

**Security Council**

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**Security Council Committee established
pursuant to resolution 1718 (2006)****Note verbale dated 25 August 2016 from the Permanent Mission
of Malaysia to the United Nations addressed to the Chair of
the Committee**

The Permanent Mission of Malaysia to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and, in accordance with paragraph 40 of Council resolution 2270 (2016), has the honour to inform the Committee that Malaysia is fully complying with the provisions of the resolution.

The Permanent Mission of Malaysia is pleased to submit the attached report (see annex) to the Chair of the Committee, in fulfilment of its country's obligation to implement the provisions of resolution 2270 (2016).



Annex to the note verbale dated 25 August 2016 from the Permanent Mission of Malaysia to the United Nations addressed to the Chair of the Committee

Report of Malaysia on the implementation of Security Council resolution 2270 (2016)

Introduction

Malaysia is fully committed to implementing all provisions contained in Security Council resolution 2270 (2016), unanimously adopted on 2 March 2016. Malaysia believes that the resolution reflects the firm and united resolve of the international community to address the continued non-compliance by the Democratic People's Republic of Korea's (DPRK) of its international obligations and commitments in halting its nuclear programmes, which are detrimental to regional and international peace.

Malaysia reaffirms that the illicit development and procurement of weapons of mass destruction and related technologies and capabilities by any State is unacceptable and contrary to international law. Such activities undermine the international community's resolve and commitment with respect to peaceful relations among States and the peaceful resolution of conflict.

Since 1 January 2011, Malaysia has enforced its Strategic Trade Act 2010, a comprehensive export control law that includes provisions to curb the proliferation of weapons of mass destruction. The Act is central to Malaysia's obligations under the relevant Security Council resolutions, including those involving DPRK, and it allows Malaysia to impose effective measures and controls to prevent the proliferation of weapons, materials or technology, including those related to the DPRK illicit weapons programme.

Measures with regard to resolution 2270 (2016)

Space cooperation (para. 5)

Malaysia and DPRK do not have any bilateral cooperation activities in the field of nuclear science and technology. Malaysia also does not have any multilateral cooperation activities with DPRK, as cooperation in nuclear science and technology is mostly established and regulated under the International Atomic Energy Agency (IAEA), of which DPRK is not a member State. Malaysia declined the offer made by DPRK in 2013 to transfer its satellite launching technology.

Conventional arms and weapons (paras. 6-9)

Arms and weapons are strictly regulated under Malaysia's domestic laws, namely, the Arms Act 1960, the Arms Licensing Regulations 1961, the Arms (Manufacture of Arms and Ammunition) (Licensing) Regulations 1989 and the Explosives Act 1957. These laws clearly state that licences and permits are required in order to possess, carry or use arms and ammunition; deal in, repair, purchase,

obtain or transfer arms and ammunition; manufacture arms and ammunition; and import and export arms and ammunition.

Any breach of these requirements is deemed a serious offence and could result in imprisonment of up to seven years, life imprisonment or the death penalty.

Malaysia enacted its Arms Act 1960 to regulate those who engage in brokering, including import and export activities. This Act was strengthened by the enactment of the Strategic Trade Act, which acts as a control mechanism over the export, trans-shipment, transit and brokering of strategic items, including arms and related materiel, and other activities that will or may facilitate the design, development and production of weapons of mass destruction and their delivery systems.

The Strategic Trade (Strategic Items) Order 2010, a subsidiary legislation enacted under the Strategic Trade Act, contains a schedule of strategic items comprising the military items list and dual-use items list. The schedule reflects the strategic items that must be controlled under global export control regimes such as the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group and the Chemical Weapons Convention. Arms and related materiel including small arms and light weapons are listed as strategic items under the military items list.

The Strategic Trade Act requires any person who intends to carry out the export, trans-shipment or transit of strategic items, including arms and related materiel listed in the Order, to apply for a permit from the relevant authority. Brokering of strategic items is controlled by requiring brokers of any such items to first be registered under the Act.

Any person who intends to carry out the export, trans-shipment or transit of strategic items to any of the 13 restricted end-user countries, including DPRK, must obtain a special permit from the relevant authority. However, the export, trans-shipment or transit of strategic items to prohibited end-users, namely, individuals and entities sanctioned under the relevant Security Council resolutions against DPRK, is prohibited under the Strategic Trade Act.

The Strategic Trade Act prohibits any person from providing technical assistance, including instruction, skills, training and consulting services, within or outside Malaysia, if such technical assistance is intended for use in connection with a restricted activity, namely, any activity that supports the development, production, handling, use, maintenance, storage, inventory or proliferation of weapons of mass destruction. It also prohibits participation in transactions with persons engaged in such activities.

Designations (paras. 10-12)

Malaysia has implemented the respective Security Council resolutions related to the non-proliferation of weapons of mass destruction against DPRK, including the targeted financial sanctions, by means of the legal framework set out below.

Strategic Trade (United Nations Security Council Resolutions) Regulations 2010

The Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 implement Security Council measures related to the non-proliferation of weapons of mass destruction, including asset freezes against designated persons (individuals and entities) from DPRK specified in the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010.

According to the Strategic Trade Regulations, Malaysian citizens and bodies corporate incorporated in Malaysia are prohibited from entering into or facilitating any dealings whatsoever with respect to any property, including funds, directly or indirectly owned or controlled by a designated person from DPRK, or from providing any financial or related service with respect to such property. Otherwise, the property will be subjected to a freeze order.

Any person who contravenes this prohibition commits an offence and shall, upon conviction, be punished with a fine of not more than 1 million Malaysian ringgit or imprisonment for a term of not more than two years, or both.

Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010

The Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 was subsequently amended by Strategic Trade (Restricted End-Users and Prohibited End-Users) (Amendment) Order 2016. It contains the link to the United Nations website so as to give effect to the automatic application of asset freezes and other relevant measures to the individuals and entities appearing on the lists established, maintained and updated by the Committee.

Pursuant to the amendments of 2016, the specified persons will no longer need to be gazetted under the Strategic Trade Act as was the previous practice. Any new additions or exclusions are automatically applicable to and/or by all persons in Malaysia, including the financial institutions.

The Central Bank of Malaysia disseminated the amended Order through its financial intelligence system to all financial institutions the same day it was gazetted, on 23 June 2016. The Central Bank also issued a circular, dated 15 July 2016, under section 95 of the Central Bank of Malaysia Act 2009. The circular requires all financial institutions to fully implement the amended Order and to report on any positive name matches to the Central Bank, and also draws attention to its automatic application.

To date, there have been no positive name matches reported by any financial institutions; as a result, no asset freezes have been carried out under Security Council resolution 2270 (2016).

Proliferation networks (paras. 13-17)

The Strategic Trade Act prohibits any person from providing any technical assistance, including instruction, skills, training and consulting services, within or outside Malaysia, if such technical assistance is intended for use in connection with a restricted activity, namely, any activity that supports the development, production, handling, use, maintenance, storage, inventory or proliferation of weapons of mass

destruction. It also prohibits participation in transactions with persons engaged in such activities.

The Malaysian Investment Development Authority evaluates and approves applications for manufacturing licences, tax incentives and expatriate positions for manufacturers and service providers from selected industries. The Authority reserves the right and authority to deny any application through section 4 of the Industrial Coordination Act 1975 and sections 5 and 6 of the Promotion of Investment Act 1986.

However, companies may also operate in Malaysia without obtaining any approval or facilitation from the Malaysian Investment Development Authority, as companies that do not fulfil the licensing requirement under the Industrial Coordination Act are exempted from obtaining a manufacturing licence. In order to operate, these exempted companies are still required to obtain necessary approvals from their respective local authorities.

Currently, there are 80 DPRK nationals working in the construction and mining industry in Sarawak. They are employed legally and have obtained non-resident employee licences under section 119 of the Labour Ordinance. The workers' activities are monitored and, if the workers are found to be involved in illicit activities that could violate Security Council resolution 2270 (2016), necessary action will be taken.

Prohibition on transportation (paras. 18-23)

The Strategic Trade Act and the Customs Act 1967 empower authorized officers to board any conveyance (vessel, train, vehicle, aircraft or any other means of transport) by which persons or items can be carried and search all parts of such conveyance. Officers are also empowered to search, inspect and seize any items, including strategic or unlisted items, together with any container, package, conveyance or other article on board, including items that are being loaded or unloaded.

Pursuant to the Strategic Trade Regulations, Malaysian citizens and bodies corporate incorporated in Malaysia are prohibited from:

- (a) Providing or collecting property, by any means, whether directly or indirectly, with the intention that the property be used, or knowing that the property is to be used, by designated persons (individuals and entities) from DPRK;
- (b) Making any property available, whether directly or indirectly, for the benefit of designated persons (individuals and entities) from DPRK.

Any person who contravenes this prohibition commits an offence and shall, upon conviction, be punished with a fine of not more than 1 million Malaysian ringgit or imprisonment for a term of not more than two years, or both.

Aircraft

The last flight by Air Koryo to Kuala Lumpur was on 8 June 2014. Malaysia has taken the necessary actions through aviation authorities to deny any DPRK

aircraft permission to take off from, land in or overfly Malaysia, based on the guidelines of the Malaysian Aviation Commission Act 2015.

Ocean Maritime Management vessels

Pursuant to the provision in paragraph 23 of resolution 2270 (2016), Malaysia prohibits the entry of any Ocean Maritime Management (OMM) vessels into Malaysia's ports, as listed in annex III of the resolution.

Other weapons of mass destruction (paras. 24-28)

The Strategic Trade Act provides for control over the export, trans-shipment, transit and brokering of strategic items, including arms and related materiel, and other activities that will or may facilitate the design, development and production of weapons of mass destruction and their delivery systems.

Apart from the control of strategic items, the Strategic Trade Act incorporates the "catch-all" controls provision that controls transactions of any unlisted items that will or may be used for a restricted activity but are not specified as strategic items under the Act.

Under the Strategic Trade Act, a person is required to notify the relevant authority of his intention to export any unlisted item at least 30 days before the carrying out of that export if he is informed by the relevant authority or otherwise knows, or has reason to believe, that the unlisted item will or may be used for a restricted activity. The relevant authority, upon such notification, shall decide whether or not to allow such export of the unlisted item. The approval of such export is subject to the granting of a permit.

In addition, section 114 of the Customs Act empowers customs officers to seize goods with respect to which a breach of the provisions of the Act has been suspected. Following seizure, the goods may be forfeited and disposed of in accordance with various provisions of the Act.

Sectoral (paras. 29-31)

For the period from 2014 to February 2016, no trade of minerals was reported between Malaysia and DPRK. There was also no transfer of gold as a means to evade sanctions imposed on DPRK.

The Strategic Trade Act also provides for control over aircraft fuels especially formulated for military purposes.

Finance and banking (paras. 32-38)

Malaysia implements the targeted financial sanctions related to the proliferation of weapons of mass destruction, based on the list of restricted and prohibited end-users, through regulations and Gazette orders issued pursuant to the Strategic Trade Act.

These requirements are addressed under the relevant policies and guidelines of the supervisory authorities for approving the opening of branches, subsidiaries and representative offices by financial institutions in and/or from the high-risk

jurisdiction in question, as specified by the Financial Action Task Force and the Government of Malaysia. The supervisory authorities are required to refuse the establishment of subsidiaries, branches or representative offices of financial institutions from DPRK or otherwise take into account the fact that the financial institution in question is from a country that does not have adequate anti-money-laundering systems or adequate systems for combating the financing of terrorism. The supervisory authorities are also required to increase supervisory examination and/or external audit requirements for branches and subsidiaries of financial institutions based in DPRK.

In addition, Central Bank guidelines on anti-money-laundering and on combating the financing of terrorism also require financial institutions to put in place additional countermeasures for dealing with high-risk jurisdictions such as DPRK. The additional countermeasures are as follows:

- (a) Limiting business relationships or financial transactions with identified countries or persons located in the country concerned;
- (b) Reviewing and amending or, if necessary, terminating corresponding banking relationships with financial institutions in the country concerned;
- (c) Conducting enhanced external audits, by increasing their intensity and frequency, for branches and subsidiaries of the reporting institution or financial group located in the country concerned;
- (d) Submitting an annual report with a summary of transactions regarding customers and beneficial owners from the country concerned to the Financial Intelligence and Enforcement Department of the Central Bank;
- (e) Taking any other measures as may be specified by the Central Bank.

Similar provisions, where relevant, have also been included in the respective guidelines on anti-money-laundering and on combating the financing of terrorism issued by the Securities Commission Malaysia and the Labuan Financial Services Authority.

To date, there are no DPRK financial institutions or branches, subsidiaries or representative offices operating in Malaysia.

International and regional cooperation

Malaysia believes that enhanced international and regional cooperation is the way to combat the proliferation of weapons of mass destruction and their related systems. In fulfilling its continuous commitment to counter the proliferation of such weapons, Malaysia has contributed actively to international non-proliferation and counterproliferation efforts through various operational initiatives and forums.

International cooperation

As a non-permanent member of the Security Council, Malaysia has consistently condemned the series of nuclear tests and ballistic missile launches carried out by DPRK. In addition, Malaysia has also been an active participant in

IAEA initiatives since becoming a member in 1969 and has held numerous trainings and/or workshops under the regional technical cooperation programme.

Malaysia endorsed the Proliferation Security Initiative in April 2014 and has actively participated in workshops and seminars organized by members of the Initiative in several countries, including New Zealand, the Republic of Korea and the United States of America. Malaysia has attended all four nuclear security summits.

Malaysia has put in place its own international cooperation regimes, in the form of mutual legal assistance, extradition and various sectoral agreements and/or memorandums of understanding for combating the proliferation of weapons of mass destruction and related systems.

Regional cooperation

Malaysia plays an active and constructive role in non-proliferation and disarmament efforts at various regional and international forums. Malaysia co-hosted the eighth intersessional meeting on non-proliferation and disarmament of the Regional Forum of the Association of Southeast Asian Nations (ASEAN), held in Putrajaya, Malaysia, on 19 and 20 April 2016, at which issues of non-compliance with international non-proliferation obligations were discussed.

During Malaysia's chairmanship of ASEAN in 2015, the country was consistent in expressing concern about DPRK nuclear and ballistic missile programmes and other activities related thereto. DPRK was urged to exercise self-restraint and comply with all relevant Security Council resolutions, in addition to its commitments under the 2005 joint statement of the Six-Party Talks.

Notwithstanding the above-mentioned laws, regulations and initiatives, Malaysia will continue to institute additional measures, if necessary, to enforce the provisions of resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).
