CHAPTER TWELVE

MALAYSIA

12.1 Organised Crime in Malaysia

Organised crime in Malaysia is a phenomenon poorly documented and not well researched. The literature and open-source information on organised crime in Malaysia is extremely limited, especially in comparison to most other jurisdictions explored in this report. Organised crime in Malaysia is most frequently associated with piracy in the Malacca Strait and elsewhere in Southeast Asian waters,859 though most piratical attacks in the region are opportunistic and not part of systematic, organised criminal enterprises.860 There are also some reports linking the illicit trafficking in timber in Malaysia to criminal elements, including criminal organisations.861

There is, to date, no systematic analysis of the levels and patterns of organised crime in Malaysia and no examination of the criminal organisations active in this country. For the most part, Malaysian scholars and government agencies have regarded organised crime as criminal activities linked with minority ethnic groups, including, in particular, Chinese and Indian communities and other new immigrant groups in Malaysia.862 While there have been some reports linking political corruption and nepotism to criminal groups,863 there is to this day no


863 Ibid., at 279–285.
comprehensive report on the manifestations of organised crime and the activities of criminal organisations.

12.2 Criminal Conspiracy Laws

Malaysia’s criminal law is in many ways identical to that of Singapore. The Malaysian Penal Code is also based on the old Penal Code of India that was introduced into the British colonies in the late 1800s.

Malaysia signed the Convention against Transnational Organised Crime on September 26, 2002 and ratified it two years later on September 24, 2004.\(^{864}\) Like Singapore, Malaysia’s domestic adoption of the treaty obligations can be found in the provisions relating to criminal conspiracies, ss 120A and 120B Penal Code,\(^{865}\) which were originally introduced on December 18, 1948.\(^{866}\) Unlike Singapore, however, no amendments to these provisions were made following Malaysia’s accession to the Palermo Convention.

The definition of criminal conspiracy in s 120A(1) and (2) Penal Code (Malaysia) is identical to the same definition in Singapore’s Penal Code: \(^{867}\)

When two or more persons agree to do, or cause to be done—
(a) an illegal act; or
(b) an act, which is not illegal, by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

The conspiracy can be aimed at carrying out an illegal act, but can also involve non-criminal acts or legal acts by illegal means. If the agreement between the co-conspirators is to commit an offence, then this agreement is the only required physical element. If the agreement is

\(^{864}\) UNODC, United Nations Convention against Transnational Organized Crime (status as on 26 Sep 2008).
\(^{865}\) Act No. 574.
\(^{866}\) F.M. Ord 32/1948.
\(^{867}\) See Section 11.1 above.