MALAYSIA’S INTERNATIONAL COMMITMENT TOWARDS COMBATING DANGEROUS DRUGS MISUSE

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INTRODUCTION

At the international level, there is irrefutable consensus that drugs destroy lives and communities, undermine sustainable human development and generate crimes. Drugs affect all sectors of society in all countries; in particular drug abuse affects the freedom and development of young people, the world’s most valuable asset. Drugs are a grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families.1

THE OBJECTIVES OF THE PAPER

The research proposes to determine the extent of Malaysia’s international obligation and her commitment in the fight against dangerous drugs misuse nationally and internationally. This research would determine whether Malaysia has the relevant laws in place relating to the control and prevention of dangerous drugs misuse, and whether these laws meet the international requirements, which Malaysia is obliged to undertake as required by the Single Convention on Narcotics Drugs, 1961, which established INCB; that Convention as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the United Nations Conventions against illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. Malaysia is a party to these Conventions.2 Due to the extensive nature of dangerous drugs laws and the time limitation of this conference, this paper can only provide an overview of Malaysia’s relevant dangerous drugs laws and discuss them generally with relevant cases and literatures.

INTERNATIONAL COVENTIONS ON DRUGS CONTROL

The drug control system is governed by a series of treaties, adopted under the aegis of the United Nations, which require that governments exercise control over production and distribution of narcotic and psychotropic substances, combat drug abuse and illicit trafficking, maintain the necessary administrative machinery and report to international

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1 The Preamble of the Political Declaration on Global Drug Control, second session, Vienna. 16-20 March 1998.
organs on their actions. The existing treaties are: the Single Convention on Narcotics Drugs, 1961, which established INCB; that Convention as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the United Nations Conventions against illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

The Single Convention on Narcotics Drugs, 1961

The Single Convention aims to combat drug abuse by coordinated international actions. There are two forms of intervention and control that work together. First, it seeks to limit the possession, use, trade-in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes. Second, it combats drug trafficking through international cooperation to deter and discourage drug traffickers. Under Article 38, parties to the convention are required to take all practicable measures for the prevention of abuse of narcotic drugs or psychotropic substances and “for the early identification, treatment, education, aftercare, rehabilitation and social re-integration of the persons involved.

The Convention on Psychotropic Substances 1971

The Convention on Psychotropic Substances 1971 establishes an international control system for psychotropic substances. It responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand, and their therapeutic value on the other.

The Convention against the illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988

The Convention against the illicit traffic in narcotics drugs and psychotropic substances, 1988 provides comprehensive measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals. It provides for international cooperation through, for example, extradition of drug traffickers, controlled deliveries and transfer of proceedings. Parties should take legislative and administrative measures to promote co-operation. Article 5(1) provides that each party is to adopt such measures as may be necessary to enable confiscation of “...the proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds...”. Art. 5 (3) requires each party to empower its courts to order that bank, financial or commercial records be made available or seized. Article 7 makes provision for the reversal of the burden of proof, namely that each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds, or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings. Article 3(1)(a)(v) & 3(1)(b)(i)&(ii) require member states to make it an offence to conceal, disguise and handle the proceeds of drug trafficking. Article 14

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3 See Article 7.1 and 2.4 of the 1988 Vienna Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances
states that parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic.

MALAYSIA'S INTERNATIONAL OBLIGATION

Malaysia's main statutes on drugs are the Dangerous Drugs Act 1952, the Poisons Act 1952, the Drug Dependants (Treatment and Rehabilitation) Act 1983; Dangerous Drugs (Special Preventive Measures) Act 1985; and the Dangerous Drugs (Forfeiture of Property) Act 1988.

Dangerous Drugs Act 1952

The Dangerous Drugs Act 1952 is the foremost statute in Malaysia on drugs control, covering penal, procedural and evidential matters, as well as regulating the importation, exportation, manufacture, sale and use of opium and of certain other dangerous drugs and substances. The Act even provides for the mandatory death penalty to convicted drug traffickers, while the offence of cultivation and production is punishable with life imprisonment. An offence under the Act is generally unbailable and seizable (arrestable) in that the police may arrest without a warrant any person, if they have reasonable suspicion that he or she is concerned in the commission of any offence under the Act. The punishment under the Act is undeniably deterrent in nature in the sense that the punishment is more punitive in relation to the offence (please see Table 1).

Table 1: Types of offences under the Dangerous Drugs Act, 1952

<table>
<thead>
<tr>
<th>Type of Offence</th>
<th>Section</th>
<th>Type of Drugs/Matters</th>
<th>Punishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Importation</td>
<td>4(1)</td>
<td>Raw opium, coca leaves, poppy straw and cannabis</td>
<td>3-5 years imprisonment</td>
</tr>
<tr>
<td></td>
<td>9(1)(a)</td>
<td>Prepared opium</td>
<td>&lt;5 years imprisonment or &lt;RM 20,000 fine or both.</td>
</tr>
<tr>
<td></td>
<td>12(1)(a)</td>
<td>Other dangerous drugs (Part iii, iv and v of First Schedule)</td>
<td>&lt;5 years imprisonment or &lt;RM 20,000 fine or both.</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Dangerous drugs - breach of the terms and conditions of authorisation</td>
<td>3-5 years imprisonment</td>
</tr>
<tr>
<td></td>
<td>38(1)</td>
<td>Dangerous drugs through ship or aircraft</td>
<td>&lt;RM 10,000 fine (Detention of ship and aircraft or &lt;RM 10,000 is furnished as security).</td>
</tr>
<tr>
<td>Exportation</td>
<td>5(1)</td>
<td>Raw opium, coca leaves, poppy straw and cannabis</td>
<td>3-5 years imprisonment</td>
</tr>
<tr>
<td></td>
<td>9(1)(a)</td>
<td>Prepared opium</td>
<td>&lt;5 years imprisonment or &lt;RM 20,000 fine or both.</td>
</tr>
<tr>
<td></td>
<td>12(1)(b)</td>
<td>Other dangerous drugs (Part iii, and iv of First Schedule)</td>
<td>&lt;5 years imprisonment or &lt;RM 20,000 fine or both.</td>
</tr>
<tr>
<td></td>
<td>19</td>
<td>Dangerous drugs - breach of the terms and conditions of authorisation</td>
<td>3-5 years imprisonment</td>
</tr>
</tbody>
</table>

5 See section 39B and 39F of the Dangerous Drugs Act 1952
Possession  
6  Ra opium, coca leaves, poppy straw and cannabis or the respective seeds of the plants  
9(1)(b) Prepared opium  
10(2)(a) Pipe or other utensils for smoking prepared opium, or for the preparation of opium for smoking, consumption or otherwise

Trafficking  
39B(1) Traffic or offer to traffic or any act preparatory thereto  
Planting or Cultivating  
6B(1) Any plant where raw opium, coca leaves poppy-straw or cannabis may be obtained directly or indirectly  
Manufacture/distribution  
16(1) Dangerous drugs (Part iii, iv & v of First Schedule)  
9(c) Prepared opium  
Consume  
10(2)(b) Prepared opium  
Administration on  
14(1) Dangerous drugs (Part iii & iv of the First Schedule)  
Self-administration  
15(a) Dangerous Drugs (Part iii & iv of the First Schedule)  
Premises  
10(1) Owner/occupier permits its use; or is concerned in its management, for making or sale or smoking or consumption or otherwise of prepared opium
<table>
<thead>
<tr>
<th>Section</th>
<th>Offence Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Using drugs for purposes of administration on a human being or for smoking, consuming or otherwise of the same</td>
<td>RM 5,000 fine or ≤2 year imprisonment or both</td>
</tr>
<tr>
<td>17</td>
<td>Products with phenanthrene alkaloids of opium or eugonone alkaloids of coca leaf</td>
<td>RM 10,000 fine or ≤5 year imprisonment or both</td>
</tr>
<tr>
<td>21(1)</td>
<td>Dangerous drugs without first having authorisation from the respective export and import authority</td>
<td>RM 20,000 fine or ≤5 year imprisonment or both</td>
</tr>
<tr>
<td>22(1)</td>
<td>Moving of dangerous drugs from the conveyance or moving of the same after removal from the conveyance without a removal licence</td>
<td>RM 20,000 fine or ≤5 year imprisonment or both</td>
</tr>
<tr>
<td>23(1)</td>
<td>Tampering of dangerous drugs and undermining the packaging</td>
<td>RM 20,000 fine or ≤5 year imprisonment or both</td>
</tr>
<tr>
<td>24(1)</td>
<td>Causing or procuring the diversion of dangerous drugs to any destination other than its original consigned destination</td>
<td>RM 2,000 fine or ≤1 year imprisonment or both</td>
</tr>
<tr>
<td>28</td>
<td>Obstructing an inspection, entry and or search of premises or conveyance, or seizure of anything for which there is reasonable ground for suspecting that an offence under the Act has been or is being committed</td>
<td>RM 2,000 fine or ≤1 year imprisonment or both</td>
</tr>
<tr>
<td>32</td>
<td>Making false declaration for purposes of obtaining a licence/permit under the Act</td>
<td>As provided for such offence</td>
</tr>
<tr>
<td>33</td>
<td>Abetting and attempting the commission of an offence under the Act or act preparatory thereto</td>
<td>As provided for such offence</td>
</tr>
<tr>
<td>34</td>
<td>Abetting in Malaysia the commission of an offence abroad or act preparatory thereto of correspondingly law that would constituted an offence if committed in Malaysia</td>
<td>As provided for such offence</td>
</tr>
<tr>
<td>35</td>
<td>Liability of every officer/person concerned in the management of the company; liability of principal for acts committed by his agents or servants in the course of his employment, and the liability of the servant and agent themselves</td>
<td>As provided for such offence</td>
</tr>
</tbody>
</table>

Note: not less than (>), not exceeding (<); Amd= Amendment; Add= Addition

### Possession

In 1973, a new section 39A was added in the Dangerous Drugs Act 1952, prescribing a minimum three years to a maximum of fourteen years imprisonment for unauthorised import or export of dangerous drugs, namely morphine or heroin of 5 grammes or more in weight. Additional punishment of whipping of not less than six strokes was added to section 39A in 1975. Section 39A was substituted in 1983 for offences under the Act where the subject matter is heroin or morphine of 5 grammes or more in weight, or prepared opium or raw opium weighing 250 grammes or more in weight. Imprisonment is between 5 years to life with whipping of not less than six strokes.

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5 Dangerous Drugs (Amendment) Act A19472.  
6 Dangerous Drugs (Amendment) Act A553/83.
In 1986, section 39A was refined and restated as section 39A(2) for offences under the Act where the amount of prohibited drugs in possession is material. Complementarily, section 39A(1) was introduced, and is meant for offences where the quantities of prohibited dangerous drugs in possession are less or nominal, and which do not warrant the same kind of treatment or punishment provided by section 39A(2). For section 39A(1), the punishment is less severe with imprisonment from two to five years and mandatory whipping from three to nine strokes. Whether the offender will be sentenced under 39A(1) or 39A(2) will depend on the amount of dangerous drugs involved (see Table 2).

Trafficking

Trafficking was introduced in 1978 as an offence under section 39B of the Dangerous Drugs Act 1952, which is punishable by death, or life imprisonment and whipping. It is an offence to traffic or offer to traffic in dangerous drugs, including any act preparatory thereto. Due to the gravity of the charge, prosecution under the section requires the consent of the Public Prosecutor. In 1983, the Malaysian government, contemporaneously with its declaration that drug misuse is a threat to its national security, amended section 39B of the Dangerous Drugs Act 1952, making the death penalty the only punishment for trafficking. The government when moving the Bill noted that life imprisonment and whipping were not an effective deterrent against drug trafficking activities, which were increasing between 1980 and 1983. The government took note that the drug menace had spread wide and affected people of all races and ages. It leads to moral decadence, loss of self-respect, crimes and drug-related crimes.

Table 2: Offences of Trafficking and Possession

<table>
<thead>
<tr>
<th>Year/Section</th>
<th>39B – Trafficking</th>
<th>39A (2) – Major Possession</th>
<th>39A (1) – Possession *</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>363</td>
<td>255</td>
<td></td>
<td>10263</td>
<td>10881</td>
</tr>
<tr>
<td>1984</td>
<td>462</td>
<td>208</td>
<td>-</td>
<td>9936</td>
<td>10606</td>
</tr>
<tr>
<td>1985</td>
<td>528</td>
<td>178</td>
<td>-</td>
<td>9777</td>
<td>10483</td>
</tr>
<tr>
<td>1986</td>
<td>456</td>
<td>156</td>
<td>-</td>
<td>8728</td>
<td>9340</td>
</tr>
<tr>
<td>1987</td>
<td>525</td>
<td>240</td>
<td>183</td>
<td>10661</td>
<td>11609</td>
</tr>
<tr>
<td>1988</td>
<td>566</td>
<td>672</td>
<td></td>
<td>12066</td>
<td>13304</td>
</tr>
<tr>
<td>1989</td>
<td>688</td>
<td>424</td>
<td></td>
<td>9147</td>
<td>10785</td>
</tr>
<tr>
<td>1990</td>
<td>779</td>
<td>651</td>
<td>872</td>
<td>8659</td>
<td>10961</td>
</tr>
<tr>
<td>1991</td>
<td>744</td>
<td>750</td>
<td>813</td>
<td>7555</td>
<td>9862</td>
</tr>
<tr>
<td>1992</td>
<td>765</td>
<td>725</td>
<td>1173</td>
<td>7216</td>
<td>9879</td>
</tr>
</tbody>
</table>

7 Dangerous Drugs (Amendment) Act A659/86.
8 Section 39B(3), Dangerous Drugs Act 1952: Dangerous Drugs (Amendment) Act A293/75 (no.1).
9 Read the House of Representatives (Parliamentary Debate), 2nd and 3rd Reading of the Dangerous Drugs (Amendment) Act, 24th March 1983, pg 7404-7460.
The Poison Act 1952

The Poison Act 1952 regulates the importation, possession, manufacture, compounding, storage, transport, sale and use of poisons. It regulates the use of drugs that are not covered under the First Schedule of the Dangerous Drugs Act 1952. The types of poisons that fall under the control of this Act include substances used for industrial, medical and agricultural purposes. Certain poisons are categorised as psychotropic substances and its supply, possession or administration, as the case may be, are done through medical practitioners, veterinarians, and dentists. Members of a local authority or public authority, members of the governing body of a public hospital, registered medical practitioners, registered dentists, registered nurses and midwives, registered pharmacists, chemists and wholesalers and retailers of poisons licensed under the Poisons Act 1952 are also exempted to a similar extent.11 Similar categories of persons or bodies are also authorised or licensed under the Dangerous Drugs Act 1952, to deal, administer, possessed or supply controlled drugs.12 The Minister is empowered to withdraw the authorisation given to persons in the medical profession where such licence or authorisation was acted upon irresponsibly.13

The Dangerous Drugs (Hospital, etc.) (General Exemption) Order, 1952, exempts public hospital, public infirmary, public clinic, public mental hospital or public sanatorium supported by any public authority, public funds, charity or voluntary subscription where dangerous drugs are dispensed by a registered pharmacist, or in his absence, by a registered medical practitioner. That Order also provides provisions for the safe custody, handling and records of the dangerous drugs in question.14

Treatment and Rehabilitation under The Dangerous Drugs Act 1952

In 1975, provisions were made in the Dangerous Drugs Act 1952 for the treatment of drug dependants under section 37B. The section empowered the police and welfare officers to take suspected drug dependants into custody for medical examination by a government medical officer, and for these dependants to be compelled to undergo treatment at an approved medical institution.15 Treatment and rehabilitation of drug

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11 Section 7, 8, 12, 15, 18, 19, 20, 21, 22 & 23 of the Poison Act 1952 - Malaysia.
12 Section 6B(2), 7(1), 9(1)(b), 12(2), 14, 15(a), 16 and 47 Dangerous Drugs Act 1952; See also Regulation 5, 6, 7 and 8, Dangerous Drugs Regulations, 1952.
13 Regulation 10 of the Dangerous Drugs Regulations 1952.
14 L.N.550 of 1952.
15 Dangerous Drugs (Amendment) Act A293/75.
dependants at a rehabilitation centre was then for a period of six months before undergoing after-care.  

Drug Dependants (Treatment and Rehabilitation) Act 1983

The Malaysian government felt that the time had come for a comprehensive Act that could specifically and seriously deal with the treatment and rehabilitation of drug dependants. The government pointed out that the Dangerous Drugs Act 1952 had become over-complicated in its attempt to achieve a number of objectives simultaneously. It would be more effective to produce another Act, which concentrates on the treatment and rehabilitation of drug dependants. In 1983, Drug Dependants (Treatment and Rehabilitation) Act 1983 was enacted to replace and repealed part VA of the Dangerous Drugs Act 1952, the provisions that deal with treatment and rehabilitation.\(^\text{17}\) Section 38A and 38B were correspondingly introduced in the Dangerous Drugs Act 1952.\(^\text{18}\) Section 38A of that Act enables the court to send a drug offender under the age of 18 years for treatment and rehabilitation under the Drug Dependants (Treatment and Rehabilitation) Act 1983, if it is expedient to do so. It however excludes serious drug offences of trafficking, cultivation or possession under section 39B, 6B and 39A of the Dangerous Drugs Act, 1952 respectively. Understandably, these offences were considered grave and serious. A punitive approach to curb the growing drug menace that was seen as threatening the social fabric of society was preferred here. Under section 38B of the Dangerous Drugs Act 1952, the court is required to order a person convicted of the offence of self-administration of dangerous drugs to undergo supervision between two and three years under the Drug Dependants (Treatment and Rehabilitation) Act 1983, having completed his prison term.\(^\text{19}\)

Section 3 of Drug Dependants (Treatment and Rehabilitation) Act 1983, enables an officer (rehabilitation officer or any police officer not below the rank of sergeant or any police officer in charge of a police station) to take into custody any person he reasonably suspects to be a drug dependant.\(^\text{20}\) He could be detained for twenty-four hours at any appropriate place for the purpose of undergoing tests. The officer may release him on bail (with or without surety), if the tests cannot be held or completed within twenty-four hours. Beyond that period, the officer would have to produce him before a magistrate for an order to detain him for up to 14 days. The magistrate may release him on bail-bond (with or without surety) to attend at such time and place as may be mentioned in the bond for the purpose of undergoing tests. Where tests had been done but the result has yet to be obtained, the magistrate may release him on bail (with or without surety) to appear at such place and time, as may be mentioned in the bond to receive the result of the tests.\(^\text{21}\)

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\(^\text{16}\) Dangerous Drugs (Amendment) Act A389/77.
\(^\text{17}\) Act 283/83 passed on the 16\(^{th}\) April 1983.
\(^\text{18}\) Dangerous Drugs (Amendment) Act 283/83, passed on 16\(^{th}\) April 1983. See section 29 and 30. of Drug Dependants (Treatment and Rehabilitation) Act 1983 (Act 283); w.e.f. 16\(^{th}\) April 1983.
\(^\text{19}\) Public Prosecutor v Ng Hock Lai [1994] 4 CLJ 1056.
\(^\text{20}\) Social welfare officer was deleted from the definition of “officer” by the Drug Dependants (Treatment and Rehabilitation) (Amendment) Act A1018/98.
\(^\text{21}\) Section 3 & 4, Drug Dependants (Treatment and Rehabilitation) Act 1983.
A person who is detained for suspicion of being a drug dependant must be a certified drug dependant before a magistrate can make an order for his treatment and rehabilitation.\(^{22}\) A rehabilitation officer or a police officer has to produce a certified drug dependant before a magistrate, who may then make an order whether a drug dependant should reside in rehabilitation centres for a two-year period and thereafter undergo supervision, or otherwise supervision for 2 to 3 years under an officer (rehabilitation officer or police officer), where treatment and rehabilitation may be carried out.\(^{25}\) (See Table 3) The resident of the rehabilitation centre on his discharge will undergo supervision for another period of two years instead of after-care.

Table 3: Treatment and rehabilitation of drug dependants

<table>
<thead>
<tr>
<th>Year</th>
<th>Supervision</th>
<th>After-Care</th>
<th>TRC</th>
<th>Private-Centre</th>
<th>Prison</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>13,081</td>
<td>2,720</td>
<td>3,022</td>
<td>247</td>
<td>9,272</td>
<td>28,342</td>
</tr>
<tr>
<td>1989</td>
<td>12,854</td>
<td>3,386</td>
<td>4,242</td>
<td>369</td>
<td>7,649</td>
<td>28,500</td>
</tr>
<tr>
<td>1990</td>
<td>12,647</td>
<td>4,173</td>
<td>5,436</td>
<td>406</td>
<td>8,552</td>
<td>31,214</td>
</tr>
<tr>
<td>1991</td>
<td>12,361</td>
<td>5,835</td>
<td>6,095</td>
<td>476</td>
<td>8,665</td>
<td>33,432</td>
</tr>
<tr>
<td>1992</td>
<td>11,618</td>
<td>6,914</td>
<td>6,979</td>
<td>372</td>
<td>8,117</td>
<td>34,000</td>
</tr>
<tr>
<td>1993</td>
<td>11,394</td>
<td>7,063</td>
<td>9,018</td>
<td>233</td>
<td>7,698</td>
<td>35,406</td>
</tr>
<tr>
<td>1994</td>
<td>10,572</td>
<td>8,502</td>
<td>11,553</td>
<td>517</td>
<td>8,612</td>
<td>39,756</td>
</tr>
<tr>
<td>1995</td>
<td>12,599</td>
<td>11,216</td>
<td>17,206</td>
<td>836</td>
<td>9,160</td>
<td>51,017</td>
</tr>
<tr>
<td>1996</td>
<td>13,541</td>
<td>11,304</td>
<td>14,155</td>
<td>N/A</td>
<td>9,107</td>
<td>48,107</td>
</tr>
<tr>
<td>1997</td>
<td>18,455</td>
<td>13,112</td>
<td>9,412</td>
<td>500</td>
<td>9,247</td>
<td>50,726</td>
</tr>
<tr>
<td>1998</td>
<td>-</td>
<td>-</td>
<td>13,542</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1999*</td>
<td>35,000</td>
<td>-</td>
<td>8,107</td>
<td>450</td>
<td>10,500</td>
<td>54,057</td>
</tr>
</tbody>
</table>

Note: Treatment and Rehabilitation (TRC)/ No data is available from sources (\(-\)).


The treatment and rehabilitation of the residents at these centres is multi-disciplinary. The aim is the physical restoration, and the mental and psychological rehabilitation of addicts. The regime promotes self-discipline, social rehabilitation, spiritual and moral values, civic, community and family values. Military like training is delivered to the residents by the military and ex military personnel posted to these centres. The objectives are to instill discipline and achieve the physical restoration of the residents. Vocational training and or socio-economic projects, such as agriculture and livestock farming serve to provide residents with coping skills. The residents undergo 4 phases of treatment and rehabilitation. In phase one (3-5 months period), a resident undergoes orientation (civic classes), physical restoration (drills), counseling, moral and spiritual rehabilitation. Physical training, religious, moral and civic education, and counseling hours are reduced as a resident proceeds to the next phase. At the same time, vocational training and or socio-economic project are greatly increased as a resident proceeds from phase to phase. In phase two (4-7 months), in addition to his daily routine as above, a

\(^{22}\) Section 6(1), Drug Dependants (Treatment and Rehabilitation) Act 1983.

\(^{23}\) Section 6(1), Drug Dependants (Treatment and Rehabilitation) Act 1983. Prior to this 1983 Act, treatment and rehabilitation in rehabilitation centre was for six months only or a two-year supervision by a social welfare officer (see Dangerous Drugs (Amendment) Act A389/ 1977 & A413/ 1977).
resident participates in vocational training. In phase 3 (4 – 7 months), a resident is given job attachments. In phase four (4-5 months), a resident is allowed to visit his family, is involved in socio-economic projects, and re-entry programme.24

**Dangerous Drugs (Special preventive Measures) Act 1985**

There are two statutes, which are of central importance in this area, the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 196925, and the Dangerous Drugs (Special Preventive Measures) Act 1985. The Emergency Ordinance was promulgated in 1969 for securing public order, the suppression of violence and prevention of crimes involving violence. Under the Ordinance, a person could be detained without trial for a period of two years only.26 The question whether a person suspected of being engaged in drug trafficking, may be legally detained under section 4(1) of the Ordinance was resolved when the Federal Court hearing three appeals simultaneously, held that the order of detention against suspected drug traffickers is within the scope and ambit of the Ordinance. Trafficking in drugs strikes at the very core of public order, and any person indulging in such activities must necessarily be acting in a manner prejudicial to public order (see Table 5).27

Table 5: Detention and restriction under the emergency (public order and prevention of crime) Ordinance 5 of 1969

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrested</th>
<th>Detained</th>
<th>Restricted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>75 (-)</td>
<td>66 (-)</td>
<td>-</td>
</tr>
<tr>
<td>1976</td>
<td>166 (4)</td>
<td>91 (4)</td>
<td>10</td>
</tr>
<tr>
<td>1977</td>
<td>255 (1)</td>
<td>181 (-)</td>
<td>37</td>
</tr>
<tr>
<td>1978</td>
<td>281 (5)</td>
<td>174 (3)</td>
<td>66</td>
</tr>
<tr>
<td>1979</td>
<td>174 (-)</td>
<td>140 (-)</td>
<td>41</td>
</tr>
<tr>
<td>1980</td>
<td>185 (2)</td>
<td>147 (2)</td>
<td>27</td>
</tr>
<tr>
<td>1981</td>
<td>343 (3)</td>
<td>255 (2)</td>
<td>54</td>
</tr>
<tr>
<td>1982</td>
<td>91 (1)</td>
<td>73</td>
<td>7</td>
</tr>
<tr>
<td>1986</td>
<td>183</td>
<td>7</td>
<td>19</td>
</tr>
<tr>
<td>1987</td>
<td>107</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>


25 Ordinance 5, 1969 - P.U. (A) 187/1969: w.e.f 16th May 1969. The Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969, is an Ordinance promulgated by the Yang Di-Pertuan Agong (His Majesty), under Article 150(2) of the Federal Constitution, by reason of the existence of a grave emergency, threatening the security or the economic life, or public order in the Federation or any part thereof.

26 Section 4(1)[detention order] & 4A(1)[restriction order]. In 1988, a new section 7A (Act A706/88) was added to the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969, which empowered the Minister to extend the two-year detention order or restriction order. This made the continuation of the detention or restriction of such persons possible, instead of a fresh detention or restriction order being made under section 6(5) of Dangerous Drugs (Special Preventive Measures) Act 1985, on ground which need not necessarily be the same from the previous detention or restriction order made under the Ordinance.

27 Re Application of Tan Boon Liat & Ors. ( Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors; Patrick Eugene Long v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors; Donnie Lee Avila v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.) [1977] 2MLJ 18 (FC). See also the case of Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Mohd Zamri b Mohd Arrifin [1990] 1 MLJ 102, where it was held by the Supreme Court that a person suspected in drug trafficking activities could lawfully be detained under the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969, and this was confirmed by section 25 of the Dangerous Drugs (Special Preventive Measures Act) 1985.
The use of the Ordinance for purposes of detaining drug traffickers was eventually stopped in 1988, considering the fact that the Dangerous Drugs (Special Preventive Measures) Act 1985, had already been in existence in the past three years. (See Table 6)

**Dangerous Drugs (Special Preventive Measures) Act 1985**

The Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316] was passed by Parliament on 30th May 1985. The Act was made under Article 149 (1) (f) of the Federal Constitution, which states that "if an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation which is prejudicial to public order in, or the security of, the Federation or any part thereof, any provision of that law designed to stop or prevent that action is valid, notwithstanding that it is inconsistent with any of the provisions of Article 5 (liberty of the person), Article 9 (prohibition of banishment, and freedom of movement), Article 10 (freedom of speech, assembly and association) or Article 13 (rights to property). Because it is special legislation, the deprivation of a person’s personal liberty and right to be tried in an open court are sanctioned constitutionally. The Dangerous Drugs (Special Preventive Measures) Act 1985 is very much a copycat version, and also an improvisation of the Ordinance. The difference between these two preventive laws lies with the preamble. The latter did not specifically mention drug trafficking. On this basis, I shall simply concentrate instead, on the Dangerous Drugs (Special Preventive Measures) Act 1985, which is the specific legislation.

Most drug traffickers who were convicted, and given the death penalty under section 39B of the Dangerous Drugs Act 1952, were believed to be couriers or drug peddlers. The drug barons who mastermind trafficking were rarely apprehended for they did not physically carry drugs. The idea of lowering the criminal standard of proof for trafficking in drugs to the civil standard would be greeted with hostility by the judiciary. The government decided that to combat the drug menace in the country, it is important that there must be a law to empower the Minister of Internal Security to issue an order for the detention without trial, of any person suspected of involvement in drug trafficking. The Malaysian Government conceded that the Act may not succeed in

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28 The Prime Minister was reported in the *New Straits Times* of 8th and 23rd December 1978 to have said, when moving the amendments in both Houses that the new clause (f) in Article 149 of the Federal Constitution was proposed in order to deal effectively with trafficking and secret society activities – quoted from the case of Chew Phang Oo v Timbalan Menteri Dalam Negeri, Malaysia [1991] 1 MLJ 59. Paragraph (f) was added vide Act A442/1978, w.e.f. 31st December 1978. The overriding clause was made through an amendment of the Federal Constitution in 1981: read the House of Representatives, 2nd and 3rd reading of the Dangerous Drugs (Forfeiture of Property) Act 1988’s Bill, 24th March 1988, pg 36 - 71, at pg 62 - 63.
overcoming totally the drug trafficking problem, but the important factor is the existence of a law that could combat drug trafficking.\textsuperscript{29}

Under the Act, any person may be arrested and detained for investigations for up to sixty days, if there are reasons to believe that he or she has been or is associated with any activity relating to or involving the trafficking in dangerous drugs. The Minister may, subsequently make an order for his or her detention for up to two years, if on the basis of report submitted to him by the investigating police officer and the Inquiry Officer, he is satisfied that it is necessary do so.\textsuperscript{30} Alternatively, the Minister may make an order with such restrictions and conditions (restriction order) for a period not exceeding two years where detention is considered unnecessary, but is nevertheless necessary that control and supervision should be exercised, or that restrictions and conditions should be imposed upon him, in respect of his activities, freedom of movement, or places of residence, or employment. The Order can be extended before its expiration for a further period not exceeding two years.\textsuperscript{31} In \textit{Mohd Ali bin Mohd Radi v Director of Prison, Rehabilitation Centre, Pulau Jerejak, Pulau Pinang & Anor and other appeals}, the applicants had been charged with trafficking in ganja (cannabis) under the Dangerous Drugs Act, but the prosecutor subsequently applied for their discharge not amounting to an acquittal. The applicants however, were subsequently arrested under section 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985.\textsuperscript{32}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{YEAR} & \textbf{ARREST} & \textbf{DETENTION} & \textbf{RESTRICTION} & \textbf{ACQUITTAL} \\
\hline
1985 & 65 & 56 & 1 & 3 \\
1986 & 218 & 183 & 19 & 16 \\
1987 & 296 & 278 & 6 & 12 \\
1988 & 446 & 391 & 20 & 35 \\
1989 & 454 & 382 & 26 & 46 \\
1990 & 566 & 397 & 77 & 92 \\
1991 & 883 & 649 & 126 & 108 \\
1992 & 816 & 613 & 126 & 77 \\
1993 & 814 & 545 & 129 & 140 \\
1994 & 747 & 464 & 183 & 100 \\
1995 & 994 & 584 & 296 & 114 \\
1996 & 1114 & 692 & 295 & 127 \\
1997 & 1456 & 1,029 & 233 & 194 \\
1998 & 1,738 & & & \\
\hline
\textbf{(27.2.98)} & \textbf{*1,375} & & & \\
\hline
\textbf{Total} & \textbf{9125} & \textbf{6363} & \textbf{1537} & \textbf{1069} \\
\hline
\end{tabular}
\caption{Detention and restriction under the dangerous drugs (Special Preventive Measures) Act 1985.}
\end{table}

\textsuperscript{29} Read the House of Representatives (Parliamentary Debate), 2\textsuperscript{nd} and 3\textsuperscript{rd} reading of the Dangerous Drugs (Special Preventive Measures) Act 1985's Bill, 11\textsuperscript{th} April 1985, pg 2021-2115, at pg 2023 - 2024, 2103 -2105, & 2110; Read also Senate (Parliamentary Debate), 2\textsuperscript{nd} and 3\textsuperscript{rd} reading of the Dangerous Drugs (Special Preventive Measures) Act Bill, 24\textsuperscript{th} April 1985, pg 101-138, at pg 128-130, and 132.

\textsuperscript{30} Section 3(1), and 6(1), Dangerous Drugs (Special Preventive Measures) Act 1985.

\textsuperscript{31} Section 6 & 11A; See \textit{Wong Fook Nyon v Timbalan Menteri Dalam Negeri, Malaysia} (1988) 2 CLJ 274.

\textsuperscript{32} [1989] 1 MLJ 248 (HC)
The Asia Pacific Group on Money Laundering

Malaysia sees international co-operation as one positive way to combat the drug problem, which is a global problem. The Asia Pacific Group on Money Laundering

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33 See section 3 to 8.
34 Section 42 – 55.
(APG) was established in Bangkok, and is based in Sydney, Australia. The APG currently consists of 19 members, and also has several ‘observer’ jurisdictions. Malaysia became an APG member on 31st May 2000, and on 22nd May 2001, hosted the APG 4th annual meeting.\(^{35}\) It reflects Malaysia’s commitment to curbing money laundering within Malaysia and in the Asia Pacific region, in consonance with the Financial Action Task Force (FATF) on Money Laundering that was founded in July 1989 by the G7 Summit in Paris to examine measures to combat money laundering. Though, Malaysia is not a member of the FATF, the APG is a FATF style regional group having identical aspirations and objectives.

The APG is one of the several FATF style regional groups and its work is underpinned by the 40 recommendations of the FATF, which has become the internationally accepted standard for measures against money laundering. Among others, the recommendations provide for the confiscation of laundered property and the prohibition of anonymous accounts. The APG serves towards providing a regional focus for cooperation against money laundering. It ensures the adoption, implementation and enforcement of internationally accepted anti-money laundering standards as set out in the FATF Forty Recommendations. The effort includes assisting countries and territories of the region to enact laws dealing with the proceeds of crime, mutual legal assistance, confiscation, forfeiture and extradition; it provides guidance in setting up systems for reporting and investigating suspicious transaction and helping in the establishment of financial intelligence units. The APG also enables regional factors to be taken into account in the implementation of anti-money laundering measures. The FATF on Money Laundering 2000-2001 Report indicated that Malaysia is not in its updated list of non-cooperative countries and territories (NCCTs), which do not cooperate in the combat of money laundering. The FATF fully supports the work of FATF style regional bodies such as the APG.\(^{36}\)

Malaysia, in line with being a member of the APG has enacted the Anti-Money Laundering Act 2001, which provides for the prevention, detection, investigation and prosecution of money laundering and the forfeiture of property derived from, or involved in, money laundering activities. The Act incorporates the requirements of customer identification, record-keeping and reporting of suspicious transactions by reporting institutions. Bankers, insurers, stock brokers, futures brokers, money changers, etc are obliged to identify and verify their customers identity. Banking institutions are then required to report large, suspicious and unusual transactions, including currency transactions above specified amounts and maintaining their records for six years. The opening of anonymous accounts or accounts in false names is prohibited. Accordingly, persons who report such activities are provided with immunity. The Act also makes it an offence for reporting institutions and their officers from warning their customers that they have been reported. Officers from reporting institutions can be directed to share information upon request from the Financial Intelligence Unit (FIU) or may do so on their own volition. The FIU monitors, analyses

\footnote{Mandarin Hotel, Kuala Lumpur. See the welcome remarks by Y.Bhg. Dato Dr Zeti Akhtar Aziz, Governor, Bank Negara (Central Bank) Malaysia - www.bnm.gov.my/spcb/22001/0522.htm.}

and disseminates financial intelligence to the relevant local and foreign law enforcement agency with whom there is a Memorandum of Understanding. FIU provides online access to its central database for nominated personnel within partner agencies on suspicious activities, with the capability for searching name, address and account number. It is also possible to make macro searches using parameters such as date range, report type, country and postcodes. The relevant user is alerted or notified when a report entering the database matches a specified name, address or account number. Monitoring is also automated by identifying patterns of financial activity that are indicative of money laundering and other serious crimes. The Anti Money Laundering Act 2001 contains 119 serious offences including drug trafficking, corruption, kidnapping, robbery, human trafficking, gambling and fraud. The Act covers most of the 40 Recommendations of the FATF.  

CONCLUSION

Malaysia commitments to the FATF Forty Recommendations through the APG is a milestone in combating internationally and nationally the proceeds of drugs from being utilised in future criminal activities and from affecting legitimate economic activities. The Malaysian Dangerous Drugs (Forfeiture of Property) Act 1988 Act is indeed a challenge to the authorities to prove their skill and ingenuity, to improve their resources nationally and internationally, and be ever vigilant by increasing efforts, because the proceeds of drug trafficking more often than not are easily liquidated and disguised. The fact is money could still be laundered within or outside the banking system. The scope of the anti-money laundering measures must also focus on non-bank financial institutions such as bureau de change or money remittances companies, which are by and large ‘unregulated’. Non-financial businesses, such as casinos, company formation agents, lawyers and accountants are largely unregulated and unsupervised too. Even with the banking system, offshore financial banks operate rather loosely; Even now, not all banks rigorously enforce the money laundering laws to the very letter, especially in the developing countries.

The availability of specific drug laws on offending, treatment and rehabilitation; and the confiscation of illegal drug proceeds, provides a challenge to the Malaysian authorities to prove their skills, efficiency and ingenuity in enforcing them to the international requirements as specified by the drugs conventions to which Malaysia is a party to them. It is the ingenuity, resourcefulness, professionalism and sufficiency of manpower of the authorities that are in issue. The lack of those qualities might somehow explain why the Malaysian government prefers that ‘the way forward’ lies instead in the use of preventive detention, and excessively severe drug laws in terms of detection, enforcement and punishment. It is conceded that the battle to eradicate the

drug menace is an arduous task and is an ongoing process.\textsuperscript{38} Be that as it may, with the necessary manpower and disciplines properly accorded to it, Malaysia is already well positioned towards eradicating the drug menace as far as its international commitments and obligations warrant. The growing awareness that international co-operation is essential to success may not directly lead to abandonment of the position that drug offenders represents a threat to national security. However, it has the indirect effect of undermining any tendency to isolationism that such a stance may induce.

\textsuperscript{38} Read the House of Representatives (Parliamentary Debate), Penyata Rasmi Parlimen, Second Session, First Meeting, Vol.11, No. 39, 25\textsuperscript{th} April 2000.