

# **REPORT ON MALAYSIA'S IMPLEMENTATION OF THE UNITED NATIONS PROGRAMME OF ACTION TO PREVENT, COMBAT AND ERADICATE THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS**

## **NATIONAL LEVEL**

### **National Co-ordination Agency**

1. The Security and Public Order Division of the Ministry of Home Affairs is the national coordination agency or body that is responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in SALW in all its aspects. The Ministry of Home Affairs is assisted by the Royal Malaysian Police and the Royal Customs Department, Ministry of Finance.

### **National Point of Contact**

2. The Royal Malaysia Police and the Ministry of Defence are the national focal points to act as liaison with other States on matters relating to the implementation of the UN Programme of Action.

### **Legislation, Regulations, Administrative Procedures**

3. The production, export, import and transit of SALW is effectively controlled by the Arms Act, 1960. This is also supported by the Customs (Prohibition of Imports) Order 1998 and Customs (Prohibition of Exports) Order 1998. The Arms (Manufacture of Arms and Ammunition) (Licensing) Regulations, 1989 also governs the production of SALW, with regard to the application for licence, under Rule 2, and the granting of licence, under Rule 3.

- 3.1 The specific sections in the Act, which regulate the production of SALW, are as follows:

- Section 12 – No person to manufacture arms or ammunition without a licence;
- Section 13 - Identification of a place of manufacture;
- Section 14 – Penalty for manufacturing without licence and for breach of conditions of licence.

- 3.2 The specific sections in the Act, which regulate the export and import of SALW, are as follows:

- Section 15 regulates the export and import of SALW;
- Section 16 – Marking of cases and notice of importation;

- Section 17 - Declaration of arms and ammunition;
- Section 24 – Concealing unlawfully imported arms or ammunition;
- Section 20 – Ports and places of import and export;
- Section 21 – Minister may prohibit importation or exportation;
- Section 22 – Penalty in respect of vessel, aircraft or vehicle used for illegal importation or exportation;
- Section 23 – Penalty for lawful importation or exportation.

3.3 The specific section in the Arms Act, which regulates the sale and transfer of arms, is as follows:

Section 11 - It is an offence for a person to transfer any arms or ammunition except to:

- (a) a licensed dealer or licensed repairer; or
- (b) a person who shows that he is entitled to have the arms or ammunition in his possession by virtue of this Act or of any license or permit thereunder, provided that in the case of a person entitled by virtue of a license or permit, he produces the license or permit to the person selling or transferring the same; or
- (c) to a person who is and whom he knows or believes to be a police officer or other public officer acting in the course of his duty in accepting delivery of the arms or ammunition.

4. The Arms Act, 1960 is also relevant to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked SALW.

In relation to the manufacture of firearms, the Ministry of Home Affairs has issued four licenses under the Arms Act, 1960. The styer rifles and ammunition manufactured are for the use of the Malaysian Armed Forces and Royal Malaysian Police. The marking of firearms manufactured in Malaysia is also regulated under the same Act. Section 59(1) of the Act empowers the Ministry of Home Affairs to make regulations on the marking of firearms.

5. National laws and regulations pertaining to the issue of preventing, combating and eradicating of the illicit trade in SALW are gazetted to notify the public. From time to time, the Government could also hold information campaigns to raise awareness among the public, apart from educating the public on the issue.

### **Law Enforcement/ Criminalization**

6. The illegal manufacture, possession, stockpiling and trade of SALW are made criminal offences under the following domestic laws:
  - Arms Act, 1960
  - Arms Licensing Regulations, 1961
  - Arms (Manufacture of Arms and Ammunition) (Licensing) Regulations, 1989
  - Firearms (Increased Penalty) Act, 1971
  - Explosives Act, 1957
  - Penal Code
  - Customs Act, 1967 – this Act also allows for the confiscation of SALW
  - Internal Security Act, 1960 - offences relating to firearms, ammunitions and explosives under Sections 57-58.

These measures have been implemented through the requirement of licensing and enforcement by the police and customs officers. This is followed by prosecution in the national courts.

Malaysia has also enacted the Anti-Money Laundering Act 2001 to deal with the subject matter of money laundering in all its aspects, including requiring suspicious transaction reporting by off-shore banks and financial investments companies to prevent money being laundered in Malaysia to finance illegal activities which may also include arms smuggling.

7. The existing domestic law particularly the Arms Act, 1960 and the Customs Act, 1967 are adequate in addressing the issue of activities in violation of the United Nations Security Council Resolutions.

### **Stockpile Management and Security**

8. On the issue of management and security of SALW stocks, the police are guided by the existing Inspector General of Police's Standing Orders (IGSO). Inspection of stocks is conducted once every six months. Section 25 of the Arms Act, 1960 provides for the periodical inspection of the stock-in-trade.

### **Collection and Disposal**

9. Regular exercises are conducted to review the stocks and determine the need for disposal. Stocks that are disposed are stocks that have

become ineffective. Ineffective stocks are then destroyed according to a standard operating procedure.

The armed forces or police or other authorized bodies shall first inform the relevant ministries such as the Ministry of Finance. Upon approval by the relevant ministries the weapons shall be disposed of accordingly. For example, in the case of the police force, approval to dispose the weapon shall be obtained from the Ministry of Home Affairs and the Ministry of Finance.

10. With due observance given to the methods and procedures outlined above, all confiscated, seized or collected SALW are destroyed. The standard means of disposal is by melting the items.

### **Brokering**

11. For the purpose of regulating the activities of those who engage in SALW brokering within national jurisdiction and control, the national legislation or administrative procedures that exist are as follows:

- Arms Act, 1960
- Arms Licensing Regulations 1961
- Firearms (Increased Penalties) Act, 1971

Malaysia's laws do not define "brokering". However, the following provisions in the Arms Act, 1960 may be relevant to deal with brokering:

- Section 4(5) requires licences granted to dealers, auctioneers, individuals, importers and exporters, and manufacturers to be registered with the police;
- Section 6 (c) - Registration for auctioneers;
- Section 9 (9) - Registration of licenses granted to dealers;
- Section 9(1)(a) – Licences to deal in and repair arms;
- Section 9(3) – Licence authorising specific activities only, e.g. separate licences for dealing, auctioneering, manufacturing and etc;
- Section 9(5) – Dealers carrying on business at more than one premise needs to have separate licences for each premise;
- Section 9(10) – Requirement for book-keeping and returns to police;

- Section 10 – Identification of the business of the licences-holder;
- Section 11 – Restrictions on the sale and transfer of arms and ammunition by an individual to a licensed dealer (section 11(1)(a), and other qualified persons only (section 11 (1) (b) and (c));
- Sections 15 and 19 – Licence to import and export, respectively;
- Section 59(b) – Power of Minister to make regulations, from time to time, on importation, exportation, landing, transshipping, transportation, conveyance, manufacture, sale, and purchase of arms ammunitions, and imitation arms.

For the offences, penalties will range from six months imprisonment or a fine, to death, depending on the type and seriousness of the offences, as provided for in the 1960 and 1971 Acts and 1961 Regulations.

### **Marking, record keeping and tracing**

12. The requirement for marking on each weapon is not specified in any of the acts involving firearms. However, it is noted that manufacturers do provide marking on the arms in the form of serial number. The name of the country that produces the arms is also marked on the arms.
13. For the purpose of identifying and tracing weapons, proper record keeping via a register is maintained. The authority will be able to trace a particular arm by referring to the said register. These records are kept permanently. The manufacturer also keeps records of the serial number of the weapons sold. The Arms Act, 1960 is the national legislation that provides for proper record-keeping of arms.
14. The exchange of information and co-operation in tracing illicit SALW is already done administratively and through bilateral and multilateral arrangements, such as ASEANAPOL, INTERPOL and EUROPOL. The type and extent of information disclosed is governed by national security measures. Apart from this, the Mutual Assistance in Criminal Matters Act was enacted in 2002 to render assistance to other countries on the basis of reciprocity when the need arises.

### **Disarmament, demobilization and reintegration**

15. Malaysia has had no need to institute any disarmament, demobilization or reintegration programme in recent years. However, Malaysia has contributed towards addressing the needs of children affected by armed conflicts by acceding to the four Geneva Conventions of 12 August 1949 on 24 August 1949. To give effect to our accession, the Geneva Conventions Act was enacted in 1962.

## **Awareness-raising**

16. The Royal Malaysia Police has been cooperating with local shooting clubs to raise public awareness on illegal possession of firearms.

## **REGIONAL LEVEL**

### **Legally binding instruments**

17. Malaysia has not been involved in negotiations for the conclusion of legally binding instruments aimed at preventing, combating and eradicating the illicit trade in SALW in all its aspects. Malaysia has also not ratified any legally binding instruments aimed at preventing, combating and eradicating the illicit trade in SALW in all its aspects. At present, there is no legally binding instrument at the South East Asian regional level which aims to prevent, combat and eradicate the illicit trade in SALW in all its aspects.

### **Moratoria and action programmes**

18. Malaysia supports the ASEAN Plan of Action to combat transnational crime as a follow-up to the Manila Declaration on the Prevention and Control of Transnational Crime. The ASEAN collaboration is focused towards strengthening regional commitment and capacity to combat transnational crime, which includes terrorism, drug trafficking, arms smuggling, money laundering, trafficking in persons and piracy. The co-operation envisaged is not purely on the illicit trade in SALW only but comprising of other transnational crime as well.

### **Regional Co-operation**

19. Malaysia participated in dialogues and Working-Groups held to address the issues of transnational crime, which includes illicit trade in SALW, in the ASEAN Plan of Action. The specific objectives of the ASEAN Plan of Action are to urge the ASEAN Member Countries to:
  - Develop a more comprehensive regional strategy aimed at preventing, controlling and neutralizing transnational crime;
  - Foster regional co-operation at the investigative, prosecutorial and judicial level as well as the rehabilitation of perpetrators;
  - Enhance co-ordination among ASEAN bodies dealing with transnational crime;
  - Strengthen regional capacities to deal with the sophisticated nature of transnational crime;

- Develop sub-regional and regional treaties on co-operation in criminal justice, including mutual legal assistance and extradition.
20. With regards to arms smuggling, these are the measures undertaken to ensure that the objectives of the ASEAN Plan of Action are met:

#### 20.1 Information exchange

- Establish a compilation of national laws and regulations of ASEAN Member Countries pertaining to arms smuggling leading towards establishing a regional repository of such laws on-site and the ASEANWEB;
- Conduct typology studies to determine trends and modus operandi of arms smuggling in the ASEAN region;
- Enhance the exchange of information and co-operation among the ASEAN officials e.g. ASEANAPOL, customs, immigration, and legislators on international and regional arms smuggling activities;
- Coordinate with ASEANAPOL on information pertaining to regional arms smuggling activities;
- Establish a comprehensive database of international treaties and agreements pertaining to money laundering/transnational crime.

#### 20.2 Legal matters

- Working towards the harmonization of marking systems for ammunitions, arms, their parts and their components according to the international system developed by the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

#### 20.3 Law enforcement matters

- Intelligence exchange and co-operation in border and customs control between ASEAN countries, and also with EUROPOL, INTERPOL and any other organizations;
- Strengthen law enforcement capabilities, especially the need for comprehensive domestic legislation against illicit arms trafficking.

#### 20.4 Training

- Develop regional training programmes and conduct regular conferences to enhance existing capabilities in investigation, intelligence surveillance, detection, monitoring and reporting. This can be achieved through sharing of experiences among the law enforcers and the compilation of national training programmes of each Member Country by the ASEAN Secretariat within a specific time frame.

#### 20.5 Institutional capacity-building

- Establish a database on illicit trafficking of arms and explosives with a view to address the current lack of information/database and research indicating the volume of trade, types of cases pursued, the trends, routes and manner of smuggling;
- Establish procedures for countries to declare surplus arms destroyed, missing and lost from government stockpiles to be reported and compiled to facilitate tracking measures in line with the development of international procedures and the exchange of information.

#### 20.6 Extra regional co-operation

- Enhance information exchange with ASEAN Dialogue Partners, regional organisations, relevant specialised agencies of the United Nations and other international organisations, particularly towards the sharing of critical information of identities, movements and activities of known transnational criminal organisations involved in arms smuggling;
- Seek technical assistance and funding considerations for weapons collection and destruction, the strengthening of law enforcement and institutional capacity-building;
- Implement the programme of action, where practicable, in accordance with the outcome of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

### **Global Level**

#### **International instruments against terrorism and crime**

21. Malaysia has ratified three international legal instruments and signed one Protocol related to terrorism while the remaining Conventions are



being reviewed, with the view to accession. The three Conventions are as follows:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft
  - Ratified on 5 March 1985
- Convention for the Suppression of Unlawful Seizure of Aircraft
  - Ratified on 4 May 1985
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
  - Ratified on 4 May 1985

The Protocol signed by Malaysia on 24 February 1998 is the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

22. Malaysia has signed the UN Convention against Transnational Organised Crime on 26 September 2002. To fulfill the obligations under the Convention, Malaysia enacted the Mutual Assistance in Criminal Matters Act 2002, which entered into force on 1 May 2003.

#### **International co-operation and assistance**

23. Malaysia has not provided technical and financial assistance for the purpose of supporting the implementation of the measure to prevent, combat and eradicate the illicit trade in SALW in all its aspects as contained in the UN Programme of Action.
24. Malaysia has bilateral treaties/agreements with certain countries with regard to mutual legal assistance and extradition, which relates to all matters of transnational crimes, including the illicit trade in SALW. Further to this, Malaysia has been cooperating with neighboring countries with common borders in the effort of curbing the illicit trade of small arms. This has been done in administrative and bilateral manner.
25. Apart from the ASEAN Plan of Action as set out above, there are no other specific steps taken at present, to develop common understandings of the issues and the scope of the problems related to illicit brokering in SALW.

#### **Co-operation with civil society and NGOs**

26. The Royal Malaysia Police has only been cooperating at the national level with shooting clubs in highlighting crimes associated with illegal SALW.

### **Information exchange**

27. ASEAN Plan of Action provides for this measure of information exchange on national marking systems on SALW, as set out under the topic of Regional Co-operation of the Programme of Action albeit at the regional level above.

### **Training, capacity-building, research**

28. ASEAN Plan of Action provides for this measure to build-capacity through cooperation and exchange in training with regard to combating illegal trade in SALW, as set out under the topic of Regional Co-operation of the Programme of Action at the regional level above.