

THE JOURNAL OF DIPLOMACY AND FOREIGN RELATIONS

Volume 19 Number 1 November 2020

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The Journal of Diplomacy and Foreign Relations (JDFR)

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Enhancing the Practice of Economic Diplomacy Post-COVID-19 Pandemic

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ABSTRACT

The emergence of COVID-19 as a pandemic has caused major disruptions in international trade and investment to the world and Malaysia. As an open economy and a trading nation where trade is about 131 per cent of the GDP in 2018, Malaysia is vulnerable to external demand. Whilst acknowledging the importance of safeguarding lives during this pandemic period, it is also important to safeguard the business community and Malaysia's position as a significant player in the global value chain (GVC) and supply chains. To successfully emerge from the COVID-19 crisis, Malaysia has to adopt a bold, radical, strong and implementable multi-pronged policy approach, employing economics, political-economy and diplomacy approaches. Malaysia must start early to promote its products for exports and diversify export markets whilst looking for new FDIs and DDIs in existing and new promoted sectors. Trade promotion, investment promotion and economic diplomacy must be seen as an integral part of Malaysia's positioning as an important trade and investment powerhouse. Malaysia must enhance the role of economic diplomacy by Malaysian diplomatic missions abroad. Embassies should be given the role to not only work closely with MATRADE and MIDA offices but to also take initiatives to promote Malaysian products and services, and Malaysia as an investment destination.

Keywords: Economic diplomacy, COVID-19, trading nation, investment destination, political economy

INTRODUCTION

This article discusses the need to enhance the role of Malaysian diplomats in

exercising economic diplomacy to assist Malaysia to recover from the economic shock caused by the COVID-19 pandemic. The emergence of COVID-19 as a pandemic has caused major disruptions in international trade and investment to the world and Malaysia. As an open economy and a trading nation where trade is about 131 per cent of the GDP in 2018, Malaysia is vulnerable to external demand, hence the need to find ways to mitigate Malaysia's economic shock as a result of the pandemic. While acknowledging the importance of safeguarding lives during this pandemic period, it is also important to safeguard the business community and Malaysia's position as a significant player in the global value chain and supply chains. Malaysia cannot escape the global economic downturn resulting from the declining international trade and investment.

The preventive behaviour of individuals enforced by the national governments' preventive measures to contain the COVID-19 pandemic contribute to the sharp decline in the economies around the world. These preventive measures contribute to the sharp decline in domestic demand, tourism, business travel trade and global connectivity by air and sea in all countries. These three factors in turn cause the decline in the global trade, global production linkages, production networks, global consumption and the disruption in the supply chains.¹

Economies around the world are working towards health and economic recovery from the negative impact of the COVID-19 pandemic. This article intends to explore the economic diplomacy options for Malaysia in ensuring sustainable return to recovery and economic growth, during and after the COVID-19 pandemic.

THE CONCEPT OF ECONOMIC DIPLOMACY

Economic diplomacy encompasses a broad concept of diplomacy and economic policy that leads to the cross-utilisation of diplomacy, economics and politics. There is no standard or universal definition of "economic diplomacy". The term "economic diplomacy" influences the practice of diplomacy from two separate angles, that is the utilisation of economy and economic position to pursue a country's agenda through the practice of diplomacy; and on the flip side is the use of diplomacy by a country to pursue economic interests in or with another country.

The approach taken in the preceding paragraph is based on the various definitions offered by different scholars and practitioners of diplomacy. Economic diplomacy, according to Bayne and Woolcock, is an activity pursued by state and non-state actor, which is a broad and elastic term.² Economic diplomacy ought to be discussed from the perspectives of both diplomacy and economics. Seije Meihara, the former Foreign Minister of Japan, in his speech to the 177th Session of Japan's Diet in 2011, divides economic diplomacy approach into four pillars, namely, free trade system; securing long-term and stable supply of resources, energy and food; international promotion of infrastructure system; and promotion of Japan as tourism-oriented nation.³

In order to do justice to economic diplomacy, Bayne and Woolcock proposed to dispose some misleading stereotypes associated with the term "diplomacy." Such stereotypes include the assumption that diplomacy is only conducted by people from foreign ministries; it applies to informal negotiations and voluntary cooperation; it is not rule-based systems and legal commitments; it is elitist and it is secretive.⁴ The author would define "economic diplomacy" in the modern world as "diplomatic practices that involve representation, negotiation, communication and other means involving one state over another state or international organisation with the aim of promoting and protecting the former's economic interests."

Economic diplomacy differs from other forms of diplomacy, such as political diplomacy, as it involves all elements of diplomacy, namely, political, cultural and economy. Economic diplomacy involves the use of economy to support diplomacy and importantly, the use of diplomacy to support economy. Economic diplomacy involves both "sticks and carrots" where there will be assistance and other forms of economic initiatives and supports, and sanctions for non-compliance with certain demand or requirement imposed by the relevant countries.

One of the areas of economic diplomacy is the promotion and attraction of investment, involving both the outflow of investment and inflow of investment, which include foreign direct investment. Investment-related diplomacy may take in the liberalisation of investment or minimum protection of investment. Investors' protections include a range of important provisions: prohibition of performance requirements, minimum standards of treatment, compensation for losses in case of strife, and protection for transfers and against expropriation.

Investment-related diplomacy involves both resource-seeking and efficiency-seeking investment. Resource-seeking investment happens when a country or an investor from a country seeks to secure resources from another country such as oil and gas and minerals. Efficiency-seeking investment happens when an investor invests in a country for the purpose of seeking highly-skilled workers or to utilise a high technology. Formal diplomacies in international investment take place in the negotiation and conclusion of investment guarantee agreements (IGA) or generally known as the bilateral investment treaties (BIT) and investment chapters in various regional and bilateral preferential trade agreements (PTA) or generally known as free trade agreements (FTA).

Secondly, economic diplomacy involves the practice of diplomacy in international trade. The economic diplomacy in this field generally takes place in the traditional multilateral trade organisations such as the World Trade Organisation (WTO) or the Asia Pacific Economic Cooperation (APEC) or other multilateral organisations. Countries practise formal economic diplomacy in the WTO, with the presence of permanent representatives (or ambassadors) and economic diplomats. At the different level, countries practise formal and direct economic diplomacy in the negotiations of the FTA.

Thirdly, economic diplomacy also takes place in relation to international monetary issues, such as on the functions and roles of the World Bank and International Monetary Fund (IMF) and the Bank of International Settlement. Countries may practise diplomacy in the monetary field when they need to seek international financial assistance, to provide monetary assistance, to seek measures to protect balance of payment or to provide technical assistance to other countries. A country may also need to practise financial diplomacy when it seeks to impose financial sanctions or when it seeks to break an economic sanction.

Economic diplomacy may also take place when a country seeks to promote or to attract technologies and to provide or attract financial aids and technical assistance. This relates to the earlier categories including diplomacy in investment, trade and monetary fields. Finally, the practice of economic diplomacy may also take place in the promotion of a country as a destination hub.

Several major economies in the world, such as China, the European Union (EU), Japan and the United States of America (USA) adopted economic

diplomacy as part of their diplomacy practice. Japan is one of the earliest economic powers that utilises economic diplomacy. It adopted economic diplomacy after its defeat in the Second World War mainly due to the lack of voice and influence in political and other traditional areas of diplomacy. Nobusuke Kishi's government adopted economic diplomacy which was implemented mainly in Southeast Asia through economic assistance such as improving infrastructure and investment environments.⁵

MALAYSIA'S POST PANDEMIC RECOVERY AND ECONOMIC DIPLOMACY

As an open economy relying on international trade and foreign direct investments (FDI), Malaysia falls within the group of countries that the World Bank and ADB predict are most severely affected by the pandemic, i.e. open economies in terms of trade and FDI, significant exporters of services and host countries experiencing the outbreak.⁶ According to the latest International Monetary Fund (IMF) World Economic Outlook June 2020, global economy is projected to contract at -4.9 per cent in 2020, 1.9 percentage points below the April 2020 World Economic Outlook (WEO) forecast.⁷ The IMF states that the COVID-19 pandemic has had a more negative impact on activity in the first half of 2020 than anticipated, and the recovery is projected to be more gradual than previously forecasted. In 2021 global growth is projected at 5.4 per cent. The impact on select regional economies is shown in Table 1 below.

Table 1 Projected Real GDP Growth 2020 and 2021, IMF (and World Bank where indicated)

Economy	Real GDP Growth 2020 (April 2020)	Real GDP Growth 2021 (April 2020)	Revised Real GDP Growth (June 2020)	Revised Real GDP Growth (June 2021)
China	1.2	9.2	1.0	8.2
Japan	-5.2	3	-5.8	2.4
Korea	-1.2	3.4	-2.1	3
Malaysia	-1.7	9	-3.8	6.3
Singapore	-3.5	3	NA	NA
Thailand	-6.7	6.1	-7.7	5.0

Source: IMF World Economic Outlook April 2020, https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEO/WORLD, last accessed 24 June 2020; and World Economic Outlook, June 2020 Update.

Malaysia, as an open economy, is cognisant to the declining world trade and foreign direct investment. The WTO estimates world merchandise trade to shrink between -12.9 per cent and -31.9 per cent in 2020 (2019: -0.1 per cent) due to the COVID-19 pandemic. Trade is only anticipated to rebound around 21.3 per cent to 24 per cent in 2021.⁸ The COVID-19 results in a projected fall in global FDI by more than 40 per cent in 2020, and the developing Asia faces a 45 per cent decline in FDI in the same year.⁹ As a result of COVID-19, more than two-thirds of multinational investors in developing countries are reporting disruptions in supply chains, declines in revenues, and falls in production. The World Bank's survey on the impact of the COVID-19 pandemic projects a worsening investment scenario in the next coming months.¹⁰

As one of the globalised economies in the world, Malaysia's domestic and foreign investments post-COVID-19 depend on the development around the Southeast Asian region and the world at large. As an open and export-oriented economy, Malaysia will be experiencing a tough challenge from post-COVID-19. Various international development organisations issued early reports on the economic impacts of COVID-19, and the reports tend to agree that COVID-19 will have a severe impact on the global economy.

The World Bank predicts that the most affected economies are those with open economies in terms of trade and FDI, significant exporters of services (which Malaysia is not) and host countries experiencing the outbreak most severely, which can only be ascertained at the end of the outbreak.¹¹ The Asian Development Bank (ADB) states that the magnitude of the economic impact will depend on how the outbreak evolves.¹²

Both the ADB and the World Bank agree that¹³ the COVID-19 outbreak affects the economies through several factors including the sharp declines in the domestic demand, lower tourism and business travel trade and production linkages and production networks, supply disruption and health effects. These factors contribute to the disruption of international production networks, and globalised consumption has resulted in the supply and demand shocks in all countries. In addition, the World Bank is of the view that preventive behaviour of individuals and the transmission control policies of governments also contribute to the disruption in demand and supply.¹⁴ These actions first hit the Chinese economy by disrupting supply and freezing demand, and other partner economies by limiting flows of trade and tourists.¹⁵

In another report, the World Bank states that the ongoing COVID-19 outbreak has led to major negative spill-overs in Malaysia's domestic economy. They include electrical and electronics (E&E) manufacturing sector, which is closely integrated into China-centric production networks and the cyclical slowdown in the global technology cycle, and in the tourism and retail industries due to lower tourist arrivals mainly from China, which represents 11 per cent of total tourist arrivals in 2018.¹⁶ Further, supply disruptions contribute to the negative effects on the commodities, such as the sharp contraction in liquefied natural gas exports and agriculture sectors.¹⁷

Two, there is an increasing shortage of labour across many sectors due to quarantine, lockdown and movement controls. Such temporary closure of production facilities resulted in a sharp slowdown in production, disruptions in global value chains, decline in confidence and lower consumption demands. The COVID-19 outbreak is expected to have a significant negative impact on employment and incomes, especially on the informal sectors which account for more than 40 per cent of the labour force that is not covered by employment-based social protection, and workers in retail, manufacturing, tourism, and other hard-hit sectors.¹⁸ Further to the World Bank reports, the author also predicts a higher level of protectionism, disruptions to trade over certain products such as food and medical supplies, and the increasing level of protectionism and anti-competitive behaviour.

The ongoing COVID-19 outbreak has led to major negative impacts on the domestic economy, including broad-based disruption of economic activities.¹⁹ The GDP growth projection for 2020 has been revised sharply downwards, from 4.5 per cent to -0.1 per cent, reflecting the severity of the economic impact of the COVID-19 outbreak. The ADB projects that in the worst-case scenario, COVID-19 will knock 1.5 per cent of Malaysia's GDP.²⁰ Bank Negara Malaysia predicts that the economic growth will be between -2.0 per cent and +0.5 per cent in 2020.²¹ The same report also predicts that the exports of goods and services will be slowing down at the rate of -8.7 per cent compared to -0.8 per cent in 2019. This is mainly due to the weak global demand, supply chain disruption and lower foreign tourist receipts. As a result, private investment will be lower, only contributing -1.6 per cent of the real GDP growth compared to +0.3 per cent in 2019. The weaker private investment is due to weak demand and business sentiments.

The World Bank predicts that growth in China is projected to decline to 2.3 per cent in the baseline and 0.1 per cent in the lower-case scenario in 2020, from 6.1 per cent in 2019. At the same time, growth in the rest of the developing EAP region is projected to slow to 1.3 per cent in the baseline and to negative 2.8 per cent in the lower-case scenario in 2020, from an estimated 4.7 per cent in 2019.

Further, Malaysia and the region will be facing a higher level of competition for FDIs. UNCTAD estimates future decline in global FDI in 2020 caused by COVID-19 will range from 30-40 per cent.²² Highly impacted sectors cover basic materials, consumer cyclicals (including airlines, hotels, restaurants, and leisure), energy, and industrials (including automotive and electronics).²³ The hardest-hit sectors are the energy and basic materials industries (-208% for energy, with the additional shock caused by the recent drop in oil prices), airlines (-116%) and the automotive industry (-47%).²⁴

The world's largest multinational corporations (MNCs) in the automotive, airlines and tourism sectors have reduced their 2020 earnings estimates by 44 per cent, 42 per cent and 21 per cent, respectively, on average.²⁵ Major hotel companies are expecting to reduce 70 per cent of hourly hotel employees, and airlines will cut their employees' pay by 25-50 per cent.²⁶ The World Bank also predicts that COVID-19 will indirectly reduce FDI via reduced economic activity, mainly in cyclical industries such as energy, basic materials, retail, garments and entertainment.

The COVID-19 pandemic further contributes to Malaysia's already challenging exports and FDI scene. Malaysia's export of goods and services had already been experiencing a steady decline since 2019 and is trending downward in 2020. Malaysia's export amounted to RM986.4 billion in 2019, a decline of 1.7 per cent over 2018. Malaysia's export of products and services is expected to decline by 13.6 per cent in 2020 compared to 1.1 per cent decline recorded in 2019.²⁷

Malaysia's FDI inflow has also been seeing some challenges, with some downward trend in the recent years. Comparatively, Malaysia is facing intense competition from ASEAN peers. COVID-19 brought further risks to Malaysia's investment scene. It enhances Malaysia's FDI risk exposures due to the high rate of infections in Malaysia's trading partners and FDI sources. To add to the

COVID-19 caused economic downturn, economies all over the world are also concerned with protectionist measures.

FDI inflows into Malaysia have fallen in recent years from a high of USD12.1 billion in 2011 to USD8.1 billion in 2018, recording falls in five out of seven years over that period. This represents a fall of around 30 per cent since 2011, compared with a fall in global FDI levels over the same period of around 9 per cent and an increase in FDI into developing countries of around 8 per cent (UNCTAD, 2019). In Ringgit terms, the Department of Statistics of Malaysia (DOSM) shows that in 2018, FDI in Malaysia recorded RM32.6 billion against RM40.4 billion in the previous year.²⁸ The FDI flows have been in continuous downward trend since 2017 due to lower investments in the mining and quarrying sector. In addition, DOSM states that out of the total inflows of RM32.6 billion, 44.9 per cent was from the Asian region, while 33.7 per cent was from the European region. Hong Kong, China remained as the highest contributor from the Asian region. Services sector continued as the major sector, particularly Financial & insurance/ takaful and Wholesale & retail trade activities. This was followed by Manufacturing and Construction sectors.

DOSM statistic does not reveal much about investments in high technologies such as in the biotechnology, medical products or devices or in the new technologies relating to Fourth Industrial Revolution (4IR). In 2016, DOSM predicted the digital economy would contribute to about 20 per cent of the economy in 2020 (the estimate was made before the COVID-19) compared to 17.8 per cent in 2017. The classification of digital economy in Malaysia is dominated by the ICT manufacturing and telecommunication sector.

It is important to ensure that all approved investments are realised. The United Overseas Bank (UOB) Malaysia, for example, projected that approved investments normally take about one to three years to be realised. UOB Malaysia projected some challenges for the realisation of the approved investments in 2019, such as global policy landscape (for example, the US-China relations, UK-EU Brexit), policy clarity, government spending and economic fundamental.²⁹ In the same publication, without COVID-19, UOB did not predict the global economy to go into recession.

Despite the approved investment figures by MIDA, according to the Bank Negara Malaysia (BNM) Report 2019, Malaysia's realised foreign investment

has slowed substantially between 2011-2018.³⁰ BNM states that, compared to the strong average growth of 14.4 per cent between 2011 and 2013, realised foreign investment growth has declined to an average of 1.2 per cent between 2014 and 2018, resulting in a smaller share of foreign affiliates investment to nominal private investment of 27 per cent in 2018. BNM attributes the slower growth mainly in the mining and manufacturing sectors, and the relatively weak contribution of services investment by foreign affiliates. These latest developments could affect transfers of technical, management and marketing know-how, and organisational skills which provide more high-skilled jobs for Malaysian graduates. Further, BNM report shows that domestic investment growth in Malaysia has moderated from an average of 13.5 per cent between 2011 and 2013 to 6.0 per cent between 2014 and 2018. The reduced domestic investments may be attributed to the slower investment growth in the mining, agriculture and construction sectors.

There were four factors showing reduction in the quality of investments in Malaysia.³¹ Firstly, BNM is of the view that innovation creation and development of forward and backward linkages, which are crucial for spill-over effects, are lower in Malaysia compared to its regional peers. Secondly, BNM is also concerned with the economic complexity gains in Malaysia which have been slower than most regional economies. Economic complexity is important as studies have documented how higher economic complexity has a positive effect on growth and levels of income. Thirdly, there has been insufficient number of high-skilled jobs created to absorb fresh graduates entering the labour force. Fourthly, the higher share of investments concentrated in broad property suggests that investment in Malaysia has not transitioned towards more productive assets (e.g. research and development, ICT equipment and computer software), which are crucial in improving labour productivity.

Compared to its regional peers, since 2015, Figure 1 shows that Thailand and Vietnam have been overtaking Malaysia in attracting FDIs into their countries. The increase of FDI into Thailand and Vietnam could be contributed to the rapid liberalisation of the investment climates in these competitor countries and changes in competitor country's investment incentives regimes. According to the OEC, Thailand is the 23rd largest export economy in the world, four positions below Malaysia, and the 32nd most complex economy, seven positions below Malaysia. On the other hand, Vietnam is the 21st largest exporter and

the 83rd most complex economy. Be that as it may, these countries have a better investment promotion and investment retention initiatives compared to Malaysia.

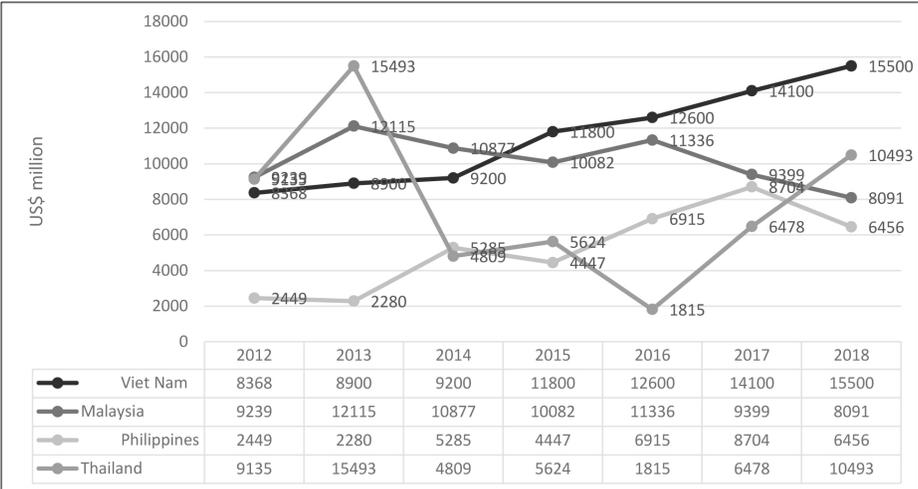


Figure 1: FDI into selected ASEAN Member States, 2000-2018

Source: UNCTAD Statistics, 2019

In order to enhance Malaysia’s competitiveness as an FDI destination, national measures that restrict FDIs would need to be addressed. Malaysia’s FDI restrictions, at 0.25, according to the OECD, remain above the non-OECD average. Meanwhile, Vietnam has reduced its FDI restrictions, where the index dropped from 0.302 in 2010 to 0.12 in 2017, which is below the non-OECD average of 0.126, and further liberalisation could be one of the factors that contribute to increased FDI inflow into that country.

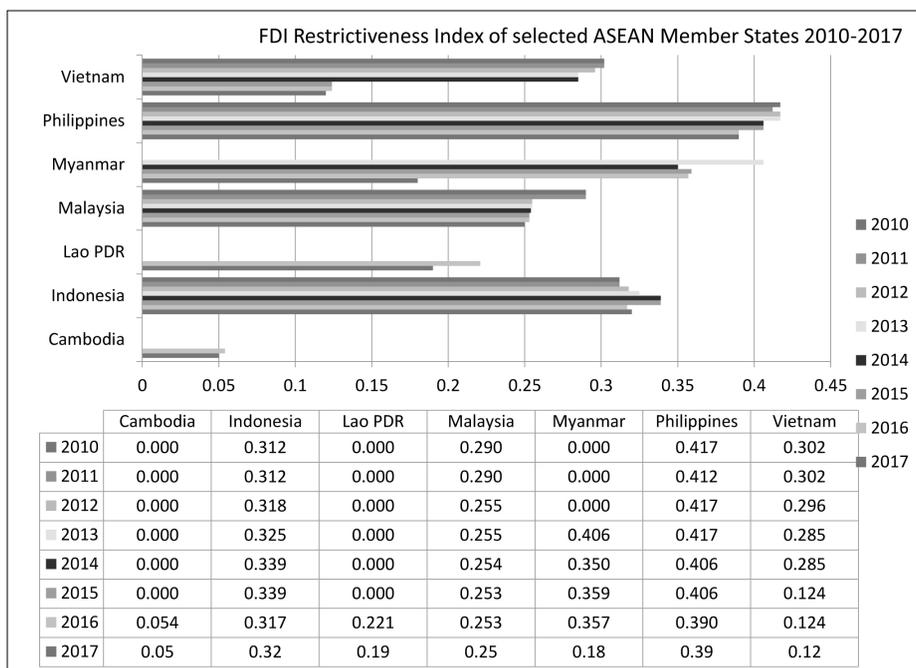


Figure 2: FDI Restrictiveness Index of Select ASEAN Member States, 2010-2017

Source: OECD FDI Restrictiveness Index

Malaysia's outward FDI (OFDI) has also been decreasing in the same period. This means more Malaysian investors abroad, mainly the government linked companies (GLCs), are reducing their investments abroad and bringing their capital and profits home. There could be several explanations on this downward trend, including uncertainties over global growth trends, low international oil and commodity prices, and a reduction of OFDI in the services sector.³²

Malaysia also cannot discount the China factor. China (including Hong Kong) is one of the largest investors in Malaysia and many businesses in Malaysia are linked with China through the global and regional value chain. According to the OECD, output contractions in China are being felt around the world, reflecting the key and rising role China has in global supply chains, travel and commodity markets.³³ The OECD predicts that economic prospects for China have been revised markedly, with growth slipping below 5 per cent this year,

before recovering to over 6 per cent in 2021, as output returns gradually to the levels projected before the outbreak.

In terms of food security, Malaysia also needs to take stock of the COVID-19 situation on investment in agriculture, agroindustry, agriculture logistics and value chain. During the SARS epidemic, countries in the East and Southeast Asia like China, Taiwan, Singapore and Vietnam showed resilience because they have enough food reserves and boast of vibrant value chains linking the domestic and international markets. However, COVID-19 is different as countries are locked down with much restriction on the movement of goods and cargo between territories. In the overall ranking of the Food Security Index 2019, Malaysia is ranked 28th in the world, the second highest in ASEAN after Singapore, which ranked first in the world.³⁴ Based on the ranking, Malaysia's main concern should be on food availability to sustain its more than 30 million population.

Post-COVID-19, food security is no longer the same as before. During the COVID-19 crisis, some countries imposed restrictions on the export of important food items. For example, Vietnam imposed restriction on exports of rice, which is a staple food for Malaysia and the rest of Southeast Asia.³⁵ Thailand, through the notification to the World Trade Organisation (WTO), banned the export of eggs.³⁶

At some stage, there was a media report that rice supply in Malaysia would only last 2.5 months³⁷ which was later denied by the Minister of Agriculture as inaccurate.³⁸ In addition to rice, there are other essential foods like vegetables, poultry and fish that must be continuously produced for Malaysians. Hence, farmers must receive continuous support and continue working to ensure there will be no shortage of food items in Malaysians' household. In the Malaysian stimulus package announced on 28 March 2020, the Government of Malaysia allocated RM1 billion to the Food Security Fund. The amount is in addition to the RM100 million fund allocated for the development and infrastructure of food storage and distribution and crop integration programme, and a smaller amount of RM64.4 million for the local Farmers' Association to develop short-term "agro-food" projects.³⁹

Processed food such as bread will have to continue given the reliance of many Malaysian families on bread as the second staple food after rice. There

is also the challenge of responsible consumption due to panic buying which causes shortage of food and uncontrollable increase in food prices. With food supply comes the question of logistics and storage. Here, there is a need for a technology to ensure proper food supply management within the value chain to ensure harvest are properly managed, and produce are properly stored and delivered to every nook and cranny of the country, in urban, sub-urban and rural areas. If not properly managed, the current COVID-19 episode could lead to incidents of Ebola in Africa, where production was disrupted due to road blockages, limited access to inputs like seeds and fertilisers and acute labour shortage, and delay in transportation system causing produce not able to reach the intended consumers.⁴⁰

In addition to meeting and addressing the above challenges, Malaysia has to pay attention to the development of investment policies made by its regional peers in response to the COVID-19. Some of the policies are more liberalising, whilst some countries are rather restrictive. According to UNCTAD, China, India, Indonesia and Vietnam, among others, imposed new measures to attract, to promote or to facilitate investments⁴¹ whilst some countries, mostly in the European Union, imposed a higher level of barriers like increased screening. For example, in the region, China introduced a set of measures to promote and facilitate foreign investment. On 18 February 2020, through the "Circular Responding to Novel Coronavirus" China provides for paperless management of foreign investment records and issuance for foreign companies failing to execute contracts during the COVID-19 crisis. In addition, on 9 March 2020, China introduced a measure to enhance government assistance to foreign-invested projects and enterprises in resuming business and production post-COVID-19. Among others, the measure introduces simplified approval procedures, optimising tax exemptions for imported equipment and protection of rights of investors.⁴²

Further, China, India, Indonesia and Vietnam adopted new policy measures to further encourage entry of foreign investments. China allowed Chinese natural persons to establish foreign-funded enterprises with foreign investors directly; India opened coal mining sectors to non-mining companies; Indonesia introduced measures to allow foreign banks to transform into Indonesian banks directly and set out tax incentives for business investing in specific business and provinces; whilst Vietnam increased foreign ownership ceiling for domestic airlines.⁴³

The G20 countries also agreed to lay a strong foundation for the economic recovery post-COVID-19. In the G20 Trade and Investment Ministerial statement dated 30 March 2020, the G20 trade and investment ministers are committed towards seeking to mitigate the impact of COVID-19 on international trade and investment. The ministers are committed *"to work together to deliver a free, fair, nondiscriminatory, transparent, predictable and stable trade and investment environment, and to keep our markets open."*⁴⁴

The G20 ministers also commit themselves to ensure the continued flow of vital medical supplies and equipment, critical agricultural products, and other essential goods and services across borders and to take measures to facilitate trade in those essential goods. Further, the ministers agree that emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent and temporary, and that they do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules. They also commit to ensure smooth and continued operation of logistics networks and to explore ways for logistics networks via air, sea and land freight to remain open.

Nevertheless, behind a crisis, there is an opportunity. The widespread restrictions on the movement of people pose new trends in working and life habits such as working from home, online learning and broader adoption of online meetings. The changing trend contributes to the upward trend in trade in digital technology, communication technology and e-commerce related services.

Malaysia needs to be able to capitalise on these opportunities to enhance its economic recovery by encouraging more international trade and FDI into the country. The efforts to enhance exports and to promote Malaysia as an FDI destination is a collective one, without any exclusivity to any particular organisation. Malaysia must start early to promote Malaysia's products for exports, diversify export markets whilst looking for new FDIs in existing and new promoted sectors. Trade promotion, investment promotion and economic diplomacy must be seen as an integral part of Malaysia's positioning as important trade and investment powerhouse. Diplomatic missions under the Ministry of Foreign Affairs should also be roped in to support trade and investment promotions in locations where the Ministry of International Trade and Industry (MITI) agencies are not directly represented.

Several regional peers are already taking aggressive steps towards promoting economic recovery. For example, Singapore has signed several agreements with Brunei, Chile and New Zealand to promote open trade, free flow of logistics and enhancement in digital trade. Malaysia could also be looking at taking similar steps. In terms of international trade policy, apart from being a member of the WTO, ASEAN and APEC, Malaysia also signed seven bilateral FTAs and seven regional FTAs through ASEAN. Malaysia is actively negotiating several other FTAs, and is encouraged to sign and ratify FTAs to attract more trade and investments into Malaysia.

In investment promotion and facilitation, the Malaysian Investment Development Authority (MIDA) has been granted an additional budget under the PENJANA to attract more investments into Malaysia. MIDA is also given the task to attract investors who would like to relocate their investments and to diversify their supply chains. MIDA has been focussing on attracting investments in high value-added, technology intensive and knowledge-based economy into the country. Among new growth areas demarcated by Malaysia are technologies associated with the IR4.0 such as big data, cloud computing, Internet of Things (IoT) and artificial intelligence (AI).

In trade promotion, the Malaysia External Trade Development Corporation (MATRADE) may identify key sectors to invigorate exports including market diversification. MATRADE may categorise them within the domestic supply chains and provide assistance to the exporters to generate value. Most obvious is to promote essential sectors i.e. medical devices and food sectors, whilst continue working on sectors that are already generating exports (E&E, Chemical, pre-packaged food, etc). In diversifying the market, Malaysia should look closer to home. Malaysia should encourage more intra-ASEAN trade whilst seeking more intra-ASEAN investments. Some ASEAN member states can be linked to the Malaysian value chain and supply chains.

CONCLUSION

The COVID-19 pandemic came unexpectedly and has caused the global economy to suffer a sudden downturn. This incident is totally unprecedented and requires a strong policy decision to overcome the challenges. The challenges are two-folds, i.e. COVID-caused and COVID-pushed, meaning COVID-19 exacerbates an already existing problem. One of the main policy decisions is to employ and practise economic diplomacy to gain the maximum benefits from

the opportunities posed by the changes in the economic activities and interests post-pandemic. The economic diplomacy has to employ "whole government" approach.

To ride out the COVID-19 shock, Malaysia must undertake a major and bold structural and sectoral reform in its FDI policy. Further, Malaysia must conduct aggressive investment promotions in attracting high quality investments by focussing on certain sectors that could revive Malaysia's economic growth. The investment priority sectors must include areas that could assist Malaysia to overcome any potential economic, health care system, emergency preparedness and food security in the future. Hence, it is proposed for Malaysia to undertake the following policy approaches:

(a) To re-look at the investment promotion efforts

MIDA is currently the main agency looking into the investment policies in Malaysia. However, there are other agencies looking into a similar angle, e.g. MATRADE (OFDI), corridor development authorities and the investment agencies at the states' level. It is imperative that there is a higher level of coordination for investment promotion which should be vested with a single agency, and for it to facilitate investment implementation with the corridors and the states.

(b) To enhance efforts to increase investment retention

Priority policy actions include retaining existing investment by providing targeted "investor aftercare initiatives" to key FDI sectors and their lead local suppliers through higher level and coordinated linkages, in order to preserve supply chains. Investment Promotion Agencies like MIDA should play an important role in the investment retention and investment facilitation. The Federal agencies must coordinate well with the corridors and states' agencies. For example, InvestKorea and InvestIndia have set up daily web-based updates on COVID-19 cases and policy responses related to foreign investors.

(c) To introduce conflict management system through investor grievance mechanism (IGM)

The IGM essentially provides minimum institutional infrastructure that enables governments to identify, track and manage grievances arising between investors and public agencies as early as possible. Reforms are undertaken to enable a designated Lead Agency within the Government to manage and implement

IGM. IGM ensures that the Government responds to investor grievances in a responsive manner and in accordance with the country's international investment agreements, laws and regulations. Many countries have started to establish their own versions of dispute prevention and general aftercare systems, which provide valuable good practice elements for designing IGM.

(d) To revisit investment fiscal and non-fiscal incentive schemes

The incentive schemes should be more targeted towards achieving high quality investments in Malaysia. Cost benefit analysis should also be done to ascertain that the selected sectors are capable of contributing to economic development and transformation. The incentives need to be targeted, automatic and properly managed. This includes the need to design a transparent and reliable application process and a monitoring and evaluation system.

(e) To encourage higher private sector investment

Malaysia needs to enhance liberalisation and access. Currently, there are still high level of restrictions for FDI in the services sector. Further, to increase private domestic investment, the Government needs to look after the SMEs, which provide most jobs. Supporting their survival and operations requires financial support and regulatory flexibilities. It is time for Malaysia to re-set the policies on SMEs and private investments like facilitating companies' strategic re-orientation and re-purposing towards production of in-demand goods and services, and relaxing regulatory and administrative requirements and fees. In ensuring survival of the private sectors, the Government needs to liberalise the economy by re-setting the role of government linked companies (GLC). GLCs should be the driver of certain sectors but must not crowd out private investments.

(f) To invest in ex-ante emergency preparedness

According to the UNESCAP, the COVID-19 crisis has shown the need to invest in ex-ante health emergency preparedness.⁴⁵ As shown by various reports, at early stage of the crisis Malaysia and most countries face shortages in essential medical supplies, such as protective clothing, surgical masks, thermometers and ventilators. Not only does Malaysia need to invest in soft infrastructure like human resources and technology development to be less dependent on third countries but to also consider regional cooperation in health risks.

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Malaysia's Withdrawal from the International Criminal Court and Constitutional Monarchy: A Critical Review

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ABSTRACT

The Rome Statute of the International Criminal Court (ICC) adopted in 1998 led to the establishment of the ICC four years later. Malaysia decided to be part of the ICC in April 2019 but withdrew about a month later in May 2019. Was Malaysia's retraction legally justifiable, or did it have anything to do with political nuances? This article will investigate the related tenets of the Federal Constitution (FC) and the Rome Statute, specifically the role of the Yang di-Pertuan Agong (YDPA) as the Supreme Commander of the Malaysian Armed Forces, and those dealing with the jurisdiction of the ICC. The objective of this article is to examine the reason(s) for Malaysia's retraction from the Rome Statute from the purview of the FC. It also identifies whether the scope of the command responsibility in the Rome Statute affects the role of the YDPA. This article finds that the prerogative of the YDPA as enshrined in the FC will not be ruined via Malaysia becoming a party to the ICC.

Keywords: Command responsibility, complementarity, federal constitution, international criminal court, supreme commander of the armed forces

INTRODUCTION

During the first quarter of 2019, there were news reports on certain reservations made by the public towards former Foreign Minister Datuk Saifuddin Abdullah's act of signing the Instrument of Accession to the Rome Statute on 4 March 2019 (Mohamed 2019; Azura Abas 2019). The said act of signing indirectly indicated that Malaysia, after the necessary acts of enactment, will soon become party to the International Criminal Court (ICC) created by the said Rome Statute.

Reservations that called for a cautious approach by Malaysia in becoming a state party to the Rome Statute not only came from the general public but also from Malaysian leaders such as Datuk Seri Anwar Ibrahim and Rulers including Sultan Ibrahim Sultan Iskandar of Johor (Jia 2019). Anwar Ibrahim (Member of Parliament for Port Dickson) said that controversial issues including ratification of an international convention must be debated in Parliament to produce a consensus prior to approval by the Cabinet. This indicates that Members were perturbed that Datuk Saifuddin had signed the Instrument of Accession to the Rome Statute even before informing the public through the Parliament.

Regardless of what was said by the public and some of our Malaysian leaders and Rulers, the said act of signing by a Malaysian Cabinet Member with foreign affairs prerogatives did not in any way contravene the legal principle of our Federal Constitution (FC). As Abdul Ghafur rightly said, the act of the Foreign Minister in signing the instrument of accession was completely in accordance with the tenets of the FC, since treaty-making power in Malaysia is given to the Cabinet Minister by virtue of Articles 39 and 80(1) that are read together harmoniously with that of Article 74 of the FC (Hamid 2019, 313). Furthermore, this article will also indicate that the prerogative of the Yang di-Pertuan Agong (YDPA) as enshrined in the FC will not be ruined via Malaysia becoming a party to the ICC.

This article examines the main contention on Malaysia becoming a party to the Rome Statute and to understand if it was due to the Statute's inconsistency with the FC relating to the Monarchy. This is because many Malaysians were against the signing of the Instrument of Accession to the Rome Statute. Large

sections of the public believe that becoming a party to the ICC would encroach the immunity and privileges of our YDPA as the Supreme Commander of the Armed Forces. Former Prime Minister Tun Dr. Mahathir Mohamad said that when the Government decided to withdraw from the ICC, Malaysians were confused and overwhelmed with the idea that becoming a party to the ICC will go against the main tenets of the FC, especially the encroachment of the power of our Monarchy (Michael 1984; Strait Times Singapore 2019).

NORMATIVE DEVELOPMENT OF THE INTERNATIONAL CRIMINAL JURISDICTION

The Rome Statute was finally adopted in 1998, after a long process of more than nine years by the international community at the United Nations (UN), to ensure that the perpetrators of the most heinous and serious crimes in the world are subjected to trial and be punishable for international crimes (Arsanjani 1999).

At the time, it was deliberated at the UN via the Legal Committee or Sixth Committee as well as the Ad Hoc Committee, which was created to deliberate on the creation of a permanent International Court to try international crimes. In addition, there was the creation of a PrepCom to deliberate further the substantive and the procedural elements of the crimes to be inserted as serious crimes of international concern.

After lengthy deliberations for almost three years, members of the UN Sixth Committee decided that the matter be brought to Rome for further deliberation and decision among Ministers and Ambassadors: to discuss whether they were serious enough to create a permanent international criminal court.

There were many crimes including those that had already achieved the status of *jus cogens* (pre-emptory norms) and created an *obligatio erga omnes* (universal jurisdiction) to the states to try those committing these crimes, like that of slavery and piracy; terrorism was also included. Yet, these crimes were said to not be serious enough, and thus did not receive the overwhelming support by the international community to be included as crimes to be tried by the yet to be established Court. The Arab states, for example, did not agree with the precepts of the Western countries on the definition of what amounted to an act of terrorism.

There was also one important crime i.e. crime of waging a war against another state that received overwhelming support. However, since it was not supported by the United States, it resulted in that crime being further negotiated in the wee hours before it was decided in Rome to be included as one of the four crimes, though not properly defined. The other three crimes were: crimes against humanity (crimes perpetrated against human regardless of race, religion or gender); crimes of genocide (crimes of murdering a particular group or race); and war crimes (crimes perpetrated during the course of a war – *ius in bello*). These crimes had received overwhelming support from the international community and as a result they achieved the status of a customary international law.

Rome Statute and Domestic Courts: Complementarity

The Rome Statute gives primacy to the jurisdiction of the Domestic Courts. The ICC will only come in once the national courts do not take jurisdiction on the four crimes listed under the Statute. The ICC is authorised to exercise its jurisdiction whenever the State is unwilling or unable to genuinely carry out the investigation, or prosecution of the State has decided not to prosecute the person culpable for such crime; and such decision was a result of the unwillingness or inability of the State to prosecute it genuinely; and lastly, the case is of sufficient gravity to justify the exercise of jurisdiction solely by the ICC (Clark 2009b).

As such this face-saving measure i.e. the complementarity principle as stipulated from the reading of Article 17 of the Rome Statute (Issues of admissibility) will enable our courts to first exercise jurisdiction on our citizens who commit the crime under the ambit of the Rome Statute; hence avoiding the contention that by becoming a party to the Statute, Malaysia will lose its sovereignty.

Exercise of Jurisdiction Under the Rome Statute

I will be looking at both Articles 12 and 13 of the Rome Statute with regard to the provisions on when the ICC can be triggered to exercise jurisdiction on those committing the Crimes under Article 5. Currently the ICC can only exercise jurisdiction towards a state party to the Rome Statute for the crimes listed under Article 5 (Clark 2009a).

Yet, since the crime of aggression was not able to be defined and accepted by the international community, it can be said that the ICC, at the current stage,

can only actively exercise jurisdiction over those individuals, including leaders who have committed crimes against humanity, genocide and war crimes.

In addition, the most important precondition of Article 12, other than those state parties that automatically accept the jurisdiction of the ICC on the current three crimes, is that a non-state party can also accept jurisdiction of the ICC if it opts to accept via the nationality principle or that of the territorial principle.

Article 13 of the Rome Statute provides three modes to trigger the jurisdiction of the ICC. It may be done via a State Party referring the matter that a crime under Article 5 is being committed; that the matter is being referred to the Prosecutor by the UNSC via Chapter VII of the UN Charter i.e. matters that threaten international peace and security; and lastly, by the Prosecutor himself initiating an investigation *proprio motu* (by himself) on the basis of the crimes under Article 5 are being committed (Clark 2009a).

The complementarity concept is envisaged in Article 17 of the Rome Statute, whereby the ICC would not exercise its jurisdiction unless the case that is being investigated or prosecuted by the State concerned is done unwillingly or not genuinely carried out (Heller 2006).

Criminal and Command Responsibility

The jurisdiction of the ICC is mainly on issues of international criminal law that lead to the liability of an individual as opposed to a State which is under the jurisdiction of the International Court of Justice. Article 25(3) denotes when an individual is criminally liable for the crimes under the active jurisdiction of the ICC. Among the *actus reus* (the act) element for liability of the Article 5 Crimes are the commission of such crimes; the ordering, soliciting or inducing of such crimes; facilitating the commission of said crimes; intentionally contributing to the commission or attempted commission of such crimes, the individual directly and publicly inciting others to commit genocide; and attempting to commit such crimes by taking action that commences their execution.

An amended version of the Rome Statute has taken cognisance of the current development on deliberations with regard to the inclusion of the crime of aggression and its definition, whereby it states that an individual is criminally responsible for a crime of aggression if that person is in a position effectively

to exercise control over or to direct the political or military of a State (Clark 2009b).

Article 27 denotes that leaders such as the Head of State or Head of Government do not have immunity when there are commission of crimes under Article 5 of the Rome Statute. In fact, it states that such official standing should also not be used to mitigate or commit a lesser punishment. In addition, in the case of Malaysia as rightly pointed by Lim Wei Jiet, even our rulers do not possess absolute immunity which was a result of the amendments made to our FC in 1993 (Lim Wei Jiet 2019). This amendment allows proceedings to be instituted against the YDPA and the Rulers via the Special Courts. Thus, the concern of Malaysians that the issue of immunity of the YDPA will be absolved should Malaysia become a state party to the Rome Statute is not well founded.

Under the Genocide Convention, the provision of Article IV connotes that persons committing genocide, whether they are constitutionally responsible rulers, public officials or private individuals, are not immune from the criminal jurisdiction. Malaysia did not even make such reservation to that Convention when it acceded to the Genocide Convention on 20 December 1994 (Gaeta 2009). Thus, it is quite uncertain the fear about the immunity of the YDPA with regard to being a party to the ICC, when Malaysia had accepted the duty to prosecute or extradite persons committing genocide, including that of our Rulers! (Gaeta 2009).

Article 28 of the Rome Statute further extends the notion of the individual criminal responsibility as per Article 25. Article 28 is with regard to the responsibility of the commanders and other superiors with the intention to somehow mitigate punishment towards the subordinates especially during the commission of the *jus ad bellum* (conduct of initiating a war) and *jus in bello* (conduct during the war itself). Bear in mind that the said Article is divided into two parts. Part A is on the military commander, and that it imposes towards the military commander who has effective command and control over his officers to be responsible for any commission or omission of his subordinates when he has the knowledge of such commission of crimes by his subordinate. Thus, instead of following the Yamashita Standard of military command responsibility, the ICC adheres to the Medina Standard of military command responsibility: that a person should know what his forces are doing; and not just he ought or should have known like in the Yamashita case (Fairman 1946). Part B is about the

superior other than military personnel and denotes the same principle as in Part A, where a superior who knew or according to the circumstance ought to know, did not take any step to stop the commission of such crimes committed by his subordinates under his effective authority and control. In addition, the superior must take any retributive measure towards the subordinates who commit the said crime. This shows that a leader, whether he is a military commander or a civilian, needs to fulfil the element of being in effective authority and control in order to be culpable. In the case of the YDPA, we need to look at Part A of Article 28 since the issue at hand is with regard to the YDPA being the supreme military commander and is responsible for any crimes committed by his armed forces in which he has effective command and control over.

THE FEDERAL CONSTITUTION OF MALAYSIA AND THE ROME STATUTE

This section compares the relevant provisions of the Malaysian FC with that of the Rome Statute, to seek the answer whether the concerns of Malaysians that led to the withdrawal of Malaysia from the Rome Statute were well founded, since the Rome Statute was said to be encroaching the privilege and immunities of the YDPA.

Constitutional Monarchy in Malaysia

In accordance with Article 32 of the FC, the YDPA is the Head of State of Malaysia; and takes precedence over all persons. He is elected amongst the nine hereditary rulers in Malaysia, for a period of not more than five years, in line with Article 32(3) and Third Schedule of the FC. By virtue of the term Constitutional Monarchy, it also meant that the YDPA shall not extend his powers beyond what is provided in the Constitution. As provided via Article 4 of the FC, the Constitution is the supreme law of Malaysia and nothing shall be inconsistent with the FC; that includes the authority and power of the YDPA as stipulated in the FC itself.

There are many provisions in the FC and elsewhere in the Federal Laws that detail out the powers of the YDPA, among which is that of Article 150(1) that gives the YDPA the authority to proclaim emergency; Article 66 that instils the importance of his royal assent before a Bill can become a law; the appointment of high post officers such as Judges (Article 122B) and Senators (Article 45(1)); the Supreme Commander of the Armed Force (Article 41); the power of pardon

(Article 42); and most importantly, the YDPA acts as the Head of Islam in Federal Territories, Malacca, Penang, Sabah and Sarawak.

Chapter 1 of Part IV of the FC, from Articles 32 to 37, reserves the position of the YDPA as the Supreme Head of Malaysia; while Articles 39 to 42 in Chapter 3 codifies the Executive Authority. This refers to one of the three important branches in the Government, and the YDPA being vested with such Executive Power. Chapter 1 of Part IV of the FC talks in general about how the YDPA and the Deputy YDPA become the Supreme and the Deputy Supreme Head of the Federation respectively, as well as the disabilities of the YDPA once he is appointed as the YDPA.

Although Article 39 spells out that the Executive Authority is vested with the YDPA, such authority or power can be exercisable either by the YDPA or the Ministers, and other Persons whom the Legislative Branch decides. There is also the emphasis that the YDPA's authority is restricted as provided for via the Federal Laws, as well as that of the Second Schedule (with regard to citizenship). One such example, as can be seen in the *PP v Koh Wah Kuan* case, is the power vested with the YDPA via Federal Laws that is in the detention of a child at the YDPA's pleasure, pursuant to Section 97(2) of the 2001 Child Act.

Discretionary Powers

As per Article 40(1), that division is well written – that the YDPA in exercising his role under the FC shall act via the advice of the Cabinet; or shall act via his discretionary powers (except as otherwise provided). The second part of the latter provision is in Article 40(2), in which the YDPA has the discretionary power (a) to appoint the Prime Minister; (b) to withhold consent on the dissolution of Parliament; (c) to request the convening of the Conference of Rulers Meeting on matters solely based on privileges, position, honour and dignitaries of their Highness; and lastly on other matters specified via the FC. Though these three Article 40(2) authorise the YDPA with the so-called discretionary power, yet they are not that absolute especially with regard to (a) and (b).

Article 43 deals with the appointment of the Prime Minister and the Cabinet that will be advising the YDPA as the Supreme Head of the Executive. It is clear that as per Article 40(2)(a), the YDPA can, via his own discretionary power, appoint the Prime Minister, yet as detailed in Article 43(2)(a), that

discretionary power is linked to the limitation that such appointment must first meet the criteria that the one chosen as the Prime Minister is a member of the House of Representatives; and has the confidence of the majority. The YDPA cannot simply use his discretionary power to appoint anyone he likes, without taking into account these two important requirements, as can be seen also in the *Stephen Kalong Ningkan v Tun Abang Haji Openg and Tawi Sli* case.

As can be seen above, what I have been deliberating has more to do with the distinct categories of power as envisaged in the FC i.e. that of Discretionary and Non-Discretionary. As Professor Shad Faruqi mentioned, 'Most of the Constitutional Powers of the King are not personal prerogative but exercisable under Article 40(1) and 40(1A) on the advice of the Prime Minister...the YDPA performs two categories of functions: non-discretionary functions exercised on advice and a small number of critical discretionary functions'.

Supreme Commander of the Armed Forces

In accordance with Article 41 of the FC, the YDPA is the Supreme Commander of the Malaysian Armed Forces, However, it is important to also look at the interrelated Article 137 of the FC, notably, Clause 1. The said Article states that though the Armed Forces Council shall be responsible under the General Authority of the YDPA for command, discipline and administration among others, it excludes that of the operational use of the Armed Forces.

By looking at the case of *Armed Forces Council, Malaysia & Anor v Major Fadzil bin Arshad* [2012] MLJ 313, one can depict that the majority of judgements from Judge Zaleha and Judge Linton, as well as the dissenting judgement of Judge Hishamudin in the case, is tailored to the idea that though by *Section 9 of the Armed Forces Act 1972*, a military officer can be dismissed or be put into retirement by the YDPA, such authority is only to assent the decision of the Armed Forces Council; hence the YDPA, though the Supreme Commander of the Malaysian Armed Forces, the power conferred is not a discretionary one.

This indicates that though the Armed Forces Council is generally responsible under the authority of the YDPA, the YDPA does not have such authority over the Council when it comes to official and operational matters. As Tun Mohamed Suffian rightly mentioned, by virtue of this Article, the YDPA does not really order the forces to do whatever he pleases, as decided in Major

Fadzil's case. Thus, when it comes to a matter like waging a war, or commanding the military to commit heinous crimes of international concerns, the YDPA does not have such commanding and controlling power over the Armed Forces.

Furthermore, the provision of Article 41 does not explicitly provide for the declaration of war to be in the hands of the YDPA. This is converse to that of the powers of the absolute monarchy like Emperor Hirohito of Japan, whose power to declare war was imbued in the Meiji Constitution (Agency n.d.).

ACCESSION AND RETRACTION FROM THE ROME STATUTE

The most probable answer as to why Malaysia did not sign and ratify the said Rome Statute when it was adopted in 1998 was like many other states' behaviour and contention towards the said Statute i.e. to adopt a 'wait and see' approach. In addition, back then there was lack of practitioners capable of understanding the intrinsic value of Malaysia being a party to the Statute.

In fact, our leaders during that time was unable to stomach the idea that the initial drafted definition of crime of aggression would also include the responsibility of our YDPA to be tried should Malaysia wage a war against another state. Thus, the YDPA may be culpable to be tried should Malaysia fulfil the elements of crime of aggression and attack another nation. Yet, this rhetorical approach does not connote well with realism in Malaysia. This is so since Malaysia at present is not even capable of initiating a war against another country. Furthermore, with budgetary constraints as well as Malaysia's interests to pursue disputes through conciliation and peaceful means via bilateral, regional (which includes the ASEAN Way) and multilateral platforms, Malaysia would never be subjugated for the crime of aggression.

Another element to consider why only in 2019, and not before, was that Malaysian leaders at that time were a bit reluctant to accept and follow rules and regulations that were determined by majority of the western states. What more when these western states were the ones that, through their delicate and diplomatic manoeuvring, went to war against another, like the invasion on Iraq. Thus, due to this contention, Malaysian leaders thought that the ICC would only be used to try those leaders from developing states such as Robert Mugabe of Zimbabwe and Omer Bashir of Sudan, who were close friends of the Malaysian leaders, whilst leaders of western countries such as George Bush and

Tony Blair were being exempted, despite having initiated a heinous crime by attacking another sovereign State – Iraq.

One of the most important anomalies in the Statute is that of Crimes of Aggression. As its definition has yet to achieve consensus as to be one of the crimes to be tried under the ICC jurisdiction, the signing to accede would not have affected the YDPA in any way and jeopardise Malaysia's sovereignty. Furthermore, by being a party to the Rome Statute, it would not affect any amendments to our FC. As such, the accession to the Rome Statute would not have greater implications than that on the FC.

Through the deliberations on our FC and the related provisions of the Rome Statute, we find that though the YDPA is the Supreme Commander of the Armed Forces, they do not connote that the YDPA is effectively in command of our Military. Only Heads of State who are actively and effectively in command of the military forces may be culpable for the crime of aggression. A deliberation on the interviews done with Constitutional Professor Shad Salem Faruqi (Shad Faruqi) of University of Malaya, and Law and Politics Lecturer Ismail Badiuzzaman (Ismail) of MARA University of Technology provides more insight into answering the issues relating to Malaysia's retraction from the Rome Statute.

Malaysia's Retraction from the Rome Statute: Any Justification?

From both the interviews done, it indicates that both interviewees agreed that the reason why Malaysia retracted from the Rome Statute was mainly due to the realpolitik intention of certain leaders. In fact, there was no real justification that the YDPA's authority will be subdued and that he will be culpable for the four crimes under the jurisdiction of the ICC should Malaysia commit such crimes. In the exact words of Shad Faruqi, 'it is more of a political posturing by some'.

Ismail, for example, mentioned that even Tun Dr. Mahathir Mohamad had agreed that the reason why Malaysia retracted from being a state party to the Rome Statute was mainly due to the political confusion created by certain leaders.

Regarding the authority of the YDPA, Article 38(4) of the FC provides that 'No law directly affecting the privileges, position, honours or dignities of the

Rulers shall be passed without the consent of the Conference of Rulers (CoR). On this point too, as pointed out by Lim Wei Jiet, the laws to be passed via Article 38(4) cannot include that of international treaties such as the Rome Statute (Lim Wei Jet 2019).

Shad Faruqi mentioned that the FC requires consultation with the CoR only in areas such as the appointment of judges, etc., but not on matters such as signing an international instrument. What more, the Rome Statute, if having any effects, would only affect the YDPA and not the Rulers. Thus, as in the *Phang Chin Hock v PP* case, there is no requirement for the consent of the CoR.

As Malaysia is a nation that is subject to dualist rather than monist in its application of international law, it has to first enact laws and inform the legislative body as such, before the Rome Statute as well as other international legal instruments can be absorbed into the Malaysian legal system. The same tendency was used when Malaysia became party to the Genocide Convention, Chemical Warfare Convention and that of the Rights of the Child (Malaysia 2013). It is not simply that once Malaysia ratifies the Rome Statute and become a state party to such Statute, will the provisions of the Statute be automatically applied to Malaysia. No, Malaysia still needs to enact a Malaysian Act, possibly a Malaysian Rome Statute Act in order to give applicability of such ruling in Malaysia. In fact, cases like *Mohamad Ezam v Ketua Polis Negara* [2002] 4 CLJ 309 exemplified how our Court decided outrightly that international human rights instruments, though accepted as Universal, are merely statement of principles and devoid of any obligatory character to Malaysia since they are not incorporated in our domestic legislation.

In addition, such provision of the Rome Statute that has a huge impact on the YDPA will be that of Article 25(3bis) of the Rome Statute, with regard to the control of the Heads of State on the military forces in the commissioning of the crime of aggression. Yet, this is not the case since the YDPA does not in any way effectively command and control the Armed Forces of Malaysia, for him to instruct them to commit war. In addition, for the other crimes as per Article 28, the YDPA needs to effectively command and control the forces that commit these crimes in order to be criminally responsible.

The contention that the accession to the Rome Statute will carry burden to Malaysia's protection of the Malays and the Islamic religion is also not well

founded. In fact, Shad Faruqi argued that such fears are merely motivated by politics not law, emotions and not reasons, and are totally bereft of any logical reasoning. Malaysians also have nothing to worry, since the country has been peaceful and that their leaders have never taken part in the perfidies of genocide, crimes against humanity, war crimes and the crime of aggression. In addition, within the ASEAN region itself, Malaysia has among the lowest military expenditure, since it put more emphasis on settling its disputes via peaceful means (Adelaida 2018) .

The YDPA, like Queen Elizabeth II of the United Kingdom, reigns but does not rule. Thus, the YDPA cannot be held legally responsible for whatever crimes committed by the government under his name, because as mentioned in the *Teh Cheng Poh v Public Prosecutor* case, the YDPA exercises his power with reference to the collective opinion or satisfaction of the members of the Cabinet.

Inconsistency Between the Rome Statute and the Federal Constitution

The ICC was never intended to replace the role of the Courts in Malaysia. Via the principle of Complementarity as stipulated in Article 17 of the Rome Statute, the ICC will only come into picture when the State is unwilling or unable to try those committing the four crimes under the ICC Jurisdiction.

In fact, I have been maintaining that there is no inconsistency between the Rome Statute and the FC when it comes to the issue of command responsibility. Article 41, which grants the YDPA the Supreme Commandership of the Malaysian Armed Forces, must be read with other provisions such as Articles 40 and 137, which connote that the YDPA is in actual fact a Constitutional Monarchy that does not have the authority to effectively command and order a crime against another state. The related Articles in the Rome Statute with regard to the culpability of the Head of State for the commissioning of crimes under the jurisdiction of the ICC are that of Articles 25(3bis) and 28: the Articles stipulate that the person will only be responsible if he has effective command and control, or directed the political or military action of a state in the case of the crime of aggression. However, this is not in the case of the YDPA. The Armed Forces, in operational matters, is under the control of the Armed Forces Council as well as the Ministers. Thus, it is them who will be legally responsible for the declaration of a war and conduct of any crimes.

Effect of the ICC on Command Responsibility, and Accountability of the YDPA

Some Malaysians argued that by virtue of Article 27 of the Rome Statute, it would mean that the YDPA will be dragged to the ICC. This contention is not valid because in the first place, Article 27 is about the irrelevance of official capacity. It simply means that regardless of who an individual is, whether Head of State, Head of Government or Minister, he will never be left with impunity for the international crime committed. This is unlike during the Cold War Era, where the commission of heinous crimes were left with impunity leading to no check and balance on their commissioning. Idi Amin of Uganda is a clear example of a Head of State commissioning crimes against humanity and genocide who escaped impunity.

If we read Article 27, it is clearly about the throwing away of immunity if a person commits the four crimes under the jurisdiction of the ICC, regardless of what his official capacity is. This again brings to the contention that many Malaysians misunderstood the provisions in the Rome Statute since they did not thoroughly read all the related Articles. We also need to look at all related provisions in the Rome Statute harmoniously. As rightly pointed out by Shad Faruqi, whoever commits crimes under the jurisdiction of the ICC will not be allowed to be hidden by the veneer of national sovereignty.

In addition, via Major Fadzil bin Arshad's case as aforementioned, the Court interpreted that the Council, when making decision, needed only the normal assent of the YDPA, and not that of consent. Thus, by this contention, the YDPA does not in actual fact command and control the Armed Forces. By virtue of Article 25(3) of the Rome Statute with regard to the crime of aggression, it only applies to those in a position to effectively exercise control over, or to direct the military action of a State.

The YDPA, unlike Emperor Hirohito who was once the absolute imperial authority of Japan, does not in any way have absolute power. He is a Constitutional Monarch and is under the purview of the Constitution. In addition, the YDPA, via the FC, only has discretionary powers via those roles as envisaged in Article 40(2) a, b and c. The YDPA does not have discretionary powers on all other matters including that of effectively controlling and ordering the Armed Forces to do what he desires. In line with the provision of Articles 40(1) and (1A) of

the FC, the YDPA only acts after receiving the advice of the Cabinet. This is further reiterated in the *N Madhavan Nair v Government of Malaysia* case. It is said that the YDPA is a Constitutional Monarch who at all times will have to seek the advice of the Cabinet. The YDPA only serves as the formal conduit for decisions taken by the Cabinet.

In fact, Shad Faruqi mentioned that by virtue of Article 39 of the FC, there is a distinction between a person who is vested with authority and a person who exercises such authority; the former relates to the YDPA, whilst the latter is performed by the Prime Minister or his Cabinet.

Thus, it is contended here that there is no validity for the fear that the YDPA's authority and powers will be encroached because in the first place, the YDPA is just a Constitutional Monarchy, having only discretionary powers on three main issues as envisaged in Article 40(2) a, b and c of the FC. What more, the YDPA is unlike an absolute monarch that Japan once had, who was capable of effectively controlling and ordering the Imperial Armed Forces.

CONCLUSION AND RECOMMENDATIONS

The contention that some Malaysians had led to the retraction from being a state party to the ICC in 2019 due to the inclusion of the crime of aggression under the active jurisdiction of the ICC cannot be sustained. This is so as provided via the said Amendments to the Rome Statute on the inclusion of the crime of aggression: it would only affect those state parties agreeing to become party to the said Amendments. Malaysia only acceded to the original Rome Statute; and should Malaysia also adopt the stance to include the crime of aggression via the ratification on the Amended Provisions, then Malaysia can still place a declaration that it would not be liable for the said crime. Thus, the contention that since the YDPA is the Supreme Commander of the Armed Forces through Article 41 of the FC, and that he can command and control the Malaysian Armed Forces to go to war, and as such will be criminally responsible for such act under the jurisdiction of the ICC, can be qualified.

In addition, Malaysian's fear of their leader being liable for the crime of aggression cannot be comprehended, since the YDPA does not have effective command and control over the Armed Forces. In addition, Annex II of Res.6 on Article 8 bis (crime of aggression) mentioned that the most important elements of crime is that the perpetrator of such an act of aggression must be in a position

to effectively exercise control over or to direct the political or military action of the State. The YDPA does not have such control!

Though Malaysia had acceded to the Rome Statute, it withdrew within the span of a month due to the fear that Malaysians had on its implication to the sovereignty of the YDPA. Malaysians should not be afraid to be part of the Rome Statute simply due to the fear that it would encroach the rights of the Malays and that of the Sovereignty of the YDPA. This fear, as can be seen from this article, is also substantiated by the opinions of the two interviewees, which attest that it is more of a politically motivated one rather than a true national interest consideration.

From the foregoing, the fear that Malaysia had, leading to the retraction from being a state party to the Rome Statute, is not well founded. Instead, it is more of a result of not having a thorough reading of both the FC and the Rome Statute of the ICC. Upon comprehensive reading, one will note that:

- The ICC will only have jurisdiction on four crimes i.e. Crimes against Humanity, Genocide, War Crimes and Crimes of Aggression.
- The Crime of Aggression or *jus ad bellum* though is defined and included under the active jurisdiction of the ICC, it will at present only involve those state parties agreeing to the amendment provisions of the Rome Statute and does not make any declaration of exemption from the jurisdiction of the ICC.
- The ICC will only encroach into a nation criminal jurisdiction, if a State is unwilling to try those committing the crimes, or is unable to because the state is not legally or well equipped to try those persons committing the said crimes.
- The definition of those leaders to be tried are those who effectively command and control the military. In the case of Malaysia, the YDPA neither commands nor controls our Armed Forces, what more to do it effectively. In fact, in reality the YDPA acts all of the time with the advice of the Prime Minister and his Cabinet members.

Accordingly, Shad Faruqi recommended that Malaysia should not have pulled back from being a party to the Rome Statute, and if we had retracted, we

should instead increase our efforts to again become a party to the Rome Statute; as to indicate our fidelity to human rights that subscribe to the international justice, as oppose to the mass murderers and the persons accused of the four heinous crimes of international concern. It must be noted that despite the withdrawal from the Rome Statute, the ICC's jurisdiction can be triggered via the authority of the UNSC in order to maintain peace and security as envisaged in Chapter VII of the UN Charter, or via Ad Hoc Tribunals like that of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Former Yugoslavia (ICTFY).

Thus, due to the existence of realpolitik consideration, Malaysia could not be a state party to the Rome Statute. The country should also consider the approach taken by the Philippines, by incorporating most of the provisions of the Rome Statute into the domestic laws, in order to try those committing international crimes.

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The Impact of the Dengist Reforms on China-ASEAN Relations, 1978-1989

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ABSTRACT

Deng Xiaoping's *Four Modernisations* focused on strengthening four critical areas of the Chinese economy: Agriculture, Industry, Defence, and Science and Technology (in short, AIDS). The Elder Statesman's political/economic/foreign policy strategy contained three key elements: (1) ideologically, to break away from the communist straight-jacketed thinking of the Maoist era which culminated in the disastrous Cultural Revolution (1963-1966); (2) economically, to modernise China through reform-oriented policies in AIDS; and (3) politically, to formulate a foreign policy that will ensure a regional environment in Asia/Southeast Asia that is friendly to China and which will support a stronger economic engagement between China and Southeast Asia. In short, Chinese foreign policy between 1978 and 1989 aimed to create a peaceful external environment that will facilitate the Beijing regime's concentration on internal economic reform. This article argues that the major overhaul of China's economy under Deng, his disavowal of support for regional communist movements, his positive view of ASEAN's growing independence and neutrality vis-à-vis the big powers, and his desire to strengthen economic engagement with the regional entity – has put China-ASEAN interactions on a positive trajectory despite growing power asymmetries between a rising China

and Southeast Asia. This article will therefore examine the political, economic and strategic impact of China's economic statecraft between 1978-1989, as manifested by Deng's Four Modernisations, on China-ASEAN relations.

Keywords: Deng Xiaoping, four modernisations, triangular strategy, economic statecraft, China-ASEAN relations

INTRODUCTION: LAYING THE FOUNDATION FOR THE FOUR MODERNISATIONS

Deng's multiple experience in the party, bureaucracy and army even before Mao Zedong's death on 9 September 1976 enabled him to chart the trajectory of China's ideological, political, economic and social development internally, and its conduct of foreign relations externally. He had to reorganise the central levers of power to ensure that the Party and the Government worked in tandem to undertake and move forward with the Four Modernisations. He had to sufficiently prepare the domestic framework before addressing the external framework of China's political economy. This meant removing ideologues and party functionaries closely aligned with Mao, and replacing them with leaders and technocrats who support Deng's post-revolutionary approach to radical economic and social transformation. Indeed, for Deng, the four cardinal principles, which involved upholding (1) the socialist path, (2) democratic dictatorship, (3) leadership of the Communist Party of China (CPC), and (4) Mao Zedong Thought and Marxism-Leninism, were to provide the correct ideological, political economic foundation to take China forward for the next two to three decades. Retrospectively, it needs to be said that "The Four Modernisations" concept was already introduced by Premier Cho En Lai in 1964. China's leadership, albeit under Mao, was already aware that the country's economy had to be structurally transformed to facilitate modernisation of the key sectors: agriculture, industry, defence, and science and technology. Following Mao's death, the way was open for a fresh, radical approach to move the country out of the "command economy" and towards a "market economy". In this effort, Deng with his deideologised and pragmatic approach proved to be the right man at the right time to open China to the outside world. He was particularly sensitive to the impressive performance of more open economies surrounding China: Japan, and the newly industrialised economies ((NIEs) of South Korea, Taiwan, Hong Kong and Singapore. All these entities have undergone major economic transformations, and what was even more striking

for Deng, three of the four rising economies were composed mainly of Chinese people – Taiwan, Hong Kong and Singapore.¹

In his effort to steer forward major economic reforms, Deng wanted to ensure there was no major ideological conflict with the basic tenets of Marxism. He therefore invented the concept of “Socialism with Chinese Characteristics” to provide the necessary ideological and practical flexibility to move away from Mao’s orthodox centrally-planned economy and towards a market economy. This doctrine, in retrospect, can be compared to Soviet Leader Josef Stalin’s effort to harmonise classical Marxism with the requirements of Soviet communism. It was clearly an attempt to formulate a new theory of national communism to suit the changing political and economic conditions in Russia in the post-Leninist era. In China, the adaptation of Marxism-Leninism under Deng was symbolised by the concept of “Socialism with Chinese Characteristics”. Deng insisted that China was still following the socialist path of development but that certain modifications to communist orthodoxy were being impelled by the changing national, regional and global environments. He was admitting that China’s closed-door policy of the Maoist era was a failure as it was unable to unleash the productive forces of Socialism. Thus, departing from failed approaches and practices required courage, political will and new thinking about politics, economy and international relations. Deng Xiaoping was fast learning from communist failures resulting from centralised control of the economy. As aptly observed by Garnaut, “The Stalinist systems of central planning, built around unwieldy state enterprises, did not deliver sustained growth in total factor productivity anywhere in the communist world... From the 1960s the communist states came to recognize the inadequacy of the system. These days the reasons for failure are less important than the universal empirical reality of failure”.²

Deng was fully cognizant of the role of foreign investment in national economic development. Under Socialism, there can also be a market economy. China was lacking both in management techniques and foreign technology. Indeed, pursuing classical Marxism in the vastly changed era of international political economy will have the effect of degrading the noble principles of Marxism and Socialism. This ideological re-orientation, which began in the 1970s, was an integral part of Deng’s strategy for salvaging Marxism in China through the implementation of national communism but without necessarily

following the dictates of the Stalinist model of "Socialism in One Country". Instructively, the Sino-Soviet ideological rift which began in the 1960s was also triggered by the differing national approaches to domestic and international communism.

CHINA'S INTERNATIONAL STRATEGY IN TRIANGULAR RELATIONS

Deng was fully aware that an international environment characterised by tension and suspicion among the major powers was counter-productive to peace, development and stability particularly in the context of modernising China. But the strained relations with the Soviet Union needed repair following the open ideological rift between the two communist nations by the early 1960s. The Treaty of Friendship, Alliance and Mutual Assistance signed by China and the Soviet Union on 14 February 1950 had already become a nullity although its official lease expired only on 16 February 1979. For Sino-Soviet normalisation, Deng insisted on Moscow meeting three conditions: (1) Soviet withdrawal from Afghanistan which Moscow invaded in 1979, (2) removal of Soviet troops from Mongolia and along the Sino-Soviet border, and (3) termination of Soviet support for Vietnam's invasion and occupation of Cambodia. Instructively, non-renewal of the 1950 treaty permitted China to attack Vietnam, a Soviet ally which invaded Cambodia in 1978. Thus, while both the communist powers (China and the Soviet Union) were reform-oriented in the 1980s, Deng's economic statecraft decidedly avoided the pitfalls inherent in Gorbachev's policies of economic *perestroika* together with political *glasnost* (economic reform and political openness). Deng opted for the former but not the latter of the Soviet leader's twin strategies of reform. Political democratization in an economically backward China could spell doom for the entire country besides undermining the leadership of the CPC. Deng still wanted the CPC to be the engine and leading force of economic reform and modernisation.

In pursuit of Deng's reform agenda, China could strengthen political/economic cooperation with the Soviet Union while setting aside ideological differences. Just as Khrushchev began the de-Stalinization of the Soviet Union in 1956, Deng began the de-Maoisation of China two decades later, in 1976. Both leaders were decapitating communist orthodoxy for different reasons. Khrushchev wanted peaceful coexistence between the two major nuclear powers, one leading the capitalist camp (United States), and the other the communist camp (Soviet Union). Deng, however began to dismantle Maoist

ideology for largely economic reasons: China was badly in need of a major economic breakthrough in order to abandon the straitjacketed socialism of the past which shackled the economy and to embark on modernisation with significant inputs of western capital and technology.

Deng's economic statecraft clearly pivoted on altering the triangular relations between China and the Soviet Union on the one hand, and China and the United States on the other. With the Soviet Union, Deng was more interested in ameliorating political/security relations, but with the United States his eye was focused on normalisation to advance his Four Modernisations. The focus was clearly more economic and less security-oriented. Thus, compared to mending relations with the Soviet Union, Deng was prepared to go much further with the United States to achieve his economic reform agenda. Deng was fully cognizant of the strengths inherent in western science, capital and technology and was keen to coopt these resources for China's long-term development. During his visit to Washington, D.C. in January 1979, Deng reportedly said to his associates, "As we look back, we find that all of those countries that were with the United States have been rich, whereas all of those against the United States have remained poor. We shall be with the United States".³

Issuing from the 1979 Washington visit were a series of bilateral agreements pertaining to science, technology, trade and cultural exchange. Since early 1979, the United States and China have initiated hundreds of joint research projects and cooperative programmes under the Agreement on Cooperation in Science and Technology, the largest bilateral programme. In re-orienting political and economic relations with the United States, Deng was equally aware that the CPC's role as the leading force of socialism had to manage without undermining its own credibility. The party's dominant role in the economy, which Deng realised was counter-productive to economic reform in the post-Mao era, had to be gradually phased out to make way for market-oriented economic management. Both the political and economic transitions had to occur in a rather seamless manner to ensure the least possible disruption in China's transformation. There was a need to coopt the intelligentsia into the reform agenda without necessarily and openly sidelining the political forces linked to the Maoist revolution of 1949. Deng's economic statecraft attempted to seek the middle ground as far as possible in effecting the transformation. One analyst noted that "Deng's bold reversals and reforms were carried out with

a large measure of conservatism, too. Under his watch, changes in the economy were monitored closely by the Party and intellectuals drafted to support the reform".⁴

Externally, the Sino-American rapprochement had to fit into the internal reform agenda under Deng's Four Modernisations. Successful management of the Triangular Relationship (China-Soviet Union-United States) would yield spinoffs in regional environments such as Southeast Asia where China as a regional power possesses direct political, economic and security interests. It is therefore relevant to examine how Deng's economic statecraft has impacted China's relations with the ASEAN states representing the institutionalised power configuration in Southeast Asia since 1967.

DENG'S REGIONAL POLITICAL STRATEGY BEHIND ECONOMIC STATECRAFT

Deng's foreign policy toward Southeast Asia in the context of executing his Four Modernisations in China's domestic development required the creation of a regional environment that was conducive to his reformist agenda. With respect to China's approach to ASEAN, Deng's strategy involved the following elements:-

(1) Assuage ASEAN's concerns vis-à-vis the threat posed by Soviet and Vietnamese expansionism in Southeast Asia, especially after Hanoi's invasion and occupation of Cambodia in 1978. China and ASEAN were on the same page with respect to Vietnam's invasion and occupation of Cambodia. For Beijing, such demonstration of Vietnamese military power was not acceptable given that there has been a long tradition of hostility and mutual suspicion between these two nations. The Cambodian issue could well have spurred the pace of China-U.S. normalisation thus underscoring the nexus between triangular relations (China-Soviet Union-United States) and regional relations (China-ASEAN). It also strengthened the ascendancy of Deng Xiaoping internally as Beijing felt threatened by the Moscow-Hanoi axis in the wake of the Cambodian invasion. As observed by Ross, China-U.S. normalisation coincided with Deng's political ascendancy and Deng's personal conception of Chinese interests in the context of Soviet foreign policy, particularly developments in Soviet-Vietnamese cooperation over Cambodia.⁵

As for ASEAN, Hanoi's conduct clearly violated a cardinal principle of the regional entity's charter (Treaty of Amity and Cooperation or TAC signed in Bali, Indonesia at the First ASEAN Summit on 24 February 1976). The ASEAN Charter for the signatories was a vital document in building and strengthening regional stability, security and development. The reformist Deng paid close attention to ASEAN's founding principles under the Bangkok Declaration in 1967, and the Bali Treaty that established the ASEAN Charter in 1976. Essentially, this indigenously-designed framework of regional cooperation advocates respect for sovereignty and independence, non-interference in internal affairs, avoidance of confrontational diplomacy, and dialogue to manage conflict. Although Communist Vietnam was not yet a member of ASEAN until 1995, its invasion of Cambodia sent danger signals to anti-Communist Southeast Asia in the context of the TAC principles. As such, ASEAN was prepared to collaborate with China by internationalising this issue with the aim of reversing Hanoi's occupation of Cambodia. In this matter, there was a visible degree of strategic convergence between China and ASEAN. The Vietnamese occupation of Cambodia created the opportunity for China to improve its political and economic relations in Southeast Asia.⁶ For ASEAN, the military exit of the United States from Southeast Asia clearly increased the regional entity's leverage in forging more independent and equidistant relationships with the major external powers.

(2) China's support for peaceful, nuclear-free zones in the Asia-Pacific region, and more specifically, Beijing's endorsement of ASEAN's Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration of 1971.

China certainly would support any scheme that reduces external power involvement in its backyard (Southeast Asia). Thus, ASEAN's concept of a Zone of Peace, Freedom and Neutrality (ZOPFAN), announced in 1971 in Kuala Lumpur, was welcomed by Beijing, even before the commencement of the Dengist reforms. In the 1980s, Deng's foreign policy endorsed ZOPFAN as a regional security framework that will ensure a peaceful external environment that facilitates China's internal reform agenda: the Four Modernisations. Deng's political strategy to ensure the success of his economic statecraft was based on achieving congruence in China's internal and external environments.

(3) Advocacy of peaceful settlement of internal and external disputes including negotiating with Britain over the return of Hong Kong to Chinese sovereignty

in 1997, and negotiations with Portugal for the return of Macao in 1999. In dealing with both these territorial issues which had posed a threat to Chinese sovereignty resulting from earlier phases of western imperialism and colonialism, Deng adopted an approach based on prudence, patience and pragmatism. Deng's worldview, unlike Mao's, was guided by the need to work with possibilities (short-term goals) while keeping in mind the desirabilities (removing traces of all forms of western colonialism in China during the mid-19th and early 20th centuries, stemming largely from China's inward-looking posture and weakness vis-à-vis the west). However, on Taiwan, the issue of reintegration with the mainland has proven to be far more complex than Deng would have preferred.

4) Support for North-South cooperation to enhance the conditions for better trade, investment and technology transfer with a view to reducing the huge socio-economic gap between the advanced countries of the North and developing countries of the South.

Here, Deng was contemplating the emergence of a New International Economic Order that can empower the South and stabilise international economic relations.⁷ For Deng, this restructuring of international economic relations i.e. reforming the international political economy was a *sine qua non* for China's emergence to major power status and world leadership. In the past, China's full potential could not be realised due to internal malaise caused by communist orthodoxy and external conditions imposed by the Euro-centric paradigm of international relations.

(5) Disavowal of support for communist/revolutionary movements in the ASEAN countries especially in Malaysia (Communist Party of Malaya, CPM) and the Philippines (Party Kommunistang Philippines, PKP) as these insurgent movements no longer reflected the will of the people of ASEAN besides threatening the national security of these states in Southeast Asia.

While not providing direct material support to these insurgent movements, Deng was not prepared to withhold moral support to them to apparently maintain ideological unity. He did not see this kind of moral support as interfering with the normal state-to-state relations between China and ASEAN.⁸ However, Deng realised that to build a strong China-ASEAN relationship and to strengthen ASEAN's independence and neutrality, Beijing had to divest more of the ideological content in bilateral relations with the ASEAN states. The abandonment of ideology in favour of economic pragmatism in China's

new approach to the regional entity was particularly evident in the case of Malaysia. Deng had persuaded Chin Peng, leader of the CPM, to give up the armed struggle and pursue revolutionary struggle by other non-violent means. This, in effect, meant the CPC was dumping the CPM in favour of China's national interests which now focused on economic modernisation. Maintaining the previous level of suspicion and antagonism towards the ASEAN states would clearly prove counter-productive to Deng's reform agenda. Moreover, Deng preferred to break with the Maoist past as it was a hindrance to newer, less ideological approaches to foreign policy. Thus, under Deng's leadership, the post-Mao dispensation "shifted the thrust from cultural revolution and ideological assertion to economic reforms and modernisation".⁹ Accordingly, fifteen years after Malaysia established diplomatic relations with China in 1974, the CPM, apparently advised by Deng, abandoned its guerrilla warfare against the Malaysian government. On 2 December 1989, Chin Peng signed an agreement with Malaysia and Thailand in the Thai border town of Haadyai, formally ending the 41-year armed struggle.¹⁰

DENG'S ECONOMIC STATECRAFT IN THE CONTEXT OF CHINA-ASEAN RELATIONS

Prior to Deng's rise to the political helm, China-ASEAN relations especially in the 1950s-1970s were marked by misgivings and misperceptions by both sides stemming primarily from ideological differences – the former espousing communism and world revolution, the latter representing a group of anticommunist countries generally pursuing internal capitalist development and external pro-western foreign policies. The breakthrough in the ASEAN countries' approach to China actually came after the Nixon Doctrine of 1969 which foreshadowed American military retrenchment from Southeast Asia. The U.S. had already begun the process of military withdrawal and ending its role in the Vietnam war. The message then was clear to America's regional friends and allies. America's "vietnamization" of the war also provided signals for the "Aseanization" of regional security and stability. In essence, the United States was transforming its role as primary security provider to "burden sharing and partnership" with regional states in the Association of Southeast Asian Nations.¹¹ For Deng, this development in U.S. policy towards Southeast Asia provided a unique opportunity to fill the power vacuum that was clearly emerging in the 1970s and 1980s – a vacuum that China could fill, not with military power but more with economics and diplomacy.

Malaysia was the first ASEAN country to take the cue and Malaysia's second premier, Abdul Razak Hussein established diplomatic relations with Communist China in 1974. Malaysia's initiative was subsequently followed by the remaining four original member-states of ASEAN: Thailand and The Philippines in 1975, post-Sukarno Indonesia which resumed diplomatic relations with China on 3 July 1990, followed lastly by Singapore on 3 October 1990. These developments indicated the normalisation of relations between the People's Republic of China with the original five-member ASEAN by 1990.

Since 1978, China's Four Modernisations policy under Deng underscored by its open door policy attracted the attention of the ASEAN states which in an earlier period were ambivalent about Beijing's intentions in Southeast Asia. The anti-Communist ASEAN had enough experience fighting leftist movements inspired by Beijing to overthrow what Beijing labelled bourgeois regimes representing proxies of neo-colonialism following the achievement of independence in the late 1940s and 1950s. But after the Sino-American rapprochement in 1972 and subtle indications from Washington that it would not frown upon normalisation of China-ASEAN ties, the way was open for each ASEAN country to establish political and economic contacts with Beijing. Malaysia was the forerunner in 1974, followed eventually by the other ASEAN members. In the wake of the disastrous consequences unleashed by the Cultural Revolution (1964-1966), followed by the demise of revolutionary leader Mao Zedong in 1976, China was ready to embrace a new leadership style that promised delivery of goods and services. For Deng the Marxist dialectic made little sense in post-Mao China, like the Communist Utopia which will remain a distant and unrealisable goal. Indeed, Beijing's desire for modernisation was the single most important factor driving China's approach to ASEAN in the early 1980s. According to Zhao,

This transformation marks the macrostructural shift from an ideologically rigid, isolationist policy under Mao to the less doctrinaire, more pragmatic, and cooperative approach favored by Deng. Indeed, whereas for Mao isolationism was desirable, for Deng the very threat of international isolation was sufficient to inspire a rapid improvement in China's relations with Southeast Asia.¹²

By the early 1980s, Deng had become sufficiently impressed with the trends of national economic development and regional consolidation by ASEAN.

Their economic modernisation, industrialisation and the role of the overseas Chinese in attracting foreign capital and technology did not go unnoticed by China's reformist paramount leader. In fact, Deng's personal input into the Sixth Five Year Plan (1980-1985) was registered by the endorsement of a major research project titled: "Research on Development Strategies of Southeast Asian Economies".¹³ Instructively, the five-year plan outlined objectives that focused on expanding market-oriented reforms to accommodate foreign talents and inputs especially from neighbouring ASEAN. The key objectives include: (1) To assemble the country's scientific and technological base for scientific and technological research and to promote the application of new technologies, and to strenuously develop education, science and culture to accelerate the construction of an ideological and material civilization, and (2) To strenuously develop trade, make effective use of foreign capital and actively introduce advanced technology to meet domestic needs.¹⁴

In the period under discussion (1978-1989), Deng's economic strategy vis-à-vis ASEAN was already producing mutually beneficial results. The volume of two-way trade had increased from over USD6 billion in 1984 to over USD7 billion in 1991. And from 1984 to 1991, China-ASEAN trade increased by 120%, while China's total foreign trade increased 273%.¹⁵ ASEAN's annual investment in China also increased from USD8.51 million in 1984 to USD87.93 million in 1991. With regard to China's investment in ASEAN, which was negligible in the 1980s, the investment volume increased in cumulative terms to USD150 million by 1992. Additionally, with China being increasingly co-opted into the international economic system, ASEAN entered into trade protection agreements with the rising Asian power. China signed investment guarantee agreements with Thailand (1985), Singapore (1986), and Malaysia (1988).¹⁶ This encouraging trend in bilateral economic relations, initiated by the Dengist reform agenda of the 1980s, was reflected in China's political recognition of ASEAN as a credible regional institution. Foreign Minister Qian Qichen was the first diplomat to attend an ASEAN event when he attended the 24th ASEAN Ministerial Meeting in Kuala Lumpur in 1991. He also laid the groundwork for future economic and trade cooperation agreements between China and ASEAN.¹⁷ However, it is noteworthy that China chose Singapore during the Dengist era to expand economic relations with ASEAN in the initial stages. As a pragmatic economist, Deng was fully aware that the city-state was a regional commercial hub with strong linkages to western capital and technology. He

could also relate better to Singapore which, with over 75% population being ethnic Chinese, shared a culture and tradition akin to mainland China.¹⁸ Indeed, the trade statistics for the period 1983-1990 revealed how central Singapore was in China's thinking regarding the economic potential offered by ASEAN to a rising China as over 73% of ASEAN's investment in China during that period came from Singapore.¹⁹

In pursuit of economic diplomacy under his Four Modernisations' Project, Deng Xiaoping visited three ASEAN countries (Thailand, Malaysia and Singapore) from 5-14 November 1978. This visit also had an important strategic motive in the context of Sino-Soviet rivalry and growing strains in China's relations with Vietnam, a close Soviet ally in Southeast Asia. According to Lee, "China probably thought of using ASEAN as a counterweight to a Vietnam-dominated Indochina".²⁰ As a realist and keen observer of the international relations of Southeast Asia, Deng was prompt in according support to ASEAN's concept of freedom and neutrality: during his visit he endorsed the ZOPFAN Declaration. This gesture by Beijing clearly helped allay the fears of regional states that China has no imperialistic or expansionist motives in Southeast Asia.

Of the three ASEAN states, Deng's visit was most successful with Thailand as there seemed to be a convergence of economic and security objectives particularly over growing Soviet-Vietnamese influence in Cambodia. Deng's visit to Bangkok produced agreements for increased trade, scientific and technical cooperation between the People's Republic of China (PRC) and Thailand. On the other hand, Deng's visit to Malaysia and Singapore can be regarded as only reasonably successful when compared with Thailand. Malaysia's apparently unfavourable treatment of ethnic Chinese through the government's pro-Malay policies was not well received by Beijing. China for its part, was also not prepared to completely break its ties with local communist insurgents. In the case of Singapore, the sensitivity of the Chinese-majority city-state not to be seen by its neighbours as too pro-Beijing also imposed some constraints as to how far it can go in strengthening its relations with China without arousing regional suspicion, especially from Malaysia and Indonesia. Thus, arguably, while Deng was a pragmatist when it came to advancing China's national interests, he was also a Communist on matters affecting the ideological struggle, legitimacy and survival of the CPC. Thus, his dualism, inherent in his foreign policy of building good state-to-state relations with ASEAN while providing moral but

not material support to pro-Beijing revolutionaries in Southeast Asia, did create some discomfort in bilateral relations. These two vestiges of western colonial era relations in Southeast Asia: PRC-supported internal communist insurgencies and fears by ASEAN states regarding emotional ties of the "overseas Chinese" with China remain issues in bilateral ties that need to be addressed in the future evolution of China-ASEAN relations.²¹

CONCLUSION

The period 1978-1989 marked a remarkable phase in modern Chinese history. The post-Mao leadership had to demonstrate tremendous courage and determination to move China out of the ideological straightjacket which climaxed under the Cultural Revolution, and bring an end to the stalemated Maoist dogma. The Reformer, Deng Xiaoping knew that he had to re-invent the domestic scenario by sidelining the ideologues and replacing them with pragmatists who shared his vision for reforming and modernising China. Hence, Deng's economic statecraft focused on the key areas of China's underdeveloped economy: agriculture, defence, and science and technology.

Major innovations in economic statecraft required jettisoning old paradigms and creating a new framework of enterprise and production that will enable China to "catch-up" with the world's major performers besides building the economic, political and strategic foundations for the emergence of China as a great power. Deng's economic statecraft post-1978 was designed to ensure that the global and regional balances of power were in harmony with China's domestic and foreign policy objectives. While ensuring normal relations with the Soviet Union (a communist state), he wanted to accelerate economic partnerships with the United States (a capitalist state) which, when compared to the Soviet Union, was far more capable of contributing substantially and effectively to China's modernisation. Thus, for Deng, internal reform required a supportive external environment, i.e. cordial and stable relations with the major powers, especially the United States and the Soviet Union.

In Southeast Asia, Deng's Four Modernisations was generally perceived by the ASEAN countries as a positive development in the rising Asian power's internal and external policies. Economic reform in China has undoubtedly opened up opportunities for mutual investment, trade expansion and a range of other economic opportunities including increased travel and tourism. Politically,

the Dengist reform agenda has gradually removed the so-called China threat to Southeast Asia, and incentivised ASEAN to pursue an even more independent course in its relations with external powers. In this pursuit, Deng was conscious of ordering his priorities to achieve his targets. China's immediate periphery had to be secured and made friendly to achieve the economic aspirations of the "New China". His focus on the anti-Communist ASEAN is indeed instructive. ASEAN has rejected the Communist ideology even prior to its formation in 1967. In fact, anti-Communism and neutralism served as the *sine qua non* of ASEAN's survival and progress in the decades prior to the demise of the Cold War. ASEAN was also accelerating the pace of economic development through preferential trading arrangements (PTAs) and dialogue relations with external powers. The success of Deng's reforms depended on the deployment of China's soft power, not hard power. Hence, in the decade of the 1980s, Deng's support for ZOPFAN sent the right message to ASEAN capitals that China respected the sovereignty and independence of its neighbours, and opened a new era of mutual cooperation and partnership in the PRC's relations with the regional association. This new era in China-ASEAN relations underscored the fact that Chinese nationalism supersedes Chinese ideology via Deng's astute adaptation of Marxism: Socialism with Chinese Characteristics. Such a formulation of economic statecraft equally suited ASEAN's strategic and developmental aspirations to achieve a *modus vivendi* with its regional neighbour and rising major Asian power.

NOTES

- ¹ Quansheng Zhao, *Chinese Foreign Policy: The Micro-Macro Linkage Approach*, Hong Kong: Oxford University Press, p. 53.
- ² Ross Garnaut, "China's reforms in International Context", in Ross Garnaut and Lin Guoguang (eds.), *Economic Reform and Internationalisation: China and the Pacific Region*, The Australian National University, New South Wales: Allen & Unwin, 1992, p. 18.
- ³ This information was apparently provided to Chen Jian in an interview with a leading historian of the Chinese Communist Party (CPC). See Chen Jian, *From Mao to Deng: Changing Relations with the United States*, Cold War International History Project, Working Paper No. 92, Woodrow Wilson International Center for Scholars, Washington, D.C., 2019, p. 2.
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- ¹² Zhao, *op. cit.*, pp. 210-211.
- ¹³ Chen Jie, "China's ASEAN Policy in Deng Xiaoping's Era: Major Political and Security Issues and General Trends". Ph.D Thesis submitted to The Australian National University, Canberra, June 1994, p. 266.
- ¹⁴ Five Year Plans of China: [https://en.wikipedia.org/wiki/Fiveyear_plans_of_China#Sixth_Plan_\(1981%E2%80%931985\)](https://en.wikipedia.org/wiki/Fiveyear_plans_of_China#Sixth_Plan_(1981%E2%80%931985)) (Accessed: 1-12-19).
- ¹⁵ Cited in Chen Jie, *op. cit.*, p. 270. Also see *Yearbook of China's Foreign Economic Relations and Trade*, 1985, p. 793 and also the 1992-1993 Yearbook, p. 391.
- ¹⁶ Chen Jie, *op. cit.*, p. 269.
- ¹⁷ Qian Qichen: https://en.wikipedia.org/wiki/Qian_Qichen (Accessed: 5/12/19).
- ¹⁸ Chen Jie, *op. cit.*, p. 272.
- ¹⁹ Chen Jie, *Ibid.*
- ²⁰ Lee Lai To, "Deng Xiaoping's ASEAN Tour: A Perspective on Sino-Southeast Asian Relations", *Contemporary Southeast Asia*, Vol. 3, No. 1 (June 1981), p. 60.
- ²¹ *Ibid.*, p. 74.

Revisiting International Relations Theoretical Approaches of Globalisation and the Schools of Thought

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ABSTRACT

Globalisation has emerged as one of the most significant and dominant concepts in the post-Cold War period. The term globalisation has become so capacious that it constitutes a site of endless contestations in both specialist and general literature on the topic. Nevertheless, substantial amount of literature exists especially in the social sciences focussing on various perspectives and aspects utilising different theoretical frameworks on globalisation. This article intends to concentrate on one of the five central topics in globalisation i.e. the implications of globalisation for state power and governance. Conjunction with the topic, this article presents a critical assessment of the literature from the international political perspective on the concept of globalisation and the theoretical approaches employed to ascertain its relations to nation states. The literature review in this article will focus on two main parts. The first part discusses how the three mainstream international relations theories view globalisation. The second part examines the debate on the effect of globalisation on the nation states. There has been much debate on globalisation especially on whether it is undermining state sovereignty and the role of state itself. The article concludes by arguing that the international relations theories and schools of thought on globalisation perceive globalisation differently and each arrives at different conclusions as to its meaning and consequences. This is because each theory has a prior view of what is pertinent in world politics. It greatly hinges on which perspective one wishes to view the world and then to conceptualise it.

Keywords: Globalisation, international relations, realism, liberalism, constructivism

INTRODUCTION

The widespread usage of the term 'globalisation' and the significance bequeathed to it over the past decade has made the term difficult to be ignored in the social sciences. From obscure origins in French and American writings in the 1960s, the concept of globalisation finds expression today in all the world's major languages (Held & et.al 2003: 1). Hence, the term 'globalisation' remains as one of the most complex and disputable concepts (Hirst & Thompson 2002: 247, Balakrishnan 2003: 397). Indeed, globalisation is in danger of becoming, if it is has not already become, the cliché of our times: the big idea which encompasses everything from global financial markets to the internet but which delivers little substantive insights into the contemporary human condition (Held et.al. 2003: 1). Historians, philosophers, international relations scholars, economists, sociologists, litterateurs, political and business economists, geographers, and environmentalists explain globalisation within their own realm of epistemology (Mann 1997: 472). There are more than 17,000 books on globalisation and global-related industries (Rappa 2011: 18). It is reckoned that the numbers have increased concurrently with the passage of time, and the concept of globalisation remains as one of most researched, explored, studied, written, used and practised notion in the world.

Generally, most scholars concur that any academic text or journal exploring the topic of globalisation should endeavour to outline precisely in the introductory note what the author intends by this term.¹ This is viewed as a necessary prerequisite to avoid ambiguity and enhance clarity of intent to ensure globalisation as cited in their texts is not interpreted as that used in another as Scholte (2000: 15-16) states, "there can be, and are, many globalisations". Hence, with differing perspectives coming from various disciplines, a methodical explanation of globalisation cannot be achieved in a comprehensive way. Therefore, it is wise to allow each field to explain the causes of globalisation within its own sphere. In the domain of international politics, globalisation remains an ill-defined concept although most refer to politics and/or political economy in some form or manner (Rappa 2011: 18).

The utility of 'globalisation' as a theoretical construct is much disputed. At the same time, there is a surprisingly strong consensus, amongst writers with

very different theoretical viewpoints, that globalisation is a salient theme of the 20th century. It has, for instance, been asserted that 'globalisation' may be the concept of the 1990s, a key idea through which we understand the transition of human society into the third millennium (Clark 1997). Indeed it has been noted that, in the face of the challenges presented by the end of the Cold War, "*globalisation 'survived'...when many of our other ordering and explanatory concepts did not*" (Hurrell and Woods 1995: 447).

This durability is to be explained, in part, by the great flexibility of the concept and its ability to be accommodated within a broad range of otherwise incompatible theoretical frameworks. Hence, even if each analytical school explains the theme in a different way they attach varying significance to it, the assertion of this common analytical motif remains striking: its pervasiveness across intellectual borders suggest that its imagery, for all its imprecision, holds a widespread appeal (Clark 1997: 16). The point can be briefly illustrated from such diverse writings as those of traditional historians, world system theorists, and historical sociologists.

GLOBALISATION DEFINITION FROM DEVELOPING COUNTRIES

Literature on the definition of globalisation from developing countries like India and Malaysia are also worthy of inclusion. Many scholars in India reckon that globalisation is not a new concept and consider globalisation as first introduced by Adam Smith, the father of modern economics in the year 1776 in his book titled, "*Wealth of the Nations*". The great significance of globalisation to India and the world has drawn many scholars and academicians including businessmen, historians, economists, social scientists, political economists and others to write on the subject (Nayak et.al. 2005: 8). Globalisation has been addressed from different angles by various scholars in India. There are few schools of thought which perceive globalisation differently. The first school of thought reckons that globalisation has been/will be good for India while the second one deems that globalisation has not been beneficial for India. A third set of scholars have dealt with some dynamics and impact of globalisation with reference to some short time intervals. Scholars in the first school of thought contend based on the theoretical principle that free trade and competition are good for the whole world in the long run and therefore, globalisation is also advantageous for India. The proponents of General Agreement on Tariffs (GATT)/World Trade Organisation (WTO) base their arguments on these

precepts. Foreign companies and governments including international bodies have criticised the closed-door policies of the Government of India (GOI) on international trade and investment. Research and work based on specific cases of success have also towed this line of argument.

Scholars in the second school of thought base their arguments on the impact of liberalisation and the opening up of the Indian economy had on India. Kidron (1965), Kurien (1966), Athreye (1999), Nayak (2000, 2002, 2003), and Kumar (2003) examine the impact of foreign direct investment (FDI) on India. Stiglitz (2002) argues that globalisation has not met its promises to the developing countries. Lall (1999), Sharma (2000) and Nayak (2003) have undertaken studies on the profile of exports and imports of India (in Nayak et.al. 2005: 8-10).

The third set of scholars dealt with the process dynamics of globalisation in some specific time periods. Bagchi in Nayak (2005) maintains that the strong political patronage aided the British companies to flourish and expand in India during the early decades of the 20th century. Linson in Nayak (2005) observes that the short term structures created by British expatriates and multinationals to generate immediate success limited their options for future evolution. Besides these three schools of thought there are numerous publications and writings that explore various issues of globalisation such as meanings, variables of globalisation for India and the impacts. As a whole, there are some observers who contend that India need not rush into the globalisation process, and get hastily ensnared in a globalised system where it would remain a victim (Vivekanandan 2007: 320).

In the case of Malaysia, there is a broad consensus that globalisation is not a uniform concept (Loong Wong 2004: 3). For some Malaysians, it is the presence of foreign multinationals, brands and lifestyles, while for others, it is the advancements in telecommunications and infrastructure, the ties of the Malays to the broader family of Muslims, the rise of significant international non-governmental organisations and Malaysia's exposure and vulnerability to global flows and vectors of capital and labour. Sabihah Osman (2001: 77) defines globalisation as a multi-layered and dialectical process involving both homogenisation and particularisation, i.e. the rise of localism in politics, economics, religion and culture. Lee Poh Ping (2008: 70) describes globalisation as a general phenomenon and a series of processes that

enhances interconnectivity of various parts of the globe through economic interdependence, developments in communications and transportation. For the former prime minister of Malaysia, Mahathir Mohamad, globalisation means "Westernization and the acceptance of Western business standards and political systems around the world" (Loong Wong, 2004: 5). Another former prime minister of Malaysia, Najib Tun Razak defines globalisation as a "value-free process that does not differentiate between beneficial change and change that impoverishes human conditions" (Ved 2010). He emphasises that globalisation is a process and a tool, and it was for the countries to establish purposes and preferred outcomes.

Based on all the above definitions, it is apparent that the term globalisation has become so capacious that it constitutes a site of endless contestations in both specialist and general literature on the topic. Davies & Nyland (2004: 5-6) highlight that there are five possible meanings that one could attach to the word 'globalisation': internationalisation, liberalisation, universalisation, westernisation or modernisation and supra-territoriality. Globalisation is used to describe each and all of these phenomena. Each of the first four possible meanings is declared 'redundant' as the basis of an adequate definition. Only the last – 'supra-territoriality' interpretation accepts that globalisation entails a reconfiguration of geography 'so that social space is no longer wholly mapped in terms of territorial places, territorial distances and territorial borders (Davies & Nyland 2004: 6). According to Scholte (1999), it alone identifies something which is historically new, which has a real causal significance that is irreducible to the others, and which therefore merits the use of a new term.

GLOBALISATION AND INTERNATIONAL RELATIONS THEORY

In the international relations academic world, realism, liberalism and marxism theories tend to be the main theories that have been used to understand world politics in the 1980s and are still widely referred until today. Constructivism and post-structuralism theories became increasingly influential in the mid-1990s. Post colonialism, on the other hand, gained influence in the millennium year. Theories in international relations tend to use different lenses and interpret differently on the same one world. Similarly, the term 'globalisation' is viewed differently by some dominant and mainstream theories in international relations. It is important to examine how the traditional theoretical perspectives in international relations regard the role and fate of the nation state in a globalising era.

Realism and Globalisation

Briefly, realism focuses on the nation state as a barrier between the international system and the domestic sphere of politics. Domestic politics are seen as separate and distinct from the international system, which is characterised as anarchy or the absence of order. Realists focus on military and economic capabilities and the desire of states to advance national interests and gains (both relative and absolute gains). In this view, states are fundamentally concerned with survival and seek to maximise power towards this end (Kay 2004: 11). Institutions such as international law and formal international organisations might be useful as tools for advancing national interests and exerting power, but they are not to be relied upon for security guarantees (Mearsheimer 1995: 9). In general realists conceptualise globalisation as primarily an economic endeavour (Wivel 2004: 8). Globalisation is about economic processes in general and international trade in particular. Realists perceive globalisation as a process that has increased interconnectedness between economies and societies, and look upon this proximity as creating vulnerability that could lead to conflict. Though realists are aware that globalisation may have made states to be more dependent on one another, they maintain their perception. To realists, despite globalisation, state remains as the most important actor in international politics. Nor does it undermine the importance of the threat of the use of force or the importance of the balance of power (Baylis, Smith & Owen 2011: 7). Realists view economic and political globalisation as having little or no bearing on the continuing primacy of state power in geopolitics, pointing out that states are powerful enough and will simply dismiss institutions that are deemed to be interfering.² According to realists, globalisation may affect the social, economic and cultural lives, but it does not transcend the international political system of the states. Whereas neo-realists view globalisation as a challenge but still see politics as international and states as the principal actors in the international political arena. Waltz (2008), acknowledges that globalisation is posing challenges to state. However, Waltz strongly advocates that no other non-state actors can equal the capabilities of the state. Waltz (2008) maintains that, "*globalisation is a fad of the 1990s and if anything the role of state has expanded its functions in response to global transformations*". The concern of neo-realists with regard to globalisation is premised upon uneven distribution of power, which results in inequality and therefore breeds conflict.

Liberalism and Globalisation

For liberals, the picture looks very different. Liberals view the state as becoming increasingly less important as a unit as other global actors emerge.³ For liberals, globalisation fundamentally undermines realist accounts of world politics since it shows that states are no longer central actors. Liberals tend to see globalisation as the end product of a long-term transformation of world politics. Liberals are particularly interested in the revolution in technology and communications represented by globalisation. This increased interconnectedness between societies, leading to economic integration and closer cooperation. According to liberals, states in the era of globalisation are no longer sealed units. If ever the states look more like a cobweb of relations (Baylis, Smith & Owen 2011: 8). In other words, the globalisation trend has promoted the growth of alternative frameworks of community. The rise of supra-territoriality has compromised the state's previous capacity to monopolise the construction of states (Scholte, 2000). Whereas neoliberals perceive that in a condition of complex interdependence, states will recognise a mutual demand for cooperation. Although neoliberals recognise the same vulnerability and sensitivity of interdependence as realists do, neoliberals prefer to see states having an interest in cooperation. In recognising a state-based interest in collectively managing a globalised world, states seek to reduce coordination problems, to establish agreed principles, norms, rules and decision making procedures, to facilitate transparency, to increase the capacity for bargaining and issue-linkage, to enhance socialisation toward the international community, and to lower the transaction costs of collective action. Moreover, the globalisation of capital has made it impossible for states to expropriate enterprises in the supposed 'national interest'. Through privatisation and globalisation, fewer communications networks are owned and operated by the state (Scholte 2000: 166).

Constructivism and Globalisation

Another major school of international relations theory is constructivism. Constructivism is about human consciousness and its role in international affairs (Barnett 2011: 155). As for constructivism, a theory that approaches international politics through centrality of ideas and human consciousness, perceives globalisation as external force acting on states. Constructivism draws on social theory of human interaction and posits that the structure and content of international relations are the by-products of social interaction

(Kay 2004:12). Just as the domestic content of politics and culture shapes the identity of the nation state, so does the nation state simultaneously shape the international environment. Constructivists posit that states themselves are actively orchestrating forces of globalisation, using it where possible to suit their needs and work in their favour. Accordingly, politicians may employ the excuse of the unstoppable and unyielding behemoth of globalisation, using it where possible to suit their demands.⁴ According to constructivists, states play a role in creating and shaping norms and values to promote national, regional and global interests. The international environment thus becomes a reflection of the inter-social relationships among states, and at the same time provides feedback to influence the domestic content of nation states. Constructivists have also employed the concept of socialisation (Barnett 2011: 161). According to Barnett (2011: 161), *"states change to identify with the identities, interests, and manners of the existing members...and change their behaviour so that it is consistent with those of the group"*. This, according to constructivism, will promote intimate relations among states within international institutions and organisations. Similar to neo-realists, constructivists also emphasise the role of transnational actors in pursuing state's interests based on constructed attitudes (Slaughter 2011). Hence, the premises of constructivism pertaining to international relations are: states are the principle units of analysis, the structures in the states system are inter-subjective, and state identities and interests are important but it is also influenced by "non-material" elements of the global and domestic environment in decision making (Saravanamuttu 2010: 2).

There is also substantial disagreement as to how one should characterise globalisation's structural consequences, if any. A debate on the effect of globalisation on the nation state has broached three broad schools of thought, which are referred to as the hyper-globalists, the sceptics, and the transformationalists (Held et.al. 2003: 2).

GLOBALISATION AND SCHOOLS OF THOUGHT

The first of these are the hyper-globalists, whose general position is that the nation state has faced a diminished capacity to act in the face of permanent forces of globalisation which effectively drain power from the nation state and into regional and global "layers".⁵ Hyper-globalist thesis proponents, such as Ohmae (1995) and Scholte (2000), hold a pessimistic view and argue that globalisation brings about the demise of the sovereign nation state.⁶ Hyper-

globalists define globalisation as a new epoch of human history in which traditional nation states have become unnatural, even impossible business units in a global economy (Held et.al. 2003: 3).

Hyper-globalists contend that economic globalisation has brought about a 'denationalization' of economies through the establishment of transnational networks of production, trade and finance. In this 'borderless' economy, national governments are relegated to accommodate global capital or, increasingly powerful local, regional and global mechanisms of governance. Hyper-globalist proponents like Rossenau submits that the cumulative scale, scope, velocity and depth of contemporary interconnectedness is dissolving the significance of the borders and boundaries that separate the world into many constituent states or national economic and political spaces. As such, this is undermining the territorial notion of the state, and thus, globalisation is eroding state sovereignty. In this respect, many hyper-globalists share a conviction that economic globalisation has also intensified the expansion of global commerce, finance and production of nations and communities around the world.

This school of thought strongly believes that globalisation is primarily an economic phenomenon; the world is increasingly becoming an integrated global economy, and economic globalisation is generating new patterns in the world economy. The effect of this integration is that no national economy is able to insulate itself from the effects of turmoil in the global financial markets. The Credit Crunch of 2008 originated in the USA, yet its ripple effects destabilised the economies of many countries worldwide.⁷ Economically, globalisation is constructing new forms of social organisation that are supplanting, or that will eventually supplant, traditional nation states as the primary economic and political units of world society.

Furthermore, the hyper-globalists claim that governments have to manage the consequences of globalisation such as growing polarisation between the developed and developing economic nations. However, the neo-liberals believe that the polarisation would not be much of a problem given that global economic competition does not necessarily produce zero-sum outcomes. Neo-liberals deem that nearly all countries have a comparative advantage in producing certain goods which can be exploited in the long run. Accordingly, for many neo-liberals globalisation is considered as the first truly global civilisation. In this account, hyper-globalists claim that the rise of global economy, the

emergence of institutions of global governance, the diffusion or hybridisation of cultures are interpreted as the demise of nation state (Luard 1990, Ohmae 1995, Albrow 1996). In addition, the hyper-globalists assert that the increase of transnational and global flows into national economy only challenges the authority and legitimacy of nation states. The argument here is that state governments become increasingly feeble to control what transpires within their own borders. Moreover, as institutions of global and regional government acquire a bigger role, the sovereignty and autonomy of the state are further eroded (Held & et.al, 2003: 5).

In conclusion, economic power and political power, in this hyper-globalists view, are becoming effectively denationalised and diffused. Globalisation has transformed the nature of politics, from state-centric geopolitics to geocentric global politics. It is argued that globalisation has changed the process of governance and accountability in the modern state. Furthermore, the Westphalian state sovereignty is undermined because of the external influence. The hyper-globalists thesis represents globalisation as embodying nothing less than the fundamental reconfiguration of the 'framework of human action' (Albrow 1996: 85).

The second school of thought on globalisation belongs to the sceptics who emphasise the continuing importance of states in world politics. Academics like Krasner and Gilpin declare that states and geopolitics continue to remain the principle agents of world order today. They contrarily argue that the decline of nation state has been grossly overstated by the hyper-globalists; far from playing a passive role, it will long continue as the primary shaper of geopolitics.⁸ The sceptics, drawing on statistical evidence of world flows of trade, investment and labour from the 19th century, maintain that contemporary levels of economic interdependence are by no means historically unprecedented. To them, the historical evidence confirms that contemporary globalisation has only heightened the levels of internationalisation and it is wholly exaggerated (Held & et.al, 2003: 5).

In this respect, the sceptics consider the hyper-globalists thesis as fundamentally flawed and politically naïve since it underestimates the enduring power of national governments to regulate international economic activity. Furthermore, the sceptics assert that compared to the classical Gold Standard era, the world economy is significantly less integrated than it once was (Boyer & Drache 1996, Hirst & Thompson 1996). The sceptics' school of thought also

challenges the presumption made by the hyper-globalist on the emergence of a new, less state-centric world order. To the sceptics' school, governments are not the passive victims of internationalisation but, on the contrary, its primary architects. Hirst (2002: 473) insists that although there are changes in governance, the sovereign territorial state is not being undermined even if the role is changing. Hirst (2002: 473) emphasises the significant importance of the state as a key actor in globalisation in relations to global governance and economics. As a matter of fact, scholars like Callinicos & et al (1994) and Gilpin (1987) in Held & et.al (2003) consider internationalisation as largely a by-product of the US initiated multilateral economic order, designed to create the impetus for the liberalisation of national economies. They further explained the recent intensification of worldwide trade and foreign investment as a new phase of western imperialism in which national governments as the agents of monopoly capital are deeply implicated.

However, despite such differences of emphasis, there is convergence of opinion within the sceptical camp that the growing economic marginalisation of many 'Third World' states as trade and investment flows intensify within the rich North to the exclusion of much of the rest of the globe. Accordingly, the sceptical thesis generally dismisses the notion that internationalisation is bringing about profound or even significant restructuring of global economic relations. In general, the sceptics reject the popular 'myth' that the power of national governments or state sovereignty is being undermined today by economic internationalisation or global governance. To them, while international economic conditions may constrain what governments can do, governments are by no means immobilised (Held et.al. 2003: 7).

The third school of thought focuses on the transformationalist thesis. At the heart of the transformationalist thesis is a conviction that globalisation is a central driving force behind the rapid social, political and economic changes that are reshaping modern societies and world order (Giddens 1990, Scholte 1993). Transformationalists posit that neither the demise nor the continuity of the state centric world order is taking place, but rather a wholesale change to the context in which nation states operate.⁹ According to the proponents of this view, contemporary processes of globalisation are historically unprecedented such that governments and societies across the globe have to adjust to a world in which there is no longer a clear distinction between international and domestic, external and internal affairs.

Transformationalists perceive state sovereignty as being eroded by the European Union, the World Trade Organisation, and other new institutions, that sovereignty is no longer as absolute but just one of the spectrum of bargaining leverages held by states (Goldstein & Pevehouse 2010: 20). In this respect, globalisation is conceived as a powerful transformative force which is responsible for intensifying and transforming societies, economies, institutions of governance and the world order. In comparison with the sceptics and hyper-globalist accounts, the transformationalists make no claims on the future trajectory of globalisation; nor do they seek to evaluate the present in relation to some single, fixed-type globalised world. Rather, transformationalists emphasise globalisation as a long term historical process which is inscribed with contradictions and significantly shaped by conjunctural factors. For the transformationalists, state power is not so much strengthened or weakened by globalisation but it is transformed to operate in new context with new tools. States are associated with new patterns of global stratification in which some states, societies and communities are becoming increasingly enmeshed in the global order while others are becoming marginalised.

At the core of the transformationalist case is a belief that contemporary globalisation is reconstituting the power, functions and authority of national governments. The transformationalists argue that, with expanding jurisdictions of institutions of international governance, states no longer retain sole command of what transpires within their own territorial boundaries (Held et.al. 2003: 8). This is especially evident in the European Union, where sovereign power is demarcated between international, national and local authorities. Furthermore, global infrastructures of communication and transport support new forms of economic and social organisations which transcend national boundaries without any consequent diminution of efficiency or control. Under such circumstances, the notion of the nation state as a self-governing, autonomous unit appears to be more of a normative claim than a descriptive statement. Globalisation, in this account, is therefore associated with a transformation or an 'unbundling' of the relationships among sovereignty, territoriality and state power.

In proposing that globalisation is transforming or reconstituting the power and authority of national governments, the transformationalists reject both the hyper-globalists rhetoric on the demise of the sovereign nation-state and the sceptics' claim that 'nothing much has changed'. The transformationalists

assert that a new 'sovereignty regime' is displacing traditional conceptions of statehood as an absolute, indivisible, territorially exclusive and zero-sum form of public power (Held 1991). Accordingly, sovereignty today is, they suggest, best understood "less as a territorially defined barrier than a bargaining resource for a politics characterised by complex transnational networks". Transformationalists assert that state power and territoriality stand today in a more complex relationship than in the era when the modern state was being forged. The contention of the transformationalists that globalisation is associated not only with a new sovereignty regime but also with the emergence of new powerful non-territorial forms of economic and political organisations in the global domain, such as multinational corporations, transnational social movements, inter-national regulatory agencies, etc. In this case, world order can no longer be conceived as purely state-centric or even primarily state governed. Nation states are no longer the sole centres or the principle forms of governance or authority in the world.

In summary, hyper-globalists view globalisation as an external economic force that represents a process that compels governments to adhere to economic policies in keeping with the tenets of neoliberalism. While hyper-globalists have argued that state autonomy has indeed been compromised, the sceptics have counter-proposed that politicians and academics in general have greatly overstated the extent to which the roles of the governments are restricted. According to the sceptics, the hyper-globalists' claim that business companies are now global entities has been exaggerated, citing studies which reveal that international businesses remain attached to territorial localities, even financially.¹⁰

CONCLUSION

The above mentioned globalisation debates have paved way for international relation theorists to provide an important basis for examining the concept of globalisation and what it means to each theory. Realists believe politics prevail over economics (Wivel 2004). If globalisation is primarily about economics, then its role in world politics is dependent on political development. Realists suggest that globalisation does not alter the most significant feature of world politics, namely, the territorial division of world into nation states. Alternatively, liberals and neoliberals institutionalism proceed from a basic optimism that

managing globalisation requires multilateral cooperation and states will define their quest for power in terms of mutual gains. Constructivists, nevertheless, observe international relations as a battle not just for power, interests and security – but also of ideas.

Overall, the international relations theories and schools of thought that have been mentioned above perceive globalisation differently and each arrives at different conclusions as to its meaning and consequences. This is because each theory has a prior view of what is pertinent in world politics. It greatly hinges on which perspective one wishes to view the world and then to conceptualise it.

NOTES

- ¹ See Peter Timson (NA), *The nation-state and globalization: A myth of diminished agency*, Retrieved from [https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson\(2\).pdf](https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson(2).pdf)
- ² See Peter Timson (NA), *The nation-state and globalization: A myth of diminished agency*, Retrieved from [https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson\(2\).pdf](https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson(2).pdf)
- ³ Ibid.,
- ⁴ See Peter Timson (NA), *The nation-state and globalization: A myth of diminished agency*, Retrieved from [https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson\(2\).pdf](https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson(2).pdf)
- ⁵ Ibid.,
- ⁶ "Is Globalization undermining State Sovereignty", Retrieved from www.academia.edu/2945507/Is_Globalization_undermining_State_Sovereignty
- ⁷ Ibid.,
- ⁸ See Peter Timson (NA), *The nation-state and globalization: A myth of diminished agency*, Retrieved from [https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson\(2\).pdf](https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson(2).pdf)
- ⁹ Ibid.,
- ¹⁰ See Peter Timson (NA), *The nation-state and globalization: A myth of diminished agency*, Retrieved from [https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson\(2\).pdf](https://www.ljmu.ac.uk/HSS/HSS_Docs/Timson(2).pdf)

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Positively Equal: How Malaysia Can Lead a Transformative Gender Equality Strategy for ASEAN

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ABSTRACT

Leveraging on Article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), this article proposes a model of transformative equality as a methodological approach for women's empowerment to shift towards gender equality both in Malaysia and in ASEAN.

Malaysia is in a unique position to rethink gender strategy to advance Malaysia's economic development and to close the gender gap, simultaneously generating economic growth domestically and leading the way for ASEAN.

The ASEAN Economic Community (AEC) is primely positioned to facilitate gender equality and women's economic empowerment, but yet places little emphasis on gender equality and the promotion of women's equal economic participation. The opportunity exists within the fourth characteristic of the Blueprint 2025, "A Resilient, Inclusive, People-Oriented and People-Centred ASEAN," to promote equitable economic development.

This article first introduces the concept of CEDAW's transformative equality. Secondly, the article proposes reforms needed and applies the transformative equality framework, developed by Dr. Sandra Fredman¹, to Malaysia to demonstrate how women's economic inclusion can meaningfully contribute to economic wellness of the country as a whole. Thirdly, the article underscores the need to apply the transformative equality framework to international trade agreements in order to drive gender equality and create economic growth. Finally, the article proposes the incorporation of this methodology into the

AEC Blueprint 2025, and into future blueprints and AEC policies.

Keywords: Gender equality, economic rights, ASEAN Economic Community, CEDAW, transformative equality

TRANSFORMATIVE EQUALITY UNDER CEDAW

In the nearly four decades since the institution of CEDAW as an international bill of rights for women, the convention has evolved substantively, via the CEDAW Committee's General Recommendations, as well as in its interpretation and implementation. It has been used both as an accountability mechanism for governments and as an active driver of gender equality within states.

CEDAW's approach to equality is three-fold, encompassing *formal equality*, *substantive equality*, and *transformative equality*, each being complementary and necessary to achieving the Convention's purpose of eliminating discrimination against women and achieving gender equality.² CEDAW calls for formal equality through the law (de jure equality), such as ensuring women's equal rights to vote or change their nationality.³ Additionally, CEDAW also calls for de facto, or substantive equality, recognising the fact that formal equality will not alone result in true equality, since the law may have unintended disparate effects on women or women may face structural barriers to accessing their rights.⁴ Substantive equality requires states to take measures to ensure equality of opportunities and equality of results.⁵ Finally, CEDAW also embraces within its provisions an approach of transformative equality, which relates to the "transformation of institutions, systems and structures that cause or perpetuate discrimination and inequality," as well as the "the modification or transformation of harmful norms, prejudices and stereotypes."⁶

Discourse around CEDAW's transformative equality approach predominantly focuses on one provision of the convention: Article 5(a),⁷ which articulates that states must take all appropriate measures:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁸

This emphasis on cultural change is seen as a key pillar underlying the convention, and is distinguishable from the aim of solely providing women with equal rights; rather, Article 5(a) embraces the idea of transformation.⁹ This notion of transformative equality embraced in Article 5(a) "...aims at changing society in such a way that those features of existing cultures, religions or traditions and of legal, social and economic structures that obstruct the equality and human dignity of women are subjected to fundamental change."¹⁰

The four-dimensional model of transformative equality pioneered by Sandra Fredman offers a framework for implementing transformative equality, encompassing the following aims: "1) break the cycle of disadvantage, 2) promote respect for dignity and worth, 3) accommodate difference by achieving structural change, and 4) promote political and social inclusion."¹¹ An understanding of transformative equality and application of Fredman's model necessarily requires comprehension of the inter-relatedness of rights under CEDAW, as well as of the inter-related and multi-faceted nature of inequality. For example, cultural stereotypes that place the responsibility of domestic and care work squarely on the shoulders of women and girls also prevent them from engaging in activities that could result in their economic empowerment, such as educational and income-generating opportunities.¹² Similarly, gender-based violence in its various manifestations interferes with women's ability to become economically independent; domestic violence, for example, often perpetuates poverty, even as poverty itself perpetuates domestic violence.¹³

According to the CEDAW Committee, transformation of societal institutions, systems, and structures with the purpose of achieving gender equality will require adopting measures aimed at redistributing power and resources among men and women, and at ensuring "...a real transformation of opportunities, institutions, and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns."¹⁴ Simultaneously, states must transform norms, prejudices, and stereotypes that violate women's rights and thus "...create the conditions necessary for women to exercise their autonomy and agency and 'develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices."¹⁵

A radical approach of transformative change towards gender equality is not only warranted under CEDAW, but envisaged by it. Such an approach must be

applied through a holistic lens that takes into account the inter-connectedness of various manifestations of discrimination against women, as well as the inter-relation of rights.

TRANSFORMATIVE EQUALITY AS A TOOL FOR ECONOMIC GROWTH IN MALAYSIA

Female labour force participation has been found to be an important driver of economic growth and development, and such participation has been found to be dependent on a variety of economic and social factors.¹⁶ As discussed above, among these factors are cultural stereotypes that place the responsibility of domestic and care work squarely on the shoulders of women and girls. It is estimated that 2,563,800 women in Malaysia were not working due to "housework or family responsibilities," as compared to 69,800 men who cite similar reasons.¹⁷ According to World Bank estimates, if Malaysia were to eliminate the gender gap in labour force participation, income per capita could increase by 16%.¹⁸ This suggests that increasing gender equality has the potential to create substantial overall gains for women as well as society at large, a conclusion that has been further supported by studies undertaken by the International Monetary fund, UNICEF, and global think tanks.¹⁹

Linda Scott conceptualised the concept of the "Double X Economy," a shadow economy unique to females, borne of the barriers to women's economic inclusion – including economic impediments and cultural constraints such as "reproductive vulnerability and the ever-present threat of violence."²⁰ Scott posits that "when it comes to economic choices, women can seldom act independently; rather, they are often coerced into acting...against their own best interests." As Scott frames it, "Women contend with economic *exclusion*, not merely unequal economic outcomes."

Malaysia's female labour force participation rate is 50.75%,²¹ ranking the lowest in Asia.²² The gender divide starts early, with female graduates between the ages of 25-34 having a labour force participation rate more than 10% lower than their male counterparts.²³ Direct factors affecting women's economic empowerment include education; access to quality, decent paid work; unpaid care burdens; access to property, assets, and financial services; and social protection, while indirect factors include the underlying legal and policy framework, gender norms, and discriminatory social norms.²⁴ Arguably,

Malaysia's biggest enabling factor for women's economic empowerment is education for women, with 98.9% of women 25 and older having completed at least their primary education²⁵ and the female enrolment rate in tertiary education being 49.8 per cent in 2018.²⁶ However, in WAO's substantial experience, factors including the substantial unpaid care burden on women, a legal and policy framework that at times discriminates against women and at others does not go far enough in protecting them against discrimination, and discriminatory social norms and gender stereotypes stymie women's economic empowerment and prevent more women from participating in the labour force. A 2016 survey conducted by WAO found that 40% of women surveyed had been asked in job interviews if they were pregnant or had plans to be in the near future, while 20% of women surveyed had had their job applications rejected or job offers revoked after disclosing pregnancies. Despite this, there are currently no laws regulating private sector employees who discriminate on the basis of pregnancy or gender. However, the existence of a robust civil society and the history of ongoing collaboration between women's groups and government is also an enabling factor towards bringing about a legal and policy framework that supports women's economic empowerment, as NGOs can serve as experts informing draft legislation based on the experiences of women on the ground; the Special Project Teams established by the Ministry of Women, Family, and Community Development for the drafting of sexual harassment and gender equality legislation are prime examples of such NGO-government collaboration in this arena, with NGOs contributing critical insights into policymaking. For example, as part of WAO's advocacy around the issue of gender-based employment discrimination, the experiences of numerous women were collected and highlighted. A few are excerpted below:

Story A

I found a new job in an international school, I was not pregnant before signing the offer letter, but found out when I started the job. Informed the HR and they decided to terminate me.

Story B

I previously worked in a market research agency. My reporting manager had just given birth and due to her husband's absence at the home, she was expected to bear all the burden of childcare. The industry is brutal as well – long and inflexible hours (during the weekends, holidays, evenings and sleeping hours), heavy workload, unpaid overtime.

While our director and company was accommodating, understanding and provided flexible hours for my manager, she resigned due to the heavy burden of home and career. She should not have had to choose. Our society should be more accommodating for both parents to share the burden of housework and childcare. Be done with gender roles.

Story C

During an interview to further my career as a surgeon, they asked me if I am married, had any plans to get married, and have babies. When I said no, they made fun of me and, told me that they do not like it when a woman in the programme gets pregnant and takes leave, being a burden to other people. I just smiled and got out of the room.

Story D

When I decided to return to the workforce after having my son, I applied for over 120 jobs. I wrote in, had interviews over Skype, over the phone, and even face-to-face interviews.

The one question I always got asked is "Married? Got kids?" Politely I would answer, "Yes a son, x month/years old." I knew by their face or the tone of their voice... "Oh, I see..." Then they would ask, "You can't stay late, right? This job requires a lot of your time." My polite answer? "Oh, not to worry. I can manage my time." The very next question would be, "Who takes care of your child while you are at work?"

The lack of a supportive and enabling environment for women is reinforced by the World Bank Group's Women, Business, and the Law index, which ranked Malaysia at a 50 (out of 100) both overall and with regard to women in the workplace.²⁷ This assessment was based on a woman's ability to get a job as compared to a man's, the existence of prohibitions of gender-based employment discrimination and sexual harassment, and available remedies for sexual harassment. Based on WAO's own analysis, the lack of an enabling environment means that women face explicit discrimination and harassment in the workplace which is not adequately dealt with through policies, trainings, and clear complaint and redress mechanisms. It also means that women face implicit discrimination in the workplace that prevents them from advancing, with favoritism and gender bias being embedded in organisational cultures. This implicit discrimination may also manifest in the form of a lack of policies acknowledging violence experienced by women outside of the workplace, such as in the form of domestic violence or stalking. Finally, a lack of an enabling environment means that workplace policies and practices may not support women to remain in the workforce after they have families. This may be due to

a lack of formal policies around flexible hours or maternity and paternity leave; a lack of facilities (such as nursing rooms or on-premises childcare); or even informal practices, such as removing women from desirable assignments due to them taking maternity leave; or a lack of any reintegration support when they return.

Given the substantial economic gains to be realised, there is a tremendous opportunity for Malaysia to leverage on the high educational attainment of women and to take measures to combat the direct and indirect factors that currently hinder women's economic empowerment by applying Sandra Fredman's transformative equality model. To implement the first aim under the framework – breaking the cycle of disadvantage – there must be a recognition that women have been disadvantaged on the basis of their gender, and that specific positive measures are required to redress this.²⁸ This element recognises that differential treatment is necessary to achieve gender equality in labour force participation and economic empowerment,²⁹ including by temporary measures such as tax incentives for employers whose workforce is made up of at least 50 per cent women, or preference given to women-owned businesses via the evaluation of public procurement processes. The second aim of promoting respect for dignity and worth focuses on the recognition of harms such as harassment, stereotypes, stigmas, and negative cultural attitudes.³⁰ This element presents an opportunity to make the legal and policy framework – one of the direct factors influencing women's economic empowerment – supportive, such as through the introduction of gender equality legislation, sexual harassment legislation, and other provisions to preempt and respond to the discrimination and violence that serve to push women out of the workforce. The third aim of accommodating difference by achieving structural change "entails 'a redistribution of power and resources and a change in the institutional structures that perpetuate women's subordination."³¹ Within this element, there are numerous cultural and institutional structures that must be addressed, from societal norms that place the responsibility of child care and domestic work solely on women's shoulders, to a lack of affordable and accessible child care, to the absence of critical facilities (such as breastfeeding rooms) to policies (such as flexible working hours for both men and women) to support women in the workplace. Finally, the fourth aim of promoting political and social inclusion requires including women in decision-making processes at every level.³² This means that women must be given the opportunity for meaningful participation and input into the

design of laws, policies, and government initiatives concerning employment and economic empowerment.

The substantial gains to be had by utilising the transformative equality framework to increase women's economic empowerment domestically stem not only from increased economic activity, but also from Malaysia's increased presence in the regional and global economy, as discussed in the next section.

APPLYING THE TRANSFORMATIVE EQUALITY MODEL TO INTERNATIONAL TRADE AGREEMENTS AS DRIVERS OF GENDER EQUALITY AND ECONOMIC GROWTH

International trade plays a critical role in shaping countries' economic and social performance, including by creating new employment opportunities and incentivising innovation.³³ Increasing women's labour force participation and economic empowerment in Malaysia by removing structural barriers, while stimulating growth in the domestic economy, can also be leveraged on to simultaneously increase Malaysia's presence in the regional and global economy and increase gender equality. For example, "Men hold 99 percent of the procurement contracts in the world, and consequently, they control 99 percent of international trade;"³⁴ with approximately 80% of international trade being transacted through multinational companies, incorporating women's economic empowerment into the supply chains of multinational companies represents a tremendous opportunity to both increase gender equality and economic growth.³⁵ In Malaysia, SMEs form a substantial portion of the economy, contributing 38.3% to Malaysia's GDP in 2018³⁶ and employing 70% of the workforce as of 2019,³⁷ and thus, "enabling SMEs to trade and invest internationally could boost economic growth and productivity, which, in turn, would increase the benefits from trade."³⁸ Increasing women's economic empowerment such that women are able to participate in the global market means incorporating – through the transformative equality framework – measures that take into account and actively counter the economic exclusion of women identified by Scott, whether at the household level or at the societal level, such as in the form of producer/supplier networks that leave women out entirely.³⁹ Examples of how this could be countered domestically include incentivising women-owned businesses or practices that increase gender equality through government and private sector procurement processes, or easing credit requirements for women-owned businesses to obtain start-up capital.

Additionally, by taking a transformative approach to international trade agreements similar to that taken by Canada,⁴⁰ Malaysia can further drive gender equality and economic growth domestically. Canada's new approach to trade views gender as a primary strategy towards a humane and sustainable world economy, and simultaneously, "Canada's trade commission also estimates that lifting barriers to female participation in world trade would boost its own economy by USD114 billion."⁴¹ In 2017, Canada and Chile executed the first international trade agreement to include a provision on gender equality, which "...asserts that trade is not gender-neutral and goes further to emphasize 'the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socioeconomic development.'"⁴² Additionally, the agreement contains specific provisions wherein:

...both nations reaffirm their commitments to all international accords on gender equality and commit to promoting public knowledge of their own 'gender equality laws, regulations, policies, and practices' domestically. Then, there is a list of activities that Chile and Canada will include in their women's empowerment plans, from financial inclusion for women to increased representation in leadership and decision-making. Sex-disaggregated data will be collected and analyzed by both countries, separately and jointly.⁴³

Finally, the agreement also creates a joint committee tasked with working cooperatively with civil society, the private sector, and international agencies to pursue gender equality through trade.⁴⁴ Canada has also been advocating for the rest of the world to follow a similar model through the Declaration on Trade and Women's Economic Empowerment, an agreement to "...enable gender-based analysis to be applied to domestic and international domestic policy, encourage female entrepreneurship and financial inclusion, remove barriers to women's participation in trade, and develop useful gender statistics and research."⁴⁵ The agreement was signed by 122 members and observers of the World Trade Organisation, including Malaysia.⁴⁶

As embodied by the Declaration on Trade and Women's Economic Empowerment, and the landmark Canada-Chile trade agreement, Malaysia could similarly commit to incorporating a provision on gender equality into any bilateral and multilateral trade agreements as part of a transformative equality

strategy under CEDAW. It is becoming increasingly clear that such bold action as part of a broader overall strategy is the path forward not only to gender equality, but to sustainable economic growth.

LEADING A STRATEGY OF TRANSFORMATIVE EQUALITY FOR ASEAN

Not only does Malaysia have the potential to implement a strategy of transformative equality that includes taking action through bilateral and multilateral trade agreements towards gender equality and sustainable economic growth in Malaysia, it also has the potential to lead such a strategy for ASEAN. The ASEAN Economic Community (AEC) Blueprint 2025 is:

...aimed towards achieving the vision of having an AEC by 2025 that is highly integrated and cohesive; competitive, innovative and dynamic; with enhanced connectivity and sectoral cooperation; and a more resilient, inclusive, and people-oriented, people-centred community, integrated with the global economy.⁴⁷

Although the AEC Blueprint 2025 makes some reference to gender and women's empowerment, it has been criticised as lacking a true human rights and gender perspective.⁴⁸ Additionally, criticism has been drawn to the fact that the AEC remains the only of the three ASEAN pillars (Economic, Socio-Cultural, Political-Security) "...without a human rights mechanism and without a space for dialogue with civil society organizations (CSOs), particularly with women rights organizations (WROs),"⁴⁹ with the "...three human rights bodies: ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), and the ASEAN Intergovernmental Commission on Human Rights (AICHR)..." all structured within the Socio-Cultural Community pillar.⁵⁰

As of 2014, the AEC was the third largest economy in Asia and the seventh largest in the world, and the integrated economy of the region constitutes a market valued at USD2.6 trillion and constituting over 622 million people.⁵¹ Much of the agenda of the AEC Blueprint 2025, and its predecessor the AEC Blueprint (2008-2015), is focused on increasing and liberalising trade within the region; however, the approach of the AEC has always been that of traditional

economics, viewing trade as gender-neutral and implementing policies that ignore the interests of and impact on women.^{52,53} A 2016 UN Women report found that the impact of the AEC on women would be significant in terms of jobs being created, but insignificant in terms of changing the pattern of employment and wages.⁵⁴ This was in part due to the fact that women were largely left out of trade as a result of labour market inequalities within ASEAN member states that prevented them from taking advantage of opportunities created by the AEC; thus, they would not materially benefit from the boost in trade envisioned by the AEC.⁵⁵ Although the AEC is primely positioned to facilitate gender equality and women's economic empowerment in the region, thus far it has failed to utilise one of its primary agendas – trade – to do so, without which there cannot be any meaningful integration of women into the regional economy.

By initiating and leading a strategy of transformative equality through its bilateral and multilateral trade agreements in the region, Malaysia has an incredible opportunity to lead the way for ASEAN. This could subsequently develop into a meaningful commitment by ASEAN to incorporate the transformative equality framework under CEDAW into the AEC – including into future AEC Blueprints.⁵⁶ Applying Fredman's transformative equality framework to the AEC would require including concrete targets and measures aimed at women's economic inclusion and empowerment, especially through trade. Similar elements as contained in the 2017 Canada-Chile trade agreement could be incorporated, including commitments to international accords on gender equality, activities to include in domestic women's empowerment plans, and the establishment of a joint multi-sectoral committee to pursue gender equality through trade. Implementing such a strategy based on a model of transformative equality under CEDAW would help the AEC and ASEAN overall live up to its commitment not only of "A Resilient, Inclusive, People-Oriented and People-Centred ASEAN," but of "A Competitive, Innovative, and Dynamic ASEAN."⁵⁷

CONCLUSION

Women's economic empowerment is the clear path forward towards the realisation of gender equality. Traditional economic structures have historically excluded women, serving as tools of ongoing oppression that are in turn reinforced by patriarchal social and cultural institutions. However, these mechanisms have the potential to be repurposed as tools for women's economic empowerment

through the application of a transformative equality framework. The gains to be had from women's economic empowerment are well-established and stand to benefit not only women, but societies at-large, stimulating tremendous sustainable growth. Through its existing commitment to CEDAW, Malaysia has the opportunity to implement the transformative equality framework envisaged by Article 5(a) in both its domestic economy and in its international trade engagements, and, by doing so, not only realise substantial economic gains, but lead the way for an ASEAN Economic Community that is truly inclusive and a global model of meaningful regional cooperation towards achieving gender equality.

NOTES

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We're Living Through the Breakdown and Here's What We Can Do About It

By Tatton Spiller

Review by Ezrin Balqis Abd Lataf and Johan Arief Jaafar

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Politics may be difficult for some to follow, especially when everything is complex. Spiller, however, has taken the readers on a journey of the UK politics in an easy-going, conversational style. The examples given are relatively simple and straightforward.

The author starts with *"there was once a time when most families had only one screen in their house. It was in a room where everyone would come together to fight about which of the three, four or five channels they would watch. This forced people into a situation in which they would have to compromise."*

One good thing that came out of this was that people had to watch news together, which then sparked conversation. Political views were discussed, challenged and argued based on the limited news source and they would have heard both sides of the argument. However, fast forward today, there is a change in how people consume news. Everyone has his/her screen and there are a variety of online and offline platforms deemed to be 'reliable' source of news. Media's agenda-setting has set a certain storyline for their audience to believe and news articles may be biased towards a certain party. We are living through The Breakdown and when people do not see eye to eye, the problem is often debated but its solutions are not discussed. It is all about who is right and who is wrong. People can have different viewpoints of what is going on in the political world. Sometimes, they try to convert each other to their ideology but both sides are just not listening. Spiller mentioned that this is exactly how it is in communities blighted by The Breakdown. Different sides, all amazed at the

awfulness of the other, unable to communicate, to make informed decisions for the good of the community, to understand each other – unwilling even to try. At the end, the writer invites the readers to take a step back, listen and analyse what people understand. It may be different from one another but it does not make them wrong.

Part One discusses the three major ideologies in the UK, and how and why different ideologies shape people's mind and views. Ideologies, according to the book, are just some key principles that people stick with and everything else needs to fall in line. Thus, it is important to understand that they not only affect how people think and perceive politically but also influence the way they live. In this chapter, the author dissects matters on free-market economics, liberalism, conservatism, socialism, similarities of the three ideologies and the breakdown of trust.

Spiller explains free-market economics as an economic system that is controlled by the market forces of supply and demand. In a free-market economy, sellers of different goods do not face any barriers and it is acceptable to sell any product they wish to sell at any price. He highlighted 'the point of equilibrium', also known as a meeting point, where a reasonable price is reached between sellers and buyers. As the concept of price equilibrium is known to be flexible, people are free to respond to what they wish. Adam Smith, a well-known economist, refers to this as the invisible hand where a "let go" approach is applied to the market. The approach holds that the market will find its equilibrium, without any intervention from the government forcing it into unnatural patterns.

The book then continues with liberalism that lives for freedom. There are two types of freedom. 'Freedom from' is said to be freedom to do anything that does not affect the society, whereas 'freedom to' is more focused on equality between one another, like levelling the playing field. Another ideology mentioned is the conservatism that upholds tradition. According to Jeremy Hunt, then foreign secretary in 2018, they are to hold traditions that are built upon the strengths of the past to shape the present. Socialism, on the other hand, is based on equality. Though it may seem like the liberals, they do not support the free-market economy. Socialists want everything equally laid out; education, work and health care.

All three ideologies have a similarity, which is the need to demonstrate a fight for 'everyone' or 'the people' if they plan to win the votes. Liberalism, conservatism and socialism are all distinct. However, politicians sometimes manipulate issues to benefit themselves or the party. As said on page 52, *the way politicians present their beliefs is often pragmatic, as well – it can shift in order to fit the narrative of the time.* The chapter concluded that understanding how people think will help one make sense of this messed up political landscape. It is also alright to agree or disagree at certain party's actions but it is also possible to see it as a more progressive and positive action towards their vision for the best of the country. The writer ends the chapter with a reminder, *"if you're trying to make sense of this political landscape, you have to understand it doesn't make you better than anyone else. Or more correct. You just disagree. And that's OK."*

Part Two analyses the area of British politics where debates on ideologies take place to win the hearts and minds of the voters. For people who generally stand on the notion of 'agreeing to disagree' and 'disagreeing to agree', the author emphasised having such views as entirely acceptable. This chapter explores issues such as privatisation and Brexit, among others, where arguments are often brought to the front.

Privatisation, as described by the author, is known as the bread and butter of modern politics. People are often faced with the privatisation versus nationalisation debate, which you either love or hate. Spiller summed up privatisation as competition. When privatisation occurs, the best person wins while the rest loses. The author further expands his ideas by analysing arguments for and against privatisation, as well as reaching for a middle ground. Often being put side by side, privatisation and nationalisation are commonly associated, although they are different based on ownership issues. Based on finding a mean, Spiller, on page 72, mentions a way where nationalisation is attainable without having the means to remove the free market and all that comes with it entirely.

The author also touched on Brexit which he further identified as a monumental battleground. Through the lens of reality, Spiller explained the future of Brexit, an issue that might take some time to resolve, due to personal interests coming from every side of the political ambit. The essence of this section is seen as the author tackles neatly the history behind Brexit as well as on how the UK referendums were held in the past. Divided between the 'Yes' and

the 'No' camps, where the 'Yes' camp stands for staying, the author uncovered every justification presented by the two groups. During the 1975 referendum, it was clear that the political parties advocated staying with the EU, which was also supported by banks or well known today as big corporations. However, things changed during the 2016 referendum where the result saw that more than half of 51.89 per cent voted to leave the EU. As mentioned by the author on page 126, *"Perhaps Brexit really is down to the Leave campaign's incredibly intelligent use of social media adverts. Or, perhaps, when it was purely an economic area, the EU was more attractive to UK voters"*.

Part Three centres on individuals and their career of influencing people to vote based on the agenda propagated by them. In today's world, people are interested to see a transformation of making a person's life better. Spiller cited several examples of those who had brought change in their unique ways, and exposed how every political personality from different ages and forms attempts in propagating an agenda to people. He also revealed how individuals can bring a big impact by playing a key role in wanting change to occur.

Nigel Farage was one of those who wanted change to take place. A British politician and activist serving as leader of the Brexit Party since 2019, Farage was also the leader of the UK Independence Party (UKIP) from 2006 to 2009 and 2010 to 2016. The author explained that it took decades for Farage to convince the UK to get out of the EU and he certainly achieved his aim, through his ability to make political arguments and conveying it to the people. As a reader, it was impressive to learn how Farage struggled to make the change happen. The lines on page 151, *"if you build a small party that can take votes away from a bigger party, the bigger party will get worried"*, was a reference to the UKIP party competing with other parties in the UK election. Although he was not successful at first, Farage was successful in 1999 after two tries, when he was voted as Member of the European Parliament. He showed passion and tenacity to deliver strong arguments to convince voters he was able to make a change. His many appearances on BBC's *Question Time* proved over the years that you can grow your popularity with the people by presenting strong arguments about an issue and delivering it well in a convincing manner.

On the other hand, Laura Coryton changed UK politics through her petition on Change.org. The British campaigner's success was driven by her sense of justice in her fight against the tampon tax. Through the setup of

'Stop Taxing Periods. Period' petition, Coryton achieved a big win where the platform gained over a quarter of a million signatures and led to changes both in the UK and European law. Setting aside the group of opponents, she continued to march forward with only the people that matter. Spiller exposes Coryton's method as slick and effective whereby she operated the movement through building support from people in the streets, attracting media attention and using the internet as a medium to reach out to targeted people.

This book is suitable for those who are new to politics or have been following the development of politics in the UK. Spiller had achieved in delivering a broad political context in an easily understood way. By reading this book, readers would benefit by gaining new knowledge from different angles of the political landscape which were discussed clearly in each chapter. Not only does the book teach us effectively to understand the purpose of different arguments, it also reminds us to search for a common ground among all political agenda for the benefit of the people and the country.

Ezrin Balqis Abd Lataf is a junior officer attached with IDFR. Her previous experience working with foreign clients led her to discover an interest in international relations and diplomacy. She hopes to continue her studies in the areas of international strategy and diplomacy for personal development and career growth. Johan Arief Jaafar has served with the Ministry of Foreign Affairs, Malaysia for more than 12 years, and is also currently serving at IDFR. He was Malaysia's Long Term Delegate at the United Nations in New York in 2015 and served at the Embassy of Malaysia in Vientiane, Lao PDR from 2016 to 2020. Johan aspires to one day become an Ambassador and also Chair or Vice-Chair of one of the Committees at the United Nations in New York.

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