³² Henry, M. (2014) *What They Didn't Teach You in American History Class*, Rowman & Littlefield, Maryland, United States of America (USA) at page 207

²³³ Hendricks, N. (2018) *Popular Fads & Crazes Through American History*, Greenwood, ABC CLIO LLC, California, United States of America (USA) at page 541

²³⁴ Collier, J. & Lowe, V. (2000) *The Settlement of Disputes in International Law: Institutions & Proceedings*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 75

²³⁵ Wallace Rebecca, M.M. & Janeczko Fraser, A.W. (2013) *The Concept of Asylum in International Law, Part I, The Challenged of Forced Migrants: Shifting the Discourse from Obligation to Rights, Refugees & Rights*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 38-39

²³⁶ Stuart, S. (2014) *Encyclopaedia of Public International Law: International Relations & Legal Cooperation in General Diplomacy and Consular Relations – Published Under the Auspices of the Max Planck Institute for Comparative Public Law and International Law Under the Direction of Rudolf Bernhardt*, Elsevier Science Publishers B.V., Amsterdam, The Netherlands (NED) at page 85

keep abreast with the energetic, democratic and liberating practice of diplomacy.²³⁷ The VCDR 1961 is a legal legacy as it is widely adopted by other treaties such as the *Vienna Convention on Consular Relations 1963*,²³⁸ the *Convention on Special Mission 1969*²³⁹ and the *Convention on the Representation of States in Their Relations with International Organization of a Universal Charter 1975*.²⁴⁰ Such adherence supports the view that the VCDR 1961 is a successful collective effort amongst the international community, especially the international law Commission (ILC).²⁴¹ It enables the diplomatic mission to perform duties without duress or interference from the Receiving State and communicate freely with the Sending State.²⁴² In addition, the VCDR 1961 also caters for the controversial issue of *Persona non Grata*²⁴³ which often entails retaliation from the Sending State.²⁴⁴

2.5 DIPLOMATIC RELATIONS BETWEEN MALAYSIA AND NORTH KOREA, DIPLOMATIC IMMUNITY & PERSONA NON GRATA

2.5.1 INTRODUCTION: THE EVOLUTION OF DIPLOMATIC RELATIONS BETWEEN MALAYSIA & NORTH KOREA

The diplomatic relations between Malaysia and the Democratic People's Republic of Korea (DPRK/North Korea) started-off apprehensively.²⁴⁵ It all began during the era of the Cold War (1947-1991) whereby North Korea was assisting the Communist movement in some Southeast Asian nations.²⁴⁶ Malaysia's foreign policies under the administration of

²³⁷ Stern, M. (2015) *5 Trends for the Future of Diplomacy*, Global Agenda – Global Governance, World Economic Forum (WEF), Cologny-Geneva, Switzerland. Source: <https://www.weforum.org/agenda/2015/08/5-trends-for-the-future-of-diplomacy/>

²³⁸ Chetail, V. (2019) *International Migration Law*, Oxford University Press, University of Oxford, Oxford, United Kingdom (UK) at page 83

²³⁹ Evans, M.D. (2019) *Blackstone's International Law Documents, 14th Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 179. See also *Convention on Special Missions 1969* at https://legal.un.org/ilc/texts/instruments/english/conventions/9_3_1969.pdf

²⁴⁰ Boczek, B.A. (2005) *International Law: A Dictionary – No.2*, The Scarecrow Press Incorporated, The Rowman & Littlefield Publishing Group Incorporated, Maryland, United States of America (USA) at page 97

²⁴¹ Hafner, G. (2001) *Codification and Progressive Development of International Law, The United Nations: Law & Practice*, Kluwer Law International, The Hague, The Netherlands (NED) at pages 146-147

²⁴² Gupta, S. et. al. (2019) *Exclusive Social, Polity & Economy Topics for Civil Services (IAS/IPS) – Prelims and Mains Exam*, DISHA Publications, New Delhi, India (IND) at page 226

²⁴³ O' Brien, J. (2001) *International Law*, Cavendish Publishing Limited, London, United Kingdom (UK) at page 300

²⁴⁴ Kaczorowska, A. (2010) *Public International Law*, Routledge, Francis & Taylor Group, Oxon, United Kingdom (UK) at page 401

²⁴⁵ Izzudin, M. (2017) *Reviewing Malaysia's Relations with North Korea*, PERSPECTIVE, Issue 2017, No. 30, Yusof Ishak Institute of Southeast Asia Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 2.

Source: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_30.pdf

²⁴⁶ Ping, H.C. (2017) *Malaysia and North Korea: Friendship on Ice*, News, Asia, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 09.03.2017. Source: <https://www.bbc.com/news/world-asia-39139035>

Tunku Abdul Rahman – the nation’s first premier – was predominantly pro-West (i.e. pro-U.S.) and anti-Communism.²⁴⁷ On 21 April 1964, Pyongyang established diplomatic relations with Jakarta – 9 years prior to the setting up of diplomatic relations with Malaysia in 1973 – in which Kim Il Sung (North Korea’s first Supreme Leader)²⁴⁸ had fully supported Indonesia’s *Crush Malaysia (Ganyang Malaysia)* campaign from 1963 until 1966.²⁴⁹ A close bilateral tie between Indonesia and North Korea was forged and subsequently materialised into the *Jakarta-Phnom Penh-Hanoi-Pyongyang-Beijing Axis* in 1964.²⁵⁰ As such, it was not surprising that North Korea initially treated Malaysia unfavourably by showing her support for Indonesia.²⁵¹ Malaysia’s stance on foreign policy was renewed when Tun Abdul Razak acted as the Second Prime Minister and re-aligned Malaysia’s direction in diplomatic relations from the pro-Western outlook to move toward *Neutrality* and *Non-Alignment* in international relations gradually.²⁵² For example, Tun Razak’s visit to China on 25 May 1974 was groundbreaking in diplomatic relations as Malaysia was still battling against the *Communist Insurgency* (Second Malayan Emergency: 1968-1989) and the local sentiment against Communist-Socialist countries was nothing but animosity.²⁵³ As a matter of fact, Malaysia was the first ASEAN country to reach out to China at a time when almost all other countries in the region were keeping a distance from the Communist State.²⁵⁴ The reason was

²⁴⁷ Kheng, C.B. (2002) *Chapter Four – 1970-1976: Malay Dominance, Economic Integration & National Unity Under Tun Razak, Malaysia: The Making of a Nation, History of Nation-Building Series*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 150

²⁴⁸ (1964) *Kim Backs Soekarno*, The Straits Times, Singapore (SIN) dated 22.04.1964 at page 2.

Source: <http://eresources.nlb.gov.sg/newspapers/Digitised/Page/straitstimes19640422-1.1.2>

²⁴⁹ Shuib, M.S. et. al. (2009) *The Implications of Cold War on Malaysia State Building Process, Asian Culture & History*, Volume 1, No. 2, July 2009, Canadian Centre of Science and Education (CCSE), Toronto, Canada (CAN) at page 93. See also Busch, P. (2003) *All the Way with JFK? Britain, the U.S. & the Vietnam War*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 174. Also at (2019) *Operasi Intelejen Merintis Perdamaian Indonesia dan Malaysia*, TEMPO Publishing, Jakarta, Indonesia (INA) at pages 31 & 32

²⁵⁰ Williams, M.S. (2017) *Indonesia, Islam and the International Political Economy: Clash or Cooperation?* Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at pages 67 & 68. See also Weatherbee, D.E. (2008) *Historical Dictionary of the United States-Southeast Asian Relations, Historical Dictionaries of U.S. Diplomacy*, No.7, The Scarecrow Press Incorporated, Lanham, Maryland, United States of America (USA) at pages 14

²⁵¹ Lee, K. (2016) *Handbook of Terrorism in the Asia-Pacific*, Imperial Collage Press, London, United Kingdom (UK) at page 560. See also Ping, L.P. & Jeong, S.H. (1995) *ASEAN, South Korea & the Asia-Pacific Region, ASEAN and Korea: Emerging Issues in Trade and Investment Relations*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 22

²⁵² Saravanamuttu, J. (2010) *Malaysia’s Foreign Policy: The First Fifty Years – Alignment, Neutralism & Islamism*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 151

²⁵³ Er, L.P. et. al. (Editors) (2013) *China and East Asia: After the Wall Street Crisis*, Series on Contemporary China, Volume 33, World Scientific Publishing Company Limited, Singapore (SIN) at page 242

²⁵⁴ Scobell, A. et. al. (2018) *At the Dawn of Belt and Road: China in the Developing World*, RAND Corporation, California, United States of America (USA) at page 255

simple for Malaysia; the best way in sustaining geopolitics and diplomatic relations for the long run was the route towards *Non-Alignment* and *Neutralisation*.²⁵⁵

The culmination of the shift in diplomatic relations resulted in Malaysia joining the Non-Align Movement (NAM) in 1970²⁵⁶ and initiated the Zone of Peace, Freedom and Neutrality (ZOPFAN) in 1971.²⁵⁷ At the same time, Kim Il Sung had introduced a State philosophy known as *Juche* (*Self-Reliant*) partly to oppose the wide-spreading influence of foreign powers since the Cold War.²⁵⁸ It was meant to inculcate the spirits of independence and Self-Sufficient in critical areas such as politics (*Chaju*), economics (*Charip*) and national defence (*Chawi*) and most importantly, to justify his autocratic rule in North Korea.²⁵⁹ As North Korea began to realise that the country had been isolated by the rest of the world, Kim Il Sung gradually rebuild Pyongyang's *Hermit Kingdom* image²⁶⁰ by enlarging the scope of her diplomatic relations beyond the Socialist-Communist bloc.²⁶¹ This strategic geopolitical move was due to the gradual fall of the Soviet Union (now Russia) as its chief economic proponent²⁶² and the urgency to counter the rise of Republic of Korea (South Korea) as the new economic powerhouse in Asia.²⁶³ The move was aimed at demonstrating a better diplomatic approach to the rest of the world.²⁶⁴ As per Article 17 North Korea's Constitution:

²⁵⁵ Beng, O.K. (2006) *The Reluctant Politician: Tun Dr. Ismail & His Time*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 255

²⁵⁶ To, L.L. & Othman, Z. (2017) *Regional Community Building in East Asia: Countries in Focus*, Routledge Taylor & Francis Group, Oxon, United Kingdom (UK) at page 106

²⁵⁷ Muzaffar, C. (2019) *Use ZOPFAN to Form Common Position on China, U.S.*, Columnists, New Straits Times (NST), New Straits Times (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 04.07.2019. Source:

<https://www.nst.com.my/opinion/columnists/2019/07/501607/use-zopf-an-form-common-position-china-us#:~:text=ZOPFAN%20was%20initiated%20by%20Malaysia's,27%2C%201971%20in%20Kuala%20Lumpur>

See also Narine, S. (2002) *Explaining ASEAN: Regionalism in Southeast Asia*, Lynne Rienner Publishers, Boulder, Colorado, United States of America (USA) at pages 19 & 20

²⁵⁸ Turku, H. (2009) *Isolationist States in an Interdependent World*, Ashgate, Ashgate Publishing Limited, Surrey, United Kingdom (UK) at page 15

²⁵⁹ Kim, J.W. (2012) *A History of Korea: From Land of Morning Calm to States in Conflict*, Indiana University Press (IU Press), Bloomington, Indiana, United States of America (USA) at page 456

²⁶⁰ Behnke, A. (2005) *South Korea in Pictures*, Lerner Publishing Group, Minneapolis, Minnesota, United States of America (USA) at page 31

²⁶¹ Armstrong, C.K. (2009) *Juche and North Korea's Global Aspirations*, Working Paper #1, Working Papers Series, North Korea International Documentation Project, Woodrow Wilson International Center for Scholars, Washington D.C., United States of America (USA) at page 1
Source: https://www.wilsoncenter.org/sites/default/files/NKIDP_WP_1.pdf

²⁶² McEachern, P. (2019) *North Korea: What Everyone Needs to Know*, Oxford University Press, University of Oxford, New York, United States of America (USA) at page 56

²⁶³ Lerner, K.L. & Lerner, B.W. (Editors) (2004) *Encyclopaedia of Espionage, Intelligence & Security*, Thomson Gale, Michigan, United States of America (USA) at page 209

²⁶⁴ Park, H.K. (2003) *North Korea Handbook*, Yonhap News Agency, Seoul, An East Gate Book, M.E. Sharpe, London, United Kingdom (UK) at pages 608-611

The State shall establish diplomatic as well as political, economic and cultural relations with all friendly countries on principle of complete equality, independence, mutual respect, non-interference in each other's affairs and mutual benefit.

Despite once being a staunch opponent to Malaysia, North Korea's diplomatic path was destined to converge peacefully with Malaysia when Pyongyang joined NAM as a full-fledged member in August 1975.²⁶⁵ The idea of being politically independent in geopolitics as posited by NAM which intertwined with *Juche*, particularly in *Chaju* (Politically Independent) had attracted Kim Il Sung to join the coalition.²⁶⁶ It seemed that from this point onwards, the diplomatic course between Malaysia and North Korea has been set to change from animosity to diplomacy.²⁶⁷

2.5.2 THE ADVANTAGES OF MALAYSIA-NORTH KOREA DIPLOMATIC RELATIONS

Prior to the rupture of diplomatic relations, North Korea had enjoyed enormously from the trade relations with Malaysia.²⁶⁸ North Korea also viewed Malaysia as her entrance to the markets of other countries in the Southeast Asian region.²⁶⁹ Similarly, in 2015, Malaysia's trade with North Korea totalled RM22.72 million in the imports of electrical and electronic products, chemicals and chemicals products, iron and steel products.²⁷⁰ Technological collaboration with North Korea in agriculture has provided fruitful results in the form of advanced *padi* planting technique and a better *padi* variant which could withstand prolonged dry-spell and infestation. It was projected that from 2019 until 2020, Malaysia will import 1.12 million tonnes of rice from Thailand and Vietnam that accounts for more than

²⁶⁵ Pak, C.Y. (2000) *Korea and the United Nations*, Kluwer Law International, The Hague, The Netherlands (NED) at page 48

²⁶⁶ Seth, M.J. (2018) *North Korea: A History*, Macmillan International Higher Education, Red Globe Press, London, United Kingdom (UK) at page 118

²⁶⁷ Ibid No. 245 at page 3

²⁶⁸ Latiff, R. & Annathalakshmi, A. (2018) *Malaysia Further Downgrading Ties with North Korea a Year After Airport Assassination*, World News, Reuters, London, United Kingdom (UK) dated 13.02.2018. Source:

<https://www.reuters.com/article/us-northkorea-malaysia-kim/malaysia-further-downgrading-ties-with-north-korea-a-year-after-airport-assassination-sources-idUSKBN1FX1GB>

²⁶⁹ (2017) *Once Strong Ties Between North Korea and Malaysia Rapidly Unravel*, Politics & Government, Malaysia, The Edge Markets, The Edge Communications Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 07.03.2017. Source:

<https://www.theedgemarkets.com/article/once-strong-ties-between-north-korea-and-malaysia-rapidly-unravel>

²⁷⁰ (2016) *Malaysia Eyes Boosting Trade with North Korea*, Business, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 02.12.2016. Source:

<https://www.thestar.com.my/business/business-news/2016/12/02/malaysia-eyes-boosting-trade-with-north-korea/>

80% of Malaysia's total global import of rice.²⁷¹ Malaysia's ability to increase *padi* harvesting by using North Korean technology is a good prospect for her economy especially when there is no more increase in *padi* planting areas in the country and Malaysia's overall population is expanding by 3% annually.²⁷² In the long run, the transfer of technology in *padi* planting from North Korea will alleviate Malaysia's dependence on foreign imports to feed its growing population.²⁷³ Malaysia's cooperation with North Korea in agriculture is part of Putrajaya's efforts to reach out to the isolated State, thus enhancing their bilateral ties.²⁷⁴ Foreign labour is an issue which has been grappling Malaysia since the inception of the *Look East* policy in 1981.²⁷⁵ The flow of foreign workers to Malaysia has become the bone of contention between Malaysia and the source countries as their arrival has caused the spike in crime rates and the rise in social ills.²⁷⁶ However, the same argument could not be applied to the North Korean workers working in Malaysia. In 2014, Deputy Home Minister Wan Junaidi Tunku Jaafar praised the North Korean miners in Selantik, Sarawak as diligent and disciplined.²⁷⁷ He also dismissed the allegation that the North Koreans despite working

²⁷¹ Schroeder, E. (2019) *Malaysia Grain Imports Seen on Upswing*, World-Grain.com., Kansas City, Missouri, United States of America (USA) dated 26.03.2019. Source: <https://www.world-grain.com/articles/11837-malaysia-grain-imports-seen-on-upswing>

²⁷² Idris, A.N. (2018) *USDA: Malaysia 2018 Rice Import Forecast to Drop to 900,000 Tonnes*, The Edge Markets, Kuala Lumpur, Malaysia (MAS) dated 25.04.2018. Source: <https://www.theedgemarkets.com/article/usda-malaysia-2018-rice-imports-forecast-drop-900000-tonnes>

²⁷³ Wahab, A.G. (2018) *Malaysia: Grain and Feed Annual 2018*, Global Agricultural Information Network (GAIN), GAIN Report No. MY8002, United States Department of Agriculture (USDA), USDA Foreign Agricultural Service, Washington D.C., United States of America (USA) at page 8. Source: https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Kuala%20Lumpur_Malaysia_4-12-2018.pdf

²⁷⁴ (2016) *Visit to Ponghwa Cooperative Farm (PCF) by H.E. Mohamad Nizan Mohamad*, Embassy of Malaysia, Pyongyang, Democratic People's Republic of Korea (DPRK), Ministry of Foreign Affairs Malaysia, Wisma Putra, Putrajaya, Malaysia (MAS) dated 12.05.2016. Source: https://www.kln.gov.my/web/prk_pyongyang/home/-asset_publisher/mUqvwIsrl6Gh/blog/visit-to-pong-hwa-cooperative-farm-pcf-by-h-e-mohamad-nizan-mohamad-ambassador-of-malaysia-to-the-dpr-korea-12-may-2016-2?inheritRedirect=false&redirect=https%3A%2F%2Fwww.kln.gov.my%2Fweb%2Fprk_pyongyang%2Fhome%3Fp_p_id%3D101_INSTANCE_mUqvwIsrl6Gh%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3D118_INSTANCE_IKApYPxHp5zc_column-1%26p_p_col_count%3D1

²⁷⁵ (1998) *The State of Food & Agriculture 1998, Rural Non-Farm Income in Developing Countries*, FAO Agriculture Series, No. 31, Food and Agriculture Organisation of the United Nations, Rome, Italy (ITA) at page 170

²⁷⁶ Rahman, A.R. (2017) *Divulging Foreign Workers Issues in Malaysia, Foreign Labour in Malaysia: Selected Works*, Malaysian Citation Center, Department of Higher Education, Ministry of Higher Education, Putrajaya, Malaysia (MAS) at pages 14 & 15. Source: <http://mycc.my/document/files/PDF%20Dokumen/Foreign%20Labour%20in%20Malaysia%20Selected%20Works.pdf>

²⁷⁷ Tawie, S. (2017) *Fate of 170 North Koreans in Sarawak Rests with Putrajaya*, Malaysia, Malay Mail, Malay Mail Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 07.03.2017. Source: <https://www.malaymail.com/news/malaysia/2017/03/07/fate-of-170-n.-koreans-in-sarawak-rests-on-putrajaya/1329773>

legally in Malaysia, were involved in the propagation of their political agenda.²⁷⁸ As such, Malaysia could consider North Korea as an alternative source of dependable foreign labour²⁷⁹ particularly in certain industries which demand high-skilled workers but are snubbed by Malaysians due to the nature of such jobs which are dirty, dangerous and difficult (3D-Jobs).²⁸⁰

2.5.3 THE ASSASSINATION OF KIM JONG NAM & THE SUSPENSION OF DIPLOMATIC RELATIONS BETWEEN MALAYSIA & NORTH KOREA

The murder of Kim Jong Nam at Kuala Lumpur International Airport 2 (KLIA2) on 13 February 2017 by VX Nerve Agent left the nation in shock.²⁸¹ Many theories behind the murder had been suggested by critics and observers; chief amongst them is the fact that Kim Jong Nam was a credible pretender to the Kim's autocratic dynasty.²⁸² Moreover, Kim Jong Nam was the ideal candidate for China's economic reform which supported the liberation of North Korea's economy²⁸³ that will run contrary to the age-old philosophy of *Juche* (Self-Reliant) which is the backbone of Kim's family legitimacy in North Korea.²⁸⁴ Adopting the economic liberalisation policy will definitely end Kim Jong Un's grip on power.²⁸⁵ The assassination and the eventual banishment of North Korean ambassador from Malaysia as *Persona non Grata* have ruptured the once cordial and carefully coordinated diplomatic

²⁷⁸ (2017) *Malaysia-North Korea Ties Low Key but Stable Since 1973*, The Sun Daily, Sun Media Corporation Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 15.02.2017. Source: <https://www.thesundaily.my/archive/2163106-ATARCH427878>

²⁷⁹ (2017) *Malaysia Decides to Stop Importing North Korean Labor*, News, Asia Pacific, The Japan Times, Tokyo, Japan (JPN) dated 29.06.2017. Source: <https://www.japantimes.co.jp/news/2017/06/29/asia-pacific/malaysia-decides-stop-importing-north-korean-labor/#.XWco5eMzaG4>

²⁸⁰ Kumar, K. (2016) *Malaysians Shun '3D' Jobs Because of Social Stigma, Not Low Wages, Employers Say*, Malay Mail, Malay Mail Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 17.02.2016. Source: <https://www.malaymail.com/news/malaysia/2016/02/17/malaysians-shun-3d-jobs-because-of-social-stigma-not-low-wages-employers-sa/1062173>

²⁸¹ Reynolds, C. (2020) *Global Health Security & Weapons of Mass Destruction Chapter, Global Health Security: Recognising Vulnerabilities, Creating Opportunities*, Springer, Springer Nature Switzerland AG, Cham, Switzerland at page 188

²⁸² Ma, A. (2018) *Kim Jong Un's Half-Brother was Assassinated with Nerve Poison One Year Ago — Here's How It Went Down and the Remaining Unsolved Mysteries*, Business Insider Malaysia, Kuala Lumpur, Malaysia (MAS) dated 13.02.2018. Source: <https://www.businessinsider.my/kim-jong-nam-assassination-one-year-anniversary-facts-and-theories-2018-2/?r=US&IR=T>

²⁸³ Shen, S. (Editor) (2007) *China & Anti-Terrorism*, Nova Science Publishers Incorporated, New York, United States of America (USA) at page 135

²⁸⁴ Harden, B. (2017) *Why Kim Jong Un Is Alienating China*, Opinions, The Washington Post, Washington D.C., United States of America (USA) dated 01.10.2017. Source: https://www.washingtonpost.com/opinions/why-kim-jong-un-is-alienating-china/2017/10/01/20d99adc-a541-11e7-ade1-76d061d56efa_story.html?noredirect=on

²⁸⁵ Adam, T. (2019) *Why North Korean Prosperity Would be the Ruin of Kim Jong Un*, Business+Economy, The Conversation, Victoria, Australia (AUS) dated 13.03.2019. Source: <https://theconversation.com/why-north-korean-prosperity-would-be-the-ruin-of-kim-jong-un-113236>

relations between the two countries with different political ideologies.²⁸⁶ Nonetheless, the murder case has piqued the public's curiosity on North Korea and on the extent of diplomatic relations it maintained with Malaysia,²⁸⁷ a bilateral relation that even surpassed Malaysia's diplomatic relations with the People's Republic of China (PRC).²⁸⁸

On 1 March 2017, two (2) individuals accused of the murder: Indonesian Siti Aisyah and Vietnamese Doan Thi Huong who are believed to be the assailants and four (4) other unnamed suspects were charged at Sepang Magistrate's Court. They were charged under Sections 302 and 34 Penal Code for the offence of murder and *Common Intention*.²⁸⁹ The murder Trial started on 2 October 2017 at Shah Alam High Court. On 16 August 2018, both of the accused were ordered to enter their Defence after the Court decided the prosecution had succeeded in establishing a *prima facie* case against them.²⁹⁰ However, on 11 March 2019 the High Court judge ordered a Discharged Not Amounting to an Acquittal (DNAA) to Siti Aisyah.²⁹¹ This decision was partly due to a diplomatic appeal made by the Indonesian government to Malaysian government.²⁹² In a letter written by the Indonesian Minister of Law and Human Rights, the Minister pleaded to the Attorney-General of Malaysia to reconsider the charges against Siti Aisyah on the ground that she was deceived and hence,

²⁸⁶ (2017) *Malaysia Planning to Shut Embassy in North Korea in Latest Sign of Frayed Relations*, Southeast Asia, South China Morning Post (SCMP), Hong Kong (HK) dated 14.10.2017.

Source: <https://www.scmp.com/news/asia/southeast-asia/article/2115369/malaysia-planning-shut-embassy-north-korea-latest-sign>

²⁸⁷ Hazis, F.S. (2018) *Malaysia in 2017: Strong Economic Growth Amidst Intense Power Struggle*, Southeast Asian Affairs 2018, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Singapore (SIN) at page 212

²⁸⁸ Sutter, R.G. (2019) *Foreign Relations of the PRC: The Legacies & Constraints of China's International Politics Since 1949, Second Edition*, The Rowman & Littlefield Publishing Incorporated, Lanham, Maryland, United States of America (USA) at page 323

²⁸⁹ (2017) *Malaysian Court Charges Two Women with Kim Jong Nam Murder*, America, World, Deccan Chronicle, Deccan Chronicle Holdings Limited, Telangana, India (IND) dated 01.03.2017. Source:

<https://www.deccanchronicle.com/world/america/010317/malaysian-court-charges-two-women-with-kim-jong-nam-murder.html>

²⁹⁰ Shim, E. (2018) *Malaysian Court to Extend Kim Jong Nam Assassination Trial*, World News, United Press International (UPI), United Press International Incorporated, News World Communications, Washington D.C., United States of America (USA) dated 16.08.2018. Source:

https://www.upi.com/Top_News/World-News/2018/08/16/Malaysian-court-to-extend-Kim-Jong-Nam-assassination-trial/4841534411915/?ur3=1

²⁹¹ (2019) *Siti Aisyah Given Discharge Not Amounting to Acquittal in Jong Nam's Murder Case*, Court, Nation, News, Borneo Post Online, Kuala Lumpur, Malaysia (MAS) dated 11.03.2019. Source:

<https://www.theborneopost.com/2019/03/11/siti-aisyah-given-discharge-not-amounting-to-acquittal-in-jong-nams-murder-case/>

²⁹² Xuxin (2019) *Malaysia Releases Indonesian Woman After Dropping Charges for Murdering DPRK Man*, Asia & Pacific, xinhuanet.com., Xinhua News Agency, State Council of the People's Republic of China, Beijing, People's Republic of China (PRC) dated 11.03.2019. Source:

http://www.xinhuanet.com/english/2019-03/11/c_137886059.htm

innocent.²⁹³ Further, the Minister requested that the criminal charges should be re-evaluated by taking into account the longstanding and good diplomatic relations between both countries.²⁹⁴ As a result of *Track 1 Diplomacy* between Malaysia and Indonesia, the Attorney-General agreed to drop the charges based on the merits raised by the Indonesian Minister.²⁹⁵

On Thi Huong's side, the prosecution however, proceeded with the trial²⁹⁶ despite appeals made by the Vietnamese government for the withdrawal of the murder charge.²⁹⁷ The Malaysian government explained that the decision on whether to pursue or discontinue a Criminal case is the prerogative of the Attorney-General under Article 145 Federal Constitution without the interference from the Malaysian government.²⁹⁸ The decision had resulted in backlash from her Defence lawyers, alleging the Malaysian government of discrimination.²⁹⁹ It was argued that since a *prima facie* case was established against both

²⁹³ Palma, S. (2019) *Woman Accused of Killing Kim Jong Un's Brother Released*, Financial Times, The Financial Times Limited, Financial Times Group (FT Group), A Nikkei Company, Bracken House, London, United Kingdom (UK) dated 11.03.2019. Source: <https://www.ft.com/content/505b07b2-43a8-11e9-b168-96a37d002cd3>

²⁹⁴(2019) *Re: Request for Assistance for the Release of Siti Aisyah*, Minister of Law & Human Rights, Central Authority, Republic of Indonesia (INA). Source: <https://cdn.tuotire.vn/2019/3/11/thu-chinh-phu-indonesia-gui--1552288184324199304770.jpg>. See also (2019) *Siti Aisyah: I Didn't Expect I Would Be Released*, Nation, News, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 12.03.2019. Source: <https://www.thestar.com.my/news/nation/2019/03/12/siti-aisyah-i-didnt-expect-i-would-be-released>

²⁹⁵ (2019) *Kim Jong Nam Murder: Suspect Siti Aisyah 'Shocked' at Being Released*, Asia, News, BBC News, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 12.03.2019. Source: <https://www.bbc.com/news/world-asia-47544915>

²⁹⁶ Petersen, H.E. (2019) *Kim Jong Nam Murder Trial: Prosecutors Reject Request to Free Doan Thi Huong*, North Korea, News, World, The Guardian, Guardian Media Group, London, United Kingdom (UK) dated 14.03.2019. Source: <https://www.theguardian.com/world/2019/mar/14/kim-jong-nam-trial-prosecutors-reject-request-to-free-doan-thi-huong>. See also (2019) *Kim Jong Nam Murder Trial: AGC Rejects Vietnam Woman's Bid to Withdraw Charge*, New Straits Times (NST), New Straits Times Press (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 14.03.2019. Source: <https://www.nst.com.my/news/crime-courts/2019/03/469034/update-kim-jong-nam-murder-trial-agc-rejects-vietnam-womans-bid>

²⁹⁷ Ngoc, A. (2019) *Vietnam Asks Malaysia to Free Vietnamese Suspect in Kim Jong Nam Murder Case*, News, e.vnexpress.net, Vn Express International, FPT Group, Hanoi, Vietnam (VIE) dated 13.03.2019. Source: <https://e.vnexpress.net/news/news/vietnam-asks-malaysia-to-free-vietnamese-suspect-in-kim-jong-nam-murder-case-3893692.html>

²⁹⁸ Ariff, S.U. (2019) *Liew: Power to Drop Charge Rests with AG*, News, Nation, New Straits Times (NST), New Straits Times (M) Berhad, Media Prime Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 13.03.2019. Source: <https://www.nst.com.my/news/nation/2019/03/468795/liew-power-drop-charge-rests-ag>

²⁹⁹ Rodzi, N.H. (2019) *Lawyers for Vietnam Woman in Kim Jong Nam Murder Accuse Malaysia of Discrimination as Her Trial is Postponed*, South East Asia, Asia, The Straits Times, SPH Digital News, Singapore Press Holdings Limited, Singapore (SIN) dated 14.03.2019. Source:

accused whom stated similar Defence³⁰⁰ - in view of the acquittal (not amounting to a discharge) of Siti Aisyah³⁰¹ – the charge against Thi Huang should have been withdrawn as well.³⁰² Nevertheless, it was revealed in a CCTV footage tendered as evidence during the trial that Thi Huang was seen approaching the deceased, placing her hands on the deceased's face and running away.³⁰³ The same evidence showed Siti Aisyah was walking away from the crime scene without committing the alleged murder,³⁰⁴ hence a weaker case against Siti Aisyah as argued by her lawyers.³⁰⁵

Later, on 1 April 2019 the judge sentenced Thi Huang to three (3) years and four (4) months in jail after she pleaded guilty to a lesser alternative charge under Section 324 Penal Code for voluntarily causing hurt by dangerous weapons or means. The section provides for imprisonment up to 10 years or fine or whipping or the combination of the two mentioned punishments.³⁰⁶ However, after intense *Track 1 Diplomacy* by the Vietnamese government and *plea-bargaining* by her lawyers, the sentence was reduced and she was released on 3 May

<https://www.straitstimes.com/asia/se-asia/vietnamese-woman-in-kim-jong-nam-murder-in-malaysia-seeks-freedom>

³⁰⁰ Hamdan, N. (2019) *Jong Nam Murder Trial: AGC Refuses to Drop Charges Against Vietnamese Doan*, Nation, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 14.03.2019. Source: <https://www.thestar.com.my/news/nation/2019/03/14/jong-nam-murder-trial-agc-refuses-to-drop-charges-against-vietnamese-doan/>

³⁰¹ (2019) *Siti Aisyah Freed After Prosecution Withdraws Case*, Nation, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 12.03.2019. Source: <https://www.thestar.com.my/news/nation/2019/03/12/discharged-out-of-the-blue-siti-aisyah-freed-after-prosecution-withdraws-case>

³⁰² Khaliq, R.U. (2019) *Malaysia Pushes Trial of Vietnamese Woman in Kim Murder*, Anadolu Agency (AA), Ankara, Turkey (TUR) dated 14.03.2019. Source:

<https://www.aa.com.tr/en/asia-pacific/malaysia-pushes-trial-of-vietnamese-woman-in-kim-murder/1417962>

³⁰³ (2019) *Vietnamese Woman's Murder Trial to Continue*, Spotlight, The Asean Post, Digital Media Nusantara, Kuala Lumpur, Malaysia (MAS) dated 15.03.2019. Source: <https://theaseanpost.com/article/vietnamese-womans-murder-trial-continue>

³⁰⁴ Rashid, F.H. (2017) *Without North Korean Suspects, Defending Jong Nam's Accused Murderers a Tall Order*, Crime & Courts, New Straits Times, New Straits Times (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 28.07.2017. Source:

<https://www.nst.com.my/news/crime-courts/2017/07/261623/without-n-korean-suspects-defending-jong-nams-accused-murderers>

See Surach, G. (2017) *Two North Koreans Initially Identified as Suspects: Jong Nam Murder Trial*, The Sun Daily, Sun Media Corporation Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 08.11.2017.

Source: <https://web.archive.org/web/20180315084247/http://www.thesundaily.my/news/2017/11/08/two-north-koreans-initially-identified-suspects-jong-nam-murder-trial>

³⁰⁵ Dinh, H. & Ng, E. (2019) *Vietnamese Suspect in Kim Jong Nam's Killing Seeking Release*, AP News, The Associated Press (AP), New York, United States of America (USA) dated 14.03.2019. Source:

<https://apnews.com/ead613cc72524b69903710ea3aa64da2> "While Aisyah's release was partly political, the case against her was also seen as weaker as her lawyers have told the court there was no video evidence showing her accosting Kim at the airport."

³⁰⁶ Hamdan, N. (2019) *Jong Nam Murder: Vietnamese Doan Sentenced to Three Years' Jail*, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 01.04.2019. Source:

<https://www.thestar.com.my/news/nation/2019/04/01/jongnam-murder-vietnamese-doan-sentenced-to-three-years-jail>

2019.³⁰⁷ The outcome of the murder trial has a lasting impact on strengthening the diplomatic relations amongst Malaysia, North Korea, Indonesia and Vietnam.³⁰⁸ The absence of any diplomatic missions between Malaysia and North Korea at the moment is a sign of temporary fall out in their diplomatic relations.³⁰⁹ This phenomenon may indicate that Malaysia has lost its neutral State status she proudly held on for so long, being the only country in the region able to bring North Korea and other ASEAN countries for negotiation. In the past, Kuala Lumpur used to serve as a venue for secret meetings between Japan,³¹⁰ the United States, South Korea and North Korea that has started since two decades ago.³¹¹ In fact, in 2018, the United States had shown her interest to groom Malaysia as the regional leader towards North Korea's denuclearisation.³¹² Malaysia however, under Tun Dr. Mahathir – the individual who spearheaded the diplomatic relations between Putrajaya and Pyongyang 48 years ago – are eager to rekindle the damaged diplomatic relations. It is just a matter of time before both countries repair and resume their diplomatic relations.³¹³

³⁰⁷ (2019) *Vietnamese Woman in Kim Jong Nam Murder Trial to be Freed May 3*, World, Kyodo News, Minato City, Tokyo, Japan (JPN) dated 13.04.2019. Source:

<https://english.kyodonews.net/news/2020/08/b2160f111832-focus-arrest-of-goddess-of-democracy-may-complicate-japan-china-ties.html>

³⁰⁸ Han, D. & Ho, S. (2017) *Kim Jong Nam's Death: What It Means for Malaysia*, RSIS Commentary, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Nanyang Avenue, Singapore (SIN) at pages 2-3. Source: <http://www.rsis.edu.sg/rsis-publication/rsis/co17067-kim-jong-nams-death-what-it-means-for-malaysia/#.WRTeGTq6Tv9>

³⁰⁹ Farzana, K.F. & Haq, M. Z. (2019) *Malaysia's Political Orientation in Diplomatic Neutrality*, Intellectual Discourse, Volume 27, Special Issue: Religion, Culture & Governance, 2019, IIUM Press, International Islamic University Malaysia (IIUM), Kuala Lumpur, Malaysia (MAS) at page 792. Source:

<https://journals.iium.edu.my/intdiscourse/index.php/id/article/view/1456/889>. See also Reduan, H. (2018) *Kim Jong Nam Murder Trial: Will Suspects Be Acquitted?* New Straits Times (NST), The New Straits Times Press (M) Berhad, Media Prima Group, Jalan Riong, Kuala Lumpur, Malaysia (MAS) dated 16.08.2018.

Source: <https://www.nst.com.my/news/nation/2018/08/401851/kim-jong-nam-murder-trial-will-suspects-be-acquitted>

³¹⁰ Kim, S.S. (2007) *North Korean Foreign Relations in the Post-Cold War World*, United States Army War College, Strategic Studies Institute, Pennsylvania, United States of America (USA) at pages 39-40. Source:

<https://apps.dtic.mil/dtic/tr/fulltext/u2/a466504.pdf>

See also Young, S.K. (2006) *South Korean Engagement Policies & North Korea: Identities, Norms and the Sunshine Policy*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 168

³¹¹ Ping, H.C. (2017) *Malaysia-North Korea Relations During the Cold War*, International Seminar on *Early Cold on China & Southeast Asia*, Institute of Chinese Studies University of Malaya, Universiti Malaya (UM), Kuala Lumpur, Malaysia (MAS) dated 26.09.2017 at page 20.

Source: http://www.academia.edu/36190136/MalaysiaNorth_Korea_relations_during_the_Cold_War

³¹² Lopez, L. (2017) *U.S. to Get Malaysia's Help to Rein in North Korea*, Asia, Southeast Asia, The Straits Times, SPH Digital News, Singapore Press Holdings Limited, Singapore (SIN) dated 08.08.2017. Source:

<https://www.straitstimes.com/asia/se-asia/us-to-get-malysias-help-to-rein-in-n-korea>

³¹³ Chu, M.M. (2018) *Dr. Mahathir: Malaysia to Reopen Embassy in North Korea*, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 12.06.2018.

Source: <https://www.thestar.com.my/news/nation/2018/06/12/dr-m-malaysia-to-reopen-embassy-in-north-korea/> See also (2019) *Security to be Prioritised in Reopening of Embassy in North Korea: Saifuddin*, News, Malaysiakini, Mkini Dotcom Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 29.12.2019. Source:

<https://www.malaysiakini.com/news/505224>

In hindsight, it seems that North Korea stand to lose more than Malaysia especially after two (2) U.S. – North Korea Summits held in Singapore and Vietnam failed to deliver any positive outcome.³¹⁴ With the change in the U.S. administration, former President Donald Trump had ceased the *Strategic Patience* strategy³¹⁵ employed by Barack Obama which means that military actions are probable against North Korea for any of her future provocations.³¹⁶ Furthermore, the United States under the leadership of new President Joseph Biden shows no signs of abatement in denuclearising North Korea.³¹⁷ The diplomatic quagmire between the U.S. and North Korea is aggravated with Kim Jong Un's latest decision in January 2021 to upgrade North Korea's nuclear weapons capabilities.³¹⁸ Thus, it is only sensible for Pyongyang to resume her diplomatic relations with countries that are known to be friendly to her and that includes Malaysia and as such, ending the diplomatic disputes will benefit North Korea in the long run.³¹⁹ Therefore, the future of diplomatic relations between Malaysia and North Korea hinges entirely on the transparency from both countries in protecting their national interests.³²⁰

The diplomatic row was severe but is momentary and recovering; taking into account Malaysia's intention in 2019 to reopen her embassy in Pyongyang.³²¹ The murder case has

³¹⁴ Buckle, C. (2017) *North Korea Allies Dry Up: Malaysia Halts All funding to Kim Jong Un in World War 3 Threat*, World News, Express, London, United Kingdom (UK) dated 13.10.2017. Source:

<https://www.express.co.uk/news/world/865861/North-Korea-allies-Malaysia-news-funding-missileprogramme-Kim-Jong-Un-latest>

³¹⁵ Kaussler, B. & Hastedt, G.P. (2017) *US Foreign Policy Towards the Middle East: The Realpolitik of Deceit*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 148

³¹⁶ Howell, E. (2018) *From 'Strategic Patience' to 'Maximum Pressure': Obstacles to Progress Remain in Pushing North Korea on its Nuclear Weapons*, Opinion, South China Morning Post (SCMP), Hong Kong (HK) dated 09.12.2018. Source: <https://www.scmp.com/news/china/diplomacy/article/2177052/strategic-patience-maximum-pressure-obstacles-progress-remain>

³¹⁷ Aoki, N. (2021) *How Will President Biden Deal with the North Korean Challenge?* Commentary, Channel News Asia (CNA), Mediacorp Private Limited, Temasek Holdings, Stars Avenue, Singapore (SIN) dated 21.01.2021. Source: <https://www.channelnewsasia.com/news/commentary/biden-north-korea-kim-trump-asia-14036910>

³¹⁸ Burke, O. (2021) *Kim Jong Un Warns Joe Biden the U.S. is North Korea's Principal Enemy as He Vows to Build the Most Powerful Military*, World News, The Sun, News Group Newspaper Limited, London, England, United Kingdom (UK) dated 13.01.2021. Source: <https://www.thesun.co.uk/news/worldnews/13727321/kim-jong-un-biden-us-north-koreas-enemy/>

³¹⁹ Bridges, B. (2019) *What's Next for KL, Pyongyang?* New Straits Times (NST), New Straits Times Press (M) Berhad, Media Prima Group, Kuala Lumpur, Malaysia (MAS) dated 11.04.2019. Source: <https://www.nst.com.my/opinion/columnists/2019/04/478581/what-next-kl-pyongyang>

³²⁰ (2018) *Malaysia to Re-Open Embassy in North Korea; Mahathir*, World News, Reuters, London, United Kingdom (UK) dated 12.06.2018. Source: <https://www.reuters.com/article/us-northkorea-malaysia/malaysia-to-reopen-embassy-in-north-korea-mahathir-idUSKBN1J80O2>

³²¹ Gabriel, P. (2019) *Ties with North Korea Warming Up*, Nation, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 16.11.2019. Source:

given the Malaysian government the chance to reassess all merits and demerits of sustaining diplomatic relations with a volatile country like North Korea.³²² Nonetheless, the assassination of Kim Jong Nam has managed to unite all Malaysians regardless of their race, religions and political affiliation. It could only be achieved when Malaysians realised that the security of their country was truly at stake against a country possessing nuclear weapons technology.³²³

2.5.4 THE SEVERANCE OF DIPLOMATIC RELATIONS BETWEEN MALAYSIA & NORTH KOREA

On 19 March 2021, North Korea unilaterally severed her diplomatic relations with Malaysia.³²⁴ The reason being was Malaysia's Federal Court decision on 8 October 2020 to reject North Korean businessman Mun Chol Myong's appeal against an extradition request from the United States' authorities.³²⁵ Mun Chol Myong was arrested in 14 May 2019 under Section 13 (1) (b) Extradition Act 1992³²⁶ following a request from the U.S.³²⁷ for offences relating to money-laundering in the US' financial services³²⁸ and violations of both the U.S.³²⁹ and UN-backed sanctions.³³⁰

<https://www.thestar.com.my/news/nation/2019/11/16/ties-with-north-korea-warming-up> See also (2018) *Malaysia Plans to Re-Open Embassy in DPRK*, World-ASEAN, Vietnam Plus, dated 12.06.2018. Source: <https://en.vietnamplus.vn/malaysia-plans-to-reopen-embassy-in-dprk/132728.vnp>

³²² (2018) *Mahathir: Malaysia to Reopen Embassy in North Korea*, News, North Korea, Radio Free Asia, Washington D.C., United States of America (USA) dated 12.06.2018. Source: <https://www.rfa.org/english/news/korea/malaysia-embassy-06122018181846.html>

³²³ (2017) *Najib: Nine Malaysians Stranded in North Korea on Their Way Home*, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 30.03.2017. Source: <https://www.thestar.com.my/news/nation/2017/03/30/najib-tun-razak-malaysians-in-north-korea-allowed-to-leave/>

³²⁴ (2021) *North Korea Says It Will Sever Ties with Malaysia Over Extradition of 'Innocent Citizen' to the US*, Channel News Asia (CNA), Asia, News, Mediacorp Private Limited, Temasek Holdings, Singapore (SIN) dated 19.03.2021. Source: <https://www.channelnewsasia.com/news/asia/north-korea-says-will-sever-ties-malaysia-extradition-citizen-us-14441754>

³²⁵ (2021) *North Korean in Malaysia Loses Final Appeal Against US Extradition*, Malaysia, News, Malay Mail, Malay Mail Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 09.03.2021. Source: <https://www.malaymail.com/news/malaysia/2021/03/09/north-korean-in-malaysia-loses-final-appeal-against-us-extradition/1956186>

³²⁶ Nik Anis, M. (2021) *Malaysia Orders All North Korean Diplomatic Staff to Leave Country Within 48 Hours*, Nation, News, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 19.03.2021. Source: <https://www.thestar.com.my/news/nation/2021/03/19/malaysia-orders-all-n-korean-diplomatic-staff-to-leave-country-within-48-hours>

³²⁷ Anbalagan, V. (2021) *North Korean Fails in Final Bid to Ward Off Extradition to US*, Nation, Category, Free Malaysia Today (FMT), FMT Media Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 09.03.2021. Source: <https://www.freemalaysiatoday.com/category/nation/2021/03/09/north-korean-fails-in-final-bid-to-ward-off-extradition-to-us/>

³²⁸ (2021) *First North Korean National Brought to the United States to Stand Trial for Money Laundering Offences*, United States Department of Justice, Washington D.C., United States of America (USA) dated 22.03.2021. Source:

Mun Chol Myong, via his application for Writ of *Habeas Corpus* to challenge his arrest,³³¹ appealed that he was innocent and was caught in a diplomatic dispute between North Korea and the U.S.³³² In dismissing the appeal, Malaysia's highest Court stated that all requirements under the Malaysia-United States Extradition Treaty 1995 had been fulfilled.³³³ The prosecution argued that it was the Malaysian government duty's to assist the U.S. in extraditing Mun Chol Myong.³³⁴ Prior to the Federal Court's decision, the Kuala Lumpur High Court in dismissing the *Habeas Corpus* application stated that there was insufficient evidence tendered by Mun Chol Myong to challenge the money-laundering charges and to prove the indictments filed by the U.S authorities were politically charged.³³⁵

<https://www.justice.gov/opa/pr/first-north-korean-national-brought-united-states-stand-trial-money-laundering-offenses>

³²⁹ (2021) *North Korean Businessman Mun Chol Myong in US Court After Extradition from Malaysia*, Article, East Asia, Asia, News, South China Morning Post (SCMP), SCMP Publishers, Hong Kong (HK) dated 23.03.2021. Source:

<https://www.scmp.com/news/asia/east-asia/article/3126520/north-korean-businessman-mun-chol-myong-us-court-after>

³³⁰ Balsamo, M. (2021) *North Korean Man Extradited to US in Sanctions Case*, Article, AP News, The Associated Press, New York, United States of America (USA) dated 22.03.2021. Source: <https://apnews.com/article/trials-north-korea-money-laundering-extradition-malaysia-5157b3fef4b32193a1a8b37743b47402>

³³¹ The application for Writ of *Habeas Corpus* originated in the Kuala Lumpur High Court and was decided on 4 November 2020. See *In the High Court of Malaya at Kuala Lumpur, In the Federal Territory of Malaysia, Criminal Application No: WA – 44 – 339 – 12/2019, Mun Chol Myong (Passport No. 927332257) v. Minister of Home Affairs & 3 Others*. Source:

https://ejudgment.kehakiman.gov.my/ks_builton/file_dispatcher_pub.php?id=11475&key=b4f90e9ddd9b68a6c130e97c50ce47ef

³³² (2021) *North Korean in Malaysia Loses Final Appeal Against US Extradition*, Channel News Asia (CNA), Asia, News, Mediacorp Private Limited, Temasek Holdings, Singapore (SIN) dated 09.03.2021. Source:

<https://www.channelnewsasia.com/news/asia/malaysia-north-korean-man-loses-appeal-us-extradition-14367564>

³³³ (2021) *Rayuan Akhir Lelaki Korea Utara Ditolak Mahkamah*, Asia, Dunia, Berita Harian, Balai Berita, The New Straits Times Press (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 09.03.2021. Source: <https://www.bharian.com.my/dunia/asia/2021/03/794370/rayuan-akhir-lelaki-korea-utara-ditolak-mahkamah>

³³⁴ (2021) *North Korean in Malaysia Loses Final Appeal Against US Extradition*, Nation, News, The Star, Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 09.03.2021. Source:

<https://www.thestar.com.my/news/nation/2021/03/09/north-korean-in-malaysia-loses-final-appeal-against-us-extradition>. See Also Talib, M.R. (2021) *Tindakan Korea Utara Sekadar Gimik Geopolitik*, Komentor, Rencana, Berita Harian, Balai Berita, The New Straits Times Press (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 23.03.2021.

Source: <https://www.bharian.com.my/rencana/komentor/2021/03/799243/bhplus>

³³⁵ See *In the High Court of Malaya at Kuala Lumpur, In the Federal Territory of Malaysia, Criminal Application No: WA – 44 – 339 – 12/2019, Mun Chol Myong (Passport No. 927332257) v. Minister of Home Affairs & 3 Others* at paragraph No. 52, at pages 51 & 52. Source:

https://ejudgment.kehakiman.gov.my/ks_builton/file_dispatcher_pub.php?id=11475&key=b4f90e9ddd9b68a6c130e97c50ce47ef

North Korea lashed out at Malaysia's decision by describing it as an 'unpardonable crime'³³⁶ and insisted that Mun Chol Myong was innocent.³³⁷ Mun Chol Myong – who is not a North Korean diplomat³³⁸ – is the first North Korean ever extradited by any country in the world to face charges in the U.S.³³⁹ Reports revealed that Mun Chol Myong was associated with North Korean intelligence services i.e. *Reconnaissance General Bureau* (RGB).³⁴⁰ As a result, Malaysia reciprocated by ordering the North Korean diplomatic mission to vacate its diplomatic premise and leave Malaysia on 21 March 2021.³⁴¹ Malaysia also had shut down her embassy in North Korea which was suspended since 2017.³⁴²

³³⁶ (2021) *North Korea Break Ties With Malaysia*, Nation, News, New Straits Times (NST), New Straits Times Press (M) Berhad, Media Prima Group, Balai Berita, Jalan Riong, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 19.03.2021. Source: <https://www.nst.com.my/news/nation/2021/03/675125/north-korea-breaks-ties-malaysia>

³³⁷ (2021) *North Korea Closes Embassy in Malaysia as Ties Severed, North Korea at Crossroads*, Spotlight, Nikkei Asia, Nikkei Incorporated, Tokyo, Japan (JPN) dated 22.03.2021. Source: <https://asia.nikkei.com/Spotlight/N-Korea-at-crossroads/North-Korea-closes-embassy-in-Malaysia-as-ties-severed>

³³⁸ Talib, M.R. (2021) *Malaysians Should Celebrate Decision to Extradite North Korean to the U.S.*, Letter, Malaysiakini, Malaysiakini.com, Mkini Dotcom Sdn. Bhd., Mkini Group Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 21.03.2021. Source: https://www.malaysiakini.com/letters/567455?fbclid=IwAR3CsGMRgp1OskLxzOvxFLLN93ExD2K_9wPuRohaDPoWYcV2gmz8O2heOU

³³⁹ Bartlett, J. (2021) *Mun Chol Myong: The First-Ever North Korean Criminal Facing Extradition to the US*, Opinion, The Debate, The Diplomat, Diplomat Media Incorporated, Pennsylvania Avenue, Washington D.C., United States of America (USA) dated 10.03.2021. Source: <https://thediplomat.com/2021/03/mun-chol-myong-the-first-ever-north-korean-criminal-facing-extradition-to-the-us/>

³⁴⁰ Viswanatha, A. (2021) *Alleged North Korean Operative Makes First U.S. Court Appearance*, Articles, World, The Wall Street Journal, News Corp., Dow Jones & Company, New York City, New York, United States of America (USA) dated 22.03.2021. Source: <https://www.wsj.com/articles/alleged-north-korean-operative-makes-first-u-s-court-appearance-11616448220>. See also (2021) *North Korean Appears in US Court After Extradition from Malaysia*, Business News, Business, The Star, The Star Media Group, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 23.03.2021. Source: <https://www.thestar.com.my/business/business-news/2021/03/23/north-korean-appears-in-us-court-after-extradition-from-malaysia>.

Also at Robertson, W. (2021) *Who Is Mun Chol Myong? The North Korean Businessman Who Caused Malaysia & North Korea to Sever Ties*, News, The Rakyat Post (TRP), 3rd Wave Media Sdn. Bhd., Kuala Lumpur, Malaysia (MAS) dated 23.03.2021. Source: <https://www.therakyatpost.com/2021/03/23/who-is-mun-chol-myong-the-north-korean-businessman-who-caused-malaysia-north-korea-to-sever-ties/>

³⁴¹ (2021) *North Korean Diplomats Leave Malaysia After Ties Cut Over U.S. Extradition Row*, Asia, News, Channel News Asia (CNA), Mediacorp Private Limited, Temasek Holdings, Singapore (SIN) dated 21.03.2021. Source: <https://www.channelnewsasia.com/news/asia/north-korean-diplomats-leaving-malaysia-after-ties-are-severed-14457234>

³⁴² (2021) *North Korean Man Extradited from Malaysia Appears in US Court*, Asia, News, Channel News Asia (CNA), Mediacorp Private Limited, Temasek Holdings, Singapore (SIN) dated 23.03.2021. Source: <https://www.channelnewsasia.com/news/asia/north-korean-extradited-us-sanctions-appears-court-14467080>

In its official statement, Malaysian Foreign Ministry regretted North Korea's unilateral decision to sever their diplomatic relations.³⁴³ Malaysia had optimised her diplomacy with North Korea by a view to rejuvenate their diplomatic relations even after the reprehensible murder of Kim Jong Nam in Malaysia.³⁴⁴ After 48 years of bilateral relations, North Korea's irrational decision has officially ended her diplomatic relations with Malaysia.³⁴⁵

2.6 DIPLOMATIC IMMUNITY & *PERSONA NON GRATA*

2.6.1 DIPLOMATIC IMMUNITY

Diplomacy is defined as any means of which the States establish bilateral relations through their authorised agents (i.e. diplomats).³⁴⁶ It is also a tactful skill that manages people and countries in diplomatic dispute.³⁴⁷ The law regulating the conduct of diplomats is a product of Customary International Law³⁴⁸ which has been codified and known as the Vienna Convention on Diplomatic Relations 1961 (VCDR)³⁴⁹ that was enforced on 24 April 1964.³⁵⁰ Historically, it has been part of Customary International Law for the Receiving States to

³⁴³ (2021) *Malaysia Deeply Regrets North Korea's Decision to Sever Diplomatic Ties*, Article, Highlight, Politics & Governments, Top Stories, Malaysia, The Edge Markets, The Edge Communications Sdn. Bhd., Mutiara Damansara, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 19.03.2021. Source: <https://www.theedgemarkets.com/article/malaysia-deeply-regrets-north-koreas-decision-sever-diplomatic-ties>.

See also (2021) *Malaysia Deeply Regrets the DPRK's Decision to Sever Ties*, Press Statement, Ministry of Foreign Affairs, Malaysia, Wisma Putra, Putrajaya, Malaysia (MAS) dated 19.03.2021. Source: https://www.kln.gov.my/web/esp_madrid/news-from-mission/-blogs/malaysia-deeply-regrets-the-dprk-s-decision-to-sever-ti-1

³⁴⁴ (2021) *Malaysia Deeply Regrets the DPRK's Decision to Sever Ties*, Press Statement, Ministry of Foreign Affairs, Malaysia, Wisma Putra, Putrajaya, Malaysia (MAS) dated 19.03.2021. Source: https://www.kln.gov.my/web/esp_madrid/news-from-mission/-blogs/malaysia-deeply-regrets-the-dprk-s-decision-to-sever-ti-1

³⁴⁵ Wey Kok, A.L. (2021) *Why Did North Korea Sever Diplomatic Ties with Malaysia?* Southeast Asia, East Asia, Diplomacy, The Koreas, The Diplomat, Diplomat Media Incorporated, Pennsylvania Avenue, Washington D.C., United States of America (USA) dated 25.03.2021. Source: <https://thedi diplomat.com/2021/03/why-did-north-korea-sever-diplomatic-ties-with-malaysia/>

³⁴⁶ Hamid, A.G. (2006) *Public International Law: A Practical Approach*, Prentice Hall, Pearson Malaysia Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) at page 198

³⁴⁷ Mumbere, D. (2020) *Africa's Persona non Grata Diplomacy: Burundi Sacks WHO Experts*, News, Coronavirus, africanews.com., Africanews, Pointe-Noire, Republic of the Congo dated 15.05.2020. Source: <https://www.africanews.com/2020/05/15/in-the-name-of-sovereignty-africa-expels-rogue-diplomats-from-western-powers/>

³⁴⁸ Ismail, M.B.A. (2016) *Islamic Law & Transnational Diplomatic Law: A Quest for Complementarity in Divergent Legal Theories*, Palgrave Macmillan, Macmillan Publishers Limited, England, United Kingdom (UK) at page 68

³⁴⁹ Berridge, G.R. et. al. (2012) *The Palgrave Macmillan Dictionary of Diplomacy*, 3rd Edition, Palgrave Macmillan, Macmillan Publishers Limited, England, United Kingdom (UK) at page 117

³⁵⁰ McClanahan, G.V. (1989) *Diplomatic Immunity: Principles, Practices & Problems*, C. Hurst & Company Publishers Limited, London, United Kingdom (UK) at page 44

extend their immunity for the diplomats of the Sending State.³⁵¹ ‘Inviolability’ refers to the elevated status of immunity accorded to a diplomat than to a commoner in the Receiving State in view of his official duties on behalf of the Sending State.³⁵² Malaysia is a State-Party to the VCDR 1961 when she ratified the same on 9 November 1965.³⁵³ Under the doctrine of *Transformation*,³⁵⁴ the VCDR 1961 became part of the Malaysian law after the Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636) has come into force on the 9 December 1965.³⁵⁵

The 53 Articles in the VCDR 1961 provide the comprehensive guidelines for the establishment, maintenance and termination of diplomatic relations between States that are based on their mutual consent.³⁵⁶ The main feature of Inviolability is embedded in Article 29 which entails the rule of diplomatic immunity and privileges.³⁵⁷ Inviolability is the bedrock of the doctrine upon which diplomatic immunity and privileges are built on.³⁵⁸ The Receiving State is thus, obligated to protect the diplomat against any violence or harassment from any party while the diplomat conducts his official duties.³⁵⁹ The regime of diplomatic immunity also caters for different types of subjects related to the diplomatic mission, *inter alia*, the

³⁵¹ Egede, E. & Sutch, P. (2013) *The Politics of International Law & International Justice*, Edinburgh University Press, Edinburgh University Press Limited, The University of Edinburgh, Edinburgh, United Kingdom (UK) at page 232

³⁵² Michaels, D.B. (2012) *International Privileges & Immunities: A Case for a Universal Statute*, Martinus Nijhoff, The Hague, Netherlands, Springer Science + Business Media, Berlin, Germany (GER) at pages 47-50

³⁵³ Plender, R. (Editor) (1997) *Basic Documents on International Migration Law*, Second Revised Edition, Martinus Nijhoff Publishers, The Hague, The Netherlands (NED) at page 14

³⁵⁴ Hamid, A.G. (2006) *Judicial Application of International Law in Malaysia: An Analysis*, Legal News, Legal & General News, Malaysian Bar, Badan Peguam Malaysia dated 31.03.2006. Source:

<https://www.malaysianbar.org.my/article/news/legal-and-general-news/legal-news/judicial-application-of-international-law-in-malaysia-an-analysis#:~:text=Applying%20Article%2032%20of%20the,Convention%20must%20always%20be%20express>

³⁵⁵ Section 3, Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636) provides that “*The Articles set out in the Schedule hereto (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) shall have the force of law in the Federation*”. According to the ‘Schedule’ to the Act, Articles of the Vienna Convention having the force of law in the Federation are: Articles 1, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40

³⁵⁶ Wanyela, C.S. (2009) *Diplomatic Privileges & Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations 1961*, Thesis for Master Degree of Arts in International Studies, The Institute of Diplomacy & International Studies, University of Nairobi, Kenya at page 47

Source: <http://erepository.uonbi.ac.ke/handle/11295/76780>

³⁵⁷ Oelfke, C. (Editor) (2018) *Vienna Convention on Diplomatic Relations on 18th April 1961: Commentaries on Practical Application*, Berliner Wissenschafts-Verlag (BWV), Berliner Wissenschafts-Verlag GmbH, Berlin, Germany (GER) at page 205

³⁵⁸ Kaul, J.L. & Jha, A. (Editors) (2018) *Shifting Horizons of Public International Law: A South Asian Perspective*, Springer, Springer (India) Private Limited, New Delhi, India (IND) at page 320. See also Michaels, D.B. (2012) *International Privileges & Immunities: A Case for a Universal Statute*, Martinus Nijhoff, The Hague, Netherlands, Springer Science + Business Media, Berlin, Germany (GER) at page 9

³⁵⁹ Baumann, C.E. (2012) *The Diplomatic Kidnappings: A Revolutionary Tactic of Urban Terrorism*, Martinus Nijhoff, The Hague, The Netherlands, Springer Science & Business Media, Berlin, Germany (GER) at page 41

diplomatic agents (Article 29),³⁶⁰ their family members [(Article 73 (1)],³⁶¹ documents and archives (Article 24),³⁶² official communication/official correspondence [Article 27 (2)],³⁶³ the diplomatic bag [Article 27 (3)]³⁶⁴ and the diplomatic courier [Article 27 (5)].³⁶⁵ Further, reciprocity is also a prominent feature in the diplomatic immunity as per the *Functional Necessity* theory.³⁶⁶ Any adverse decisions such as *Persona non Grata* by either State will trigger retaliation that leads to eventual severance of diplomatic relations.³⁶⁷ In view of the Research Problem, this Thesis concentrated only on the diplomatic immunity afforded in criminal jurisdiction under the VCDR 1961 and the cases of abuse thereof.

The diplomatic immunity and privileges are built around the doctrine of *Functional Necessity* in which diplomats are absolutely protected from the criminal jurisdiction in the Receiving State (e.g. investigation, interrogation, arrest, prosecution, trial, subpoena & sentencing) while discharging his official duties with necessary freedom and security.³⁶⁸ This is to ensure the diplomats – who usually carry out their official duties in confidentiality – will function efficiently and effectively without interference from the Receiving State.³⁶⁹ It means

³⁶⁰ Sen, B. (2012) *A Diplomat's Handbook of International Law & Practice*, Martinus Nijhoff, The Hague, The Netherlands, Springer, Springer Science + Business Media, Berlin, Germany (GER) at pages 90 & 91

³⁶¹ Aust, A. (2005) *Handbook of International Law*, Cambridge University Press, University of Cambridge, Cambridge, United Kingdom (UK) at page 147

³⁶² Denza, E. (2016) *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 4th Edition, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 156

³⁶³ Buchan, R. (2019) *Cyber Espionage & International Law*, Hart Publishing, Bloomsbury Publishing Plc., Oxford, United Kingdom (UK) at pages 86 & 87. See also Crawford, J. (2019) *Brownlie's Principles of International Law, 9th Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 390. Also at Fahim, M.Y. (2010) *Diplomacy, The Only Legitimate Way of Conducting International Relations*, Dissertation in International Relations & Diplomacy, Dissertation Submitted to the Corllins Online (Distance) University, California, USA, Washington D.C., United States of America (USA) at page 43

³⁶⁴ Boczek, B.A. (2005) *International Law: A Dictionary, Dictionaries of International Law, No.2*, The Scarecrow Press Incorporated, Maryland, United States of America (USA) at page 52. See also Crawford, J. (2019) *Brownlie's Principles of International Law, 9th Edition*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 390. Also at Nolte, G. (Editor) (2013) *Treaties & Subsequent Practice*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) page 347. And also at Cooper, F.A. et. al. (Editors) (2013) *The Oxford Handbook of Modern Diplomacy*, Oxford University Press, Oxford University, Oxford, United Kingdom (UK) at page 524

³⁶⁵ (2017) *Diplomatic Pouches*, Diplomatic Importation Program, Office of Foreign Missions, U.S. Department of State, Washington D.C., United States of America (USA) dated 20.01.2017. Source: <https://2009-2017.state.gov/ofm/customs/c37011.htm>

³⁶⁶ Bercovitch, J. et. al. (Editor) (2009) *The SAGE Handbook of Conflict Resolution*, SAGE Publications Limited, London, United Kingdom (UK) at page 39

³⁶⁷ Kaczorowska, A. (2010) *Public International Law, 4th Edition*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 401. See also Hoogh, A.D. (1996) *Obligations Erga Omnes & International Crimes: A Theoretical Inquiry into the Implementation and Enforcement of the International Responsibility of States*, Kluwer Law International, The Hague, The Netherlands (NED) at page 253

³⁶⁸ Bankas, E.K. (2005) *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Court*, Springer, Springer Science + Business Media, Berlin, Germany (GER) at page 347

³⁶⁹ Carter, B. E. et. al. (2018) *International Law, 7th Edition*, Wolters Kluwer N.V., South Holland, The Netherlands (NED) at page 708

that the diplomatic immunity only caters to those functions/duties which are classified as the official functions of a diplomat (i.e. diplomatic functions) in the Receiving State.³⁷⁰ Amongst the diplomatic functions performed by a diplomat is set out in Article 3 (1).

Over the years, the VCDR 1961 departs from earlier legal theories such as *Representative Character* and *Extra-Territoriality* towards *Functional Necessity* in justifying diplomatic immunity.³⁷¹ The essence of *Functional Necessity* theory is expressed in the Preamble³⁷² and Article 29.³⁷³ Unlike in civil disputes,³⁷⁴ the exemption from criminal jurisdiction in the Receiving State is absolute as stated in Article 31 (1).³⁷⁵ The diplomatic immunity and privileges are not attributed to and for the benefit of the diplomat *per se* but are attributed to the recognition of State's sovereignty.³⁷⁶ The diplomatic immunity actually benefits the State which the diplomat represents (i.e. Sending State).³⁷⁷ This explains the VCDR's provisions which allow only the Sending State to terminate or recall the impugned diplomat [Article 9 (1)] and to waive the immunity against criminal proceedings in the Receiving State [Article 32 (1) & (2)].³⁷⁸ Once the waiver is expressed by the Sending State, it is irrevocable.³⁷⁹ Plus, the diplomat's exemption from the Receiving State's criminal jurisdiction does not preclude him from the criminal jurisdiction in the Sending State as per Article 31 (4). The diplomatic immunity in criminal jurisdiction is an exception to the general

³⁷⁰ Feltham, R.G. (2012) *Diplomatic Handbook, 8th Edition*, Martinus Nijhoff Publishers, Koninklijke Brill NV, Leiden, The Netherlands (NED) at page 35

³⁷¹ Barker, C.J. (2013) *The Protection of Diplomatic Personnel*, Ashgate Publishing Limited, England, United Kingdom (UK) at page 147

³⁷² "Realising that the purpose of such Immunities and Privileges is not to benefit individuals but to ensure efficient performance of the functions of Diplomatic Missions as representing States."

³⁷³ "The person of a Diplomatic Agent shall be inviolable. He shall not be liable to any form of arrest or detention. The Receiving State shall treat him with due respect and shall take appropriate steps to prevent any attack on his person, freedom or dignity."

³⁷⁴ Brohmer, J. (1997) *State Immunity & the Violation of Human Rights*, Kluwer Law International, The Hague, The Netherlands (NED) at page 27

³⁷⁵ Breau, S. (2013) *Questions & Answers International Law 2013 & 2014*, Oxford University Press, University of Oxford, Oxford, United Kingdom (UK) at page 142

³⁷⁶ Ibid No. 346 at page 19

³⁷⁷ Cryer, R. et. al. (2010) *An Introduction to International Criminal Law & Procedure, 2nd Edition*, Cambridge University Press, University of Cambridge, Cambridge, United Kingdom (UK) at page 35

³⁷⁸ Okeke, E.C. (2018) *Jurisdictional Immunities of States & International Organisations*, Oxford University Press, University of Oxford, Oxford, United Kingdom (UK) at page 347. See also Dixon, M. et. al. (2011) *Cases & Materials on International Law, 5th Edition*, Oxford University Press, University of Oxford, Oxford, United Kingdom (UK) at page 304

³⁷⁹ Vark, R. (2003) *Personal Inviolability & Diplomatic Immunity in Respect of Serious Crimes*, Juridica International VIII/2003, University of Tartu, Estonia at pages 117 & 118.

Source: https://www.juridicainternational.eu/public/pdf/ji_2003_1_110.pdf

rule of territorial jurisdiction.³⁸⁰ In short, the official diplomatic functions as listed in Article 3 (1) could not be executed without the protection against the local criminal jurisdiction.³⁸¹

A diplomatic agent shall always be mindful that in spite of being inviolable, respecting the laws and refraining from interfering in the internal affairs of the Receiving State are part of his official duties as per Article 41 (1).³⁸² He is also expected to be sensitive to the cultural niche and promote friendly relations with the Receiving State.³⁸³ With regards to criminal jurisdiction for crimes occurring in the Receiving State, the nationality of the suspect or the accused (assuming the diplomatic agent is a citizen of the Sending State) is prevalent via the *Active Personality/Nationality* principle.³⁸⁴ Jurisdiction over offences committed abroad (i.e. International Crimes/Trans-boundary crimes) is vital in order to prevent the perpetrator from escaping any prosecution and punishment.³⁸⁵ Since the diplomatic immunity appears in various variants for different subjects related to the diplomatic mission, it increases the likelihood of abuse by these subjects.³⁸⁶ The incidents of misuse of diplomatic immunity by members of the diplomatic mission ranged from trivial offences (e.g. violation of vehicle parking, drunkenness) to grievous crimes such as murder,

³⁸⁰ Akande, P. & Shah, S. (2011) *Immunities of State Officials, International Crimes & Foreign Domestic Courts*, The European Journal of International Law, Volume 21, No. 4, Oxford Academic, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 826.

Source:<https://academic.oup.com/ejil/article/21/4/815/418198>

³⁸¹ Wilson, R.A. (1984) *Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations*, Law Reviews, Loyola of Los Angeles International & Comparative Law Review, Digital Commons at Loyola Marymount University and Loyola Law School, Los Angeles, United States of America (USA) at pages 117 & 118. Source:

<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=1070&context=ilr>

³⁸² Mwenda, K.K. (2011) *Public International Law & The Regulation of Diplomatic Immunity in the Fight Against Corruption*, Pretoria University Law Press (PULP), Faculty of Law, University of Pretoria, South Africa at page 68

³⁸³ Wiener, J. & Schrire, R.A. (Editors) (2009) *International Relations, Volume I, Encyclopaedia of Life Support Systems*, United Nations Educational, Scientific & Cultural Organisation (UNESCO), Encyclopaedia of Life Support Systems (EOLSS), EOLSS Publishers Company Limited, Oxford, United Kingdom (UK) at pages 109 & 110

³⁸⁴ Cryer, R. et. al. (2007) *An Introduction to International Criminal Law & Procedure*, Cambridge University Press, The University of Cambridge, Cambridge, United Kingdom (UK) at page 41

³⁸⁵ Cassese, A. (Editor) (2009) *The Oxford Companion to International Criminal Justice*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 229

³⁸⁶ (1977) *Diplomatic Privileges & Immunities, Hearings and Markup Before the Sub-Committee on International Operations of the Committee on International Relations, House of Representatives, 95th Congress, First Session, May 17th, 2nd, 9th & 16th 1977*, U.S. Government Printing Office, Washington D.C., United States of America (USA) at page 181. See also Yeakey, C.C. et. al. (Editors) (2014) *Urban Ills: Twenty-First-Century Complexities of Urban Living in Global Contexts*, Lexington Books, Lanham, Maryland, United States of America (USA) at page 393

espionage and drug-trafficking.³⁸⁷ In serious cases, the Receiving State will ultimately evict the impugned diplomat as *Persona non Grata* [Article 9 (1)].³⁸⁸ Examples on how the abuse of diplomatic immunities are handled by countries according to the VCDR 1961 are as follows: -

2.6.1.1 THE PROSECUTION & SENTENCING OF MUHAMMAD RIZALMAN BIN ISMAIL IN NEW ZEALAND³⁸⁹

Muhammad Rizalman bin Ismail was a Malaysian diplomat who was charged with sexual violence before a Criminal Court in Wellington, New Zealand.³⁹⁰ On 9 May 2014, Rizalman who was working as an Assistant Defence Attaché at the Malaysian High Commission in Wellington was arrested by the New Zealand police³⁹¹ and charged with assault and burglary with the intention to rape a 21-year old local woman.³⁹² He was brought to the Wellington District Court and was facing maximum ten (10) years of imprisonment upon conviction.³⁹³ Wisma Putra later invoked for diplomatic immunity³⁹⁴ and requested Rizalman to be sent back to Malaysia on 22 May 2014.³⁹⁵ Unfortunately, his return to Malaysia had left the impression that the diplomatic immunity was invoked as a mean to

³⁸⁷ Novakovic, M. (Editor) (2020) *Diplomatic Immunity: Evolution & Recent Country Developments*, Palgrave Macmillan, Springer Nature Singapore Private Limited, Singapore (SIN) at pages 126 & 127

³⁸⁸ Crawford, J. et. al. (Editor) (2010) *The Law of International Responsibility*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 150

³⁸⁹ *The Queen v Muhammad Rizalman Bin Ismail CRI-2014-085-005323* [2015] NZHC 3216

Source: <https://offenders.sst.org.nz/wp-content/uploads/2016/03/MUHAMMAD-RIZALMAN-BIN-ISMAIL-Sentencing-Notes.pdf>

³⁹⁰ (2014) *Malaysian Diplomat Denies Sexual Assault in New Zealand*, New Straits Times (NST), New Straits Times (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 21.11.2014. Source: <https://www.nst.com.my/news/2015/09/55046/malaysian-diplomat-denies-sexual-assault-new-zealand>

³⁹¹ (2014) *Former Military Attaché Faces New Zealand Court*, News, New Straits Times (NST), New Straits Times (M) Berhad, Media Prima Group, Bangsar, Kuala Lumpur, Malaysia (MAS) dated 26.10.2014. Source: <https://www.nst.com.my/news/2015/09/former-military-attache-faces-new-zealand-court>

³⁹² (2014) *Malaysia Diplomat Denies New Zealand Assault Charges*, Asia, BBC News, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 21.11.2014. Source: <https://www.bbc.com/news/world-asia-30140592>

³⁹³ Davison, I. (2014) *Sex Case Diplomat to Return to New Zealand*, New Zealand, The New Zealand Herald, Auckland, New Zealand (NZ) dated 02.07.2014. Source: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11286442

³⁹⁴ (2014) *BP 04/2014*, Malaysian High Commission Wellington, New Zealand dated 21.05.2014. Source: <https://assets.documentcloud.org/documents/1211342/malaysian-tpn-response.pdf>

³⁹⁵ (2016) *Malaysian Military Man Muhammad Rizalman bin Ismail's Sentence 'A Kick in the Guts' for Victim*, National, Stuff, Wellington, New Zealand (NZ) dated 04.02.2016. Source: <https://www.stuff.co.nz/national/crime/76529955/malaysian-military-man-muhammad-rizalman-bin-ismails-sentence-a-kick-in-the-guts-for-victim>

escape from prosecution and punishment in New Zealand.³⁹⁶ In early October 2014, the New Zealand government had filed a request for extradition against Rizalman.³⁹⁷ Consequently, the Malaysian government waived Rizalman's immunity and extradited him to New Zealand to face his criminal trial on 24 October 2014.³⁹⁸ Rizalman pleaded guilty to the charge of indecent assault and was sentenced to nine (9) months home detention in Wellington, New Zealand.³⁹⁹ On 4 November 2016 he was deported to Malaysia after serving his sentence.⁴⁰⁰ The case underscores Article 31 (4) that the diplomat was still subjected to the criminal jurisdiction upon arrival to his Sending State (i.e. Malaysia). Despite having no extradition treaty with New Zealand,⁴⁰¹ Malaysia took the right decision⁴⁰² to preserve their good diplomatic relations by extraditing Rizalman to Wellington and to allow the local jurisdiction (i.e. Territorial Jurisdiction) in determining his fate.

2.6.1.2 THE MURDER OF CONSTABLE YVONNE FLETCHER

Constable Yvonne Fletcher was fatally shot on 17 April 1984⁴⁰³ whilst on duty to control a protest against the Muammar Ghaddafi's regime outside the Libyan embassy at St. James Square, London.⁴⁰⁴ Investigations disclosed that the deceased was shot by a

³⁹⁶ (2014) *Malaysian Envoy in New Zealand Sex Case Possibly Extradited Next Week, Report Says*, Home, Malaysia, Malay Mail, Malay Mail Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 18.10.2014. Source:

<https://www.malaymail.com/news/malaysia/2014/10/18/malaysian-envoy-in-nz-sex-case-possibly-extradited-next-week-report-says/765909>

³⁹⁷ Dougan, P. (2014) *Extradition Request Filed for Malaysian Diplomat*, The New Zealand Herald, Auckland, New Zealand (NZ) dated 03.10.2014. Source:

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11336494

³⁹⁸ Cheng, N. (2014) *Rizalman Extradited to New Zealand*, Nation, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 24.10.2014.

Source: <https://www.thestar.com.my/news/nation/2014/10/24/muhammad-rizalman-extradited-to-new-zealand>

³⁹⁹ (2016) *Rizalman Sentenced to Nine Months Home Detention for Indecent Assault*, Nation, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 03.02.2016. Source:

<https://www.thestar.com.my/news/nation/2016/02/04/muhammad-rizalman-sentenced-to-nine-months-home-detention-for-indecent-assault>

⁴⁰⁰ Divakaran, P. (2016) *Rizalman Returns Home After Serving Jail Sentence in New Zealand*, Nation, The Star, Star Media Group Berhad, Petaling Jaya, Selangor, Malaysia (MAS) dated 04.11.2016. Source:

<https://www.thestar.com.my/news/nation/2016/11/04/rizalman-returns-home-from-new-zealand>

⁴⁰¹ Habibu, S. (2014) *Rizalman to Go Back to New Zealand and Face Trial*, Nation, The Star, Star Media Group Berhad, Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 24.10.2014. Source:

<https://www.thestar.com.my/News/Nation/2014/10/24/Rizalman-to-go-back-to-NZ-and-face-trial/?style=biz>

⁴⁰² Guan, J.T.H. (2014) *Rizalman Extradition Delay Is Injustice*, Letter, Malaysiakini, Mkini Dotcom Sdn. Bhd., Petaling Jaya, Selangor Darul Ehsan, Malaysia (MAS) dated 07.08.2014. Source:

<https://www.malaysiakini.com/letters/270819>

⁴⁰³ Ivimey, J.M. (2014) *Dog Stags & NAAFI Growlers*, Troubador Publishing Limited, Wistow Road, United Kingdom (UK) at page 29

⁴⁰⁴ Bradley, C.A. (Editor) (2019) *The Oxford Handbook of Comparative Foreign Relations Law*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 655

submachine gun which was fired from the Libyan embassy.⁴⁰⁵ As a result, the embassy was under siege by the Metropolitan Police for 11 days.⁴⁰⁶ The standoff between the Metropolitan Police and the Libyan embassy was eventually resolved when the British government allowed the Libyan diplomatic staff to leave the premises without undergoing any inspection or interrogation.⁴⁰⁷ In this case, there were at least three (3) types of violations of the immunity and privileges under the Vienna Convention, namely abuse of the diplomatic premise (Articles 22 & 41), abuse of the diplomatic bag (Article 27) and abuse of the diplomatic status (Articles 29 & 31). The Libyan embassy in London was exploited as a fortress for harbouring weapons and terrorists disguised as diplomatic agents.⁴⁰⁸ Request from the British government to enter the embassy in search of the murder weapon(s) was rejected by the Libyan government.⁴⁰⁹ The British government also had to concede to the fact they could not search the contents of the diplomatic bag which was suspected to have smuggled the murder weapon(s) out of London since it was inviolable [Article 27 (3)].⁴¹⁰

All Libyan diplomatic staff had been allowed to leave the embassy⁴¹¹ and were escorted to Heathrow airport to depart for Tripoli.⁴¹² However, owing to their diplomatic immunity,⁴¹³ none of the diplomatic staff who left the embassy was interrogated for the

⁴⁰⁵ Sullivan, K.L. (2009) *Dictatorships: Muammar Al-Ghadaffi's Libya*, Twenty-First Century Books, Lerner Publishing Group Incorporated, Minneapolis, United States of America (USA) at page 99

⁴⁰⁶ Siegel, J.A. & Mirakovits, K. (2016) *Forensic Science: The Basics, 3rd Edition*, CRC Press, Taylor & Francis Group, Florida, United States of America (USA) at page 43

⁴⁰⁷ Jones, C. (2019) *Yvonne Fletcher: The 35 Year Old Vow to a Dying Friend*, UK, News, BBC News Services, British Broadcasting Services (BBC), London, United Kingdom (UK) dated 11.11.2019. Source: <https://www.bbc.com/news/uk-50334287>. "When the siege ended, all Libyan Diplomats were allowed to leave the Embassy and given Diplomatic Immunity."

⁴⁰⁸ Sweeney, J.C. (1984) *State-Sponsored Terrorism: Libya's Abuse of Diplomatic Privileges & Immunities*, Article No. 7, Number 1, Volume 5, Dickinson Journal of International Law, 1986, Penn State International Law Review, Penn State Law, The Pennsylvania State University, Pennsylvania, United States of America (USA) at pages 133 & 134. Source: <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=1052&context=psilr>

⁴⁰⁹ Barker, C.J. (2004) *International Law & International Relations*, International Relations for the 21st Century, Continuum Books, London, United Kingdom (UK) at page 160

⁴¹⁰ Meek, J. (2004) *Can't Touch Me, Politics*, UK Politics, News, The Guardian, Guardian Media Group, Kings Place, London, United Kingdom (UK) dated 05.08.2004. Source: <https://www.theguardian.com/politics/2004/aug/05/ukcrime.law>

⁴¹¹ Feder, B.J. (1984) *British Break Off Libyan Relations Over London Siege*, World, The New York Times, The New York Times Company, New York City, New York, United States of America (USA) dated 23.04.1984. Source: <https://www.nytimes.com/1984/04/23/world/british-break-off-libyan-relations-over-london-siege.html>

⁴¹² (1984) *Libyan Embassy Siege Ends*, BBC News, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 27.04.1984. Source: http://news.bbc.co.uk/onthisday/hi/dates/stories/april/27/newsid_2502000/2502565.stm

⁴¹³ Staniforth, A. & Sampson, F. (Editors) (2013) *The Routledge Companion to UK Counter-Terrorism*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 170

murder including the perpetrator(s) who was/were responsible for the murder.⁴¹⁴ As a result, the British government severed her diplomatic relations with Libya.⁴¹⁵ Until today, no one has been held responsible for the murder of Yvonne Fletcher.⁴¹⁶

A typical diplomatic bag should have been labelled as such with tags, markings or other visible physical inscription.⁴¹⁷ A diplomatic bag that carries official documents (i.e. diplomatic pouch) is usually sealed with wax or lead.⁴¹⁸ However, there is no fixed measurement of the size and weight of the bag, with most countries preferring a flexible interpretation of Article 27.⁴¹⁹

It is noted that even in the face of the abuse, the privileges which diplomats enjoy under the VCDR 1961 remain unaffected in order to protect them from false allegations/charges, fabricated evidence and/or harassment in the Receiving State.⁴²⁰ In serious offences or should the diplomat is a persistent offender, the Receiving State will normally request to the Sending State to waive the diplomatic immunity and will prosecute the diplomat accordingly.⁴²¹ As the last resort, the Receiving State can – without the need to explain – declare the impugned diplomat as *Persona non Grata*, so that the Sending State is

⁴¹⁴ Behrens, P. (Editor) (2017) *Diplomatic Law in a New Millennium*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 176

⁴¹⁵ Milne, S. (2004) *The Enemy Within: The Secret War Against the Miners*, Verso Books, Brooklyn, New York, United States of America (USA) at page 125

⁴¹⁶ Hall, J. (2020) *Aberdeen-Born Policeman to Meet Prime Minister Over 36-year Justice Fight*, News, Local, Evening Express, Aberdeen Journals Limited, Broad Street, Aberdeen, Scotland dated 28.07.2020. Source: <https://www.eveningexpress.co.uk/fp/news/local/aberdeen-born-policeman-to-meet-prime-minister-over-36-year-justice-fight/>

⁴¹⁷ Stuart, S. (2014) *Encyclopaedia of Public International Law, International Relations & Legal Cooperation in General Diplomacy and Consular Relations*, Elsevier Science Publishers B.V., Amsterdam, The Netherlands (NED) at page 51

⁴¹⁸ Naylor, R.T. (2004) *Wages of Crime: Black Markets, Illegal Finance & the Underworld Economy, Revised Edition*, Cornell University Press, Cornell University, Ithaca, New York, United States of America (USA) at page 149

⁴¹⁹ Addicott, J.F. (1991) *The Status of Diplomatic Bag: A Proposed United States Position*, *Houston Journal Of International Law*, Volume 13, Number 2, Spring 1991, Faculty Articles, School of Law Faculty Scholarship, Digital Commons at St. Mary's University, St. Mary's University, San Antonio, Texas, United States of America (USA) at pages 230 & 231.

Source: <https://core.ac.uk/download/pdf/228922573.pdf>. See also Berridge, G.R. et. al. (2012) *The Palgrave Macmillan Dictionary of Diplomacy, 3rd Edition*, Palgrave Macmillan, Macmillan Publishers Limited, England, United Kingdom (UK) at page 100

⁴²⁰ Dixon, M. (2007) *Textbook on International Law, 6th Edition*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 203

⁴²¹ Roberts, I. (Editor) (2009) *Satow's Diplomatic Practice, 6th Edition*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 129

legally obligated to either recall or terminate the diplomat's services.⁴²² Failure of which, the Receiving State will be entitled with the refusal of recognition on the diplomat's status.⁴²³

In Kim Jong Nam's murder, it is highly probable that the murder weapon i.e. VX Nerve Agent⁴²⁴ was smuggled into and out of Malaysia via the North Korean diplomatic bag.⁴²⁵ Being a Nuclear-Armed State (NAS),⁴²⁶ North Korea has the technology and capability to produce the VX Nerve Agent⁴²⁷ – a variant of Weapons of Mass Destruction (WMD).⁴²⁸ After all, North Korean Diplomats are notorious for abusing their diplomatic bag by smuggling contraband⁴²⁹ such as gold,⁴³⁰ ivory⁴³¹ and narcotics/drugs.⁴³²

Similar to the murder of Yvonne Fletcher, all potential suspects and witnesses from North Korea in Kim Jong Nam's murder had not been properly/thoroughly investigated by the authorities; they were either seeking refuge inside the North Korean Embassy in Kuala

⁴²² Hardy, M. (1968) *Modern Diplomatic Law*, Manchester University Press, The University Press, Oxford Road, Manchester, United Kingdom (UK) at pages 31 & 32. See also Dixon, M. (2007) *Textbook on International Law, 6th Edition*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 203

⁴²³ Heinze, E. & Fitzmaurice, M. (Editors) (1998) *Landmark Cases in Public International Law*, Kluwer Law International Limited, Wilton Road, London, United Kingdom (UK) at page 940

⁴²⁴ Hersman, R.K.C. & Pittinos, W. (2018) *Restoring Restraint: Enforcing Accountability for Users of Chemical Weapons, A Report of the CSIS International Security Program*, Centre for Strategic & International Studies (CSIS), Rowman & Littlefield, Lanham, Maryland, United States of America (USA) at page 40

⁴²⁵ Kim, K. (2017) *Malaysia's VX Incident: 6 Months Later*, Commentary, Non-Proliferation, STIMSON, The Henry L. Stimson Centre, Washington D.C., United States of America (USA) dated 03.08.2017. Source: <https://www.stimson.org/2017/malaysias-vx-incident-six-months-later/>

⁴²⁶ Thakur, R. (2015) *Nuclear Weapons & International Security: Collected Essays*, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 1. See also Cha, V.D. & Kang D.C. (2003) *North Korea: A Debate on Engagement Strategies*, Columbia University Press, Columbia University, New York, United States of America (USA) at page 58

⁴²⁷ McEachern, P. (2019) *North Korea: What Everyone Needs to Know*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 138

⁴²⁸ Cashman, J.R. (2008) *Emergency Response Handbook for Chemical & Biological Agents & Weapons, 2nd Edition*, CRC Press, Taylor & Francis Group, Boca Raton, Florida, United States of America (USA) at page 275

⁴²⁹ Hassig, R. & Oh, K. (2015) *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom, 2nd Edition*, Rowman & Littlefield, The Rowman & Littlefield Publishing Group Incorporated, Lanham, Maryland, United States of America (USA) at page 58

⁴³⁰ Pak, J.H. (2020) *Becoming Kim Jong Un: A Former CIA Officer's Insights into North Korea's Enigmatic Young Dictator*, Ballantine Books, Random House, Penguin Random House LLC., New York, United States of America (USA) at page 111

⁴³¹ Ryall, J. (2014) *North Korea Branches Out into Ivory, Fake Cigarette & Pharmaceutical Trade, Military & Defense Contributors*, Business Insider, Insider Incorporated, New York City, New York, United States of America (USA) dated 15.04.2015. Source: <https://www.businessinsider.com/north-korea-ivory-and-contraband-trade-2014-4>

⁴³² Kraus, C. (2017) *North Korea, The Smuggler State*, The Wilson Centre, Pennsylvania Avenue, Washington D.C., United States of America (USA) dated 18.09.2017. Source: <https://www.wilsoncentre.org/blog-post/north-korea-the-smuggler-state>

Lumpur⁴³³ or were allowed to leave Malaysia on the pretext of diplomatic immunity as part of *quid pro quo* for the release of the detained Malaysian diplomats in North Korea.⁴³⁴ With the murder charge dropped against the remaining accused persons – Indonesian Siti Aisyah was Discharged Not Amounting to an Acquittal (DNAA) and Vietnamese Doan Thi Huong pleaded guilty to a lesser charge of causing grievous injury – the real culprit engineering the murder of Kim Jong Nam may never be brought to justice.⁴³⁵

2.6.2 PERSONA NON GRATA

The legal term *Persona non Grata* in Article 9 VCDR 1961 originates from Latin⁴³⁶ which means *person not wanted*⁴³⁷ or *undesirable man*.⁴³⁸ The declaration of *Persona non Grata* which precedes the act of expulsion⁴³⁹ is widely deemed as a defence mechanism which permits the Receiving State to expel delinquent diplomats.⁴⁴⁰ The declaration and expulsion seek to address the abuse of diplomatic immunity by certain recalcitrant members of the diplomatic mission.⁴⁴¹ The expulsion also intends to restore peace and order in society

⁴³³ Haas, B. (2017) *Are Kim Jong Nam Murder Suspects Being Framed by North Korea?* Asia, World, Top Stories, Deutsche Welle (DW), Bonn, Germany (GER) dated 28.07.2017. Source:

<https://www.dw.com/en/are-kim-jong-nam-murder-suspects-being-framed-by-n-korea/a-39876136>

⁴³⁴ (2019) *Chronology of Key Events in the Killing of Kim Jong Nam*, AP News, The Associated Press (AP), Liberty Street, New York, United States of America (USA) dated 01.04.2009. Source: <https://apnews.com/b6f3d46e53164acea19bc1bf02e420a9>. See also (2017) *Kim Jong Nam: Malaysians Stranded in North Korea Return Home*, Asia, World, BBC News, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 31.03.2017. Source: <https://www.bbc.com/news/world-asia-39451595>

⁴³⁵ Ng, E. & Talmadge, E. (2019) *Detailed & Public, Kim Jong Nam Murder May Never Be Solved*, AP News, The Associated Press (AP), Liberty Street, New York, United States of America (USA) dated 02.04.2019. Source: <https://apnews.com/f6f284cfcfb344469b8d58b7b55f4fe5>

⁴³⁶ Opdorp, D.V. (2019) *What Does It mean to be Declared Persona non Grata?* News, Top Stories, Deutsche Welle (DW), Bonn, Germany (GER) dated 06.03.2019.

Source: <https://www.dw.com/en/what-does-it-mean-to-be-declared-persona-non-grata/a-47800884>

⁴³⁷ Hawker, S. (Editor) (2011) *Colour Oxford English Dictionary, 3rd Edition*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 509

⁴³⁸ Batchelor, R. & Pountain, C. (2005) *Using Spanish: A Guide to Contemporary Usage, 2nd Edition*, Cambridge University Press, University of Cambridge, The Edinburgh Building, Cambridge, United Kingdom (UK) at page 227

⁴³⁹ Duquet, S. & Wouters, J. (2015) *Legal Duties of Diplomats Today: The Continuing Relevance of the Vienna Convention*, Working Paper No. 146, January 2015, Ku Leuven, Leuven Centre for Global Governance Studies, University of Leuven, Leuven, Belgium at page 23.

Source: https://ghum.kuleuven.be/ggs/publications/working_papers/2015/146duquetwouters

⁴⁴⁰ Witiw, E.P. (1988) *Persona non Grata: Expelling Diplomats Who Abuse Their Privileges*, NYLS Journal of International Law & Comparative Law, Volume 9, Number 2, Volume 9, Numbers 2 & 3, Article 8, New York Law School, Broadway, New York, United States of America (USA) at page 354. Source:

https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1272&context=journal_of_international_and_comparative_law

⁴⁴¹ Ahmad, N. (2020) *The Obligations of Diplomats to Respect the Laws & Regulations of the Hosting State: A Critical Overview of the International Practices*, Article, Faculty of Law & Shariah, Sultan Sharif Ali Islamic University (UNISSA), Brunei Darussalam, Multidisciplinary Digital Publishing Institute (MDPI), Basel, Switzerland at page 10. Source:

which if not executed would otherwise be chaotic.⁴⁴² *Persona non Grata* is the maximum sanction which the Receiving State is legally entitled to.⁴⁴³ In spite of being an extreme measure, remedial bilateral efforts would normally take place prior to the declaration for the purpose of preserving harmonious diplomatic relations.⁴⁴⁴ Further, the declaration and expulsion are aimed at balancing the overbearing force of diplomatic immunities in the VCDR 1961.⁴⁴⁵ The VCDR 1961 has accorded the power to declare *Persona non Grata* to the Receiving State as absolute – at anytime, anywhere without any reason or explanation at all.⁴⁴⁶ A diplomatic agent can be declared as *Persona non Grata* on several grounds such as espionage,⁴⁴⁷ intrusion of internal affairs⁴⁴⁸ or as a protest by the Receiving State against a policy of the Sending State.⁴⁴⁹ Despite the provision in Article 41 (1), expulsion of recalcitrant diplomats as *Personae non Gratae* is recurring in many instances.⁴⁵⁰ One example is in the case of the expulsion of Indonesian Ambassador to the Philippines – Leo Lopulisa: -

https://www.researchgate.net/publication/343991872_The_Obligation_of_Diplomats_to_Respect_the_Laws_and_Regulations_of_the_Hosting_State_A_Critical_Overview_of_the_International_Practices

⁴⁴² Murty, B.S. (1989) *The International Law of Diplomacy: The Diplomatic Instrument & World Public Order*, Martinus Nijhoff Publishers, New Haven Press, New Haven, Connecticut, United States of America (USA) at page 348

⁴⁴³ Paddock, R.C. (2017) *North Korean Ambassador Leaves Malaysia*, Asia Pacific, World, The New York Times, The New York Times Company, New York City, New York, United States of America (USA) dated 06.03.2017. Source:

https://www.nytimes.com/2017/03/06/world/asia/vx-north-korea-kim-jong-nam.html?_r=0. See also (1984) *Hearings Before the Sub-Committee on Security & Terrorism of the Committee on the Judiciary United States Senate, 98th Congress, Second Session, On S. 2771: A Bill to Protect the Internal Security of the United States Against International Terrorism by Making the Use of a Firearm to Commit a Felony by Foreign Diplomats in the United States a Federal Felony*, July 24th & September 21st 1984, Serial No. J-98-74, U.S. Government Printing Office, Washington D.C., United States of America (USA) at page 46, paragraph 27.

Source: <https://www.ncjrs.gov/pdffiles1/Digitization/97998NCJRS.pdf>

⁴⁴⁴ Spies, Y.K. (2019) *Global Diplomacy & International Society*, Palgrave Macmillan, Springer Nature Switzerland AG, Switzerland at page 125

⁴⁴⁵ Hare, P.W. (2016) *Making Diplomacy Work: Intelligent Innovation for the Modern World*, CQ Press, SAGE Publications Incorporated, California, United States of America (USA) at page 28

⁴⁴⁶ Bederman, D.J. (2002) *The Spirit of International Law*, The University of Georgia Press (UGA Press), University of Georgia, Athens, Georgia, United States of America (USA) at page 159

⁴⁴⁷ Bjola, C. & Kornprobst, M. (2013) *Understanding International Diplomacy*, Routledge, Oxon, United Kingdom (UK) at page 67

⁴⁴⁸ Preston, I. (2001) *A Political Chronology of Central, South & East Asia, Political Chronologies of the World, 1st Edition*, Europa Publications, Taylor & Francis Group, London, United Kingdom (UK) at page 248

⁴⁴⁹ Kleiner, J. (2016) *The Permanence of Diplomacy: Studies of US Relations with Korea, Pakistan & Afghanistan*, World Scientific Publishing Company Private Limited, Singapore (SIN) at page 41

⁴⁵⁰ Bjola, C. & Murray, S. (Editors) (2016) *Secret Diplomacy: Concepts, Contexts & Cases*, Routledge New Diplomacy Studies, Routledge, Taylor & Francis Group, Oxon, United Kingdom (UK) at page 91

2.6.2.1 THE EXPULSION OF LEO LOPULISA

Leo Lopulisa was the Indonesian Ambassador to the Philippines from July 1981 until the end 1982.⁴⁵¹ His short-lived tenure was due to his meddling with the Philippines' internal affairs.⁴⁵² In an interview with the Philippines publication *Bulletin Today* on January 1982, Leo opined that the Philippines government should withdraw its claim over Sabah for the sake of maintaining good bilateral relations with Malaysia.⁴⁵³ The Philippines Foreign Ministry was upset with the statement and deemed it as an improper interference in the Philippines internal affairs – a clear contravention of Article 41. Leo was summoned by the Foreign Ministry and after the meeting, he was declared *Persona non Grata* and expelled from the Philippines.⁴⁵⁴

Briefly, during the 15th century, Sabah (then North Borneo) was under minimal control of the Brunei Sultanate and the Sulu Sultanate.⁴⁵⁵ Sabah was later ceded by the Brunei Sultanate to the Sultanate of Sulu in 1658 as a favour for the latter's help in quelling a rebellion in Brunei.⁴⁵⁶ Later on, Sabah was leased to a British Chartered company, viz. the North Borneo Chartered Company (BNBCC) in August 1878.⁴⁵⁷ It was a Chartered Company

⁴⁵¹ (1981) *Keputusan Presiden Republik Indonesia Nomor 122/M Tahun 1981*, Presiden Republik Indonesia, Soeharto dated 04.07.1981. Source:

<http://perpustakaan.bappenas.go.id/lontar/file?file=digital/149347-%5B%20Komen%20-%5D-KEPRES%20NO.%20122-M%20TAHUN%201981.PDF>

⁴⁵² Fernandez, E.S. (2013) *The Malaysian Plot – Marcos, Sabah & the Origin of Moro Secessionism*, Social Transformation Vol. 1, No. 2, August 2013/43-78 dated 05.05.2017 at page 45.

Source: <http://journals.ateneo.edu>

⁴⁵³ (1983) *Ambassadorial Post in Manila Left Vacant*, Jakarta KOMPAS, South East Asia Report, No.1301, Foreign Broadcast Information Service (FBIS), National Technical Information Service, U.S. Department of Commerce, Springfield, United States of America (USA) dated 15.05.1983 at page 5.

Source: <http://www.dtic.mil/dtic/tr/fulltext/u2/a362842.pdf>

⁴⁵⁴ Hendrapati, M. (2014) *Legal Regime of Persona non Grata & the Namru-2 Case*, Journal of Law, Policy & Globalisation, Volume 32, 2014, International Sharing Knowledge Platform (IISTE), Academic Hosting & Event Management Solutions, New York, United States of America (USA) at page 167

Source: <https://www.iiste.org/Journals/index.php/JLPG/article/view/18765/18724>

⁴⁵⁵ Gin, O.K. (Editor) (2004) *Southeast Asia: A Historical Encyclopaedia, From Angkor Wat to East Timor*, ABC-CLIO Incorporated, Santa Barbara, California, United States of America (USA) at page 1175. See also (2011) *The Report: Sabah 2011*, Oxford Business Group (OBG), Victoria Street, London, United Kingdom (UK) at page 12. Also at Thiessen, T. (2008) *Borneo: The Bradt Travel Guide*, Bradt Travel Guides Limited, England, United Kingdom (UK) page 6. And also at Lim, R. (2008) *Federal-State Relations in Sabah, Malaysia: The Berjaya Administration, 1976-1985*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang Road, Singapore (SIN) at page 14

⁴⁵⁶ Boquet, Y. (2017) *The Philippine Archipelago*, Springer International Publishing AG, Cham, Switzerland at page 692. See also Lazo, Jr., R.S. (2006) *Philippine Governance & the 1987 Constitution*, Rex Book Store, Manila, Philippines at page 60

⁴⁵⁷ Rood, S. (2019) *The Philippines: What Everyone Needs to Know*, Oxford University Press, The University of Oxford, Oxford, United Kingdom (UK) at page 214

established by the British investors to conduct trade in the Borneo islands⁴⁵⁸ and ultimately to colonise Sabah.⁴⁵⁹ In 1962, based on historical and legal perspectives, the Philippines' President Diosdado Macapagal claimed for Sabah⁴⁶⁰ and severed diplomatic relations with Malaya to protest the formation of Malaysia which Sabah had agreed to become part of.⁴⁶¹ In spite of the protest from the Philippines and severance of diplomatic relations by Indonesia in 1963, Malaysia was legally formed in 16 September 1963.⁴⁶² However, during the 1977 ASEAN Conference in Kuala Lumpur, President Ferdinand Marcos announced the Philippines' decision to withdraw her claim for Sabah.⁴⁶³ The Indonesian government apologised to the Philippines government and took full responsibility for Leo's misconduct. On 12 January 1982, Jakarta ordered him to return and dismissed him from his post as the ambassador.⁴⁶⁴

Kang Chol's expulsion from Malaysia as *Persona non Grata* was not the first incident in the world involving recalcitrant North Korean diplomats. In 1992, two North Korean diplomats in Zimbabwe, namely Pak Su Yong and Han Dae Song were expelled after being caught by the authorities for their illegal possession of rhinoceros' horns, believed to be smuggled to North Korea via their diplomatic bags.⁴⁶⁵ Possessing, selling and/or purchasing rhino horns are illegal in Zimbabwe and worldwide as per the Convention on International

⁴⁵⁸ Thiessen, T. (2012) *Borneo: The Bradt Travel Guide*, Bradt Travel Guides Limited, England, United Kingdom (UK) at page 163

⁴⁵⁹ (2002) *Towards Asia's Sustainable Development: The Role of Social Protection*, Organisation for Economic Co-operation & Development (OECD), Paris, France (FRA) at page 72. See also Gin, O.K. (2013) *Post-War Borneo, 1945-1950: Nationalism, Empire & State-Building*, Routledge, Oxon, United Kingdom (UK) at page 77

⁴⁶⁰ Tarling, N. (2011) *Southeast Asian Regionalism: New Zealand Perspectives*, Yusof Ishak Institute of Southeast Asian Studies (ISEAS), Pasir Panjang, Singapore (SIN) at page 18

⁴⁶¹ (2005) *Regional Integration in the Asia Pacific: Issues & Prospects*, The Bob Hawke Prime Ministerial Centre at the University of South Australia, Organisation for Economic Co-operation & Development (OECD), Paris, France (FRA) at page 238

⁴⁶² (2002) *The Far East & Australasia, 34th Edition*, Europa Publications, Taylor & Francis Group, London, United Kingdom (UK) at page 765

⁴⁶³ Kadir, N. & Mansor, S. (2014) *Pengguguran Tuntutan Filipina Keatas Sabah & Gerakan Pemisahan Sabah Pada Dekad Kedua Kepimpinan Ferdinand Marcos, 1977-1980*, Jurnal Sejarah, Jurnal Jabatan Sejarah Universiti Malaya, Volume 23, No. 2, 2014, Universiti Malaya (UM), Kuala Lumpur, Malaysia (MAS) at page 140. Source: <https://ejournal.um.edu.my/index.php/SEJARAH/article/view/9301/6599>

⁴⁶⁴ Ariye, E.C. (2020) *An Appraisal of the Diplomatic Face-Off Between Nigeria & the United Kingdom in 1976*, Nnamdi Azikiwe University Journal of International Law & Jurisprudence, Volume 11, No. 1, 2020, African Journals Online (AJOL), Anambra State, Nigeria at pages 58 & 59. Source: <https://www.ajol.info/index.php/naujilj/article/view/195489>

⁴⁶⁵ (1992) *North Korean Diplomats Caught Smuggling Rhino Horn*, UPI Archives, United Press International Incorporated (UPI), Washington D.C., United States of America (USA) dated 08.01.1992. Source: <https://www.upi.com/Archives/1992/01/08/North-Korean-diplomats-caught-smuggling-rhino-horn/1952694846800/>

Trade on Endangered Species of Wild Fauna and Flora 1989 (CITES).⁴⁶⁶ Rhino horns were illegally exported to North Korea for their alleged medicinal values.⁴⁶⁷ The expulsion was the right decision by Zimbabwe since the diplomats' dealings in contraband was unbefitting of accredited diplomats' duties.⁴⁶⁸ On 3 September 2017, North Korea launched her sixth and the most powerful nuclear weapons tests in direct violation of previous UN sanctions.⁴⁶⁹ This had not only led to a new sanction imposed by the UN Security Council but also caused other countries such as Spain,⁴⁷⁰ Kuwait⁴⁷¹ and Peru⁴⁷² to declare North Korean diplomats *Personae non Gratae* and expelled them as a protest. As a matter of fact, it was reported in 1976 that a North Korean diplomat in Malaysia was expelled after being involved in smuggling goods.⁴⁷³ Evidently, the incessant abuse of diplomatic immunity (e.g. diplomatic bag) by North Korean diplomats is a perennial problem faced not by Malaysia alone but a global issue.⁴⁷⁴

⁴⁶⁶ Warinwa, F. et. al. (2020) *Fighting Wildlife Trade in Kenya*, Article, UN Chronicle, United Nations (UN), New York, United States of America (USA). Source: <https://www.un.org/en/chronicle/article/fighting-wildlife-trade-kenya>

⁴⁶⁷ Jin, C. S. (2015) *North's Officials Caught with Illegal Rhino Horns*, Politics, Korea JoongAng Daily, Seoul, Republic of Korea (ROK) dated 03.06.2015. Source: <https://koreajoongangdaily.joins.com/2015/06/03/politics/Norths-officials-caught-with-illegal-rhino-horns/3004962.html>

⁴⁶⁸ (2017) *North Korean Diplomats Smuggle Ivory, Cigarettes & Gold*, Editorials, The Maritime Executive, The Maritime Executive LLC., Fort Lauderdale, Florida, United States of America (USA) dated 25.09.2017. Source: <https://www.maritime-executive.com/editorials/north-korean-diplomats-smuggle-ivory-cigarettes-and-gold>

⁴⁶⁹ (2017) *North Korea Slapped with UN Sanctions After Nuclear Test*, Asia, World, BBC News, British Broadcasting Corporation (BBC), London, United Kingdom (UK) dated 12.09.2017. Source: <https://www.bbc.com/news/world-asia-41235157>

⁴⁷⁰ Yang, H. & Pearson, J. (2017) *Factbox: Countries Which Have Expelled North Korean Ambassadors After Nuclear Test*, Editor's Pick, Reuters, London, United Kingdom (UK) dated 19.09.2017. Source: <https://www.reuters.com/article/us-northkorea-missiles-diplomacy-factbox/factbox-countries-which-have-expelled-north-korean-ambassadors-after-nuclear-test-idUSKCN1BU0ED>

⁴⁷¹ (2017) *Kuwait Orders North Korea's Ambassador to Leave Within a Month*, World News, Reuters, London, United Kingdom (UK) dated 17.09.2017. Source: <https://www.reuters.com/article/us-kuwait-northkorea/kuwait-orders-north-koreas-ambassador-to-leave-within-a-month-idUSKCN1BS0MQ>

⁴⁷² (2017) *Peru Expels North Korean Diplomats Over Nuclear Crisis*, Nuclear Weapons, News, Al Jazeera, Al Jazeera Media Network, Doha, Qatar dated 23.12.2017. Source: <https://www.aljazeera.com/news/2017/12/peru-expels-north-korean-diplomats-nuclear-crisis-171223085005130.html>

⁴⁷³ (1976) *Scandinavia: Smuggling Diplomats*, Times Magazine, Times Incorporated, New York City, New York, United States of America (USA) dated 01.11.1976. Source: <http://content.time.com/time/subscriber/printout/0,8816,914629,00.html>.

Also at Rademeyer, J. (2017) *Diplomats & Deceit: North Korea's Criminal Activities in Africa, The Global Initiative Against Transnational Organized Crime*, September 2017, The Global Initiative Against Transnational Organized Crime (TGIATOC), Geneva, Switzerland at page 5. Source: <https://globalinitiative.net/wp-content/uploads/2017/09/TGIATOC-Diplomats-and-Deceit-DPRK-Report-1868-web.pdf>

⁴⁷⁴ Rademeyer, J. (2017) *Diplomats & Deceit: North Korea's Criminal Activities in Africa, The Global Initiative Against Transnational Organized Crime*, September 2017, The Global Initiative Against Transnational Organized Crime (TGIATOC), Geneva, Switzerland at page vi. Source: <https://globalinitiative.net/wp-content/uploads/2017/09/TGIATOC-Diplomats-and-Deceit-DPRK-Report-1868-web.pdf>

Malaysia's decision to expel Kang Chol as *Persona non Grata* was in accordance of the VCDR 1961.⁴⁷⁵ His criticism against the Malaysian government and the authorities are a clear violation of Article 41; a diplomatic tenet in the VCDR that any accredited diplomats shall abide to.⁴⁷⁶ His statements were outrageous since the other countries implicated in the murder case such as Indonesia and Vietnam did not issue any offending remarks against Malaysia.⁴⁷⁷ Kang Chol's accusations against Malaysia and her authorities persisted despite several reprimands made by the Malaysian government prior to his banishment.⁴⁷⁸ His refusal to apologise⁴⁷⁹ and to appear before the Ministry of Foreign Affairs were the penultimate acts of defiance that led to the declaration of *Persona non Grata* and his expulsion on 6 March 2017.⁴⁸⁰ By expelling Kang Chol, Malaysia is ultimately defending her sovereignty.⁴⁸¹ Moreover, Malaysia's tactful way of handling the issue had been applauded by international observers.⁴⁸² Regrettably, the North Korea's reaction on 7 March 2017 to ban the movement of Malaysian diplomats from leaving Pyongyang that is akin to a hostage situation, only aggravated the dispute.⁴⁸³ The outcome of the murder trial and the expulsion of Kang Chol as

⁴⁷⁵ (2017) *Decision to Expel Kang Chol Not Made Hurriedly*, Berita Malaysia, Astro Awani, Astro AWANI Network Sdn. Bhd., Astro All Asia Network, Astro Malaysia Holdings Sdn. Bhd., Kuala Lumpur, Malaysia (MAS) dated 05.03.2017. Source:

<https://www.astroawani.com/berita-malaysia/decision-to-expel-kang-chol-not-made-hurriedly-134493>

⁴⁷⁶ Ishan Jan, M.N. (2017) *Envoys Must Respect Local Laws*, News, New Straits Times (NST), New Straits Times (M) Berhad, Media Prima Group, Kuala Lumpur, Malaysia (MAS) dated 09.03.2017. Source: <https://www.nst.com.my/news/2017/03/218920/envoys-must-respect-local-laws>

⁴⁷⁷ Yong, T.T. (2017) *Negotiating the Diplomatic Landmines*, Opinion, Letter, The Star, Star Media Group Berhad, Petaling Jaya, Selangor, Malaysia (MAS) dated 07.03.2017, Source:

<https://www.thestar.com.my/opinion/letters/2017/03/07/negotiating-the-diplomatic-landmines>

⁴⁷⁸ (2017) *Malaysia May Kick Out North Korean Diplomats Amid Assassination Row*, North Korea, News, Radio Free Asia (RFA), Washington D.C., United States of America (USA) dated 03.03.2017. Source:

<https://www.rfa.org/english/news/korea/malaysia-diplomats-03032017155442.html>

⁴⁷⁹ (2017) *Malaysia Expels 'Rude' North Korean Ambassador Over Kim Jong Nam Assassination Row*, Diplomacy, Asia, South China Morning Post (SCMP), Hong Kong dated 05.03.2017. Source:

<https://www.scmp.com/news/asia/diplomacy/article/2076170/malaysia-expels-rude-north-korean-ambassador-over-kim-jong-nam>

⁴⁸⁰ Johnson, Q. (2017) *The Case of Kim Jong Nam & Questions of International Law*, Yale Journal of International Law, Yale University, New Haven, Connecticut, United States of America (USA) dated 17.08.2017. Source: <https://www.yjil.yale.edu/the-case-of-kim-jong-nam-and-questions-of-international-law/>

⁴⁸¹ (2017) *Malaysia Protecting Dignity in Expelling Ambassador*, World, Bangkok Post, Bangkok Post Group, Bangkok Post Public Company Limited, Bangkok, Thailand dated 06.03.2017. Source:

<https://www.bangkokpost.com/world/1209789/malaysia-protecting-dignity-in-expelling-ambassador>

⁴⁸² Han & Ho (2017) *Kim Jong Nam's Death: What It Means to Malaysia*, RSIS Commentary, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Nanyang Avenue, Singapore (SIN) at page 2. Source: <http://www.rsis.edu.sg/rsis-publication/rsis/co17067-kim-jong-nams-death-what-it-means-for-malaysia/#.WRTeGTq6Tv9>

⁴⁸³ Latiff, R. & Park, J.M. (2017) *North Korea Bars Malaysians from Leaving*, in 'Diplomatic Meltdown', Reuters, Thompson Reuters Corporation, London, United Kingdom (UK) dated 07.03.2017.

Source: <https://www.reuters.com/article/us-northkorea-malaysia-kim-idUSKBN16E0FE>

Persona non Grata showed that Malaysia handled the diplomatic dispute objectively with transparency without resorting to provocation or violence against the offending State.⁴⁸⁴

2.7 CONCLUSION

Diplomatic relations is a phenomenon that has created an opportunity for an in-depth analysis on issues influenced by the societal changes, cultural differences, continuous progression in technology (e.g. communication) and the emergence of new actors. Modern diplomacy is flexible with the objective of maintaining peaceful co-existence amongst nations. In the context of diplomatic relations, the role of the legal scholars and practitioners are to suggest innovative ideas to the stakeholders on the issues pertinent to the VCDR 1961. When the wisdom of the treaties has reached its limits, the mastery of the experts is necessary to deliver sustainable solutions.

Besides than being well-known as expert sailors and maritime merchants, the Malays are also outstanding in the realm of diplomacy. This could be seen in customary practices of past Malay kingdoms and empires in preserving their relationships with other kingdoms located within and beyond the Malay Archipelago. Their craft in sustaining harmonious diplomatic relations (*Seni Diplomasi*) is a priceless heritage that should be studied, preserved and adapted to the modern diplomatic settings. Their ingenuity (*Kebitaraan*) in governing the dynamics in international commerce was proven as the source of the Malays' political power and economic wealth especially in the Malay World (*Alam Melayu*). Hence, the lifeblood of Malay's diplomacy that was a fusion between neutrality and Islamic virtues is still relevant despite the changes in geopolitics, science and technology.

After gaining her independence on 31 August 1957, Malaysia chose to sustain close foreign relations with her former colonial masters – a temporary move to avoid economic chaos and the collapse of a budding nation. As a multicultural, multi-religious country, a diplomacy that is acceptable to all races and countries is the best policy to manage both domestic and geopolitics. Hence, Malaysia is known as the pioneer in achieving peace, freedom and *neutrality* in the Southeast Asian region. A sustainable diplomatic policy is the one that is inclusive and robust against future challenges.

⁴⁸⁴ Fifield, A. (2017) *North Korea Says Malaysia Can't Be Trusted to Investigate the Killing of Leader's Half Brother*, World, The Washington Post, Washington D.C. dated 20.02.2017.

Source: https://www.washingtonpost.com/world/north-korea-says-malaysia-cant-be-trusted-to-investigate-the-killing-of-leaders-half-brother/2017/02/20/7f0cccb4-f740-11e6-be05-1a3817ac21a5_story.html

Establishing and maintaining diplomatic relations especially with recalcitrant nations such as North Korea is a challenging task. Nevertheless, the differences in political ideologies between Malaysia and North Korea are not hampering the vigour to forge a meaningful bilateral relations. As a matter of fact, both countries are seeking a neutral path in voicing out their justification for their stand in geopolitics. Malaysia's *neutral* and non-aligned foreign policies under Tun Abdul Razak which meant a departure from the earlier pro-British/pro-Capitalism slant under Tunku Abdul Rahman, coincided with Pyongyang's ideological break out from the Socialist-Communist bloc. Whilst Malaysia intended to be friendly to all countries, North Korea pursued geopolitical independence and economic self-sustenance.

As the country that championed the cause of maintaining Southeast Asian region as the Zone of Peace, Freedom and Neutrality (ZOPFAN), Malaysia should repair the damaged relations and pursue harmonious diplomatic relations with North Korea. The assassination of Kim Jong Nam in Malaysia has temporarily halted what was once described as secret but strategic bilateral relations. The prospect of reaching an amicable solution with North Korea will not only resolve the diplomatic impasse but could also be seen as a catalyst to solve bigger problems in the Korean Peninsula (e.g. denuclearisation of North Korea). Malaysia's experience of pioneering innovative diplomacy with recalcitrant countries (e.g. China) should position Putrajaya in a constructive mode to rebuild the trust it once shared with Pyongyang.

A middle-ground approach was to address these issues in the Malaysian style – diplomatically. Tun Abdul Razak's visit to China on 28 May 1974 was reminiscent of the voyage undertaken by the Malay Melaka Sultans to the Chinese Empire during the 15th century. Similar to those royal visits, Malaysia's entourage was warmly welcomed in Beijing, signalling China's willingness in rejuvenating diplomatic relations with Malaysia. For Malaysia, it was a balancing act that demanded tactful deliberations between protecting her sovereignty and advocating others to respect her managing of internal affairs.

Hence, for as long as the mutual paranoia between North Korea and its perceived foreign aggressors exists, Pyongyang will continue manipulating its nuclear weapons as a bargaining chip during negotiations. Sanctions and isolation have proven to only embolden Kim's regime in intensifying its nuclear provocations. Thus, as highlighted by this chapter, peaceful engagement is still the best method to gradually denuclearise the *Hermit Kingdom* which will result in peace and stability in the entire region. Sanctions have terribly backfired

and in the spirit of ‘*Malaysia Boleh*’, it is time now for North Korea to sit down and talk with an old friend.

Diplomacy has been around ever since humans were able to establish a functional society and attain civilisation. Diplomatic immunity is gradually evolving in tandem with the dynamism in diplomacy. In order to remain functional and relevant, the diplomatic immunity regime needs to be realigned with universal values such as the *Rule of Law* and human rights. Diplomatic immunity which is centred around the *Functional Necessity* theory allows the diplomats a certain degree of freedom in carrying out his official duties in the Receiving State. The diplomats are ought to be provided with the necessary freedom in executing his official function while not being encumbered with irrelevant laws in the Receiving State.

Unfortunately, some diplomatic agents have blatantly abused the immunities and privileges. The diplomatic immunity has established a biased platform whereby diplomatic agents seem to be above the principle of Rule of Law. The abuse of diplomatic immunity also stems from the weakness of local legislation in enforcing the VCDR 1961 on domestic level. *Persona non Grata*, in spite of being the ultimate sanction under the VCDR, seems to have failed in deterring or reducing the recurrence of misuse of diplomatic immunity. Moreover, the immunity also caters for the diplomat’s household which has no relation to the official functions of a diplomat. Expanding the scope of the immunity to include family members of a diplomat is skewing the functionality aspect in the *Functional Necessity* theory. Thus, increasing calls for the convention are to be reviewed in order to lessen the incidents of abuse.

In addition, the scope of diplomatic immunity should be balanced with more emphasis on the functional aspect of a diplomat’s duties. However, amending the relevant provisions in the VCDR is an uphill task as it requires the consent of all State-parties as per Article 39 Vienna Convention on the Law of Treaties 1969. In hindsight, in cases whereby basic human rights are violated due to crimes committed by diplomats, the protection of human rights should precede the protection of diplomats via the diplomatic immunity. Hence, it is recommended that a restrictive interpretation on the application of inviolability amongst diplomatic agents and/or diplomatic mission is adopted.

A careful understanding of Chapter 2.4 and 2.6 shows that the VCDR 1961 has not provided any legal provisions for conflicting countries to address and resolve their diplomatic

disputes. This may indicate that diplomatic disputes could be resolved by exploring methods beyond the legal framework of the VCDR 1961. As such, alternatives to address and solve diplomatic conflicts viz. *Tracks of Diplomacy* are elaborated in the next chapter i.e. Chapter 3. *Tracks of Diplomacy* are suggested as the platform for Malaysia and North Korea to settle their issues.

