JURISDICTIONAL BRIEFS FOR INTERNATIONAL JUSTICE IN ASIA

Malaysia

The following document surveys legal avenues that *may* be available to survivors of international crimes, specifically in **Malaysia**. It includes a summary of the Malaysian legal system and a review of potentially useful legislation and case law.

Nothing in this brief constitutes legal advice or an endorsement of particular legal services.

Please seek advice from legal professionals qualified in the relevant domestic jurisdiction.

Links to legislation are up-to-date at the time of writing and links to judicial decisions are provided for reference only. Please consult official versions of legislation or decisions.

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Last updated April 2026.

Contents

Practitioner Summary 4
Context 5
Legal System 5
Court System 6
Criminal Law 8
Civil Law 10
International Obligations & Domestic Law 11
Relevance Of International Law In The Domestic System 11
Treaty Law 11
Customary International Law 15
Conflicts & Ambiguity 16
Extraterritoriality, Universal Criminal Jurisdiction, & *Aut Dedere Aut Judicare* 17
Extraterritorial Application 17
General Extraterritoriality of Criminal Law 17
Specific Extraterritorial Offences in Criminal Law 19
Extraterritoriality of Civil Law 19
Universal Jurisdiction 20
Aut Dedere Aut Judicare Obligations 21
Extradition & Mutual Legal Assistance 22
Extradition 22
Mutual Legal Assistance In Criminal Matters 22
Sanctions 23
Selected Legislation In Depth 25
The Penal Code 1997 (Act 574) 25
The Geneva Conventions Act 1962 (Act 512) 28
Strategic Trade Act 2010 (Act 708) (STA) 31
Malaysian Anti-Corruption Commission Act 2009 (Act 694) (MACC Act) 34
Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLA) 37
Relevant Case Summaries & Practice 42
Prosecution of Extraterritorial Piracy and 'Security of Malaysia' 42
'Public Interest' Judicial Review and Accountability for International Crimes? 43
Relevance of Constitutional Rights For Non-Nationals & Employment Jurisprudence? 44
Increasing Political Will? 46
Project Background & Acknowledgments 48

Practitioner Summary

Domestic Penal Code Offences May Enable Partial Accountability for International Crimes.

Although only 'grave breaches' of the Geneva Conventions have been incorporated into domestic criminal law, Malaysia has publicly asserted that conduct amounting to other international crimes may instead be prosecuted through the existing Penal Code. For example, in the absence of a specific piracy offence, Malaysia relied on domestic offences in the prosecution of Somali nationals involved in the attempted hijacking of the *MT Bunga Laurel*. Such an approach may enable partial accountability for atrocity-related conduct, though it may not capture the full legal elements that distinguish international crimes.

Jurisdiction For Extraterritorial Offences Is Available, But Considerations Should Be Given To A Nexus With Malaysia.

Malaysia has constructively engaged in United Nations discussions on universal jurisdiction, advocating for clearer consensus on its scope while emphasising respect for national sovereignty. This aligns with domestic law requirements for a nexus with Malaysia before extraterritorial offences can be prosecuted under national legislation. Although most offences permitting extraterritorial jurisdiction are expressly scheduled, Malaysian law may also allow for limited extraterritorial jurisdiction where the Attorney General certifies that conduct abroad affects the 'security of Malaysia' (see Section 127A(1) of the Criminal Procedure Code and Section 22(1)(b)(vi) of the Courts of Judicature Act.

Multilateral Engagement May Reflect Support for International Accountability Mechanisms.

Malaysia has actively participated in International Court of Justice advisory opinion proceedings relevant to this brief. Likewise, Malaysia joined other States in establishing The Hague Group to coordinate legal and diplomatic measures aimed at advancing accountability for alleged violations of international law. This engagement suggests that Malaysia may support multilateral accountability initiatives even where comparable mechanisms are not fully incorporated into domestic law.

Strategic Trade, Anti-Corruption, and Anti-Money Laundering Frameworks May Provide Pathways For Accountability.

Malaysia has put in place a range of legal and regulatory frameworks that engage with strategic goods, financial flows, and related enforcement risks. For example, Malaysia's Strategic Trade Act establishes licensing and control mechanisms over strategic goods and brokering activities, creating a regulatory basis to restrict the movement of items

that could contribute to serious violations of international law. Likewise, recent anti-corruption enforcement actions indicate a willingness to investigate misconduct linked to procurement and smuggling networks that may facilitate illicit flows. Finally, amendments to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act provide broad extraterritorial reach and powers to freeze, seize, and forfeit assets connected to serious or foreign offences. Together, these frameworks may provide indirect but useful mechanisms to monitor financial benefits and supply chains associated with conduct analogous to core international crimes.

Context

Malaysia is a constitutional monarchy comprising the Peninsula of Malaysia and the Borneo states of Sabah and Sarawak. British colonization began in 1786 with the acquisition of the island of Penang. By 1914, Britain controlled every Malay state in Malaya. It formed the 11-state Federation of Malaya in 1948.[1]

The Federation of Malaya achieved formal independence from Britain on 31 August 1957 (Merdeka Day). The Federation of Malaya then merged with the State of Singapore, the Crown Colony of Sarawak and the Crown Colony of Sabah to form Malaysia on 16 September 1963, with Singapore leaving Malaysia and becoming an independent nation two years later. The monarch, elected to a five-year term by Malaysia's Conference of Rulers and acting as Malaysia's ceremonial Head of State, is known as the *Yang di-Pertuan Agong*. The Prime Minister is the Head of Government.

The State maintains a tripartite system of government, with executive, legislative and judicial branches. There is 'no strict separation' between the executive and legislative branches of government, as members of the executive branch are also members of the Parliament of Malaysia.

As a federal system, power is divided between the central government and Malaysia's 13 state governments. Article 75 of the Federal Constitution of Malaysia (Constitution) states that, if any state law is inconsistent with federal law, federal law prevails.

Federal legislation can be found at **https://lom.agc.gov.my**.

Legal System

The Malaysian legal system includes civil (secular) law and Islamic law.[2] Malaysian secular law draws heavily on English common law. The doctrine of *stare decisis applies*.[3]

1. Abdul Ghafur Hamid @ Khin Maung Sein, 'Malaysia' *Oxford Handbook of International Law in Asia and the Pacific* (2019), 460.
2. Article 3(1) of the Federal Constitution of Malaysia (Constitution) declares that Islam is the State religion, but that 'other religions may be practiced in peace and harmony in any other part of the Federation.' Islamic (or *syariah* law) is under the exclusive jurisdiction of the states; where *syariah* law applies, it governs family and religious matters for people professing the Muslim faith.
3. See *Dato' Tan Heng Chew v Tan Kim Hor & Another* [2006] 1 CLJ 577 at [2]-[3] (Shim CJ).

As a former British colony, Article 169(a) of the Constitution states that:

> [A]ny treaty, agreement or convention entered into before Merdeka Day between Her Majesty or her predecessors or the Government of the United Kingdom on behalf of the Federation or any part thereof and another country shall be deemed to be a treaty, agreement or convention between the Federation and that other country.

This relationship to British law—particularly English law—is also apparent in Section 5 of the Criminal Procedure Code 1935 (Act 593) (Criminal Procedure Code), which states:

> As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force the law relating to criminal procedure for the time being in force in England shall be applied so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto.

While unlikely to be relevant to practitioners utilising this brief, these provisions are a reminder of Malaysia's shared legal history. Further, this shared legal history suggests that common law jurisprudence may be of persuasive assistance.

Under Article 4(1), the Constitution is the 'supreme law of the Federation' with which all law passed after Malaysia's independence must be consistent. Article 4(1) gives Superior Courts the power of constitutional judicial review.[4]

Court System[5]

Malaysia's civil court[6] hierarchy is composed of Superior Courts and Subordinate Courts.

Of relevance to this brief, Malaysia's Superior Courts include: (1) two High Courts 'of co-ordinate jurisdiction and status'[7] – one situated in the states of Malaya and one in the states of Sabah and Sarawak; (2) the Court of Appeal; and (3) the Federal Court:[8]

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4. See *SIS Forum (Malaysia) v Kerajaan Negeri Selangor; Majlis Agama Islam Selangor (Intervener)* [2022] 3 CLJ 339, [26]-[24] (Tengku Maimun Tuan Mat CJ).
5. For an easy-to-read history of the Malaysian court system, see here.
6. This is separate from Malaysia's *Syariah* Courts, which deal with Islamic personal and family law. Constitution Article 121(1A) lists them as state courts of exclusive jurisdiction. Despite previous decisions stating that the courts were of equal standing to the civil courts (see *Subashini Rajasingam v Saravanan Thangathoray* [2007] 7 CLJ 584), more recent apex court case law has clarified that civil courts retain a supervisory jurisdiction over their *Syariah* counterparts (see *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] MLJU 211 at [64]).
7. Constitution, Article 121(1).
8. Notably, there is also a Special Court, which can hear 'proceedings by or against the *Yang di-Pertuan Agong* or the Ruler of a State in his personal capacity'. See Constitution, Article 182(2).

- The **High Courts** hear most criminal and civil appeals and try cases where subordinate courts lack jurisdiction, such as criminal cases involving the death penalty or divorce and probate civil matters.[9] (See more below on Extraterritorial Jurisdiction.)

- The **Court of Appeal** hears all criminal and civil appeals from Malaysia's High Courts.[10] It is an intermediate appellate court.

- The **Federal Court** is Malaysia's highest court and the final court of appeal. It hears appeals from the Court of Appeal if leave is granted and hears criminal appeals from High Court decisions made in their original jurisdiction.[11] The Federal Court also has the original jurisdiction to determine whether Malaysian legislative bodies have made laws within their power and can decide constitutional issues referred to it by other courts. Finally, the Federal Court may give advisory opinions on any question referred by the *Yang di-Pertuan Agong*.[12] The Federal Court's bench includes the Chief Justice, the President of the Court of Appeal, the two Chief Judges of Malaysia's High Courts, and four other Federal Court justices.

Malaysia's formal [13] Subordinate Courts include: (1) Magistrates' Courts and (2) Sessions Courts.

- The **Magistrates' Courts** have general civil and criminal jurisdiction and are divided into 'First Class' and 'Second Class' Magistrates. The Magistrates' Courts usually deal with minor cases. For First Class Magistrates, this broadly includes criminal cases punishable by a fine or 10 years or less in prison[14] and civil claims 'where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgit'.[15] Second Class Magistrates may hear criminal cases punishable by a fine or 12 months or less in prison[16] or civil claims under ten thousand ringgit.[17]
- The **Sessions Courts** have general civil and criminal jurisdiction – they can hear all criminal cases except those involving the death penalty[18] and, for the purposes of this brief, have civil monetary jurisdiction 'where the amount in dispute or the value of the subject matter does not exceed one million ringgit'.[19]

9. See generally Courts of Judicature Act 1964 (Act 91) (Courts of Judicature Act), Sections 22-24 (Original Jurisdiction) and Sections 26-28 (Appellate Jurisdiction).
10. Constitution, Article 121(1B); Courts of Judicature Act Section 50 (Criminal Appellate Jurisdiction) and Sections 67-68 (Civil Appellate Jurisdiction).
11. Constitution, Article 121(2), Courts of Judicature Act Sections 81 and 86.
12. Constitution, Article 130. However, the King's power to seek such an opinion does not appear to have been used. One opportunity came in 2012, when political debate became heated as to whether Malaysia is a secular or Islamic state, but no advisory opinion was eventually sought.
13. Note that in West Malaysia, there are also *Penghulu* Courts that are rural bodies steered by village headmen (or *Penghulus*). They are designed to resolve small disputes informally.
14. Subordinate Courts Act 1948 (Act 92) (Subordinate Courts Act), Section 87. Note, however, that First Class Magistrates may only sentence convicted persons to up to 5 years of imprisonment (Section 87).
15. Subordinate Courts Act, Section 90.
16. Subordinate Courts Act, Section 88.
17. Subordinate Courts Act, Section 92.
18. Subordinate Courts Act, Section 63.
19. Subordinate Courts Act, Section 65(1)(b). Note that under Section 65(1)(a), the Sessions Courts also have 'unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress'.

Malaysian criminal law is primarily governed by the Penal Code 1997 (Act 574) (Penal Code), with its criminal procedure governed by the Criminal Procedure Code.

Under Criminal Procedure Code Section 376(1), the Federal Attorney General acts as the 'Public Prosecutor' and '[has] the control and direction of all criminal prosecutions and proceedings under the Criminal Procedure Code'. This includes the discretion to prosecute or not prosecute.

While once thought to be unfettered,[20] the Attorney General's discretion to prosecute was found to be subject to judicial review in 2021 by the Federal Court in *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors (Sundra Rajoo).*[21]

The relevant case involved criminal charges brought by the Attorney General against Datuk N Sundra Rajoo (the Appellant), for alleged criminal breach of trust in the Appellant's capacity as the director of the Asian International Arbitration Centre. Central to the Appellant's claim was that he was entitled to functional immunity and that the charges were void for illegality. To address this claim, the Court needed to determine whether the Attorney General's discretion to prosecute was amenable to judicial review.

The Federal Court found for the Appellant.[22] In so doing, the Court described a two-stage test to attain leave for judicial review of the Attorney General's decisions:

1. The applicant must show legal grounds for the judicial review including, *inter alia*, illegality, irrationality, procedural impropriety, and *male fides*;[23] and
2. The applicant must 'adduce compelling and *prima facie* proof' that the relevant ground is made out.[24]

The Court also noted that it must be satisfied that 'judicial review is the only method of redress available to the litigant'[25] and stated that the Attorney General's decisions are 'cloaked with a strong presumption of legality'.[26]

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20. *Repco Holdings Bhd v Public Prosecutor* [1997] 3 MLJ 681 at 689: 'The importance of the propositions formulated by the learned Lord President in these two cases is that, as a matter of public law, the exercise of discretion by the Attorney General in the context of art 145(3) is put beyond judicial review. In other words, the exercise by the Attorney General of his discretion, in one way or another, under art 145(3), cannot be questioned in the courts by way of certiorari, declaration or other judicial review proceedings.'
21. [2021] 5 MLJ 209 (*Sundra Rajoo*).
22. *Sundra Rajoo* [122].
23. *Sundra Rajoo* [115].
24. Importantly, it is not yet clear what degree of proof is required: on one hand, it is said the courts are to presume the grounds are not made out 'unless the evidence singularly leads to the inevitable conclusion that they have been made' and on the other, it is simply necessary to show '*prima facie* proof.' *Sundra Rajoo* [116].
25. *Sundra Rajoo* [119].
26. *Sundra Rajoo* [113].

While *Sundra Rajoo* clarifies that the Attorney General's decisions to prosecute are subject to judicial review, it remains to be seen if there would be a sufficient ground to challenge decisions not to prosecute—for example in matters where Malaysia has *aut dedere aut judicare* obligations under international law.

Under Section 377 of the Criminal Procedure Code, every criminal prosecution before a Court or Magistrate must be conducted by the Public Prosecutor, a Senior Deputy, Deputy or Assistant Public Prosecutor, or those listed in the section who are authorized 'in writing by the Public Prosecutor'.

Private prosecutions are possible, but under Criminal Procedure Code Section 380, the prosecution must be: (1) for a non-seizable offence (under Section 2, this applies to a limited number of offences for which a police officer can arrest the accused without a warrant); (2) against the person or property of the person bringing the matter; and (3) brought in the Magistrates' Court.

This does not apply to harms related to international crimes.

Section 425A of the Criminal Procedure Code permits in absentia trials in limited circumstances. If, after being charged, an accused 'absconds', the accused is said to have waived the right to be present at trial (see Section 425A(1)) and the trial may proceed.[27] This includes where an arrest warrant has been issued; however the Court must be 'satisfied it is no longer in the interest of justice' to wait for the accused's presence.[28]

There is no explicit temporal limitation for bringing criminal charges.

Inchoate Offences

The Criminal Procedure Code permits conviction of inchoate offences without separate charges. Section 168 provides '[w]hen the accused is charged with an offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged'. Section 511 of the Penal Code further provides that, where the punishment for an attempt is not expressly prescribed under the Penal Code or 'any other written law', the offender is liable to the punishment provided for the offence as if it had been fully committed.

27. Note that Section 425A(2) of the Criminal Procedure Code 1935 (Act 593) (Criminal Procedure Code), states that if a trial proceeds, the court is prohibited from passing a sentence of death, imprisonment for life, or imprisonment for a term between 30 and 40 years inclusive.
28. See Section 425(A)(3)(b) of the Criminal Procedure Code.

The most relevant statute to Malaysian civil law is the Civil Law Act 1956 (Act 67) (Civil Law Act). This Act applies the 'common law of England and the rules of equity' to Malaysia unless later amended or replaced by a direct Malaysian statute.[29] It also covers certain discrete subjects like proceedings against joint and several tortfeasors and apportioning liability for contributory negligence.

Malaysian tort law is a mix of inherited English common law and relevant Malaysian statutes; it generally mirrors other common law jurisdictions in its approach to negligence and duty of care.

The Rules of Court 2012 (Rules of Court) govern civil procedure.

Notably, under the Rules of Court, 'representative proceedings' (or class actions) are possible under Order 15, Rule 12. The Court of Appeal succinctly described Order 15, Rule 12 as requiring a 'common interest [among the plaintiffs], common grievance [among the plaintiffs], and that the relief sought must be beneficial to all [plaintiffs]'.[30]

Likewise, Order 53 of the Rules of Court provides for judicial review. Order 53, Rule 2(4) states that '[a]ny person who is adversely affected by the decision of any public authority shall be entitled to make the application.' Because Order 53, Rule 2(4) is phrased as 'any person', it appears that it is not exclusive to Malaysian citizens.

The Federal Court in *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi and Anor* [2014] 3 MLJ 145 (the MTUC case) clarified that 'adversely affected' is a single test:

> [The] applicant has to at least show he has a real and genuine interest in the subject matter. It is not necessary for the applicant to establish infringement of a private right or the suffering of special damage.[31]

Civil claims are subject to time limits established by the Limitation Act 1953 (Act 254). In general, under Section 6(1)(a) of the Act, a tort claim must be filed within six years from the date the cause of action occurred.

29. Civil Law Act 1956 (Act 67), Section 3(1) (Civil Law Act).
30. *Vellasamy Pennusamy and Ors v Gurbachan Singh Bagawan Singh and Ors [2012]* 2 CLJ 712, Zainun Ali JCA at [223] citing *Tong Tai Holding Sdn Bhd v Jimi a/l Mantali and Ors* [2003] 5 MLJ 450.
31. At [58]. See, more recently, *Perbadanan Pengurusan Trellises & Ors v Datuk Bandar Kuala Lumpur & Ors* [2021] 3 MLJ 1. A brief regarding the 2023 Federal Court decision is provided here.

International Obligations & Domestic Law

Relevance Of International Law In The Domestic System

Constitution Article 160(2) defines 'law' as including 'written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof'. This does not explicitly include international law.

Instead, as a dualist jurisdiction, Malaysia's international obligations must be enacted in domestic statute to be applied in Malaysian courts.[32]

Treaty Law

Under the Constitution, treaties are concluded by the Executive[33] and the Federal Parliament has the power to give treaties domestic effect.[34]

Of relevance to this brief, Malaysia is Party to several treaties and protocols, including:

- The Hague Convention for the Protection of Cultural Property and its Protocol, acceded to in 1960;
- The four Geneva Conventions, acceded to in 1962;
- The Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods, acceded to in 1970;
- The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), acceded to in 1994;
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), acceded to in 1995;
- The Anti-Personnel Mine Ban Convention, acceded to in 1999;
- The Convention Prohibiting Chemical Weapons, acceded to in 2000;
- The Convention on the Rights of the Child (CRC), acceded to in 1995, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (CRC-OP) acceded to in 2012;

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32. Ghafur (n 1) 468. See, e.g., *Bato Bagi & Ors v Kerajaan Negeri Sarawak and Another Appeal* [2011] 6 MLJ 297 at [180]: 'On the issue whether this court should use 'international norms' embodied in the UNDRIP to interpret arts 5 and 13 of the Federal Constitution I have only this to say. International treaties do not form part of our law, unless those provisions have been incorporated into our law. We should not use international norms as a guide to interpret our Federal Constitution.'
33. On the Executive, see Constitution Article 39, Article 80(1), and the Federal List (found in the Constitution's Nineth Schedule).
34. For Parliament's power to make laws regarding, and giving effect to, treaties, see Constitution Article 74(1), read with Article 76(1)(a) and the Federal List (found in the Constitution's Nineth Schedule).

- The Convention on the Rights of Persons with Disabilities (CRPD), acceded to in 2010; and
- The Treaty on the Prohibition of Nuclear Weapons, acceded to in 2020.[35]

When considering whether and how treaties apply, it is helpful to consider whether Malaysia has made any reservations.

For example, Malaysia declared that its accession to CEDAW is subject to the provisions not conflicting with Islamic law and the Federal Constitution. Malaysia further clarified that it does 'not consider itself bound by the provisions of articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g).'

Further, Malaysia has made a reservation to the Genocide Convention, noting that in reference to Article IX, disputes in which Malaysia is a party under the Convention may only be submitted to the International Court of Justice with 'the specific consent of Malaysia'.

Notably, in the case of the Genocide Convention, Norway entered a communication to the UN Secretary-General (with similar communications from the Netherlands and the United Kingdom) stating that such a reservation was 'incompatible with the object and purpose' of the treaty.

Malaysia also signed the Arms Trade Treaty 2013 (ATT) only three months after its establishment. Although Malaysia has not ratified the ATT, it has publicly stated multiple times (see, e.g., here) that it has enacted domestic legislation that aligns with the ATT's purpose, including the Strategic Trade Act 2010 (Act 708), the Customs Act 1967 (Act 235), and the Arms Act 1960 (Act 206).

Without an enabling statute, Malaysian courts will not generally apply a treaty as domestic law—even if Malaysia has acceded to the treaty.[36]

Doctrine of Legitimate Expectations?

The doctrine of legitimate expectations is a public law doctrine that scholars have credibly identified as a potential avenue for reading international treaty obligations into domestic decision-making and law.

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35. Malaysia is not a Party to the Additional Protocols to the Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention for the Protection of All Persons from Enforced Disappearances (ICPPED), or the Rome Statute.
36. A possible exception is the case of *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors* [2012] 1 CLJ 769 (*Noorfadilla*). There, a schoolteacher successfully sued the Malaysian government in the High Court for gender discrimination. This included arguments regarding Malaysia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) without CEDAW being explicitly incorporated into domestic statute. Nevertheless, it must be noted that the Court of Appeal in a subsequent decision explicitly disapproved of Noorfadila's treatment of CEDAW. See *AirAsia Bhd v Rafizah Shima bt Mohamed Aris* [2014] 5 MLJ 318 at [29] and [37].

In general, the doctrine provides that where there is a detrimental reliance on an express promise given by a public authority, those affected may seek remedies for such a reliance. Applying this to Malaysia's treaty obligations, in theory the doctrine may provide a basis for arguing that representations or commitments made by the Executive in relation to international agreements give rise to enforceable expectations in domestic law.

While the doctrine is recognised in Malaysian jurisprudence and could provide an opening where domestic law is silent on international legal obligations, it remains subject to important limitations. In particular, legitimate expectations may be overridden by competing considerations of public interest and cannot prevail over clear statutory provisions.

For a summary of the doctrine's limits with references to Malaysian case law, see here.

However, international law and international legal principles have been referenced for interpretation of related points in domestic law. This is particularly relevant regarding rights recognised in the Constitution.

For example, the Federal Court noted that the constitutional right to redress against preventive detention was more in accord with international principles requiring judicial redress for detainees,[37] including legal principles from the United Nations and the European Convention on Human Rights,[38] than the narrow writ of habeas corpus in United Kingdom law.

More specifically, Malaysian courts have referenced the International Covenant on Civil and Political Rights (ICCPR), a treaty to which Malaysia is not a Party but which incorporates similar rights as enshrined in the Constitution. This includes affirming the

37. *Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ, [20]: 'Further, arts 4 and 8 of the [Federal Constitution] are not alluded to in art 149 of the [Federal Constitution], meaning that the relevant legislation cannot contravene arts 4 and 8 of the [Federal Constitution]. This means that the fundamental characteristics or features, or the basic structure of the [Federal Constitution] must be complied with, as should the doctrines of proportionality and equality embodied in art 8 of the [Federal Constitution]. *This is consonant with international law on according all detainees the right of judicial redress'* (emphasis added).

38. Ibid at [26]: 'Simply put, the constitutional right to redress against detention in this jurisdiction under art 5(2) of the [Federal Constitution], is considerably wider and consonant with international law as prescribed, *inter alia,* by the United Nations and the European Convention on Human Rights. And such wide powers of constitutional review have been embedded in our [Federal Constitution] from its inception.'

non-derogability of freedom of religion[39] and determining the limitations of the freedom of movement.[40]

However, this does not mean that the ICCPR, or the Universal Declaration of Human Rights (UDHR) on which the ICCPR is based, are incorporated and applicable in Malaysian domestic law. Instead, it suggests that the judiciary is willing to be informed, but not instructed, by international law when interpreting rights-conferring provisions.[41]

On this, *Subramaniam a/l Letchimanan v The United States of America and Another Appeal* may be instructive.[42] There, the Court of Appeal—in responding to arguments regarding a work dismissal and a treaty to which Malaysia was not a Party—stated:

> [72] We understand that where fundamental liberties and human rights are concerned the courts are more prepared to take a robust approach in incorporating international human rights norms into the domestic law even though a particular Convention has not been ratified or incorporated into domestic law by legislation.
>
> [73] Our courts tend to be more flexible if the Convention to which we are not a party yet nevertheless promotes principle[s] of fundamental liberties enshrined in our Federal Constitution and the Rule of Law or that it is embodied in the [UDHR] *which values are not inconsistent with our Federal Constitution*.... (emphasis added).[43]

The Malaysian Human Rights Commission & The Universal Declaration of Human Rights

The Human Rights Commission of Malaysia Act 1999 (Act 597) established the Malaysian Human Rights Commission, or SUHAKAM.

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39. See *Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and Another Appeal* [2021] 1 MLJ 120, [86]: 'Indeed, even in international human rights law, the freedom of religion is generally considered a non-derogable right. Just to emphasise our point, the Human Rights Committee observed in respect of article 18 of the International Covenant on Civil and Political Rights ('ICCPR') in General Comment No 22 as follows, at para 1: The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.'
40. *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] MLJU 212, [360]: 'Be that as it may, the poser in the first question implicitly accepts that while a person, a citizen, has a right to leave one's own country even under international law, and there are several international conventions dealing with this right; it recognises that such right is not absolute and that there are restrictions on border controls. Amongst the international conventions are Article 12 of the International Covenant on Civil and Political Rights (ICCPR); and Article 13 of the Universal Declaration of Human Rights (UDHR)'.
41. See also *Muhammad Hilman Bin Idham & Ors v Kerajaan Malaysia & Ors* [2011] MLJU 770.
42. [2021] 4 MLRA 153.
43. Ibid. See at [80].

Under Section 4(1) of the Act, SUHAKAM is an independent body empowered to: engage in public human rights education; advise the Malaysian government related to human rights including on domestic legislation and policy as well as accession or ratification of treaties; and investigate complaints of human rights violations.

Notably, the term 'human rights' is defined explicitly under Section 2 as the 'fundamental liberties as enshrined in Part II of the Federal Constitution'. The importance of the Constitution's framing of human rights is reiterated in Section 4(4),[44] indicating that '[f]or the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 [UDHR] *to the extent that it is not inconsistent with the Federal Constitution*' (emphasis added).[45]

Although the UDHR is mentioned in the Act, Malaysian courts have generally found this does not mean that the UDHR is, itself, incorporated into domestic law.[46]

Customary International Law

Malaysia has consistently reiterated 'the dualist nature of the Malaysian legal framework' in statements affirming that customary international law is not automatically binding on domestic courts and may only be applied to the extent that it does not conflict with domestic statute.[47]

This is despite Section 3(1) of the Civil Law Act, which permits incorporation of customary international law through English common law. Although used by domestic courts prior to independence, Malaysian courts have since largely moved away from incorporating customary international law through Section 3(1).[48] One exception to this regards the international legal doctrine of sovereign immunity.[49] However, utilising Section 3(1) to

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44. More broadly, Section 4 of the Human Rights Commission of Malaysia Act 1999 (Act 597) describes Malaysian Human Rights Commission's (SUHAKAM) roles and powers.
45. Note that, in international law, the UDHR itself is not a treaty and, as such, is non-binding. However, the ICCPR and the ICESCR incorporate many of the rights articulated in the UDHR, making them binding for States Parties. Additionally, some express protections in the UDHR, such as a protection against arbitrary detention, are recognised as norms of customary international law and therefore binding on all States.
46. See e.g. *Mohamad Ezam bin Mhd Noor v Ketua Polis Negara* [2002] 4 MLJ 449, judgment of Siti Norma Yaakob FCJ; *SIS Forum (Malaysia) v Dato' Seri Syed Hamid Albar* [2010] 2 MLJ 377 at [37] (Mohamad Ariff J). Cf *Suzana Binti Md Aris v DSP Ishak bin Hussain* [2011] 1 MLJ 107 at [27] (Lee Swee Seng JC), in interpreting the right to life under the Constitution regarding a death in police custody: 'UDHR is part and parcel of [Malaysia's jurisprudence] as the international norms in the UDHR are binding on all member countries unless they are inconsistent with the member countries' constitutions.' However, it is important to note that this case was examining a right already expressed in the Federal Constitution and was not a finding of Malaysia's apex court.
47. See also here and here.
48. Ghafur (n 1) 469-472.
49. Ibid at 470, citing *Village Holdings Sdn, Bhd v Her Majesty the Queen in Right of Canada* [1988] 2 MLJ 656 and *Commonwealth of Australia v Midford (Malaysia) Sdn Bhd* [1990] 1 CLJ 878.

However, utilising Section 3(1) to incorporate other customary norms, particularly where there is contrary domestic statute, has not been successful.[50]

The recognition of the doctrine of sovereign immunity could be attributed to an absence of a specific domestic legal framework addressing the issue, thus allowing courts to rely on English common law's incorporation of international law under the Civil Law Act. However, where domestic legal frameworks exist, statutory provisions are prioritised over international custom.

> Regarding the potential incorporation of the international customary norm of *non-refoulement*, Dina Imam Supaat succinctly argues that there are '[t]hree main principles…identified in the application of customary international law in [Malaysian] domestic courts'. These include that: (1) the customary rule 'can be considered as [part of English] Common Law'; (2) the rule must not be 'inconsistent with any written [Malaysian] law'; and (3) the party invoking the rule bears the burden of proving the rule is both relevant and applicable.[51]

Conflicts & Ambiguity

As noted above, in the event of a conflict between domestic and international law, domestic law will likely prevail.[52] However, where ambiguity exists, the Federal Court case of *Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia and Ors (Sundra Rajoo)* may assist.[53]

In *Sundra Rajoo*, concerning functional immunity from criminal proceedings, the Federal Court held that ambiguous domestic legislation should be construed in a manner that does not place Malaysia in breach of its international obligations.[54] Of particular relevance to this brief, the Court adopted LeBel J's statement in the Supreme Court of Canada, identifying it as the correct legal position regarding the interpretation of statutes in conformity with international obligations:

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50. See here citing *Public Prosecutor v Narogne Sookpavit* [1987] 2 MLJ 100 regarding the right of innocent passage and contravention of Section 11(1) of the Fisheries Act 1963 (Act 317).
51. Dina Imam Supaat, 'Paving the Way for the *Non-Refoulement* Principle in Domestic Courts,' *Malaysian Journal of Syariah and Law*, 6 (December 2017) 24, 39, citing Eyal Benvenisti, 'Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts' *European Journal of International Law* (1993) available here.
52. See, e.g., *Sundra Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] MLJ 943, [45]: '…The point is that if domestic legislation directly conflicts with international law, then the Courts of a dualist system must give priority to domestic law over international law. Any breach of international law would be as a result of the conduct of the Legislative and Executive arms of Government'.
53. *Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] MLJ 943.
54. Ibid at [45]: '…However, where the legislation is ambiguous and capable of an interpretation which favours international law, the Courts ought not to put the State or the other branches of Government in a position which would render them in breach of international law whether it be conventional international law (treaty law) or customary international law'.

> It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result. R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed 2002), at p 422, explains that the presumption has two aspects. First, the legislature is presumed to act in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community. In deciding between possible interpretations, courts will avoid a construction that would place Canada in breach of those obligations. The second aspect is that the legislature is presumed to comply with the values and principles of customary and conventional international law. Those values and principles form part of the context in which statutes are enacted, and courts will therefore prefer a construction that reflects them.[55]

This suggests that, while explicit domestic statutes prevail over international law, domestic legislation should, where possible, be interpreted in a manner consistent with Malaysia's treaty obligations and customary international law.

Extraterritoriality, Universal Criminal Jurisdiction, & *Aut Dedere Aut Judicare*

Extraterritorial Application

Most Malaysian laws have explicit jurisdictional limits, and Malaysian courts apply the presumption against extraterritoriality. However, Malaysian law does permit prosecution of particular offences occurring outside of Malaysia by non-Malaysians.

General Extraterritoriality of Criminal Law

Section 127A of the Criminal Procedure Code permits Malaysian courts to treat specific conduct carried out abroad as if it was committed within Malaysia. There are three parts to Section 127A(1).

First, the conduct must be an offence in one of three broader categories:

- An offence under Chapters VI (Offences against the State), VIA (Terrorism), or VIB (Organized Crime) of the Penal Code;

55. Ibid at [43], citing *R v Hape* [2007] 2 SCR 292, [53].

- An offence as specified in the Schedule to the Extra-Territorial Offences Act 1976 (Act 163) (which, at time of writing, includes offences under the Official Secrets Act 1972 (Act 88) and the Sedition Act 1948 (Act 15)); or
- Any offence 'under any other written law' where the offence is 'certified by the Attorney General to affect the security of Malaysia'.

Any offence 'under any other written law' where the offence is 'certified by the Attorney General to affect the security of Malaysia'.

Within these categories of offences, of greatest potential interest may be offences under Chapter VIA (Terrorism) and offences that may be framed to 'affect the security of Malaysia'.

Second, the offence must be committed in any of nine circumstances, including: on the high seas or a vessel registered in Malaysia; by a citizen or permanent resident on the high seas; by a citizen or permanent resident outside of Malaysia; against a Malaysian citizen; against government property; with the intent to compel the Malaysian Government or a state government to act in a particular way; by a stateless person with habitual residence in Malaysia; by any person on a fixed platform on Malaysia's continental shelf; or 'by any person who after the commission of the offence is present in Malaysia'.

Within these circumstances, of greatest potential interest may be offences allegedly committed by a person present in Malaysia after the commission of the offence (Section 127A(1)(i)).

Finally, there are two further requirements that:

- A diplomatic officer in the jurisdiction where the offence was allegedly committed must certify that the case should be investigated in Malaysia (noting where there is no diplomatic officer, the Public Prosecutor must approve the investigation); and
- If proceedings commence, the person may not be extradited or surrendered to another country for that same offence.

Note that such extraterritorial offences fall under the jurisdiction of the High Court under Section 22(1) in the Courts of Judicature Act.

Specific Extraterritorial Offences in Criminal Law

Malaysia also maintains legislation that applies to offences by non-nationals outside of Malaysia where there is nevertheless a territorial link to Malaysia, including: [56]

- The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670), which criminalises amongst other acts trafficking in persons, trafficking in children, profiting from exploitation of a trafficked person, providing facilities or services in support of trafficking in persons, and smuggling migrants. Section 3 states that the Act's offences apply, 'regardless of whether the conduct constituting the offence took place inside or outside Malaysia and whatever the nationality or citizenship of the offender' as long as the exploitation related to the conduct occurred in Malaysia, Malaysia is the receiving country of the trafficked or smuggled persons, or the trafficked or smuggled persons transited Malaysia.

- The Child Act 2001 (Act 611), which incorporates Malaysia's obligations under the Convention on the Rights of the Child into domestic law. Section 43 (child prostitution), Section 48 (unlawful transfer of a child), Section 49 (importation of a child by false pretences) and Section 52 (taking or sending out a child without consent of lawful custodian) criminalise various acts by 'any person' occurring 'within or outside Malaysia'. Importantly, the Preamble states that the Act 'recogniz[es] that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status', suggesting it can be used to protect non-citizen children in Malaysia.

- The Communications and Multimedia Act 1998 (Act 588), which regulates communications (including online). Section 4 provides that the Act and its subsidiary legislation apply both within and outside Malaysia; specifically, Section 4(2) states that the Act may apply to 'any person beyond the geographical limits of Malaysia and her territorial waters' if the person is 'a licensee under the Act' or 'provides relevant facilities or services under the Act in Malaysia'. Licensees include social media providers. Potentially relevant offences under the Act may include Section 183 (compromising public safety) and Section 233 (improper use of network facilities or service to abuse or threaten individuals).

Extraterritoriality of Civil Law

Generally for civil matters, under Section 23 of the Courts of Judicature Act, Malaysia's High Courts have jurisdiction to try proceedings:

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56. See also below discussion of the Malaysian Anti-Corruption Commission Act 2009 (Act 694), Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613), and the Strategic Trade Act 2010 (Act 708).

a) Where the cause of action arose;
b) Where a defendant resides or has their place of business;
c) Where the facts, on which the proceedings are based, exist or are alleged to have occurred; or
d) Where any disputed ownership of land falls within the Court's geographical jurisdiction.

This suggests that civil wrongs that take place outside of Malaysia can still be litigated if, for example, the defendant lives in Malaysia or operates as a business in Malaysia—in other words, that there is a territorial connection.

Foreign Head of State or Government Immunity?

Until 2024, Malaysia adopted the common law doctrine of restrictive immunity for Heads of State and Government, meaning that Heads of State and Government would retain immunity from Malaysian courts for sovereign acts.[57]

In 2024, Malaysia codified this doctrine in the Jurisdictional Immunities of Foreign States Act 2024 (Act 853) in relation to civil proceedings.

Section 5 provides that foreign States and their Head of State and Government enjoy 'immunity from the jurisdiction of the court and no proceedings shall be instituted against them by any party'. However, the Act restricts this immunity in particular circumstances, including where: the Foreign State or their Head of State or Government waives their immunity (Section 7); the claims are related to personal injuries that occur in Malaysia (Section 10); or the proceedings relate to a foreign State's participation in a company or body that includes non-State participants and is incorporated or operates in Malaysia (Section 13).

Importantly, Section 2(b) indicates that the Act does not apply to criminal proceedings. This suggests the common law doctrine still operates for alleged criminal offences.

Universal Jurisdiction

Malaysia has actively contributed to United Nations discussions on the principle of universal jurisdiction, often emphasising the need for consensus on the principle's scope. In doing so, Malaysia has also emphasised that the principle must be exercised in deference to national sovereignty and that prosecution under universal jurisdiction 'is not the only avenue for fighting impunity'.

57.See Section 3 of the Civil Law Act; *Village Holdings Sdn, Bhd v Her Majesty the Queen in Right of Canada* [1988] 2 MLJ 656; and *Commonwealth of Australia v Midford (Malaysia) Sdn Bhd* [1990] 1 CLJ 878.

Malaysia has publicly recognised that offences under the Geneva Conventions, the Genocide Convention, the Convention against Torture, and the United Nations Convention on the Law of the Sea (UNCLOS) are subject to universal jurisdiction by virtue of the treaties' express language.

However, Malaysia is not a Party to the Convention against Torture and does not have incorporating legislation for the Genocide Convention or UNCLOS (see below regarding Extraterritorial Prosecution of Piracy). Instead, within domestic legislation, the exercise of universal jurisdiction is only available for offences under the Geneva Conventions Act 1962 (Act 512) (Geneva Conventions Act; see Section 3(1), discussed further below). At time of publication, this provision has not been used.

Aut Dedere Aut Judicare Obligations

Malaysia has publicly stated that the principle of *aut dedere aut judicare* (an obligation to extradite or prosecute an individual within a State's jurisdiction for particular crimes) is distinct from the exercise of universal jurisdiction. This distinction is because *aut dedere aut judicare* 'operates as a treaty obligation' which 'flows' from treaty requirements to establish domestic jurisdiction over, and criminalise, particular offences listed in the relevant treaties. Therefore, underscoring its nature as a 'dualist State', Malaysia has maintained that the principle of *aut dedere aut judicare* is 'not binding upon States unless the State chooses to bind itself either under treaty or domestic legislation'.

Malaysia has chosen to be bound by this obligation as a Party to the following treaties:

- The Geneva Conventions
- Single Convention on Narcotic Drugs
- Convention for the Suppression of Unlawful Seizure of Aircraft
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- Convention on the Psychotropic Substances
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents
- International Convention against the Taking of Hostages
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- International Convention for the Suppression of Terrorist Bombings
- International Convention for the Suppression of the Financing of Terrorism
- Convention against Transnational Organized Crime
- United Nations Convention against Corruption

Extradition & Mutual Legal Assistance

Extradition

Extradition is governed by the Extradition Act 1992 (Act 479) (Extradition Act). Malaysia's Minister for Home Affairs serves as the central authority regarding extradition and the Attorney General advises the Ministry on extradition practice.

At time of writing, researchers could identify Malaysian bilateral extradition agreements with Thailand, Indonesia, the United States, Hong Kong SAR, and Australia, as well as with Iran, Romania, and Pakistan. Likewise, a simplified extradition process with Singapore and Brunei Darussalam is provided in Part V of the Extradition Act. If there is no extradition treaty in place with a Requesting State, such extradition can only be performed under the Act if the Minister for Home Affairs makes a 'special direction in writing' (Section 3).

Section 6 of the Extradition Act states that Malaysia will only return an individual 'for an extradition offence'. This includes offences that are punishable under the Requesting State's law and Malaysian law (as if it were committed in Malaysia) by 'imprisonment for not less than one year or with death' (Section 6(2)(a) and (b)). Notably, this means that the Act requires 'dual criminality', or that the conduct must be criminalised in both Malaysia and the Requesting State. However, the wording of the offence does not need to be identical in both States; Malaysia's 'focus is on the act or omission underlying the request', meaning Malaysia only requires sufficient similarities between the offences to satisfy the dual criminality requirement.

General procedures for extradition from Malaysia can be found in Part IV of the Extradition Act and a list of mandatory refusal reasons can be found in Section 8. Relevant forms for extradition are included in the Act's Schedule.

Mutual Legal Assistance In Criminal Matters

Mutual legal assistance (MLA) in criminal matters is governed by the Mutual Assistance In Criminal Matters Act 2002 (Act 621) (MACMA). Under Section 19 of the MACMA, the Attorney General serves as the central authority for MLA requests to Malaysia (as opposed to the Minister for Home Affairs in extradition).

At time of writing, researchers could identify at least 10 Malaysian bilateral MLA agreements (Iran, Hong Kong SAR, China, India, the United Kingdom, Romania, the Republic of Korea, the United States, Australia, and Ukraine). Malaysia is also a Party to the Association of Southeast Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters.[58]

58. Note, however, that the Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters is not a basis for extradition (see Article 2(1)(a)).

Assistance may also be given to 'prescribed foreign States'. Section 17(1) of the MACMA requires the 'Minister charged with the responsibility for legal affairs'[59] to make an order to 'declare a foreign State to be prescribed a foreign State if there is in force a treaty or other agreement' under which the foreign State has agreed to reciprocity.

Where there is no pre-existing 'treaty or other agreement', Section 18 permits the Minister to give a 'special direction in writing' so that assistance may be given.

Under Section 20(1)(f) of the MACMA, requests for assistance must be refused by the Attorney General where dual criminality is not satisfied.

The Attorney General's Chambers provides model MLA request forms on its website.

The above sections have been written for purposes of seeking extradition or MLA *from* Malaysia.

However, if you are advocating for extradition to Malaysia (or MLA *for* Malaysian matters), it is important to note that States without the death penalty often mandate refusal of assistance if the Requesting State cannot assure that the death penalty will not be carried out. Despite recent changes that abolished mandatory death sentences,[60] Malaysia retains the death penalty.

Nevertheless, and relevant to this brief, Section 3(1)(i) of the Geneva Conventions Act sets the punishment upon conviction for a 'grave breach... involving the wilful killing of a person protected by the convention in question' as life imprisonment. Therefore, 'grave breaches' offences do not carry the death penalty under Malaysian law and are unlikely to trigger refusal on death penalty grounds.

Sanctions

Malaysia implements United Nations Security Council (UNSC) sanctions through the domestic Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLA).

The AMLA (the Principle Act) was most recently amended by the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025 (Act A1761) (Amendment

59.See definitions under Section 2(1) of the Mutual Assistance In Criminal Matters Act 2002 (Act 621) (MACMA).
60.See Abolition of Mandatory Death Penalty Act 2023 (Act 846).

Act). Under Section 3, the Amendment Act changes the Act's title to the 'Anti-Money Laundering, Anti-Terrorism Financing, *Anti-Restricted Activity Financing* and Proceeds of Unlawful Activities Act 2001', broadening the scope of the Principle Act.

At time of publication, the most recent amendments are not incorporated in the Principle Act on the available government website, and therefore do not yet appear to be in force.

This brief will reference the amended versions of clauses found in the Amendment Act as the AMLA itself, in preparation for these amendments to come into operation.

Under Section 66C, the Minister of Home Affairs is empowered, though not required, to gazette orders to give effect to such UNSC sanctions. Under Section 66E and Section 66I,[61] relevant regulatory authorities may issue directions, guidelines, and conditions to the entities they oversee in order to 'discharge or facilitate the discharge of any obligation binding on Malaysia by virtue of a decision' of the UNSC. Entities that fail to comply with such directions are liable, under Section 66E(5) and Section 66I(4) respectively, to 'a fine not exceeding one million ringgit'.

Malaysia also may implement its own sanctions under Section 66B of the AMLA related to the financing of terrorism. For these sanctions, Section 66B(1) provides that the Minster of Home Affairs may declare an entity to be a 'specified entity' under the Act. This determination is made where the Minister:

> [I]s satisfied on information given to him by a police officer that—
> (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act; or
> (b) an entity is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a)...

A 'terrorist act' is defined in Section 66A as having the same meaning as Section 130B of the Penal Code. (See below in Selected Legislation in Depth for more on Penal Code Section 130B.)

Designations under Section 66B can be found here.

Section 66B(3) indicates that, once an entity is designated a 'specified entity', 'no person shall within or outside Malaysia knowingly':[62]

61. As found under Section 45 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025 (Act A1761) (Amendment Act).
62. 'No person' is an amendment under Section 41(b)(i) of the Amendment Act, replacing the words: 'Malaysian citizens and bodies corporate incorporated in Malaysia'.

(a) ...[P]rovide or collect by any means, directly or indirectly, property with the intention that the property be used, or in the knowledge that the property is to be used, by a specified entity;
(b) ...(i) [D]eal, directly or indirectly, in any property of a specified entity, including funds derived or generated from property owned or controlled directly or indirectly by that entity;
(ii) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in
subparagraph (i);
(iii) provide any financial or other related service in respect of the property referred to in subparagraph (i); or (iv) make available any property or any financial or other related service, directly or indirectly, for the benefit of a specified entity; [and]
(c) ...[D]o anything that causes, assists or promotes, or is intended to cause, assists or promote, any activity prohibited by paragraph (a) or (b).

Section 66B(3)(d) requires 'every person'[63] to 'disclose immediately' property in their 'possession or control' related to a specified entity, as well as any information related to prospective or previous transactions regarding that property, to the Inspector General of Police. Failing to do so is an offence under Section 66B(4), which may result in 'a fine not exceeding three million ringgit or imprisonment for a term not exceeding five years or to both'.

While only the Royal Malaysia Police may make an application to the Minister of Home Affairs for the Minister to designate a 'specified entity', the information required in making such an application can be found here.

Selected Legislation In Depth

The Penal Code 1997 (Act 574)

Context	The Penal Code is the primary statute to address criminal offences.
Conduct Addressed	Relevant to this brief, criminal acts with explicit extraterritorial application under the Penal Code include: • **Chapter VI** (Offences against the State, largely addressing sedition, espionage, and war against Malaysia);[64]

63. 'Every person' is an amendment under Section 41(b)(ii) of the Amendment Act, replacing the words: 'Malaysian citizens and bodies corporate incorporated in Malaysia'.
64. Perhaps relevant to this brief, see 'Waging war against any power in alliance with the Yang di-Pertuan Agong' (Section 125), 'Committing depredation on the territories of any power at peace with the Yang di-Pertuan Agong' (Section 126), and 'Receiving property taken by war or depredation mentioned in sections 125 and 126' (Section 127) within the Penal Code.

- **Chapter VIA** (Terrorism); and
- **Chapter VIB** (Organized Crime, largely addressing membership in or engagement with an 'organized criminal group').

Under Chapter VIA (Terrorism), the prohibition against committing, participating, aiding or abetting a 'terrorist act' is expansive. In **Section 130B(2)**, a 'terrorist act' is 'an act or threat of action *within or beyond* Malaysia' (emphasis added) where:

(a) The act or threat is intended to cause harm to individuals, the general public, or the environment under Section 130B(3);
(b) The alleged perpetrator engaged in the prohibited conduct 'with the intention of advancing a political, religious, or ideological cause'; and
(c) The act or threat is, 'or may reasonably be regarded as being intended to…intimidate the public or a section of the public' or compel the Malaysian government or an international organisation to act in a particular way.

Section 130B(5) clarifies that, for the purpose of interpreting **Section 130B(2)**:

(a) [A] reference to any person or property *is a reference to any person or property wherever situated, within or outside Malaysia*; and
(b) [A] reference to the public *includes a reference to the public of a country or territory other than Malaysia* (emphasis added).

This expansive definition of 'terrorist act' is important as it provides the foundations for the definitions of 'terrorist' and 'terrorist group' in **Section 130B(1).**

Relevant offences under Chapter VI (Terrorism) therefore may include, but are not limited to: [65]

- Committing terrorist acts (**Section 130C**)
- Providing devices to terrorist group (**Section 130D**)
- Providing or collecting property for terrorist acts (**Section 130N**)
- Providing services for terrorist purposes (**Section 130O**)
- Dealing with terrorist property (**Section 130Q**)

Notably, **Section 130T** recognizes that Sections 130N, 130O, and130Q may be committed by bodies corporate and

65. However, see above regarding the Criminal Procedure Code and other requirements for extraterritorial application of the Penal Code.

	therefore provides for individual criminal responsibility of those who were acting in management or control of the body corporate at the time of the offence. Additional relevant acts that must be 'certified by the Attorney General to affect the security of Malaysia' under Section 127A(1) of the Criminal Procedure Code to apply may include: • Culpable homicide and murder (**Sections 299-301**) • Voluntarily causing hurt or grievous hurt, including through 'dangerous weapons or means' (**Sections 321-322, Section 324, Section 326**) • Wrongful confinement (**Sections 340-348**) • Abduction, slavery and forced labour (**Sections 362-372, Section 374**) • Hostage-taking (**Section 374A**) • Rape (**Section 375, Section 375B**) • Receiving, and dealing in, stolen property (**Sections 410-414**) Finally, the Penal Code explicitly criminalizes '[a]betment in *Malaysia* of offenses *outside Malaysia'* (emphasis added, **Section 108A**) and puts no explicit territorial or nationality limits on the prohibition of engaging in a '[c]riminal conspiracy' (**Section 120A**).
Procedure	The Criminal Procedure Code and the Courts of Judicature Act apply.
Notes & Relevance	**Accountability for International Crimes without Explicit Incorporation?** In discussing the relevance of a draft treaty on Crimes against Humanity, Malaysia submitted in 2015 that 'as far as Malaysia's current framework, perpetrators of Crimes against Humanity may be prosecuted under its general criminal laws, foremost of which, the Penal Code'. This position suggests that, rather than relying on dedicated international crime provisions, Malaysia would approach such conduct through existing domestic offences that criminalise (at least in part) the underlying acts. For example, in its 2020 submission to the UN Office of Legal Affairs on the scope of universal jurisdiction, Malaysia noted that while it had no express provision prohibiting the crime of torture, there were 'relevant provisions under the Penal

	Code which concern the act [of] torture [or] cruel and inhumane treatment'. To this end, the submission notes that relevant offences may include: • **Sections 299 – 377E** involving 'offences affecting the human body'; • **Section 331** specifically regarding 'voluntarily causing grievous hurt to extort confession or compel restoration of property'; and • **Section 503** addressing criminal intimidation, defined as 'threaten[ing] another with any injury to his person, reputation or property… with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do…'. It is important to note that international crimes are distinct from domestic crimes in that they have specific elements that reflect the extraordinary circumstances or the gravity of the conduct. For example, war crimes require a nexus with armed conflict; crimes against humanity involve acts that are widespread or systematic; and genocide requires proof of intent to destroy, in whole or in part, a particular group. In the case of torture, international law imposes its own distinct criteria for severity and State involvement. Prosecuting such crimes under a domestic parallel may fail to capture the specific elements that define 'international crimes'. However, in the absence of explicit incorporation of international crimes into domestic law, identifying domestic provisions that approximate, or correspond to, the harms of international crimes can provide a pragmatic means of addressing such conduct within the national legal system.

The Geneva Conventions Act 1962 (Act 512)

Context	The Geneva Conventions Act incorporates into domestic law Malaysia's obligations under the four Geneva Conventions.
Conduct Addressed	**Section 3(1)** states that: 'Any person, whatever his citizenship or nationality, who, whether in or outside Malaysia, commits, or aids, abets or procures the commission by any other person of *any such grave breach of any of the scheduled conventions as is referred to in the following articles respectively of those conventions…* shall be guilty of an offence and shall be liable on conviction…' (emphasis added).

	The scheduled 1949 Geneva Conventions' Articles include: • Article 50 of the First Geneva Convention; • Article 51 of the Second Geneva Convention; • Article 130 of the Third Geneva Convention; and • Article 147 of the Fourth Geneva Convention. Under these Articles, the prohibited conduct includes but is not limited to: wilful killing or causing great suffering, torture or inhuman treatment, unlawful deportation of a protected person, compelling a protected person to serve in the forces of a hostile power, and extensive destruction and appropriation of property.[66] The victims of the conduct must be 'protected persons' under the Conventions. Under **Section 3(1)(i)**, punishment for 'grave breaches' that include 'wilful killing' is life imprisonment. Under **Section 3(1)(ii)**, all other 'grave breaches' may be punished with a prison term of up to 14 years.
Forum, Jurisdiction, & Procedure	**Section 3(1)** indicates that Malaysia may exercise universal jurisdiction over offences given in the Act. Under **Section 3(2)**, where a 'grave breach' is committed outside of Malaysia, 'a person may be proceeded against, charged, tried and punished… in any place in Malaysia as if the offence had been committed in that place'. Under **Section 3(3)**, the Magistrates' Courts do not have the jurisdiction to try 'grave breaches' offences. As there is no death penalty under the Act, the courts of first instance will likely be the Sessions Court. **Section 3(4)** states that proceedings for an offence of grave breaches under Section 3 must be brought by or on behalf of the Public Prosecutor. At time of writing, the Attorney General serves as the 'Public Prosecutor'; however, this prosecutorial function may soon be separated to create an independent public prosecutor within the Office of the Attorney General.

66. Sections 8 and 9 of The Geneva Conventions Act 1962 (Act 512) further prohibit the unauthorized use of protected emblems (such as the Red Crescent).

Notes & Relevance

Limitations of 'Grave Breaches'?

The term 'grave breaches' of the Geneva Conventions has traditionally referred to violations of the Geneva Conventions that occur only in international armed conflict (meaning conflict between States)—as opposed to 'war crimes' which occur in international and non-international armed conflict (meaning conflict other than between States, including civil war). This is because Article 2, common to all four Geneva Conventions of 1949, provides that the Conventions' 'apply to all cases of declared war or of any other armed conflict *which may arise between two or more of the High Contracting Parties*, even if the state of war is not recognised by one of them' (emphasis added). Notably, Common Article 2 also states that the Convention applies to 'all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.'

The Conventions do address harm caused in conflicts not between two States or involving occupation 'of a High Contracting Party' under Common Article 3. However, this harm is not expressly referred to as 'grave breaches'.

That said, there is growing evidence to suggest that, as international criminal law has progressed, the distinction between 'grave breaches' and 'war crimes' is blurring particularly with reference to the continued development of customary international law. Such evidence of the progression of customary international law may include:

- Nicaragua at [218];
- Tadić at [127];
- Ferdinandusse at 737 citing District Court of Stockholm, Arklöf, 18 December 2006, as reported in Oxford Reports on International Law in Domestic Courts (ILDC) (SE 2006) 633; and
- Klamberg (2009).

Such an argument is dependent on how customary international law is incorporated; for example, in the *absence* of express legislative intent to exclude harm against Common Article 3 protected persons in the term 'grave breaches', evidence of the progression of customary international law may assist.

Judicial Notice of the Geneva Conventions Act

At time of writing, judicial notice of the Act is limited to interpreting when an individual may claim Convention protections as a prisoner of war, rather than prosecutions of conduct amounting to grave breaches. In the context of hostilities between Indonesia and Malaysia, the accused in each case sought to be recognised as a prisoner of war to appeal the death sentence for convictions (see Act s 6(1)).

In *Public Prosecutor v Oie Hee Koi and Associated Appeals,*[67] the final appeal to the UK Privy Council resulted in a majority finding that: (1) an accused must raise sufficient doubt at trial as to their status as a prisoner of war for the protection to be raised; and (2) prisoners of war protection does not extend to nationals of the 'Detaining Power' (as the accused were Malaysian Chinese captured in the company of Indonesian military personnel).

In *Osman and Anor v Public Prosecutor,*[68] the final appeal to the Privy Council held that, even if they were members of the Indonesian armed forces, the accused forfeited any protection afforded by prisoner of war status by detonating an explosive in a non-military building while wearing civilian clothes and by being captured in civilian attire; in other words, the accused were 'unprivileged belligerents'.

Both cases largely turn on interpretation of the Conventions, rather than of the Act itself.

Strategic Trade Act 2010 (Act 708) (STA)

Context	The STA (as amended by the Strategic Trade (Amendment) Act 2017 (Act A1537)) controls the export, trans-shipment, transit, and brokering of strategic items and related technology. Notably, the STA provides for corporate liability. Under **Sections 49** and **50**, offences committed by a body corporate may also result in liability for directors, employees, or agents who were involved in the commission of the offence.

67. [1968] 1 MLJ 148.
68. [1968] 2 MLJ 137.

	What constitutes as 'strategic item' is determined by the Minister of International Trade and Industry[69] and is provided, at time of writing, in the **Strategic Items List 2025** (the List). The List primarily covers military equipment and related technologies. It includes conventional weapons such as firearms, rifles, machine guns, and other small arms, together with their components and accessories (see 'ML1', pp 2–6). It also regulates heavier weapons systems such as cannons, mortars, projectile launchers, and similar armaments ('ML2', pp 6–8), as well as 'ammunition and fuze-setting devices' used with those weapons ('ML3', pp 9–10). The List further covers explosive weapons and military systems, including bombs, rockets, missiles, grenades, and other explosive devices designed for military use ('ML4', pp 10–13). Related military support technologies—such as fire-control systems, surveillance and targeting equipment, as well as military ground vehicles—are also regulated because they facilitate the deployment and operation of weapons systems ('ML5'–'ML6', pp 13–16). Importantly, the regulatory regime is not limited to physical weapons. The STA also extends to technology, software, and technical data related to strategic items, including information used for the design, development, production, or use of controlled items (see STA **Section 2** definitions of 'technology,' 'technical data,' and 'technical assistance'). In addition to controlling what items may pass through Malaysia, **Section 8** of the Act permits the Minister to designate 'restricted end-users' and 'prohibited end-users' of such items. Under **Section 8(1)**, a permit is required for trade with 'restricted end-users'. Under **Section 8(2)**, all 'export, transhipment or transit of strategic items or unlisted items under this Act' is proscribed for 'prohibited end-users'. Such designations can be found here.
Conduct Addressed	The central offence under the STA concerns the unauthorized export, transhipment, or transit of strategic items. Under **Section 9**, it is an offence to export or otherwise move strategic items without the required permit issued under the Act.

69. Strategic Trade Act 2010 (Act 708) (STA) Section 7.

	The STA also criminalizes the unauthorized provision of technical assistance relating to strategic items. **Section 10** makes it an offence to provide technical support, training, or technical knowledge connected with controlled items without authorization. In addition, **Section 11** regulates the brokering of strategic items, meaning the negotiation or arrangement of transactions involving such items between foreign parties. Persons engaging in brokering activities without proper registration or authorization commit an offence. The STA further contains a 'catch-all' provision in **Section 12**, which applies even to items not specifically listed as strategic items. A person may commit an offence if they participate in transactions involving such items while knowing or having reason to suspect that the items may be used in activities related to weapons of mass destruction or their delivery systems. Relevant penalties for the above offences are also found in **Sections 9–12** of the STA. Where the offence involves arms or related materials and results in serious consequences, more severe penalties apply including the death penalty or imprisonment for life (see, e.g., **Section 9(4)(a)(i)(A)**). In other cases, a person may be punished with imprisonment for up to ten years, a fine of up to RM10 million, or both, while a body corporate may be fined up to RM20 million (see, e.g., **Section 9(4)(a)(i)(B)**). Similar penalty structures apply across other controlled conduct. In addition, the STA establishes enforcement-related offences under **Part V**, including providing false information or obstructing authorized officers during investigations (see, e.g., **Sections 40** and **46**). These provisions also carry criminal penalties including fines and imprisonment.
Forum, Jurisdiction, & Procedure	**Section 4(1)** of the STA provides that it applies extraterritorially to 'any person, whatever his nationality or citizenship.' [70] As the above constitute criminal offences, the Criminal Procedure Code applies.

70.Note that, in relation to the transmission of strategic technology, the Act only applies if this transmission utilized or was routed through any equipment/device in Malaysia; see STA Section 4(2).

Notes & Relevance	Despite the breadth of the statute, there appears to be limited publicly reported case law or news reporting involving prosecutions of private actors under the STA. Most references to the STA arise in the context of export-control compliance guidance issued by the Malaysian government or industry advisory materials. This suggests that the law primarily functions as a preventive regulatory regime, relying heavily on licensing, compliance procedures, and administrative oversight rather than frequent criminal litigation. Accordingly, while the STA provides severe penalties and applies to private actors involved in exporting or brokering strategic items, publicly documented prosecutions appear to be relatively rare. Nevertheless, the STA could be a tool for addressing the flow of strategic goods to actors engaged in core international crimes if an alleged breach is identified and reported.

Malaysian Anti-Corruption Commission Act 2009 (Act 694) (MACC Act)

Context	**Section 2** provides that the MACC Act aims: (a) [T]o promote the integrity and accountability of public and private sector administration by constituting an independent and accountable anti-corruption body; and (b) [T]o educate public authorities, public officials and members of the public about corruption and its detrimental effects on public and private sector administration and on the community. It promotes these aims by formally creating the Malaysia Anti-Corruption Commission (MACC), the primary body responsible for combating corruption (**Section 4**). The MACC has jurisdiction to investigate corruption offences involving public bodies, public officials, private sector agents, and foreign public officials. Notably, the term 'public body' is broadly defined to include the Federal and state governments, statutory authorities, local authorities, and companies controlled by such bodies (**Section 3**). The Act also provides the appointment of a Chief Commissioner, who directs and supervises the MACC (**Section 5**).

Conduct Addressed	The Act codifies key corruption offences holding individual liability. Examples include: • Accepting or giving gratification (general bribery offence) (**Section 16**) • Corrupt gratification involving agents (**Section 17)** • Giving of false documents intended to deceive a principal (**Section 18**) • Bribery of officers of a public body (**Section 21**) • Bribery of foreign public officials (**Section 22**) • Abuse of office or position for gratification (**Section 23**) If proven, these offences are punishable under **Section 24**, which provides penalties of imprisonment of up to 20 years and a fine of at least five times the value of the gratification or RM10,000 (whichever is higher). The Act also codifies offences for failing to report bribery (**Section 25**), providing false statements regarding alleged corruption (**Section 27**), attempting or abetting corruption (**Section 28**), and 'dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence' (**Section 26**). The application of **Section 26** is notably broad: it applies to '[a]ny person…whether within or outside of Malaysia, whether directly or indirectly, whether on behalf of himself or on behalf of any other person,' engages in the prohibited conduct. In addition to individual liability for corruption, **Section 17A** provides a form of corporate liability. **Section 17A(1)** states that: 'A commercial organisation commits an offence if a person associated with the commercial organisation corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person' with the intent to receive business or gain a commercial advantage. Penalties under **Section 17A(2)** include fines to the 'commercial organisation' or possible imprisonment for individuals who are involved in the management or control of the business.

Powers Provided to the MACC	To investigate potential offences, MACC officers are granted extensive investigative powers under the Act. **Section 10** provides that officers of the Commission possess all the powers and immunities of police officers for the purposes of enforcing the Act. These powers include the authority to receive and investigate corruption reports (**Section 29**) and to summon and examine persons, require the production of documents, and obtain statements under oath during investigations (**Section 30**). Officers of the Commission may also conduct searches and seizures of premises, persons, documents, and other evidence where corruption is suspected (**Section 31**). In addition, investigators may inspect bank accounts, financial records, and safe-deposit boxes for the purposes of financial investigation (**Section 35**) and may require suspects or related persons to declare their assets, property, and sources of income (**Section 36**). It is an offence under **Section 48** to obstruct an investigation or search.
Forum, Jurisdiction, & Procedure	**Section 66(1)** allows for the prosecution of corruption-related offenses committed by Malaysian citizens or permanent residents outside of Malaysia. Extraterritoriality extends also to 'commercial organisations' that carry on a business at least in part in Malaysia under **Section 17A(8)** and individuals who deal with property or benefit from offences in the Act under **Section 26**.
Notes & Relevance	In May 2024, two senior Malaysian police officers were charged under **Section 16(a)(B)** of the MACC Act for allegedly accepting a RM1 million bribe to help close a criminal investigation linked to the purchase of firearms by an Israeli citizen. One of the officers was also separately charged with accepting an additional RM250,000 bribe to help close another criminal investigation regarding cheating as described by the Penal Code. In August 2025, the MACC broke up what it described as a major smuggling syndicate allegedly led by senior military officers. The operation resulted in the arrest of five senior Armed Forces officers (including two retired officers) and five civilians. The officers involved were from the military's intelligence unit, a division responsible for monitoring and preventing smuggling. Investigators believe the officers leaked sensitive operational information to help smuggle

	illegal goods (including drugs, cigarettes, alcohol, and replica firearms) from neighbouring countries. In return, they allegedly received bribes of between RM30,000 and RM50,000 per smuggling trip, with total illicit gains estimated at over RM3 million. Finally, and perhaps most relevant to this brief, in January 2026, the MACC announced that it would charge two of the country's most senior former military leaders following an investigation reportedly centred on alleged bribery and irregularities in military procurement contracts. At the time, the MACC also stated that investigations into two other senior military officers could be referred to prosecutors. While none of these cases directly involve the financing or supply chains of core international crimes, research indicates that corruption and smuggling networks often contribute to such crimes. Therefore, these incidents are significant because they suggest political will to pursue anti-corruption enforcement at some of the highest levels of Malaysia's police and military institutions.

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLA)

Context	The AMLA codifies financial crimes such as money laundering and financing of, or financial benefit from, the proliferation of weapons of mass destruction. In addition to sanctioning provisions addressed above, the AMLA provides the framework for the detection of money laundering, terrorism and proliferation financing, as well as deriving financial benefit from other crimes. Additionally, AMLA sets out compliance obligations for individuals and corporate bodies and provides for the freezing, seizure, or forfeiture of property connected to offences under the Act. Also noted above, the AMLA (the Principle Act) was most recently amended by the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025 (Amendment Act). Under Section 3, the Amendment Act changes the Principle Act's title to the 'Anti-Money Laundering, Anti-Terrorism Financing, *Anti-Restricted Activity Financing* and Proceeds of Unlawful Activities Act 2001' (emphasis added), broadening the scope of the Principle Act.

	At time of publication, the most recent amendments are not incorporated in the Principle Act on the available government website, and therefore do not yet appear to be in force. The following will reference the amended versions of clauses found in the Amendment Act as the AMLA itself, in preparation for these amendments to come into operation.
Conduct Addressed	The AMLA addresses several types of related conduct, including 'unlawful activity', 'serious offences', 'foreign serious offences', and 'restricted activities'. 'Unlawful activity' is defined in **Section 3** as conduct that amounts to, 'is of such a nature' as to constitute, or 'occurs in such circumstances…that it results in or leads to the commission of' a 'serious offence' or 'foreign serious offence'. A 'serious offence', in turn, is defined in **Section 3** in reference to offences listed under the Act's **Second Schedule** (discussed further below) as well as 'any offence under the federal law in respect of which the punishment provided… is imprisonment for a period of one year or more'. A 'foreign serious offence', under **Section 3**, is defined as an offence under the law of a foreign State that would also be a 'serious offence' in Malaysia. Under the **Section 3** definition, such serious and foreign serious offences constitute 'unlawful activity' '*regardless whether such activity, wholly or partly, takes place within or outside Malaysia*' (emphasis added). A 'restricted activity', under **Section 3** as amended, carries the same meaning as provided in Section 2 of the Strategic Trade Act 2010, or supporting or financially dealing with activities related to weapons of mass destruction. **Section 3** notes the AMLA adopts the definition of 'terrorism financing offence' from as that given under '[S]ection[s] 130N, 130O, 130P or 130Q of the Penal Code'. **Codified Offences** The AMLA establishes primary offences for money laundering and financing activities related to weapons of mass destruction proliferation.

Section 4(1) defines the 'offence of money laundering' as 'any person' dealing with, moving, or concealing proceeds of an 'unlawful activity' [71] or 'instrumentalities of an offence',[72] including engaging in cross-border transfers and attempts to hide their origin or ownership. Under the amended Act, conviction of money laundering carries a 'term [of imprisonment] not exceeding fifteen years and a fine of not less than five times the sum or value of the proceeds of' the conduct 'at the time the offence was committed or five million ringgit, whichever is the higher'. **Section 4(4)** states that the offence of money laundering is applicable even when the 'serious offence' or 'foreign serious offence' has not been prosecuted.

Section 4A makes 'structuring financial transactions to evade' reporting requirements under Section 14(1)(a) (transactions exceeding a set amount by authorities) an additional offence. Conviction carries 'a fine of not more than five times the aggregate sum or value of the transaction at the time offence was committed or [a term of imprisonment] not exceeding seven years or both'.

Section 66H of the amended Act defines the 'offence of financing a restricted activity' as 'any person who, directly or indirectly' provides financial services or property where the person intends, knows, or reasonably suspects that such services will be used to support or benefit someone involved in 'restricted activities'. Conviction for financing a restricted activity carries a similar punishment as money laundering, that is a 'term [of imprisonment] not exceeding fifteen years and a fine of not less than five times the sum or value of the proceeds of' the conduct 'at the time the offence was committed or five million ringgit, whichever is the higher'.

Reporting

The AMLA compels 'reporting institutions', or those managing, overseeing, or working for the institution, to monitor for money laundering, terrorism or proliferation financing, and deriving benefits from 'serious offences'. This includes, amongst other things: keeping records of relevant transactions (**Section 13**); reporting specific transactions or activities (**Section 14**); conducting 'due diligence'

71. See the definition of 'proceeds of an unlawful activity' in Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLA) Section 3.
72. See the definition of 'instrumentalities of an offence' in AMLA Section 3.

investigations on their customers and clients (**Section 16**); and retaining such records for six years (**Section 17**).

As defined under **Section 3** by reference to the AMLA's **First Schedule**, 'reporting institutions' include financial services and professional services, including lawyers.

Freezing, Seizing, & Forfeiture

Under **Part VI**, the AMLA also provides for freezing, seizing, and forfeiture of property relevant to the conduct addressed.

Notably, under **Section 53**, the Public Prosecutor may make an *ex parte* application to the High Court to prohibit a person from 'dealing with property outside Malaysia' if the property is suspected to be linked to money laundering, terrorism financing, restricted activity financing, or other unlawful activities. Under **Section 53(3)**, such an order expires after eighteen months if charges or prosecution are not initiated, though this may be extended under **Section 53(5)** for a further twelve months.

Application & Procedure

Section 2 indicates that the AMLA applies to the activities described 'whether committed before or after the [Act's] commencement date' (**Section 2(1)**) and to 'any property, whether it is situated in or outside Malaysia' (**Section 2(2)**).

Section 81 provides for extraterritorial application; however, **Section 81(2)** states that the relevant Malaysian diplomatic officer—or where there is no officer, the Public Prosecutor—must certify that the relevant charges under the AMLA should be brought in Malaysia.

Section 93 states the Public Prosecutor must provide written consent to initiate criminal prosecutions under the Act.

Where proceedings are not for a criminal offence, under **Section 70(1)** the standard of proof for 'fact[s] to be decided by a court in proceedings under this Act' is 'on the balance of probabilities'.

Relevance

As noted above, Malaysia has indicated that core international crimes, such as crimes against humanity 'may be prosecuted under its general criminal laws'. Many of these such laws are listed in the AMLA's **Second Schedule**, which defines 'serious offences'. These include:

	• The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (including Section 13, trafficking in persons by means of threat or force and Section 14 trafficking in children); • The Customs Act 1967 (Act 235) (including Section 133, making incorrect declarations and falsifying documents and Section 137, offering or receiving bribes); • The Firearms (Increased Penalties) Act 1971 (Act 37) (Firearms (Increased Penalties) Act) (including Section 7, trafficking in firearms); • The Penal Code (including Sections 130C-130S, terrorism offences; Section 300, murder; Sections 322 and 326, forms of voluntarily causing grievous hurt; Sections 347 and 348, forms wrongful confinement; Sections 370-374, slavery and forced labour; Section 374A, hostage taking; and Section 411, dishonestly receiving stolen property); and • The Strategic Trade Act (including Section 9, export, transhipment and transit of strategic items and unlisted items; Section 10, provision of technical assistance; Section 11, brokering of strategic items; and Section 18, unauthorised use of permit). Such offences listed above may constitute domestic equivalents of core international crimes. Moreover, by also defining a 'serious offence' under **Section 3** as 'any offence under the federal law' punishable by imprisonment of a year or more, the AMLA may further capture relevant conduct not explicitly listed in the Second Schedule. Therefore, although the AMLA does not provide a direct mechanism for international criminal accountability, it targets the benefits derived from the above offences, offering a possible framework to monitor and hold accountable entities that benefit from related core international crimes.

Relevant Case Summaries & Practice

Prosecution of Extraterritorial Piracy and 'Security of Malaysia'

Malaysia is a Party to UNCLOS, which provides a definition of the crime of piracy and obligates States to cooperate to address and repress such conduct. Malaysia has stated in its submissions to the United Nations that piracy is a crime for which prosecution under universal jurisdiction is warranted, although it clarified that there is likely to be another form of extraterritorial jurisdiction available. In making this point, Malaysia referred to the prosecution of seven Somali attempted hijackers of the *MT Bunga Laurel* on the high seas in January 2011.

The ship the *MT Bunga Laurel* was in the Gulf of Aden at the time of the attempted hijacking. While the ship's ownership was Japanese, it was registered in Panama, and its crew were Filippino, the ship was operated by the Malaysian International Shipping Corporation. The Malaysian Navy captured the suspected hijackers and four adults and three minors were brought to trial in Malaysia.

Although the prosecutions for the attempted hijacking underscores Malaysia's determination to identify a jurisdictional nexus to its interests, of relevance to this brief Malaysia's approach is interesting in two respects:

- It demonstrates a degree of flexibility in characterising international crimes through alternative domestic offences; and
- It addresses what may be considered as 'affect[ing] the security of Malaysia' necessary for permitting extraterritorial jurisdiction under Section 22(1)(b)(iv) of the Courts of Judicature Act.

Regarding this flexibility, Section 22(1)(a)(iv) of the Courts of Judicature Act provides the Malaysian High Courts the jurisdiction to hear piracy matters, but no 'crime of piracy' has been specifically proscribed. Instead, the accused were charged with an offence under Section 3 of the Firearms (Increased Penalties) Act, namely discharging firearms at the Malaysian Navy while attempting to commit robbery. Each of the accused accepted a plea bargain, pleading guilty to a lesser charge of 'use and possession of arms and imitation arms in certain cases' under Section 32(1)(a) of the Arms Act 1960.

Regarding extraterritorial jurisdiction, as the accused were not charged with piracy, the High Court of Kuala Lumpur affirmed its jurisdiction under the Courts of Judicature Act Section 22(1)(b)(iv) rather than Section 22(1)(a)(iv); the Public Prosecutor argued that the alleged offences were certified offences by the Attorney General to 'affect the security of Malaysia' and were 'by any person against a citizen of Malaysia'. Muhammad Hameedullah Md Asri and Md Khalil Ruslan describe the arguments regarding Malaysia's security, ultimately accepted, in the following passage:

> ...[P]iracy that was initially intended for private ends is said to have affected the security of Malaysia for a number of reasons: (1) grave and serious nature of the

> crime, (2) being organized by a gang of Somali pirates, (3) the attack was against RMN personnel who are citizens of Malaysia, (4) the violent manner in which the crime was carried out, (5) the use of firearms, (6) a large number of reports the world over on previous Somali pirates' activities, (7) the intent to take over the ship, (8) the attempt to hold crew members hostages, (9) ransom intended by the pirates from Malaysian authority upon successful commission of the crime, (10) the need to protect the ships from Malaysia while at the high seas, and [(11)] the need to secure the interest of Malaysia.[73]

In total, the prosecutions did not directly engage the international crime of piracy, nor did they constitute an exercise of universal jurisdiction. Nevertheless, they offer insight into how domestic Malaysian prosecutors may assert jurisdiction over conduct with transnational dimensions in the absence of specific domestic incorporation of core international crimes.

'Public Interest' Judicial Review and Accountability for International Crimes?

As discussed above, Order 53, Rule 2(4) of the Rules of Court 2012 provides that '[a]ny person who is adversely affected by the decision of any public authority shall be entitled to make [an] application' for judicial review. Prior to 2014, 'adversely affected' was interpreted to mean applicants needed to show they had 'suffered special damage' themselves.[74]

However, in 2014, the Federal Court clarified in the MTUC case at [58] that 'adversely affected' is a single test which requires the 'applicant … to at least show he has a real and genuine interest in the subject matter'. In this way, the MTUC case 'opened the door for public interest litigation in Malaysia'.[75]

In interpreting the phrase 'adversely affected', the Federal Court quoted at [48] approvingly Gopal Sri Ram JCA in *QSR Brands Bhd v Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532 regarding the 'factual spectrum' that includes public interest litigation (further citations omitted):

> [16] …The phrase ['adversely affected'] calls for a flexible approach. It is for the applicant to show that he falls within the factual spectrum that is covered by the words 'adversely affected'. At one end of the spectrum are cases where the particular applicant has an obviously sufficient personal interest in the legality of the action impugned… This includes cases where the complaint is that a fundamental right such as the right to life or personal liberty or property in the widest sense… has been or is being or is about to be infringed. In all such cases, the court must, *ex debito justitiae*, grant the applicant threshold standing.…

73. Muhammad Hameedullah Md Asri and Md Khalil Ruslan, 'Prosecuting Piracy at the High Seas: The Experience of Malaysia,' (2018) 26(2) *International Islamic University Malaysia Law Journal* 307, 328.
74. *Government of Malaysia v Lim Kit Siang and United Engineers (M) Bhd v Lim Kit Siang* [1988] 2 MLJ 12.
75. Dalila Amir and Nurwafa Atikah Mohamad Bahri, 'Environmental Public Interest Litigation in Malaysia: The New Face' *Bioresources and Environment* (2023) 1(1) 22-31, 25.

[17] At the other end of the spectrum are cases where the nexus between the applicant and the legality of the action under challenge is so tenuous that the court may be entitled to disregard it as *de minimis.* In the middle of the spectrum are cases which are in the nature of a public interest litigation. The test for determining whether an application is a public interest litigation is that laid down by the Supreme Court of India in *Malik Brothers v Narendra Dadhich AIR* [1999] SC 3211, where, when granting leave it was said [by Pattanaik J]:

> Public interest is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights....[76]

This broad approach to determining 'adversely affected' and 'public interest' indicates that Malaysian jurisprudence can accommodate a wide range of claims.

This breadth raises the question whether, and in what circumstances, accountability for international crimes may itself be characterised as a matter of public interest and thus constitute a sufficient basis for judicial review.

Relevance of Constitutional Rights For Non-Nationals & Employment Jurisprudence?

The Malaysian Constitution guarantees an array of fundamental rights. Several of these provisions are framed in terms of 'persons' rather than citizens, indicating their applicability irrespective of nationality. These include (emphasis added):

- **Article 5(1):** *No person* shall be deprived of his life or personal liberty save in accordance with law.
- **Article 6(1):** *No person* shall be held in slavery.
- **Article 7(1):** *No person* shall be punished for an act or omission which was not punishable by law when it was done or made, and *no person* shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.
- **Article 8(1):** *All persons* are equal before the law and entitled to the equal protection of the law.
- **Article 11(1):** *Every person* has the right to profess and practice his religion and, [subject to restrictions in Article 11(4)], to propagate it.
- **Article 13(1):** *No person* shall be deprived of property save in accordance with law.

76.*QSR Brands Bhd v Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532, Gopal Sri Ram JCA [16]- [17[.

That the term 'person' includes non-nationals has been noted by the High Court and Court of Appeal,[77] as well as in the Federal Court. Of potential relevance in representing non-national individuals, including victims of international crimes, may be Article 8(1), equality under the law. This guarantee of equal protection may be particularly significant where procedural fairness or access to remedies is at issue.

Arguments utilising Article 8(1) in respect to non-nationals to which this brief may be relevant may benefit from reasoning in workers' rights matters, an area in which courts have engaged with both constitutional equality and Malaysia's international legal obligations.

For example, in the Industrial Court case of *Ali Saleh Khalaf v Taj Mahal Hotel* (Taj Mahal case),[78] a UNHCR-recognised refugee employed as a receptionist was dismissed shortly after reporting a violent assault at the workplace. The employer implicitly relied on the claimant's lack of work permit, but the Court held that this did not deprive the complainant of legal protection. Crucially, the Court cited Article 8(1) as guaranteeing equality before the law to 'all persons,' not merely citizens, to affirm that even undocumented workers are entitled to equal legal protection and access to remedies for wrongful dismissal.[79] This was then reflected in the Court's interpretation of the Employment Act 1955 (Act 265) and the Industrial Relations Act 1967 (Act 177) (Industrial Relations Act).[80]

In the Federal Court case of *Ahmad Zahri bin Mirza Abdul Hamid v Aims Cyberjaya Sdn Bhd*,[81] a Singaporean man employed for many years on fixed-term contracts challenged his dismissal as unjust. The central issue was whether he was truly a fixed-term employee or, in substance, a permanent employee, and whether the requirement for a work permit as a non-citizen was a material factor in determining the nature of his employment.

The Court decided that the citizenship of the claimant is irrelevant in deciding whether he was in permanent employment with the respondent, noting that the Industrial Relations Act does not make any distinction between the citizens and non-citizens.[82]

Significantly, the Court referred to obligations under the ILO Migrant Workers (Supplementary Provisions) Convention 143 of 1975, to which Malaysia is a Party.[83] It observed that the Convention requires Member States to 'undertake to promote and

77. Regarding Article 11, the High Court in *Maqsood Ahmad & Ors v Ketua Pegawai Penguatkuasa Agama & Ors* [2019] 9 MLJ 596 at [56]: 'Article 11 guarantees to 'every person' in Malaysia, and not merely Malaysian citizens, the right to profess, practise and propagate his religion. A 'person', as opposed to 'citizen', would include permanent residents, migrant workers, tourists, international students, asylum seekers and refugees. Such 'persons' are entitled to 'freedom of religion' under the Federal Constitution while within Malaysia. In this regard, it would be pertinent to note that some of the applicants are non-citizens and/or foreigners, and they too would be afforded the right enshrined in art 11 to freedom of religion.' On appeal, the Court of Appeal also supported the expansive meaning of 'person'. *Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another Court of appeal* [2021] 1 MLJ 120 (Badariah Sahamid JCA) at [85].
78. *Case No. 22-27/4-1580/12, Award No. 245 of 2014*, unpublished (Y.A. Dato' Mary Shakila G Azariah, Chairman).
79. Ibid at (9).
80. Ibid at (9)-(11).
81. [2020] MLJU 595.
82. Ibid at [72].
83. Ibid at [80].

guarantee equality of opportunity and treatment between migrant workers and nationals',[84] obliging Malaysia to afford equal employment rights even where a worker's immigration status is irregular.[85] The Court then concluded that 'all workers should be treated with fairness, dignity and equality without distinction whether they are local or foreigners *[which] is consistent with [Article] 8(1) of the Federal Constitution'* (emphasis added).[86]

It is recognised that invoking the right to equality under the law in labour matters differs significantly from representing clients in the context of this brief. Notably, labour complainants are often physically present in Malaysia, their claims concern areas with relatively robust domestic protections, and the subject matter is generally less politically or socially contentious.

Nevertheless, taken together, these authorities indicate that equality before the law under Article 8(1) has been applied in practice to non-nationals, including those in vulnerable or irregular situations, within doctrinal contexts shaped by both domestic legislation and international standards.

Increasing Political Will?

While not a member of the International Criminal Court, Malaysia is a member of the International Court of Justice (ICJ) by virtue of its membership in the United Nations.

Malaysia has both been a party to contentious cases[87] and active in submitting statements in advisory opinions,[88] including one directly related to Malaysia with the Malaysian High Court noting that Malaysia had voluntarily agreed to accept the ICJ's decision as binding.[89]

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84. Ibid at [81].
85. Ibid at [82].
86. Ibid at [83].
87. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* [2002] ICJ 3; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* [2008] ICJ Rep 12. See also *Application for revision of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia/Singapore) (available here).
88. Consider: Malaysia's support for UN General Assembly Resolution A/RES/71/292 requesting an advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius* (see here); Malaysia's *note verbale* in advisory proceedings regarding the *Legality of the Threat or Use of Nuclear Weapons* (see here); Malaysia's written statement in advisory proceedings regarding the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (see here); and Malaysia's written statement in advisory proceedings regarding the *Legal Consequences of the Construction of a Wall* (see here).
89. Malaysia submitted to the International Court of Justice advisory proceedings regarding lawsuits filed in Malaysia against Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights (*Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*). Domestically, the Malaysian High Court recognised that Malaysia voluntarily agreed to accept the International Court of Justice's decision—although in an advisory opinion—as binding. See *Insas Bhd v Dato' Param Cumaraswamy* [2000] 4 MLJ 727. This was later spoken of approvingly by Malaysia's Federal Court in *Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] MLJ 943: [74] 'With [the ICJ's decision and direction to Malaysia to stay proceedings in *Cumaraswamy*] firmly in mind, this Court was minded to pay due regard to the Advisory Opinion of the ICJ. Substantively, the ICJ held that the Malaysian courts had essentially violated international law by failing to consider Dato' Param Cumaraswamy's immunity status in a summary manner…'. [75] 'In our view, the judgment of the ICJ is correct…'.

On recent issues relevant to this brief, Malaysia participated in ICJ advisory proceedings on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* through both written (2023) and oral (2024) statements.

Then, building on the Court's two Advisory Opinions related to Palestine and the Court's orders on provisional measures in *South Africa v Israel*, Malaysia was one of eight States to establish The Hague Group in 2025. The Hague Group's website states that its mission is '"collective action through *coordinated legal and diplomatic measures* at both national and international levels" *in pursuit of accountability for Israel's grave violations of international law against the Palestinian people'* (emphasis added).

This pattern of engagement suggests that Malaysia may value multilateral legal accountability on the international plane, even where comparable mechanisms are not expressly incorporated into its domestic legal framework. For more on this, please see here.

Project Background

Recognising the opportunities to address atrocity crimes in Asia, AJC commissioned and edited several reports on legal avenues to justice and accountability in the region. These include briefs on available legislation and causes of action for survivors of atrocity crimes in 9 Asian jurisdictions; a report on making sanctions a stronger tool for accountability; and primers related to strategies to address refoulement.

This series, 'Jurisdictional Briefs for International Justice in Asia', considers existing legal 'hooks' that practitioners might consider if supporting survivors of international crimes.

It builds on AJC's scoping work on universal jurisdiction and its convening series, bringing together a diverse group of experts to examine civil society's role in pursuing universal jurisdiction cases, universal jurisdiction and the so-called Global South, opportunities for universal jurisdiction cases in Asia, and opportunities for atrocity crime accountability beyond universal criminal jurisdiction.

Although broader, these reports are inspired by and modelled on the Syria Justice and Accountability Centre's resource 'A Summary of Legal Avenues for Victims of Crimes in Syria under US Law'.

Acknowledgements

The Asia Justice Coalition is particularly grateful to the law firms providing pro bono research and drafting, contributed through their partnerships with PILnet, as well as AJC Research Consultants **Alphonsus Chan** and **Kuberan Hansrajh Kumaresan**, and AJC Law and Policy Interns **Gracella Chafrina, Khusniddin Abdufattokhov**, and **Mariam Hiba Malik.**

Further gratitude is expressed to **Kumaresan Thurairaju** of **Thurairaj T. Kumar & Associates** for voluntary review of the brief.

Further research, drafting, and editing for briefs in this series is by Jennifer Keene-McCann (Senior Law and Policy Advisor, AJC) and mistakes remain with the editor.

About The Asia Justice Coalition

Founded in 2018, the Asia Justice Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law. The Coalition operates through collaboration, resource-sharing, and coordinating efforts between local and international civil society organizations working in the region. Its work is accomplished by undertaking joint activities relating to justice and accountability and engaging in collective advocacy.

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