

DEVELOPMENTS IN COMBATING ILLICIT NARCOTICS TRAFFICKING

A Memorandum by the Government of Malaysia

In the international scenario of illicit narcotics trafficking, Malaysia has long stood as a transit country along the drug route from the notorious opium producing areas of the 'Golden Triangle' to Australia and the West. Malaysia is especially vulnerable as a transit country because of her geographical location, proximity to the Golden Triangle, long coastline and excellent communication system. In the process of their transportation into and out of Malaysia a certain proportion of the drugs have found their way into the Malaysian community, creating and meeting the local demand for drugs.

2. In Malaysia the habit of opium and cannabis smoking can be traced to the early 19th century. However, by the late 1960s this habit had developed into abuse of hard drugs. Within the last 15 years, drug abuse and illicit trafficking in Malaysia has become a frighteningly real and everpresent danger. This danger is not unique to Malaysia - drug abuse and illicit trafficking is rapidly spreading over an ever increasing number of countries, whether they be source, transit or consuming countries.

3. At the national level Malaysia has based its anti-narcotics measures on the objectives of supply reduction and demand reduction. More important, in 1983, Malaysia elevated its attitudinal approach to the narcotics problem to an unprecedented priority by declaring the problem a primary security concern. The rationale for this is the perception that narcotics production and trafficking is invariably associated with corruption, increased criminal activity, violence and intimidation, and that organisations dealing with production and trafficking of narcotics can reach heights of power which threaten the peace and stability of the countries in which they operate.

4. In its fights against the drug menace, Malaysia has adopted the strategies of prevention, rehabilitation, manpower development and evaluation and international cooperation. In both areas of prevention and rehabilitation, legislation has been utilized to assist in meeting the objectives and supporting the measures undertaken. The main legislations are -

- (i) the Dangerous Drugs Act, 1952;
- (ii) the Drugs Dependents (Treatment and Rehabilitation) Act, 1983; and
- (iii) the Dangerous Drugs (Special Preventive Measures) Act, 1985.

The Dangerous Drugs Act 1952

5. This Act provides for the regulating of the importation, exportation, manufacture, sale, and use of certain dangerous drugs, and makes special provision relating to the jurisdiction of courts in respect of offences thereunder.

6. The Act creates offences in relation inter alia to the following drug related activities -

- (a) possession;
- (b) trafficking;
- (c) importation and exportation;
- (d) manufacturing; and
- (e) cultivation of cannabis opium and coca plants.

7. The Dangerous Drugs Act 1952 has been frequently amended to keep pace with the changing patterns of drug abuse and illicit trafficking in this country. The purposes of the amendments are to confer wider powers on the enforcement agencies and to make the sentences for drug offences under the Act more deterrent. In 1983, the Dangerous Drugs Act 1952 was amended to:

- (a) confer power on any police officer or officer of Customs, on the authorisation of the Public Prosecutor to intercept, detain or open any postal article in the course of transmission by post or to intercept messages transmitted or received by telecommunication or to intercept or listen to any conversation by telecommunication;
- (b) provide that any person who is found in possession of 15 grammes or more in weight of heroin, 15 grammes or more in weight of morphine or a total of 15 grammes or more in weight of heroin and morphine or 1,000 grammes or more in weight of prepared opium be presumed, until the contrary is proved, to be trafficking in that dangerous drug;
- (c) introduce the mandatory death penalty for the offence of trafficking in dangerous drugs.

8. The latest amendment was made in 1984. It sought inter alia to redefine the term "opium poppy" so that any plant from which morphine may be produced falls within the meaning of "opium poppy". It also sought to introduce monoacetylmorphine as another drug upon which the presumption of trafficking will operate if any person is found in possession of 15 grammes or more of that drug. Heretofore analysis of seized drugs had revealed the presence of monoacetylmorphine in addition to morphine and heroine but no prosecution could be made in respect thereof because of a lacuna in the law. The amendment thus fills the lacuna.

The Drug Dependents (Treatment and Rehabilitation) Act 1983

9. The treatment and rehabilitation programme for drug dependants was initiated by the Ministry of Welfare Services in 1975. Initially the empowering legislation was the Dangerous Drugs Act 1952. On 25 March 1983, a new Act, the Drug Dependents (Treatment and Rehabilitation) Act 1983 (DDTRA) was passed. It repealed those provisions in the Dangerous Drugs Act 1952 which dealt with treatment and rehabilitation of drug dependants. The Act makes special provision with regard to the treatment and rehabilitation of drug dependants, their after care and related matters.

10. The DDTRA contains the following main provisions -

Provisions for Compulsory Treatment

(i) Drug dependants who are unwilling to volunteer themselves for treatment will be subjected to compulsory treatment. Compulsory treatment involves the bringing into legal custody of any person reasonably suspected to be a drug dependant for medical examination or observation by a medical officer. Where a person is found to be a drug dependant, the Magistrate is empowered by law to order such person to undergo compulsory institutional treatment at a Rehabilitation Centre for two years or to be placed under compulsory supervision by a Rehabilitation Officer for a period of between two to three years.

(ii) Drug dependants who are put on compulsory supervision are required to execute bonds containing terms and conditions which they have to observe. Breach of those terms and conditions would render the supervisees or his sureties liable to pay the penalty under the bond. Such supervisee would furthermore be brought before a Magistrate who may order him to undergo compulsory institutional treatment at a Rehabilitation Centre for two years.

(iii) Drug dependants who have been discharged from Rehabilitation Centres after having undergone two years of treatment and rehabilitation will be subjected to another two years of aftercare supervision by Rehabilitation Officers. If the aftercare supervisees were to suffer a relapse, they can be ordered by the Magistrate to undergo another term of treatment and rehabilitation at a Rehabilitation Centre.

Provisions for Adult Volunteers

(iv) Adult drug dependants can volunteer themselves for treatment. These cases are handled by Rehabilitation Officers who decide whether to send the drug dependants for treatment at Rehabilitation Centres or to place them under their supervision. Where drug dependants are placed under the supervision of Rehabilitation Officers, bonds will have to be executed by the drug dependants. Breach of the terms and conditions contained in the bonds would result in forfeiture of the money due under bonds.

Provisions for Minors

(v) Under section 9, minors who desire to seek treatment must do so through their parents or guardians. These cases, too, come within the province of Rehabilitation Officers. In such cases, the provisions which govern adult volunteers seeking treatment shall apply in the same manner, save that the bond required to be executed under subsection (4) of section 8 shall be executed by the parents or guardians of the minors concerned.

The Dangerous Drugs (Special Preventive Measures) Act 1985

11. The Act is directed against persons who though well known to the authorities as being involved in syndicates concerned in trafficking of dangerous drugs escape prosecution due to technicalities of the law. These persons are usually either the brains or the financial backers of drug trafficking operations. In accordance with the Government's declared tough stand against the drugs problem a special law was enacted to provide for the arrest and preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs. The initial period of detention is two years with possible extension for further periods of two years indefinitely.

12. The Act came into force on 13th June 1985 and shall remain in force for a period of five years from that date. It was subsequently amended by the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1985 in December 1985. The amended Act, inter alia, empowers the police to detain any person suspected of committing any offence under the Act for a period of not more than 60 days for purposes of investigation. The Minister may, after considering the investigation report and the report of the Inquiry Officer, issue an order of preventive detention in respect of the arrested person. The Minister is also empowered to issue in lieu of an order of preventive detention, an order of restriction in regard to the arrested person whereby the person is ordered to reside strictly within the limits of a specified place for a period not exceeding 2 years and be also subject to the supervision of the police.

13. A person subject to an order of detention or restriction issued by the Minister has the right to make representations to an Advisory Board constituted of a chairman who is qualified to be a judge of the High Court or the Supreme Court and two other members nominated by the Yang di Pertuan Agong (King). The Advisory Board makes recommendations to the Yang di Pertuan Agong (King) who may in turn give the Minister such directions as he may think fit regarding the order made by the latter.

14. In every other case of detention or restriction, the order or direction given by the Minister is reviewed as a matter of course by the Advisory Board not earlier than twelve months from the date of such order or direction. The Board submits its opinion to the Minister on whether or not the detention of any person should cease or continue, and the Minister is bound by law to act thereon.

15. At the international level, Malaysia recognises that it requires serious and concerted effort by all countries and international agencies concerned before we can hope to rid the world of the problem of drug abuse and trafficking. In the ASEAN region, cooperation in the fight against drugs was initiated by the signing of the ASEAN Declaration of Principles on Drug Abuse Control in 1976 by all the ASEAN countries. Since then regular meetings have been held to ensure uniformity of views, approaches and strategies to prevent and control drug abuse and illicit trafficking in the ASEAN countries. Some measure of coordination and uniformity has been achieved in the approach by ASEAN countries towards training programmes, treatment and rehabilitation of drug dependants and legislative measures including penalties for drug offenders, the underlying aim of which was to provide no haven in the ASEAN region for the drug offender.

16. The extent of influence which domestic policies and strategies have on the global production of raw materials for illicit drugs is, however, negligible, such production being largely an independent variable. What is still needed is the political will to progressively phase out the illicit production of narcotic drugs. In this respect Malaysia has in the recent past advocated and continues to advocate for international participation in the formulation of a master plan or schedule of action in the Golden Triangle and other source areas.

17. In February 1985 the 31st meeting of the United Nations Commission on Narcotics Drugs adopted a resolution related to the initiation of the preparation of a Draft Convention on Illicit Traffic of Narcotic Drugs and Psychotropic Substances. No doubt such a Convention would be expected to work towards internationalising efforts to combat drug abuse and trafficking and improving the existing situation by dealing with those aspects of the problem not envisaged in existing international instruments.

18. In the same year, Malaysia initiated an ASEAN Resolution entitled 'International Strategy For Combatting Drug Abuse and Trafficking' which was tabled at the 40th United Nations General Assembly in late 1985. The United Nations General Assembly then adopted a resolution containing a decision to convene an International Conference on Drug Abuse and

Illicit Trafficking at ministerial level in 1987 and to adopt a comprehensive multi-disciplinary outline of future activities which focuses on issues directly relevant to the problems of drug abuse and illicit trafficking. These include, inter alia -

- (a) consideration of existing mechanisms with a view to exchanging experiences methodologies and information on law enforcement and to improving or complementing them with new mechanisms;
- (b) intensification of concerted efforts by governmental, intergovernmental and non-governmental organisations to combat all forms of drug abuse, illicit trafficking and related criminal activities leading to further development of national strategies that could be a basis for international action;
- (c) achievement of as much harmonisation as possible to reinforce national legislations, bilateral treaties, regional arrangements and other international legal instruments especially in respect of enforcement and penalties against those involved in illicit trafficking including forfeiture of illegally acquired assets and extradition, and to develop cooperation in dealing with drug abusers, including their treatment and rehabilitation; and
- (d) making further progress towards eradicating the sources of raw materials for illicit drugs through a comprehensive programme of integrated rural development, development of alternative means of livelihood and retraining, law enforcement and crop substitution.

19. Needless to say, the proposed International Conference on Drug Abuse and Illicit Trafficking and the proposed United Nations programme of activities require the full support of all countries. Malaysia believes that an essential pre-requisite to success in solving the drug problem is the commitment thereto by the highest level of leadership in the various countries. It is noted that at least 16 Commonwealth countries gave their support to the United Nations resolution. It is hoped that this momentum in the global effort to combat drug abuse and trafficking is maintained both within and outside the Commonwealth.