

**A STUDY OF THE LEGAL CONTROLS OF SUBVERSION
IN MALAYSIA**

**by
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Dedicated to my parents with

"BLOOD, SWEAT AND FEARS"

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(SUFARDI BIN ELWAN)

September 1976.

PREFACE

The methodology employed in this study is varied. The main source comes from textbooks available in the University of Malaya library and relevant statutes relating to subversive activities in this country. This paper includes statistics obtained from the Ministry of Home Affairs as primary sources. Other sources consulted include periodicals, articles and newspapers. An interview was conducted with a top government official.

Due to the highly confidential nature of information regarding security matters the writer faced difficulties in gathering much needed data and statistics for this paper. However, the writer managed to get some data about the success of military operations and arrests made by the government of the Communists and their sympathisers. Officers in the Ministry of Home Affairs when interviewed refused to disclose information which according to them are highly confidential and, if disclosed, would be prejudicial to the security of the country. Some declined to be quoted because of personal reasons and the fear of reprisal from their superiors.

Finally the writer wish to convey his gratitude to his supervisor, Encik Azmi Khaled, whose patience and guidance made this project paper possible; to the secretary of the Ministry of Home Affairs; to the staff of the Attorney-General Chamber; to the University of Malaya main library for allowing the use of microfilms; to Mohd. Ideres Rapee for the assistance provided and to Pniah Hajjah Saadiyah Ahmad who have helped in typing this paper.

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INTRODUCTION

This project paper is a study of subversive activities with an emphasis on the laws against subversion in Malaysia. Subversive activities in Malaysia, which are now causing some public anxiety, is a factor of some importance in South East Asia, particularly after the recent Communist victories in Indo-China.

Although this study is concerned principally with the legal controls of subversion in Malaysia, it does not claim to be a comprehensive discussion of the laws against subversion, but only a general account of the laws for the prevention of subversion in Malaysia. It is thought that, in view of the intensified acts of terrorism by the subversive elements in Malaysia, it is necessary for us to examine the laws relating to subversive activities more closely since they involve the interest of the State as well as the individual.

The purpose of this study is to examine the impact upon individual liberties of government measures designed to ensure internal security and to expose and control subversive elements or subversive conduct. The problem arises out of the conflict between the rights of the government which needs power to govern and to preserve its position and that of the individual who needs to have freedom without unwarranted restrictions. The question is, how far do these laws encroach upon the individual liberty of a person and the necessity of having such laws.

However, it is to be noted that, in writing this project paper the writer is aware that the problem of subversion in Malaysia cannot be solved solely by having bulwarks of legislations. Instead, the causes for such anti-national activities should be ascertained. Although we must face the fact that these subversive activities cannot be wiped out totally, there are other measures which are regarded as effective weapons in curbing these activities to the minimum level. Malaysia is an encouraging example of how a Communist rebellion can be suppressed by a combination of vigorous military and police actions coupled with wide ranging measures of settlement, political reform and adjustment of policies such as the Malaysian Economic Plan.

This project paper is divided into five chapters. Chapter I is divided into two major Parts; Part A outline the origins and current position of subversive activities and insurgency in the ASEAN region namely Indonesia, Thailand, Phillipines and Singapore, while the Malaysian position will be dealt with in Part B of the chapter. This chapter is preceded by the introduction on International subversion.

It is inevitable that in the course of chapter I, emphasis will be laid on the Communist movements since they are the main threats prevailing in these countries. Though the Vietnam war is over, insurgencies continue to plague the nations of Asia. All of the countries consider this as a serious threat to their security. This is evident in Thailand where the government decided to increase

its military spending by 20% and adding 167 million dollars for internal peace keeping.¹

Chapter II is devoted to a legal analysis of subversion. In this chapter, the writer made a comparative study of subversion between the Malaysian and American position. The rest of the chapters concentrate on the legal controls of subversion in Malaysia. Chapter III traced the origins of these legislations before Merdeka while chapter IV deals with the post Merdeka laws. It was felt necessary by the writer to treat the Internal Security Act in a separate chapter because it is the principal legislation against subversion in Malaysia. Therefore chapter V is devoted to the study of the Act.

¹Time. February 9, 1976 at p. 5.

CHAPTER I

SUBVERSION IN SOUTH EAST ASIA

Introduction

This chapter will mainly deal with the background of subversive activities in South East Asia. Part A of the chapter will deal with the South East Asia position. The Malaysian position will be dealt with in Part B of the chapter. But before going into the South East Asian position, it is necessary to look at subversion at the international level briefly.

International Subversion

There is a universal need to define subversion at the international level. However, subversion at the international level more often than not involves violence and terrorism.¹ There is a sudden and alarming increase in international terrorism among the Western nations. These acts are considered as political terror, that is to say, "the use of coercive intimidation by revolutionary movements, regimes or individuals for political motives."² Therefore, it can be said that political terrorism can be considered as an act of subversion with the aim of creating a radical change of

¹Robert Moss in his book Urban Guerrillas, Temple Smith, London 1972 at p. 32 defined terrorism as "the systematic use of intimidation for political purposes."

²Paul Wilkinson, Political Terrorism, The Anchor Press Ltd. Tiptree, Essex 1974 at p. 11.

either the form of government or a political compromise between the terrorists and the government.

An international declaration against terrorism was made by the General Assembly by adopting a resolution on December 18, 1972. The General Assembly expressed deep concern over acts of international terrorism which are occurring with increasing frequency and which took a toll of innocent human lives. Inter alia, the resolution condemned the combination of repressive and terrorist acts by colonial, racist and a lien regimes in denying peoples their legitimate right to self-determination and independence and other human rights³ and fundamental freedoms.

³It is interesting to note that in recent lectures given by Asbjorn Eide of International Peace Research Institute, Oslo on Liberation Movements, Resistance Organisations and the Law of Armed Conflict at the 7th study session of the International Institute of Human Rights held in France, the United Nations was criticised for being negligent in examining the conditions of individual human rights during the struggle for self-determination and particularly after independence has been achieved. At the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in armed conflicts, the Committee adopted various draft provisions for the protection of civilian population. Among other things, draft article 42 provides for the due process of law both in determining whether a person is entitled to prisoner of war status, and also in cases when he is not found to be so entitled and is brought to trial for offences arising out of the hostilities. The article if accepted by the Committee, will represent a considerable departure from existing law of armed conflict and significantly improve the protection of liberation and resistance movements in accordance with their military necessity. Hence the members of Liberation Movements and Resistance Organisations are given protection on humanitarian ground. This is a step towards the recognition of the status of these members who are fighting only in legitimate struggles.

The General Assembly also made a resolution on the measures to prevent international terrorism which endangers or takes innocent human lives or jeopardises fundamental freedoms. It also called upon nations to study the underlying causes of these forms of terrorism and acts of violence which lie in misery, frustrations, grievances and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.⁴

These radical changes are often effected by holding hostages. An example of these acts was reflected in Holland where a group of South Moluccan terrorists held a trainload of prisoners in 1975 and demanded the independence of their State from the Central Government of Indonesia under the Regime of General Suharto. Their demand was turned down and it ended up with bloodshed when several hostages in the train were killed.

Measures are being taken by various countries at international level to combat international terrorism which could lead to countries being subverted. The search for fresh solutions to growing international terrorism began in 1974 in the aftermath of the Munich murder of the Israeli Olympic Athletes. The European Economic

⁴International Legal Materials Vol. XII
March 1973 at p. 218.

Community (EEC) came to an agreement in setting up a central law enforcement structure to combat international terrorism.⁵ The idea is to bind the police forces of the nine European Common Market countries in a single co-operative structure to combat international crime, particularly terrorism.

The South East Asian nations have also taken a similar step akin to that of the E.E.C. by forming an organisation called ASEAN.⁶ These nations have added a new objective to the existing socio-economic goals, that is, collaboration against Communist insurgents.⁷ However ASEAN is not a military alliance or political bloc, neither is it against any state or ideology.⁸

⁵New Straits Times. 23 February 1976.

⁶Association of South East Asian Nations.

⁷Asean Review 13 February 1976 at p. 7.

⁸See per. President Marcos in Asiaweek no 10/1976 at p. 9.

PART A

1. South East Asian position

Introduction

Subversive activities started in South East Asia with the rise of Communist movements. This has proved to be one of the important but little understood political developments of the post war era. One important feature to note is that subversive activities in the South East Asian countries are not only confined to revolutionary nature but also covers non-revolutionary challenges. Apart from Liberation Movements and Resistance groups, there are other non-revolutionary challenges by ethnic or religious movements with little or no concern for social change, especially where they are exploited or supported by outside powers.

Background of Subversion

(1) INDONESIA

The main threat of subversion to Indonesia are the Communists. The revolutionary challenge comes from the Indonesia Communist Party, better known as P.K.I.⁹ which claimed a membership of more than 3 million in 1965.¹⁰ Besides the PKI, Indonesia also faced resistance from Muslim religious groups. These groups consisted of Muslim fanatics.

⁹ Partai Komunis Indonesia was banned in 1966.

¹⁰ Brian Crozier, Annual of Power and Conflict, London Institute for the Study of Conflict, New York National Strategy Information, 1972 at p. 54.

Two of these groups are called Darul Islam and Masjumi Party. Darul Islam had since independence terrorised large areas of West Java, the Southern Celebes, and Northern Sumatra in an effort to turn Indonesia into a theocratic State. In May 1962 the members made an abortive attempt on President Sukarno's¹¹ life. Sukarno later outlawed the Masjumi Party for refusing to co-operate with the Communists.¹² It can safely be said that subversion in Indonesia was in some way stimulated by President Sukarno himself. He accepted Communist support unequivocally shortly after the Communist show of strength in 1955 elections.¹³ It thus opened the door for subversion.

The Communists had secretly set 1970 as the date for a complete takeover of Indonesia. However, events took a dramatic and unexpected turn in the early hours of October 1, 1965. The PKI went into action, along with some radical left wing politicians and some Communists who had infiltrated the army.¹⁴ On the night

¹¹ He was the first President of Indonesia elected for life but was ousted and succeeded by General Suharto on 27 March 1968.

¹² It was indeed a strange decision taken by Sukarno, not knowing that showing favour to the Communists was to lead to his downfall.

¹³ Dan Kurzman, Subversion of the Innocents, Random House, New York, (1963) pp 372-373.

¹⁴ Wilfred T. Neil, The Twentieth Century Indonesia, New York, Columbia University Press (1973) p. 353.

of September 30 - October 1, six of the most senior general officers of the army were abducted and murdered during a coup attempted by Communist - influenced army and airforce personnel and members of the Youth's and Women's Organisations. The officers were captured alive and the bodies of the slain were trucked to 'Lubang Buaya',¹⁵ near Halim airbase 15 miles from Jakarta.¹⁶

In the changed political atmosphere, previously repressed Muslim elements supported by the army, proceeded toward a ruthless extermination of the Communist movements. The PKI's part in the abortive coup was fateful. Counter-action by the security forces led to the massacre of nearly all the hardcore Communists. Between 150,000 and 300,00¹⁷ people lost their lives.

Taking advantage of the breakdown of legal process, due to the coup, civilian anti-Communist groups proceeded to kill large numbers of people, who were believed to be associated in some fashions with the PKI or its mass organisations. On the other hand the government took a very arbitrary action. Thousands of

¹⁵ Crocodile Hole.

¹⁶ For a detailed account of the coup; see the report by President Suharto to Parliament in Bahtiar Djamil, Anak Pa' Tani Jadi Presiden, Utusan Melayu Bhd., Kuala Lumpur (1969) pp 64-99.

¹⁷ Figure given in Annual of Power and Conflict op. cit. at p. 204.

Communists were detained without trial for various lengths of time, and several thousands still remain under arrest, without hope of early trial or release.¹⁸

There are no immediate threats to the security of Indonesia except in 1971 when a PKI remnant attempted to renew armed activity in the South Blitar but was defeated by the security forces.¹⁹ Factions of the PKI are most active along the Sarawak - Kalimantan border. The remnants were in disarray. Its leaders were dead, or imprisoned or abroad and a large number of PKI followers and sympathisers were in detention. Therefore, it can be assumed that the PKI will not play a significant overt role in Indonesian political life for sometime to come. This is based on the fact that no reported activities of the subversives. However, the Indonesian authorities believe that they might make a come back in a different way or different banner.

(11) THAILAND

Compared to Indonesia, Thailand faces two major threats, revolutionary as well as non-revolutionary challenges to her internal

¹⁸

Guy J. Parker, Indonesia "Gestapu Affair" in Problems of Communism Vol. XXIV Nov - Dec 1973 at p. 57.

¹⁹

Annual Power of Conflict op. cit. p. 55.

security. Firstly, the threat comes from the Communist Party of Thailand (CPT) with its military wing called the Thai Peoples Liberation Armed Forces (TPLAF). This anti-government threat mainly in the North is causing great concern to the Central Government in Bangkok.²⁰

The second threat which is less worrying to the government comes from the Muslim separatists in the South of Thailand. In an area where the majority of the inhabitants are Muslims a band of 3,000 armed Muslim insurgents have set out an objective to create their own autonomous State of 'Pattani'.²¹ These 'Pattani' rebels, mostly Malays, are carrying out a small scale, but persistent, terrorist²² campaign against the government representatives sent from Bangkok.

Another less immediate threat lies along the southern border with Malaysia are several hundred Malaysia Communists devoting themselves to the subversion of Malaysia.²³ They use Thailand as a

²⁰

Time, February 9, 1976.

²¹

Far Eastern Economic Review, June 27, 1975 at p. 27.

²²

Paul Wilkinson in Political Terrorism, op. cit. at p. 12 writes that "political terrorists always resort to political murder in order to induce the psychic state of terror."

²³

Annual of Power and Conflict, op. cit. at p. 66.

place for retreat.

Communism was introduced into Thailand by Chinese immigrants. It was not until 1942, that the CPT was officially formed. Initially the CPT was able to operate legally. A Trade Union Federation was created in 1944 in Bangkok and was expanded in 1947 into a National Trade Union Federation.²⁴ However, following a military coup in November 1947, the first repressive measures were taken against the trade unions although the CPT was not forced underground.

In November 1952 the government decided to deal severely with the CPT by outlawing it and arresting a number of its members. Many militant party members went underground in furtherance of their subversive activities. The government repressive move resulted in heavy losses of the party ranks. The Thai authorities discovered a printing house in Bangkok organised by the subversive elements. Many party documents and propaganda materials were seized and destroyed. In 1962 the chief of the underground machinery and his deputy were arrested and executed in April.²⁵ The CPT began to enhance its underground subversion with terrorist and insurgent activities.

²⁴

Witold S. Swerakowski, World Communism, a hand
1918 - 1963, Hoover Institution Press at p. 427.

²⁵

Ibid., p. 428.

In 1973 the insurgents took their subversive activities from the thick jungles and hills of Thailand out into the urban civilisation. They changed their directions towards new targets in the south. They had managed to infiltrate the minds of students. In the same year a student revolution toppled the military regime. Student activists, moving out of Bangkok and the southern provinces, indoctrinated the peasants.

The new direction of the Communists is to start subversive activities in the city and open attacks on the security forces. They had managed to infiltrate every part of Thailand including the labour and left wing groups.²⁶ This shows how difficult it is to exterminate the insurgents who give the impression that Thailand is under a state of emergency. This is supported by the fact that out of 71 provinces, no fewer than 34²⁷ are under some sort of immediate insurgent challenge.

(111) PHILIPPINES

The Phillipines faces somewhat similar threat to her internal security as Thailand. It faces revolutionary challenges from Communist insurgents and Muslim minority population. At the

²⁶
Time February 9, 1976 p. 7.

²⁷
Ibid.

time of writing this paper, Southern Phillipines is the scene of South East Asia's largest and bitterest insurgency. In justification, the President of Phillipines, Ferdinand Marcos, declared a state of emergency by enforcing martial law in 1972.

The Communist insurgents' activities started with the formation of the Communist Party of Phillipines (PKP) in 1930.²⁸ It emerged as a popular force after World War II because of the guerilla struggle against the Japanese invaders. In 1942 the PKP merged with the Hukbalahap or Huks (People's Liberation Army). By 1969 ideological rivalry divided the PKP into factions; a Maoist faction called New People's Army (NPA) and the pro-Soviet faction.²⁹

When the PKP was outlawed in 1932, its members went underground. With the Communist out of the legal scene, however, it was able to use the small left wing Socialist Party to carry out its subversive activities.³⁰ When the PKP reappeared in the open in 1938 it merged with the Socialist Party and the Chinese Bureau, a branch of the Communist Party of China.

In 1946 the PKP founded the Democratic Alliance to

28

Swarczewski, op. cit. p. 359.

29

B. Crozier, op. cit. p. 62.

30

D. Kurzman, op. cit. pp 395-6.

enable its candidate to stand for elections. Six of its members were successful but were barred from taking office on charges of fraud and corruption. The members immediately undertook intensive insurgent activity against the central government. The government in turn took repressive measures and was successful in putting down the insurgents. In 1957 an anti-subversion law was passed. The PKP and its allied organisations was outlawed.³¹

Turning to the southern island, where a more serious threat was launched by the Muslims, the Phillipines government considered it as a festering sore which existed from the early days of Spanish rule. The Mindanao Independence Movement (MIM) formed in 1968 was the major force behind the Muslims of Cotabato province in the southern island of Mindanao³² in their fight against the Christian majority. The Muslim grievance is that their land had been wrested from them by Christian settlers. This conflict between the Muslims and the Christians involved a struggle for an autonomous Muslim State but not a seperation from Phillipines.

A new driving force behind this up rising is the Bangsa Moro or the Moro National Liberation Front (MNLF), fighting for the 1.5 million Muslims in Phillipines to re-establish their own

³¹ Swarzewski, op. cit. p. 359.

³² Grezier op. cit. p. 62.

republic in Mindanao. Attempts by the government to negotiate a peace settlement with the Muslims have proved almost totally futile. A peace conference between the two sides at Jeddah³³ in January 1975 ended in a deadlock when the Muslims refused to drop their demands.³⁴

In the meantime, the Communist groups were involved in regrouping and re-establishing their influence especially in Central Luzon where they had undertaken intensive recruitment of cadres for subversive activities. According to a source³⁵ the NPA is preparing a big offensive in Luzon. If the party were able to persuade the Moros to unite with them the result would be calamitous for both the Phillipines and South East Asia. This is a very serious threat to the internal security for Manila to handle.

(iv) SINGAPORE

Subversion in Singapore were and are being carried out in a different manner as compared to the other ASEAN countries. Singapore was not the scene of armed insurrection in the post war period. This is due to the geographical difference of the state. In contrast

³³ A city port of Saudi Arabia.

³⁴ Far Eastern Economic Review June 27 p. 21.

³⁵ Ibid.

with other countries having insurgent threats, Singapore is void of thick jungles, where the subversive elements could retreat and hide. Hence subversion in Singapore is confined to extensive urban underground activities or urban guerilla warfare.

Historically, Singapore did experience substantial unrest, much of it fomented by Communists in the Labour Movements and in Chinese middle schools. There was no official Communist front in Singapore but the Communist Party of Malaya (CPM) operating in Malaysia mainly directs its subversive activities on the peninsula and in Singapore.

It should be noted that subversion by subversive elements in Singapore are mainly directed on students and labour movements. For instance in 1960, the politically active section of the student body at Nanyang University was largely controlled by Marxist elements who were reputedly in touch with Communist underground elements.³⁶ As far the trade unions, the government froze the fund of three largest trade unions in September 1963 because the leaders holding top executive post were implicated with the Communists.³⁷

Subversive activities in Singapore was ably controlled by

³⁶ Government White Paper, Communism in Malaysia and Singapore, March 1971, p. 30.

³⁷ Ibid., p. 31.

the authorities. This is due to the increasing police surveillance. Many would attribute Singapore's relative quietness to the very strict and effective security regulations.³⁸ This was proved in 1976, when the Singapore police with the assistance of Malaysian authorities, unearthed plans for a new phase of subversion and terrorism by the CPM. Fifty people, ten out of them Malaysians, were arrested under the Internal Security Act, 1960.³⁹ In the police sweep a businessman, sales manager, naval officer and a few members of the armed forces were arrested. This shows that no income group, no sector of Singapore is out the scope of the Communist designs. The Communist objective is no longer confined to the trade unions and students but also tries to reach all strata of society.

The subversive elements have even gone to the extent of subverting the minds of Singapore students studying in Australia.⁴⁰ With the breakup of the Communist movements in Singapore, once again the Singapore Government has succeeded in bringing into light the threat of subversion actively operating underground. The government is still detaining a number of its citizen if freed can be a threat to the public welfare.⁴¹ Whether this is a valid reason depends on the authorities.

³⁸ David Hawkins, The Defence of Malaysia and Singapore, (The Royal United Services Institute for Defence Studies) London 1971 p. 59.

³⁹ New Straits Times, May 30, 1976.

⁴⁰ Ibid.

⁴¹ New Straits Times, June 9, Wed. 1976.

PART B

West Malaysian Position

Subversion in Malaysia started after the World War II. These subversive element are mainly members of the Communist Party of Malaya (CPM) formed in 1930. The CPM was given the single "aim of establishing a Communist Republic in Malaya."⁴² Preparing to seize power after the defeat of Japan, the CPM ordered the formation of secret Malayan Peoples' Anti-Japanese Army (MPAJA) units and the creation of armed caches. In 1948 the legal struggle of the Party was abandoned.

As early as in 1948, the Communist Party turned to violence and bloodshed. It murdered contractors of labour on estates and mines; it threatened British planters and miners with death and killed several of them. It attacked, isolated police stations and terrorized the countryside. All these acts were carried out by 'mobile killing corps' formed from the party's secret force which had been living inside the jungle since the end of the Japanese War.

Before the Communists embarked on the use of violence, they have already infiltrated into various organisations. The CPM took advantage of labour unrest to build up the essential basis of

42

Government White Paper, Communism in Malaysia and Singapore,
March 1971 p. 5.

support among the workers, first through the General Labour Union and then, from 1946 onwards through the Singapore and Pan-Malayan Federations of Trade Unions. By the end of 1947 the party controlled some three quarters of the organised labour force.⁴³ They used extortion, threats and violence against unco-operative workers. To control this the government introduced the Trade Unions (Amendment) Ordinance⁴⁴ in May 1948, preventing intimidation and making it more difficult for Communist to take over unions.⁴⁵

Another problem that was faced by the government during that time was the disarmament of the anti-Japanese guerillas. Of the 6,800 guerillas demobilised, less than 500 failed to turn in their weapons. As a result of the reluctance of the guerillas to hand over their arms, the government made an order on 1 February 1946, making it mandatory on the entire population to return their arms.⁴⁶ The British ordered the death penalty to be introduced for those found guilty of illegal possession of arms.⁴⁷

The CPM's policy of peaceful struggle was abandoned in

⁴³ Ibid., p. 7.

⁴⁴ For details of the provisions of this Ordinance refer Chap. III.

⁴⁵ Lucian W. Pye, Guerilla Communism in Malaya, Princeton University Press (1956).

⁴⁶ Gene Z. Hanrahan, The Communist Struggle in Malaya, K.L. University Press 1971 p. 91.

⁴⁷ Straits Times 1 February 1946.

March, 1948. At a Central Committee meeting, it was decided that the greater part of the party's organisation should go underground leaving only a few front groups in the open.⁴⁸ The first act of terrorism was committed on 16 June, 1948 when 3 British planters in the vast rubber growing district of Sungai Siput were murdered by 3 separate groups of terrorists.⁴⁹

The High Commissioner in Malaya, Sir Edward Gent on the same day of the outbreak of terror, declared that a state of emergency existed in certain districts in Perak and in Johore, where the worst outrages had occurred. The emergency was declared only on a limited way, but due to the public pressure he extended the state of emergency to the rest of the country on the following day. The government began to take immediate steps to counter the guerilla open rebellion. The government instituted a special static defence system by organising special police and militia forces and setting up a national registration and identity card system.⁵⁰

Throughout the Emergency, the government faced various kinds of difficulties in putting down the rebellion. One factor which is

⁴⁸ Harry Miller, Menace in Malaya, Harrap 1954.

⁴⁹ Harold Smith, Jungle War in Malaya, Arthur Barker Ltd.- London 1972 p. 37.

⁵⁰ G. Hanrahan op. cit. p. 112.

worth mentioning is the fact that the Communist auxiliary civilian organisation called Min Yuen. During the Emergency, the Min Yuen provided guerillas with food, money and information; despite the harsh security measures imposed, such as preventive detention of suspects⁵¹ Chinese squatters⁵² proved most receptive to Communist propaganda.

By 1954 the CPM showed a sign of defeat General Tamplin, reviewing the whole situation of the emergency declared the elections to the Legislative Council in 1955. In the July election the Alliance under the leadership of Tunku Abdul Rahman gained 51 out of the 52 elected seats after Tunku became Chief Minister, Chin Peng, the secretary general of CPM was offered amnesty for all Communists to surrender. The peace talk was held in Baling but ended in a deadlock. Chin Peng and his men retreated to the jungle on the Malayan - Thai border where they launched their subversive activities in a sporadic manner.

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D. Kuraman, op. cit. p. 10

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These were impoverished Chinese labourers and farmers, uprooted during the Japanese Occupation from the old houses and residing in small shanty villages. The squatters, for economic and social reasons were most prone to give assistance to the Communist insurgents; and their villages, located in inaccessible areas bordering the jungle, proved favourable liaison points for guerilla forces.

The 'confrontation' launched by the Indonesian government was another milestone for the Communist struggle in Malaya. It was during this time that the subversive elements embarked on a new kind of subversion, that is, to win the heart of the Malays by masquerading as the protectors of Islam. A Central Department of Malay work was set up with deliberate preaching in rural areas that Islam and Communism share similar ideals, they were successful to a certain extent, especially the Malays in Kelantan by masquerading as members of PMIP.⁵³

Subversive activities were further intensified in Malaysia by Indonesia infiltrators and their collaborators, mainly found in the Malayan Peoples' Socialist Front (MPSF) and Pan Malayan Islamic Party (PMIP) which consisted of nearly all Malays. The Indonesian subversion began with the arrival of R.M. Soenita, a senior Indonesian Intelligence Officer, on 29 March 1963, in Kuala Lumpur. He was sent to augment staff at the Indonesian Embassy of subversive and intelligence operatives. According to a source,⁵⁴ extremist political personalities were involved in various aspects of conspiracy to subvert and bring the then Federation of Malaya under the domination of the Sukarno regime. One of those extremist arrested was Ahmad

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Pan Malayan Islamic Party.

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"Indonesian Intention Towards M'sia" Govt. Publication April, 1964.

Boestaman Chairman of Partai Rakyat Malaya (Peoples Party of Malaya). He was arrested and detained on 13th February, 1963, while planning an escape route from Malaya to Indonesia.⁵⁵

An agent of The Indonesian Government, Hussain Ya'acob⁵⁶ was recruited to help to merge the eleven Malay States of the former Federation of Malaya with the four Southern Provinces of Thailand under a new government conforming with President Sukarno's concept of Indonesia Raya (Great Indonesia). According to a Government White Paper⁵⁷ the Pattern of Indonesia aggression can be classified under five main categories namely military, diplomatic, subversive, economic and Psychological. Subversive activities were intensified and consolidated in Malaysia by pro-Sukarno politicians, among other things were to divert subversive activities in Malaysia and co-ordinate these activities with Indonesian infiltrations and landings, and create internal disorder and chaos by sabotage, assassination and inter-communal riots and finally to stage an armed revolution with the aim of setting up a government under the aegis of the Sukarno regime.

⁵⁵ 'A plot Exposed' Govt. Printers, 1965.

⁵⁶ A Pattani Malay working as a reporter for 'Utusan Melayu' which is regarded as the organ of Malay extremist movement.

⁵⁷ A plot exposed. 1965 Govt. Printers. A detail description of pro-Sukarno politician in Malaysia is written in this paper.

The subversion by the Indonesian infiltrators and their sympathisers was comparatively unsuccessful. This was due to the fact that it did not receive popular mass support⁵⁸ and also can be attributed to the excellent work of the intelligence. At the same time, the Communist insurgents also failed to take advantage of the subversion. It was unable to provide any assistance to the infiltrators or to exploit the situation. The Indonesian 'Confrontation' came to an end in 1966 after President Sukarno was ousted.

Another important milestone in the constitutional development of Malaysia was the racial riot in 1969, which is often quoted as the 'May 13 Incident.' A state of Emergency was declared for the third time, after the outburst of communal clashes between Chinese and Malays after the National elections. The trouble lasted for three days. The subversive elements were quick to grasp this opportunity to subvert the people.

According to a very reliable source⁵⁹ Maoist agents, secret societies and communal extremist elements were responsible for the fomentation of racial unrest. The National Operations Council which was created to cope with the National Emergency and to return the

⁵⁸ G. Hanrahan. op. cit. p. 145.

⁵⁹ May 13, 1969, A report by National Operations Council, Govt. Publication. p. 77.

country to normalcy stated that these groups posed a constant barrier to the return of Parliamentary rule. With regard to the Maoist agents the report stated that "they have gone underground, but are currently busy recruiting fresh supporters and planning to stage more showdowns as part of their "softening up" process in their final bid for power. This statement by NCC later materialised into a fact.

The Communist insurgents, after exploiting the fear and tension extant in the country launched into terrorism. On 24th July the Communist guerillas committed their first murder on Malaysian soil since the end of the Emergency. They went to the isolated village of Sintok, Northern Kedah, and shot a Chinese woman, probably a police agent, in front of a crowd that they had gathered. They described it as 'vengeance killing.' Three days later terrorists ambushed a small security force which was on its way to investigate the murder.⁶⁰ Six soldiers were killed.⁶¹ The authorities decided that the village was completely controlled by the CPM and the whole population of 117 people was removed and placed in a new village. The insurgents attempt to exploit the May disturbances was abortive.

⁶⁰ See H. Miller, Resurgence Ten Years After.

⁶¹ David Hawkins op. cit. p. 55.

A very prominent factor to be noted of the Communist 'comeback' is the change of tactic. They are using subtle methods of subversion by propaganda and infiltration into political parties and institutions of higher learning. A disturbing factor, which needs mentioning, is the extension of their activities from the jungles in the border of Malaysia and Thailand into the country. Evidence shown that the Communists are operating in the urban areas of the country. This is exemplified by a series of acts of terrorism and atrocities committed in big towns. To justify the seriousness of these attacks the late Prime Minister of Malaysia, Tun Haji Abdul Razak declared in late 1971 that "the Communist threat is very real in several states."⁶² Tun Razak's deputy and Minister of Home Affairs, Tun Dr. Ismail, had earlier said that the Communist "had learned a great deal since 1960 and were more efficient and employed more sophisticated methods."⁶³ This is very true indeed.

This changed in strategy can be attributed to a split within the CPM. Documents released in 1974 revealed a breakoff between the CPM Marxist-Leninists Faction and the CPM Revolutionary Faction. According to a New Straits Times report, 12 members of the CPM were killed in a clash with the breakaway Marxist-Leninist group in South

⁶² H. Smith op. cit. p. 14

⁶³ An interview with Arnold Dibble reported in Malaysian Digest, 31st July 1970.

Thailand on February 23, 1976. Both of these factions are trying to prove to the other how 'revolutionary' each is. However, it is difficult to obtain information on these activities and to be sure of the accuracy of the information behind the facts because much data comes only from the government.

To prove that the guerillas are turning their attention to urban terrorism, they launched a number of subversive activities in big towns as well as Kuala Lumpur itself. 1975 was an active year for the guerillas. On April 1, 1975/^{armed} forces camps and airbase were bombed in Kuala Lumpur. Later on September 4, in what was a principally psychological exploit, they tossed grenades into the police field force parade ground, killing two and wounding forty-one then they blew up the National Monument in Kuala Lumpur.⁶⁴ The aim behind these activities were to create anxiety and apprehension among the population. 1975 was also marked for the killing of Special Branch detectives.⁶⁵

Another area of subversion was the students in Institution of Higher Learning. A Government White Paper⁶⁶ published in 1974

⁶⁴ Time, February 9, 1976.

⁶⁵ Malaysian Business Feb. 1976 gives the events of subversive activities of the guerillas, throughout 1975.

⁶⁶ Activities within The University of Malaya Chinese Language Society, Kementerian Hal Ehwal Dalam Negeri. 19 Dec. 1974.

exposed the activities of students of University of Malaya, especially the members of the Chinese Language Society as "work that are bent on converting the country's cultural fabric into a vehicle for the dissemination of subversive propaganda." The government gave evidence to show that subversive elements have gained control of the society and are using it under the guise of culture to promote subversive activities on a national scale exclusively in support of the CPM. On 9th December, 1974 police raided a house occupied by members of UMCLS in Petaling Jaya and seized printing blocks, imitation rifles, boots and other propaganda instruments.⁶⁷ The Communist had to a certain extent succeeded in infiltrating into the student body to satisfy one of their requirements by putting emphasis on youth because the CPM desperately needed young, educated, intelligent executives. In the same White Paper it is questionable whether the mass student demonstration in protest against the government for its alleged incompetence to eradicate social injustices was incited by these subversive elements.

Many believed that the Communist subversion cannot succeed unless it receives mass support from various races and all strata of the society. One factor which lends a hand in the insurgents previous defeat is the lack of Malay supporters. An article⁶⁸

⁶⁷
Ibid.

⁶⁸
New Straits Times. 16 April, 1976.

written in one of the local newspapers states that the Communist terrorists are using the 'soft tactic' in trying to win Malay support. The method of subversion used is through the Islamic religion. They have set up Parti Persaudaraan Islam (Islamic Solidarity Party) aimed at exploiting religious issues and twisting Islamic Principles. This is a tactic which religious officials believe could be equally dangerous. Villages along the Thai - Kelantan border have become the main target of this subversive.

At present, the threat of subversion can be considered as serious. This is reflected by the words of the new Prime Minister Datuk Hussein Onn when he declared that "the political development in the Asian Mainland coupled with the Communist success in several operations in West Malaysia and in Sarawak are sufficient to convince us all that the threat to our security is worrying."⁶⁹ On the other hand, the government claimed that they have all the vital information of the guerilla's activities as well as the Communist strength. The Home Affairs Minister, Tan Sri Ghazali reiterated that the Communist threat in Malaysia was serious but could be contained.⁷⁰ He said that currently the terrorists were fully occupied in 'masses' propaganda work for overall support and occasionally ambushing security

⁶⁹

New Straits Times Wed. 30 June, 1976.

⁷⁰

Malaysian Business February, 1976.

forces patrols and soft targets on remote government projects as well as carrying out minor sabotage and the assassination of intelligence personnel with the help of underground elements. The Minister of Home Affairs gives the strength of the terrorists as follows.¹ The total strength in and without Malaysia is 2054 personnel. Below is tabulated the breakdown in racial composition. Figures of terrorist's casualties were also given by the Minister, from the period 1973 to 1975.

TABLE A

COMMUNIST TERRORIST STRENGTH IN MALAYSIA

Race	No
Malaysian of Chinese Origin	732
Malaysian Orang Asli	11
Chinese Muslim Converts	23
Thais	7
Thais of Chinese Origin	661
Thai Muslims	509
Japanese	2

TABLE B

COMMUNIST TERRORIST'S CASUALTIES (1973-1975)

Terrorist Killed	159
Terrorist Captured	96
Surrendered and Return Army Personnel	709
Terrorist Supporters and underground workers arrested including top officials	1868

¹ Statistics obtained in an interview with Tan Sri Ghazali Shafie by Malaysian Business February, 1976.

Success of security forces in military operations tabulated below are the statistics showing Communist losses (excluding the underground elements/resources) resulting from security forces military operations during the period 1st January 1974 to 8th August 1976 in West Malaysia).¹

TABLE C

Type of Enemy Losses	1974	1975	1976
OT ² camps found	24	35	13
Weapons recovered	57	40	5
Ammunition recovered (rounds)	10,539	6,336	357
Booby-traps recovered	33	24	75
Arms dumps recovered	9	1	-
Food dumps recovered/destroyed	50	39	12
Engagements with SF ³	35	22	10
Surrenders	10	5	1
Captures	8	1	5
Kills	41	7	11

¹ Statistics obtained from the Ministry of Home Affairs in an interview conducted on 28 August 1976.

² Communist terrorist

³ Security forces

CHAPTER II

A LEGAL ANALYSIS OF SUBVERSION

Subversion is one of the most controversial areas in the constitutional law of Malaysia. There is yet to be a legal definition of subversion in Malaysia. Courts in Malaysia are very reluctant to give a clear, specific and direct definition of the term 'subversion.' Judges in the Malaysian Courts have taken a very evasive attitude and approach when deciding cases involving subversive elements. As a result of this lacuna many difficulties had arisen in categorising whether a person falls under this class or order.

What actually is 'subversion'? Who can be called a subversive element? The government at present seems to be fond of using the term 'subversive elements' in their propaganda work to eliminate subversion. These arbitrary accusations on the part of the government had created fear and anxiety in the opposition parties¹ in Malaysia and inhibits the healthy process of opposition in the country. It is within the scope of this study to try and

¹ Before the start of Indonesian Confrontation, Dr. Lim Chong Eu (an opposition member then) appealed to the Prime Minister (Tengku Abdul Rahman), for the sake of parliamentary democracy, "to adopt a fatherly attitude and encourage the growth of healthy opposition in this country instead of merely condemning other parties as subversive, communal, racist, chauvinist or Communist." Straits Times May 1 1962.

draw the line of distinction between what is subversion and what is not. Under this chapter it is proposed to make a comparative study of the American position with the Malaysian position.

The term 'subversion' comes from the word 'subvert'. The New National Dictionary by Collins² gives the meaning of 'subvert' as to overthrow, especially a government. The term 'subversion' is the act of overthrowing a government. However, this definition cannot be accepted as a legal definition as it is inconclusive and very vague. It is therefore necessary to consider the definition through other methods.

The Position in the U.S.A.

The United States of America, which is situated far from the Communist countries, is not immune to subversion. In January 25, 1941 the assembly and senate passed a resolution setting up a committee of three Senators and four assemblymen and empowering it to investigate, ascertain, collate and appraise all facts causing or constituting interference with the National Defence of California.³ The Tenney Committee as it is called, was given the task of investigating subversive activities in California. Because of its strategic

² Collins, The New National Dictionary, London and Glasgow p. 483.

³ Walter Gillborn, The States and Subversion, Cornell University Press, New York 1952.

location California is a main target for the Communist Conspiracy, and the Communist agents were spreading their insidious propaganda from positions of influence and power throughout the state.

The Committee's appraisal of the nature and extent of the Communist movement runs as follows:-

"..... a world wide Communist conspiracy directed from Moscow has swept Eastern Europe and is moving ahead in China and other Asiatic Countries. The grand objective of this conspiracy is to capture America, and war between Russia and the United States is inevitable and imminent. The Communist Party in the United States is the local agent of this world wide conspiracy, and its basic aim is the abolition of our present system of government and the establishment of a Soviet dictatorship in its place, thus, every Communist in the United States is a potential traitor, saboteur and espionage agent of Soviet Russia⁴

The objectives of the Committee were to expose subversive activities and to introduce legislations from time to time on the

⁴ Ibid., p. 21.

subject. In order to achieve these objectives the Committee assumed a duty to compel the public at large to comply with its standards of conduct with reference to Communists.

The first step taken by the legislature towards the problem of regulating subversive activities was taken in 1952. It resulted from the emergency created by the Korean War. The Governor of California issued a proclamation in September, 1950 calling the legislature into an extraordinary session with the purpose to "consider and act upon legislation relating to civil defense, disaster relief and subversive activities, etc."⁵ There was a nationwide allegation that Communists are in the government. A number of bills and proposed constitutional amendments calling for loyalty oaths and investigations and providing for the compulsory registration of members of subversive groups were immediately introduced.

The constitutional amendment provided that no person or organization shall advocate the overthrow of the government of the United States by force or violence or other unlawful means or advocate the support of a foreign government against the United States. However the legislative proposals for compulsory registration of members of subversive groups were dropped when Congress passed the Internal Security Act of 1950.⁶

⁵ Ibid., p. 49.

⁶ Ibid., p. 51.

Likewise, in Illinois, the Bryson Commission was set up to investigate subversive activities throughout the State. It is to be noted that during the Commission investigations, Illinois was not devoid of laws designed to curb subversion. It is unlawful in Illinois to advocate the reformation or overthrow, by violence or other unlawful means, of the representative form of government secured by the constitution of Illinois.⁷ It is unlawful for any person to publish or knowingly sell or distribute any printed matter which advocates the violent overthrow of the constitutional form of government.⁸ In addition, it is unlawful for any person to organize or join any society, the object of which is to advocate the reformation or overthrow of the existing form of government by violence or other unlawful means.⁹

Although there are many laws against subversion, the American State legislatures had enacted statutes containing well over 300 enactments aimed at curbing subversive activities. However, one hesitates to define the term 'subversion'. Subversion says the legislatures, is to be stifled or investigated. But at the very least, the general agreement among the legislatures, is that

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See Ill. Rev. Stat. c 38, Sect. 558 (1947), constitutionally sustained in People v. Lloyd, 304 Ill. 23, 136 N.E. 505 (1922).

8

Ibid., sect. 559.

9

Ibid., sect. 560.

subversive activities can be classified under certain category.

Hence the American position can be summarised as follows. Subversive activities include:

- i. The use of violent or otherwise unconstitutional means to change the country's political or economic institutions.
- ii. The commission of espionage, sabotage, and other crimes of stealth in behalf of foreign enemies or domestic cliques.
- iii. The bearing of arms against the United States, or other affirmative behavior in aid of hostile forces; and
- iv. The entry into a conspiracy to perform these acts or the actual though unsuccessful attempt to do them.¹⁰

From the summary above one can analyse the American position of 'subversion' as the act of overthrowing a constitutionally constituted government through unlawful means. It should be noted that to bring certain acts as falling under the ambit of subversion one common essential ingredient that must be fulfilled is that the acts committed are of a violent nature.

The Malaysian Position

As far as the Malaysian position is concerned there are no attempts on the part of the legislature as well the courts to define or at least give a clear position of subversion or subversive activities. Not a single piece of legislation intending to curb or control subversion has defined the term. Therefore, in trying to discover what subversion is, the provisions of the legislation would not be helpful.

However, the relevant provision is contained in Part XI of the Malaysian Federal Constitution which provides special powers against subversion and emergency powers. The provision¹¹ provides that if an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:-

"to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;¹² or to excite disaffection against the Yang Di Pertuan Agong or any government in the Federation;¹³ or to promote feelings of

¹¹ Malaysia, Federal Constitution, Article 149 (1).

¹² Ibid., Clause (1) (a).

¹³ Ibid. Clause (1) (b).

ill-will and hostility between different races or other classes of the population likely to cause violence;¹⁴ or to procure the alteration, otherwise than by lawful means, of anything by law established;¹⁵ or which is prejudicial to the security of the Federation or any part thereof,¹⁶ any provision of that law designed to stop or prevent that action is valid

The above provision which is intended to control subversion sets out the action that has been taken or threatened. It can be interpreted that these actions can amount to acts of subversion. The provision gives the power to the government to promulgate laws against these actions notwithstanding that it is inconsistent with any of the provisions of articles 5,¹⁷ 9¹⁸ or 10.¹⁹ These are articles enshrining the fundamental liberty of individuals.

The Act which was passed under article 149 (1) in the

¹⁴
Ibid., Clause (1) (c).

¹⁵
Ibid., Clause (1) (d).

¹⁶
Ibid., Clause (1) (e).

¹⁷
Fundamental liberty of a person.

¹⁸
Prohibition of banishment, and freedom of movement.

¹⁹
Freedom of speech, assembly and association.

Internal Security Act²⁰ which is meant to fight subversion and anti-national acts. The long title of the Act States that "an Act to provide for the internal security of Malaysia, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specified areas of Malaysia, and for matters incidental there to." By this Act the government was given the power of preventive detention of subversive elements²¹ and terrorists.²²

It is useful to refer to this Act in seeking the meaning of subversion. The preamble of the Act begins:-

"whereas action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia to cause, and to cause a substantial number of citizens to fear, organised violence against persons and property; and to procure the alteration, otherwise than by lawful means, of lawful government of Malaysia by law established and whereas the action taken and threatened is prejudicial to the security of Malaysia, and whereas Parliament considers it necessary to stop or prevent that action"

²⁰ 1960 (no. 18).

²¹ Internal Security Act 1960, Sect. 8(1).

²² The word terrorists is defined under sect. (2)(a-c) of the Internal Security Act 1960.

It seems that the legislature adopted clause (a), (d) and (e) of article 149 of the Federal Constitution. It would suffice if a person causes a substantial number of citizens to fear or organised violence against persons and property. In other words, it is not necessary for a person to actually commit overt acts of violence so as to be apprehended under this Act.

In regards to the next requirement, the government has a very wide and arbitrary power²³ of arresting a person whose action, taken and threatened, is prejudicial to the security of Malaysia.

Under the Act the Minister has a subjective satisfaction of determining whether a person has acted in any manner prejudicial to the security of Malaysia or to the essential services thereof or to the economic life thereof. In deciding to detain a person under the Act, the Minister must give grounds for the detention, only these grounds are not necessarily objective. The court cannot go behind the detention order to question whether there are sufficient grounds.²⁴ Therefore, it is left to the discretion of the Minister

²³

In February, 1976 the Malaysian Bar Council called upon the Attorney-General to release five men who were re-arrested under the Internal Security Act after they were acquitted and discharged by the High Court, without their defence being called, for the alleged murder of a barber. The secretary of the Bar Council said that the re-arrest immediately after their acquittal was "against the concept of the rule of law, particularly when no reason for such arrests was given." The New Straits Times, Feb. 1976.

²⁴

Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia (1969)
2 MJ 129.

to term whether the act of a person is subversive.

So in comparing the Malaysian position with the American, one can safely conclude that there is a very wide contrast between the two. In America, the term 'subversion' has a narrower meaning as compared to Malaysia. Subversion in the United States of America is bent towards the unconstitutional means of overthrowing or replacing the legally or constitutionally constituted government. It need not be so in Malaysia.

Another major difference is that in America the laws against subversion are set out in statutes and it is much easier for the authority to decide on what subversion is. The position is vague in Malaysia, especially with the provision of 'acting in a manner prejudicial to the security^{of} Malaysia'²⁵ Under this heading any action taken by persons can be deemed as acting prejudicial to the security of the country. Thus it can be seen that subversion in Malaysia means not only an attempt to overthrow the government but also to act prejudicial to the economic well being of the country or to cause fear or violence against persons or property. The subversive activity need not be investigated as practised in America.

CHAPTER III

THE LEGAL CONTROLS OF SUBVERSION IN MALAYSIA

Pre-Merdeka Laws

The earliest legal measure that was used by the British Administrators in combating the growth of Communist threat of subversion was that of deportation. It is to be noted that the threat of subversion mainly came from the Chinese population, who are more receptive to Communist propaganda. Since few Chinese in Malaya held citizenship¹ it became standard British policy to arrest all suspected labour agitators and Communist agents, deporting them to Mainland China. Deportation, however, more often than not created serious consequences.

This problem arose because at that time Communism was illegal in China, Chinese sent by the Malayan authorities were frequently executed by the Chinese government. In 1929, few Chinese were shot on arrival in Chinese territory.² Therefore, deportation was not a potent weapon to use in eliminating the subversive threat.

Under the Penal Enactment 1910, the British Resident

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In the pre-war Years, a Chinese or Indian could gain citizenship only if both parents had been born in the country and resided there for at least 15 years. Naturalization was restricted to those who had lived there for eight years.

2.

The Straits Times October 28, 1929.

in the Federated Malay States was given wide powers to issue warrants of arrest and orders of banishment. The Enactment provides³ that "whenever it shall appear to the Resident of any of the Federated Malay States after enquiry or on such written information as he may deem necessary, that there are reasonable grounds for believing that the banishment from the state of any person in the state is conducive to the good of the state or of any other Malay State or that it is expedient that such person be required to execute a bond for his good behavior the Resident shall issue an order for the arrest and detention and the Ruler of the state may thereupon, with the advice and consent of the Resident, order that such person be banished from the state. It may be for life of the person banished or for a term to be stated in the order."⁴

All that is needed to banish a person during that time was that there should be reasonable grounds for believing that the banishment of the person concerned is conducive to the good of the state. The Resident upon issuing the warrant of arrest and order of detention shall place before the Ruler a written statement of the grounds which it so appears to him and the Ruler shall upon the advice of the Resident order that person be banished. Therefore the grounds given by the Resident shall not be questionable

³ Section 3 (1).

⁴ Banishment Ordinance 1948, Sect. 3 (1).

since he was also the one who decides whether the person concerned should be banished.

The Banishment Enactment 1910 of the Federated Malay States was amended by the Banishment Ordinance⁵ which came into effect on 6 March 1948. Section 3(1) of the Enactment was amended by the Ordinance under which the power to issue warrants of arrest and orders of detention was given to the Chief Secretary. The difference between the Enactment and Ordinance is that under the Enactment, the Ruler of the State acts on the advice of the Resident, whereas under the Ordinance, the Chief Secretary after issuing a warrant of arrest shall lay before the High Commissioner the grounds for the banishment. Thereupon, the High Commissioner, in association with the Ruler of the State may order the person to be banished from the Federation.⁶

The Banishment Ordinance was resorted to when it was deemed necessary to rid Malaya's Communist Party top leadership. Under this Ordinance, any non-British subject could be deported as an undesirable alien.⁷ The local authorities had very wide discretionary powers. As a result of this repressive measure

⁵ The whole of this Ordinance was repealed by Act 68/65.

⁶ Banishment Ordinance, 1948 Sect. 3 (1).

⁷ *Ibid.*

by the British many experienced party agitators, organisers and union officials in the labour organizations were deported. Thus, the labour unions were weakened because of the lack of leadership. The Banishment Ordinance was popularly used in 1948 when 606 Chinese were deported and in the following year the number rose to 10,300.⁸ Hence, deportation proved to be an effective means of reducing Communist effectiveness but by no means a lethal weapon for eliminating the threat of subversion.

Apart from the Banishment Ordinance, the most effective legal means employed by the authorities in curtailing the Communist growth was the Trade Union Disruption of 1949. The British authorities were faced with a very disturbing threat from the labour organizations. Most of the union leaders were Communist or Communist agitators. By 1946 the entire trade union movement in Malaya was dominated by the General Labour Unions (GLU) which was controlled by the Communists.⁹

It was unfortunate for the Communist infiltrators that the British were quick to realize that the labour movement was led by Communists and was getting out of hand. The British invoked

⁸ G. Hanrahan op. cit. p. 113.

⁹ A. Shureliff, The Growth of Democratic Trade Unions in the Federation of Malaya, Labour Monthly Review (September 1951) p. 274.

the Trade Union Enactment 1940 which was provide for the Registration and Control of Trade Unions. The Enactment made it mandatory for trade unions to be registered, since most of the trade unions were not registered they became illegal.

Under the Enactment, the Registrar of Trade Unions has the power to register the trade union if he is satisfied that in applying for registration it has complied with the provisions of the Enactment and of the Regulations made thereunder and that the objects, rules and constitution of the union do not conflict with any of the provisions and are not unlawful, and that the union is not likely to be used for unlawful purposes or purposes inconsistent with its objects and rules.¹⁰ After all these requirements have been satisfied the Registrar shall register the trade union. There is also a proviso that if one of the objects of the trade union is unlawful after registration, the registration of the trade union shall be void.

The Trade Union Enactment 1940 was later amended by the Trade Unions (Amendment) Ordinance which was officially brought into effect on 12th June, 1948. When this legislation was passed it seriously reduced the Red Labour activity. A new provision¹¹

¹⁰
Section 5B.

¹¹
Section 8 (2).

was inserted in the Ordinance. This provision provided that no person shall be or act as an officer of a trade union of Federation of Trade Unions who has been convicted by any court, of criminal breach of trust, extortion or intimidation, or of any other offence, and whose conviction, in the opinion of the High Commissioner in Council, renders him unfit to be an officer of a trade union.¹²

Another provision led to the forced dissolution of the Pan Malayan Federation of Trade Unions (PMFTU), which was the biggest Communist labour organisation then, and also affiliated with the World Federation of Trade Unions. This provision restricted labour federations to unions of similar occupations or industries. Under this provision¹³ it was provided that a registered trade union may affiliate with a registered federation of trade unions representing a similar trade, occupation or industry if the consent of the members of the trade union to such affiliation has been obtained, and the federation of trade unions files with the Registrar a notice, signed by the secretary of the federation, that the application to affiliate has been duly approved by the federation.

12

Under the Trade Union Ordinance (Amendment) S. 3 provides other than the Secretary, all officers of a trade union of federation of trade unions shall be persons who have served at least 3 year's engagement or employment in the industry concerned.

13

Section 60.

The consent of the members of the trade union must be obtained in the manner provided in the Enactment.¹⁴ The Registrar of Trade Unions may register the formation of the federation of trade unions if the consent of the members of each of the registered trade unions wishing to form or create a federation has been obtained by a majority of votes taken by secret ballot at a general meeting after service on the Registrar and all members of the union.

The Trade Union Ordinance also provided for the registration of all associations with trade union objectives; the auditing of union accounts; prohibiting the use of union funds for political purposes; and granting trade unions and their members certain legal protection in their trade union activities. These legal barriers were very effective indeed as employed by the British and it went far towards restricting Red Control over the Malayan Labour Movement.

In the field of Communist propaganda work the authorities took active steps to reduce its flow by means of the highly restrictive Seditious Publications (Prohibition) Enactment 1932. In October 1945, two Chinese newspapers, the Shih Tai Jit Pao and the Pai Ma Tao Pao were forcibly closed down and their editors and staffs sentenced to prison terms for sedition under the Printing and Publishing Enactment.

¹⁴ Section 58.

¹⁵ Purcell, The Chinese in Malaya, Oxford University Press, 1948 p. 270.

Under the Seditious Publications (Prohibition) Enactment of 1932, the authorities have wide discretionary power to term certain publication as having seditious tendency. The purpose of the Enactment was to prohibit the publication and importation of seditious newspapers, books and documents. Under this Enactment any person who issues or imports any seditious publications shall be guilty and liable to penal servitude for life, or to imprisonment for seven years, or to a fine of \$10,000, or to both such penal servitude and fine.¹⁶

When the Communists launched an all out and open rebellion, the government took a very drastic measure by proclaiming a state of emergency on 19 June, 1948 after several atrocities committed by the Communists. It was declared by the High Commissioner, Sir Edward Gent. The proclamation of emergency saw for the first time in the constitutional development of Malaya the suspension of democracy which means the restrictions on the fundamental liberties of the population. The state of emergency was proclaimed to the whole of the Federation on 12 July, 1948.¹⁷

The proclamation of emergency was the first step in

¹⁶ Seditious Publications (Prohibition) Enactment 1932 - Sect. 12.

¹⁷ Emergency Regulations (No. 10 of 1948) Proclamation of State of Emergency. Sect. 3.

the development of a comprehensive system of Emergency Regulations. It has become a model for controlling the population in the face of a widespread and organised revolutionary movement which uses violence and the threat of violence as well as propaganda. The Emergency Regulation Ordinance enacted on 7 July 1948 conferred on the High Commissioner power to make regulations on occasions of emergency or public danger after declaring a state of emergency. The High Commissioner was given power to declare emergency if it appears to him that an occasion of emergency or public danger has arisen.¹⁸

In justifying this declaration of Emergency, the British High Commissioner, Sir Henry Gurney, who succeeded Sir Edward Gant, declared that Communism could be fought on 2 fronts; firstly with the weapons of social, economic and political progress and secondly by the police and the soldiers. He stressed the importance of emergency legislation being wide enough and strict enough to ensure that police, soldiers and all other government officials could do what they needed to do to maintain or restore order without having to act outside the law. Gurney introduced more Emergency Regulations to give the government further powers over life and liberty.

The most urgent and effective Emergency Regulations were those giving power of arrest and detention without trial (preventive

detention). It was during this time that for the first time preventive detention was introduced in Malaya. The authorities saw the need of suspending individual liberties because the functioning of the normal processes of law was deliberately made unworkable by the repeated intimidation of witnesses. Under the Emergency Regulation Ordinance 1948¹⁹ any order of detention made shall be for a period not in excess of two years. Each detention was also subject to periodic review.²⁰

With the introduction of preventive detention the police at once arrested nearly 1,000 known Communist Party members or sympathizers. By the end of 1948, 1,1779 people were held in detention and another 637 deported, when the Federation became independent, 33,992 were detained for varying periods, and another 14,907 deported.²¹

These Regulations made during the Emergency were amended and improved by 1953. Under the Emergency Regulation Ordinance 1948, regulations may be made almost on any matters specified under

¹⁹ Ibid., sect. 3 (a).

²⁰ Ibid. sect. 3 (b).

²¹ Richard Clutterbuck, Riot and Revolution in Singapore and Malaya, 1945-1963, Faber and Faber Ltd. London. 1973 p. 169.

the Ordinance.²² It includes; censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of Communications; arrest, detention, exclusion, and deportation; restriction of movement of persons, curfew; protected places for the protection of goods and supplies stored; processions and meetings; explosives, arms and ammunition; control of aliens; control of harbours, ports and territorial waters of any state or settlement in the Federation, and of movements of vessels; transportation by land, air, or water and the control of the transport and movement of persons, animals and things; trading, storage, exportation, importation, production and manufacture; supply and distribution of food, water, fuel, light, and other necessities, appropriation, control, forfeiture and disposition of property, and the use thereof; conferring upon himself and upon other public officers or other persons such additional powers as he may consider necessary, including power to make, issue or give orders, rules, directions, instructions, authorisations, licences and permits in respect of any matter or thing; requiring persons to do work or render services; payment of remuneration or compensation in respect of all matters done under any regulations; modification, amendment, supersession or suspension of all or any of the provisions of any written law; special provisions in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and of the

law regulating evidence, proof and civil and criminal liability; control of prices and regulation or taxation of profits; formation of tribunals and other bodies for the purpose of deciding any matters specified in such regulations but having no powers to inflict fines or imprisonment; entry into and search and interrogation of persons; prescription of fees or other payments; and finally any matter in respect of which it is in the opinion of the High Commissioner desirable in the public interest that regulation should be made.²³

Throughout the Emergency many Regulations were made. Measures taken were very harsh indeed. As Harold Smith in his work, *Jungle War in Malaya*²⁴ puts it: "no other government in the world had ever had such sweeping powers, even in war time." A good example of this is the provision relating to the control of firearms, ammunition or explosives. Under the Emergency Regulations, 1948, any person who carries or has in his possession or under his control any fire-arm not licensed or unauthorised ammunition or explosives shall on conviction be punished with death.²⁵

Among other matters that were regulated were that the traffic and the passage of food along public roads²⁶ could be

²³ Emergency Regulation Ordinance 1948, Sect 2 (a-v).

²⁴ *Op. cit.*

²⁵ *Idem*, regulation 4 (1).

²⁶ Emergency (Restriction of Movement of Foodstuffs) Regulation 1950, regulation 3.

controlled; houses could be searched by the police without warrants;²⁷ curfew could be imposed;²⁸ heavy penalties could be imposed for assisting terrorists.²⁹ The control of the passage of food was effective in denying the terrorists of their food supply which came mainly from the civilian communists and their sympathisers mostly situated in villages fringing the jungles. There was also a suspension of the strict procedural law of evidence. Under the Emergency Regulation, trials may be heard in camera. The Regulation provided³⁰ that the whole or any part of any trial to take place in a closed court if it is satisfied that it is expedient in the interests of justice or of public safety or security to do so. This was to do away with the strict compliance of the law of giving evidence by witnesses. The purpose is to protect the witnesses from reprisal. The court also has the power to prohibit the publication of witnesses names.³¹

One factor which inhibited the efficient police and army counter-measures was the difficulty in identifying the men and women who formed the enemy. Most of the terrorists and insurgents

²⁷ Ibid., regulation 21 (1).

²⁸ Emergency (Proclamation of Terrorists) Regulation 1950, regulation 8 (1).

²⁹ Ibid., regulation 5.

³⁰ Ibid., regulation 34.

³¹ Ibid., regulation 35.

were leading double lives; they did their business or occupation by day and became guerilla or supplier by night. In order to distinguish the enemy among the whole population, the High Commissioner Gurney, introduced a system of registration requiring the registration of the entire adult population over 12 years. Every adult person was photographed, thumbprinted and issued with a National Registration and Identity Cards (NRIC).³² The whole idea behind this was to distinguish the Communists from the rest since the authority was certain that the Communists would never register themselves.

Therefore, at the end of the Registration, any person without an identity card was presumed to be a guerilla or civilian supporter of the Communist Party of Malaya (CPM). This was an effective legal tool employed by the government and recognised by the Communist High Command as an extremely dangerous measure against them.³³ The whole process of National Registration began in July 1948 and was completed in eight months.³⁴

Another counter-measure taken by the British authority to

³² The CPM reacted violently, killing photographers, destroying NRIC's and killing or maiming those who concealed them from the guerillas.

³³ Richard Chatterbuck, op. cit. p. 169.

³⁴ H. Smith, op. cit.

eliminate the Communist subversion was the creation of 'new villages'.³⁵ The Emergency Regulation gave the government and their security forces the power to remove squatters from land to which they had no title and to resettle them in villages in which they could be protected and controlled. The authorities undertook this measure not solely to isolate the terrorists from the population but also to help these scattered population economically.

The measure was taken under an enacted law of the land with a view in the long run to earn the willing support and respect of the people.³⁶ The government enacted the Emergency (Amendment No. 13) Regulations, 1949 so as to give the security forces the power to evict the squatters from unlawfully occupying land. Under the Regulation the Ruler in Council of any Malay States had the subjective satisfaction of directing any person unlawfully in occupation of any land to leave that area. It was also provided³⁷ that the eviction order shall prescribe the places

³⁵ This was a security measure designed to break the links between the Communist terrorists and the rural population. The resettlement of about 500,000 squatters in about 500 new villages was a major undertaking which was almost completed by 1954.

³⁶ Sir Robert Thompson, Defeating Communist Insurgency, London 1966, pp. 53-4.

³⁷ Emergency (Amendment No. 13) Regulations 1949, regulation 2 (b).

or areas to the persons affected to proceed on.

These were the pre-Merdeka Laws that were successfully invoked by the British in putting down the armed rebellion and subversion in Malaya.

CHAPTER IV

LAWS AGAINST SUBVERSION IN MALAYSIA

POST-MERDEKA LAWS

I. Emergency Legislation

Despite the state of emergency that existed from 1948 to 1960, Malaysia (Malaya then) achieved her independence from the British colonialist government on 31st August 1957.¹ The abortive attempt by the communist to overthrow the government through armed rebellion did not hinder the development of the constitutional process of the country. The state of emergency was proclaimed at an end on 13th July 1960.²

With the termination of Emergency the government was still faced with the threat from the terrorists who retreated into the jungles situated near the Thai-Malayan border. In order to eliminate another uprising of the Communist insurgents, steps were taken by the government to legislate laws controlling or preventing subversion. As a result of this, provisions were included in the Constitution, enshrining new laws as a substitution for the emergency laws that were to come to an end after the emergency.

¹The Federation of Malaya Independence Act 1957. Under this Act a new Constitution was drafted by the Reid Commission which was set up for the purpose of recommending the provisions of the new Constitution.

²Government Gazette 1921/1948.

To show the importance of these provisions which were aimed at eliminating the remnants of the Communist terrorists as well as preventing the emergence of a new uprising, the Reid Commission recommended new provisions giving wide and arbitrary power to the government to enact laws against subversion even though it infringes the fundamental rights of an individual. In the words of the Commission it recommended:-³

"... Neither the existence of fundamental rights nor the division of powers between the Federal and the State ought to be permitted to imperil the safety of the State or the preservation of a democratic way of life. The Federation must have adequate power in the last resort to protect these essential national interests. But in our opinion infringement of fundamental rights or of State rights is only justified to such an extent as may be necessary to meet any particular danger which threatens the nation The history and continued existence of the present emergency show that organised attempts to subvert constitutional government by violence or other unlawful means may have to be met at an

³The Federation of Malaya Constitutional Commission, Government Printers 1957, pp. 74-5.

early stage by the use of emergency powers if they are to be prevented from developing into serious and immediate threats to the safety of the State Emergencies, such as war, or internal disturbance, which constitute an immediate threat to the security or economic life of the country or any part of it may have to be dealt with more promptly. There should be a proclamation of emergency"

Thus this recommendation which was accepted gave birth to the article relating to the power of the government to declare a state of emergency. This was the origin of article 150 of the Federal Constitution of Malaysia. Under the article⁴ the Yang di-Pertuan Agong, being the ruler of the State, may issue a Proclamation of Emergency if he is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part of it is threatened. This power conferred on the Yang di-Pertuan Agong in proclaiming a state of emergency is very wide. It is not confined to any particular reason of emergency or types of emergency. So long as the security or economic life of the Federation is threatened, he may issue the proclamation.

The issue whether the Proclamation of Emergency can be

⁴article 150 (1)

questioned by a court of law was discussed in the celebrated case of Stephen Kalong Ningkan v Government of Malaysia.⁵ The Federal Court decided that the validity of the Declaration of Emergency cannot be questioned or challenged by the court. The decision was affirmed by the Privy Council. However, although a Proclamation of Emergency cannot be questioned in Court, Emergency Legislation can be questioned in Parliament, where the government must give reasons for the legislation and answers to the challenge.⁶

A Proclamation of Emergency may be made notwithstanding whether a Parliament is sitting⁷ or not. If a Proclamation of Emergency is issued when Parliament is not sitting, the Yang di-Pertuan Agong shall summon Parliament as soon as may be practicable, and may, until both Houses of Parliament are sitting, promulgate Ordinances having the force of law if satisfied that immediate action is required.⁸

The most important clause within the scope of this study is Clause (5) which provides that while a Proclamation of Emergency is in force Parliament may, notwithstanding anything in the

⁵ [1968] 2 MLJ 238

⁶ Salleh Abbas, Prinsip Perlembagaan dan Pemerintahan di Malaysia, Dewan Bahasa dan Pustaka, 1968 p 363

⁷ Lord President, Tun Suffian in the most recent case of Khong Then Kheng and another v .P.P. (Federal Court decision) defined 'sitting' as "actually sitting down and deliberating on matters." New Sunday Times August 15, 1976. p.1

⁸ Federal Constitution, article 150 clause 2.

Constitution make laws with respect to any matter, if it appears to Parliament that the law is required by reason of the Emergency.⁹

And no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shall be invalid on the ground of inconsistency with any provision of the Constitution.¹⁰ Therefore, the effect of this article is that Parliament can make any law even though it is inconsistent with the provisions of the Constitution, during a Proclamation of Emergency.

Nevertheless, the Proclamation of Emergency is considered as a temporary means of suspending Parliamentary democracy¹¹ in order to overcome the emergency with effectiveness. At the expiration

⁹ Ibid. clause 5 and 6 are both subject to clause 6 (A) which provides that clause (5) shall not extend the powers of Parliament with respect to any matter of Muslim Law or customs of the Malays, or with respect to any matter of native law or custom in a Borneo State nor shall clause (6) validate any provision inconsistent with the provisions of the Constitution, relating to any such matter or relating to religion, citizenship or language.

¹⁰ Article 150 clause (6).

¹¹ Wan Sulaiman J. said that "It was common to all democratic constitutions that in times of grave national emergency, normal constitutional principles must take second place to the overriding need to deal with the emergency."
See also the dissenting judgement of H.S. Ong J. Ibid.
New Sunday Times August 15, 1976 p. 3.
(Khong Then Kheng and another v. P.P.).

of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the proclamation and, to the extent that it could not have been validly made but for article 150, any law made while the Proclamation was in force, shall cease to have effect, except as things done or omitted to be done before the expiration of that period.¹²

This sweeping power given by the Constitution is prone to abuse by the authorities but historically speaking, the government could be credited for it has never yet made the fullest use of its arbitrary strength in the three emergencies that were declared in Malaysia. Throughout the emergencies few really drastic measures were taken although local election were suspended in 1965.¹³

The first emergency was put into play on 13 July 1948 due to the Communist rebellion. It was to be followed later by another emergency after the first emergency came to an end on 31st July 1960.¹⁴ The second emergency was proclaimed on 3rd September 1964¹⁵ due to the aggressive policy of Confrontation by the Indonesian Government. Emergency powers were once again invoked in Sarawak in September

¹²Article 150 (7)

¹³R.S. Milne, Government and Politics in Malaysia, University of British Columbia Publication, Houghton Mifflin Co. 1967 at p.42

¹⁴P.U. 185 (1960)

¹⁵P.U. 271 (1964)

1966 to justify the passing of a constitutional amendment which led to a change of government.¹⁶ Finally it became operative once again due to the inter-racial rioting beginning on 13th May 1969. A state of emergency¹⁷ was proclaimed two days after the outbreak of violence although mainly restricted to certain areas in the federal capital.

The emergency from 1948-1960 was proclaimed by the High Commissioner of the Federation of Malaya under section 3 of the Emergency Regulation Ordinance 1948.¹⁸ With the Proclamation of Emergency, the High Commissioner enacted emergency regulations¹⁹ which were necessary for the prevention of the Communist subversion.²⁰ The regulations were improved from 1948 and reached its effectiveness in 1953. However, with the end of the first Emergency, the Emergency Regulation Ordinance 1948 was temporarily kept alive by article 163 of the Federation of Malaya Constitution 1948 which was repealed by the Federal Constitution of Malaysia. Part of these regulations were preserved in the Internal Security Act.²¹

¹⁶ see Stephen Kalong Ningkan v government of Malaysia [1968] 2 MLJ 238.

¹⁷ P.U. (A) 145/1969.

¹⁸ Ordinance No. 10 (1948) This Ordinance was repealed by P.U. 185 (1960).

¹⁹ Emergency Regulations 1948-1950. Government Printer (1950).

²⁰ The regulations were discussed in Chapter III.

²¹ The Act will be dealt with in detail in the next Chapter.

In so far as the second emergency was concerned, the threat of subversion from the Indonesian Confrontation, was initially prevented by the Internal Security Act whereby the whole shore and territorial waters of Malaysia were declared as 'security area'.²² The government's security forces were able to patrol the Malaysian territorial waters with ease under the declaration. The Indonesian Confrontation threat was not serious at the outset but situations turned to be serious when Indonesia sent her soldiers into the Malaysian territory and soil.

When Indonesian soldiers infiltrated and landed in Pontian and Labis in Johore and also in Malacca and Negri Sembilan, the three States were declared as security areas.²³ Unfortunately both declarations were inadequate because the Indonesian armies received assistance, from subversive elements living in Malaysia, in their infiltration. Finally a proclamation of emergency was inevitable, and under article 150 of the Federal Constitution, the Yang di-Pertuan Agong declared a state of emergency on 3 September 1964. By 7 September 1964 the whole of Malaysia was declared as security area.²⁴ On the 18 September 1964, Parliament was convened to discuss the Proclamation of Emergency and on the same

²²P.U. 243/1964 - 13 August 1964.

²³P.U. 245/64 - 17 August 1964.

²⁴P.U. 273/64 - 7 September 1964

date the Emergency (Essential Power) Act 1964 was passed.²⁵

This Act gives the power to the Yang di-Pertuan Agong to make regulations which he considers desirable or expedient for securing the public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community.²⁶ As compared to the regulations made in the 1948 Emergency, only a few regulations were made²⁷ due to the fact that measures could be taken under the Internal Security Act 1960.

Under the Emergency (Essential Powers) Act 1964, regulations were made among them the Emergency (Criminal Trials) Regulations 1964.²⁸ This regulation dispensed with the strict compliance of procedural evidence in an emergency procedure case where there is no preliminary inquiry needed.²⁹ The suspension of elections was suspended during the

²⁵Act No. 30 (1964)

²⁶Emergency (Essential Powers) Act 1964 Sect 2(1).

²⁷See LN 286/64, 420/64, 421/64, 45/65, 75/65, 84/65, 121-123/65, 168/65, 215/65, 230/65, 231/65, 251/65, 355/65, 443/65, 451/65, 33/66, 35/66, 187/66, P.U.245/66, 243/68 and 297/68.

²⁸LN 286/64

²⁹1 bid regulation 5 (1)

continuance of the proclamation of Emergency³⁰ under the Emergency (suspension of Local Government Elections) Regulations 1965.³¹ There are other regulations made which were of little importance in preventing the Indonesian subversion. Eventually with the change of government in Indonesia, the policy of confrontation was dropped, thus the emergency came to an end in July, 1966. Following the declaration, the government launched an appeal to those subversive elements who had taken up arms persuading them to surrender.³²

The last proclamation of emergency was made when inter-racial rioting broke out on 13 May 1969. The Yang Di Pertuan Agong again invoked article 150 under which he promulgated the Emergency (Essential Powers) ordinance 1969.³³ The proclamation of emergency at that time was made not because of any subversion but due to the outbreak of racial violence. In order to cope with the swiftly-moving events during the emergency and the great likelihood of communist exploiting the grave situation,³⁴ a second ordinance was promulgated two days after the

³⁰ Ibid., regulation 2(1).

³¹ LN 75/65.

³² Straits Times August 9, 1965.

³³ Ordinance 1, P.U. (A) 146/1969.

³⁴ National Operation Council, The May 13, 1969, Government Printers P. 77.

promulgation of the first ordinance. By virtue of the Emergency (Essential Powers) ordinance No.2, 1969,³⁵ the executive authority, of the Federation was delegated to a Director of Operations³⁶ who was given wide powers similar to that of a dictator. It is appropriate to mention that the Director of operation did not use his arbitrary powers more than necessary. It is to be noted that there were amendments made to the Constitution of Malaysia after the incident but, however, it is not within the scope of this study, thus it needs no further mention.

It can be seen that under the proclamation of emergency, the executive authority of the Federation can make any laws notwithstanding that it encroaches the fundamental liberties provided in Part II of the Constitution or anything in the Constitution.³⁷ So the question arise whether this provision conferring wide arbitrary powers to the government during emergencies is justiciable.

It can be argued that this temporary measure is necessary where the security or economic life of the Federation is threatened. Parliamentary democracy in the country would have been destroyed were it not for these emergency powers. Moreover, the State has a duty

³⁵P.U. (A) 149/1969.

³⁶The late Tun Abd. Razak was the Director of the National Operation Council. He was the Deputy Prime Minister then.

³⁷except subject to clause 6(A) of article 150.

to protect its citizens in times of grave emergency. Though the powers conferred during emergencies are liable to abuses by the authority, it can later be questioned in Parliament. It is up to the people to judge whether the authority has justifiably used their powers during the emergency and whether in times of national danger such measures as the suspension of democracy can be accepted in the interests of security.

II Special Powers Against Subversion.

Part XI of the Constitution contains the permanent provisions under which the federal authorities may legislate in certain circumstances in a manner which would otherwise be unconstitutional. These provisions were unimportant during the two remaining years of the first emergency because article 163 (which was repealed) continued the Emergency Regulations Ordinance, 1948. The Ordinance was continued until 31 July 1960, and while it was in force, gave the federal government all the powers that it required, as can be seen in Chapter III. However, when the first emergency was declared at an end, the government deemed it necessary that the Constitution be amended to give permanent powers to legislate for emergencies and against subversion. These powers were inadequate then. To comprehend for future subversion the Constitution was accordingly amended.

By virtue of the original article 149 (1), " If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation, to cause, or to cause a substantial number of citizens to fear,

organised violence against persons or property, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of article 5³⁸, 9³⁹ or 10⁴⁰, or would apart from this article be outside the legislative power of Parliament; and article 79⁴¹ shall not apply to a Bill for such an Act or any amendment to such a Bill. (2) A law containing such a recital as is mentioned in clause (1) shall, if not sooner repealed, cease to have effect on the expiration of a period of one year from the date on which it comes into operation, without prejudice to the power of Parliament to make a new law under this article."

This article (149) was amended by the Constitution (Amendment) Act, 1960.⁴² By virtue of section 28, article 149 was amended by repealing clause (1) and substituting a new clause which states:

"If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federations - (a) to cause, or to cause a

38
Liberty of a person.

39
Prohibition of banishment and freedom of movement

40
Freedom of speech, assembly and association.

41
Exercise of concurrent legislative powers.

42
No. 10.

substantial number of citizens to fear, organised violence against persons or property; or (b) to excite disaffection against the Yang Di Pertuan Agong or any government in the Federation; or (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or (e) which is prejudicial to the security of the Federation; any provision of that law designed to stop or prevent that action is valid....."

The remaining words were retained. So the amendment added new clauses to the article to widen the scope of power in legislating against subversion.

The original clause (2) of article 149 was also substituted with a new provision which provides that the law made under the article shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this article. The effect of this clause is that the law passed shall cease to have effect after resolutions

are passed whereas under the original clause the law passed would automatically cease to have effect after one year.

The danger to political dissent in the special powers against subversion is greater than in the emergency powers provisions of article 150 for a variety of reasons. The laws against subversion extend to fewer people, they may seem less harmful to a larger proportion of the population. They may be employed less dramatically and publicly than in the procedure of a declaration of emergency and can be abused by the authority who usually claimed that they are doing something which is highly necessary to preserve the security of the nation. There is no guarantee found in the Constitution that the powers would not be abused. A statement was made by the Prime Minister, Tun Abdul Razak, in 1975 that "the people will just have to put their faith in the Government."⁴³

Regarding the encroachment on the individual freedoms most that is fearful in article 149 lies in the combination of breadth and vagueness of the descriptive language and the removal of the consideration of the fairness of its application by an independent judiciary.⁴⁴ Parliament need only follow the simple permissive formula of the article, and any repressive legislation, whatever the basis for it in fact, may be

⁴³ The New Straits Times, October 11, 1975.

⁴⁴ See Karam Singh v. Government of Malaysia, *op. cit.*

enacted, and this legislation will be quite beyond the reach of any court.

III. Internal Security Act 1960

We have seen in the last sub-chapter how the authority may legislate against subversion. This sub-chapter will deal with the Internal Security Act 1960 which is considered as the principal legislation against subversive activities. This chapter traced the origin of the Act and the introduction of preventive detention, which is permissible under the Act.

Under the powers conferred by article 149 of the Federal Constitution, the Internal Security Act 1960⁴⁵ came into existence after Parliament had had a long and thorough debate and the opposition had been given a fair hearing.⁴⁶ The Act became operative on 1st August, 1960 to West Malaysia and on 16th September 1963 to East Malaysia. The most important feature of this Act is the introduction of administrative detention without trial or preventive detention if it is necessary for the preservation of security of Malaysia or maintenance of essential services in Malaysia.

To justify the introduction of preventive detention,

⁴⁵ Act 18, 1960.

⁴⁶ per Deputy Prime Minister, Tun Abdul Razak. Straits Times June 23, 1960.

it is appropriate to quote the speech of the Deputy Prime Minister (Tun Abdul Razak) in moving the second Reading of the Constitution (Amendment) Bill 1960, at the Dewan Rakyat⁴⁷ In his words,

"Every country which lies under the direct threat of Communism and wishes to remain free has to face the established fact established in the writings of the Communists themselves - that one of the policies of Communism is to undermine democratic government by every subtle weapon of subversion that can be continued without an open breach of the law. Country after country has found that one weapon is essential in defence against such an attack, the detention of agents to prevent them proceeding with their plans. The situation in this country demands that the government assumes this weapon of defence and we would be failing utterly if we allowed ourselves to be deterred from doing so."

The policy of the Communists in using subtle weapons of subversion, also resulted in the expansion of article 149⁴⁸. The government came to a conclusion that a serious threat could

⁴⁷

National Archives, Speeches of Tun Abdul Razak, 1975.

⁴⁸

Malaysia, Federal Constitution.

develop to public safety without actual threat or organised violence and therefore the wording has been expanded to include attempts to stir up communal hostility and to upset the established order by unlawful means.

It is felt necessary to discuss the various aspects of preventive detention here. Preventive detention can be defined as detention without trial in circumstances where evidence possessed by the detaining authority is not sufficient to secure conviction but may still be sufficient to justify his detention as preventive measure against the commission of acts prejudicial to the national interest. There is no need for the authority to have legal proof in justifying the detention. The question whether there is reasonable cause to detain a person is a matter of opinion and policy, a decision which could only be taken by the executive.⁴⁹

There are various reasons put forward in justifying the concept of preventive detention. By preventive detention it is possible to try subversive elements according to procedures as distinct from criminal procedures because this would compel the authority to disclose the identity or information of the detaining officer. As such it will result in jeopardising the intelligence network of the country. Furthermore other aspects of the secret agent or special branch might

⁴⁹ Karam Singh v. Menteri Hal Ehwal Dalam Negeri on. cit.

be disclosed and this is against national interest.

Another reason given by the authority is that ordinary courts of law are not trained to evaluate the significance of informations on security. Normal criminal procedure makes it difficult for the authorities to secure a conviction for hardcore criminals. Potential witnesses are usually apprehensive of giving evidence in court for fear of reprisal from the accused. Preventive detention is an act by the executive to prevent a person from doing harm to the state.⁵⁰

The object of preventive detention is to prevent the person from doing something, that is, acting in a manner prejudicial to the security of Malaysia⁵¹ while the object of punitive detention is to punish a person for what he has done. While punitive detention comes after the illegal act is actually committed, preventive detention intercepts the person before he does the act and prevents him from doing it. The illegal act referred to here is not necessarily a criminal offence but, could include a political offence.

The necessity for having preventive detention provisions in the Federal Constitution was stressed in 1960 by the Deputy

⁵⁰
P. P. v. Musa (1970) 1 MLJ 101.

⁵¹
Internal Security Act 1960, Sect. 8.

Prime Minister who was also the Minister of Defence. In justifying the importance and the urgent need for these provisions he said,⁵²

"..... The object of having this provision of Preventive Detention is to prevent anti-social and subversive elements from imperilling the welfare and security of our country, particularly of a young nation like ours. We have had 12 years of the Emergency and although this Emergency is about to come to an end we know only too well how dangerous it is to allow such a situation to arise again. It is therefore the incumbent duty of the Government of the day to see that the Communists and their Agents are prevented from carrying out their object and their plan....."

Accordingly provisions were made permitting preventive detention. However, since the excessive power conferred on the executive could be abused, there are some safeguards provided in article 151 of the Federal Constitution. However, there is

52

Speech by the DPM on the Constitution (Amendment) Bill at Dewan Negara 10 May 1960. Extracted from speeches of Tun Haji Abdul Razak Hussein. Published by National Archives with the co-operation of Prime Minister Department 1975 p. 85.

no public appeal against such detention.

Article 151 (1)(a) provides for the detaining authority to state the nature of the detention. He shall as soon as may be, inform the detainee of the grounds for his detention and the allegations of fact on which the order of detention is based, and the detainee shall have an opportunity of making representation against the order as soon as may be. However, the allegations of fact may be refused if the authority invokes clause (3) of the Article which states that the article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest. The clause gives the discretion to any authority not to disclose facts.⁵³

Article 151 (1)(b) provides that if the person detained is a citizen, he may not be detained longer than 3 months, unless a three-man advisory board has considered any representations he has made and has made recommendations on them to the Head of State, that is, the Yang Di Pertuan Agong. The Advisory Board shall be constituted of persons mentioned in Clause (2) of Article 151. The safeguards which preventive detention is subjected to, in a way fall short of judicial procedure but since the chairman of the advisory board must be a judge of the

Federal Court or High Court or qualified to be one it can be said that there is some semblance of judicial review.

The origin of the Internal Security Act 1960 can be traced from the Speech of the Deputy Prime Minister in moving the Internal Security Bill on the second reading at Dewan Rakyat on 21st June, 1960.⁵⁴ The Act was to replace the Emergency Regulation Ordinance 1948 which ceased to function after Independence. Tun Razak said,

"..... because the Emergency is to be declared at an end, the government does not intend to relax its vigilance against the evil enemy who still remains as a threat on our border and who is now attempting by subversion to succeed where he had failed by force of arms. It is for this reason that this Bill is before the House. It has two main aims: firstly, to counter subversion throughout the country and secondly, to enable the necessary measures to be taken on the border area to counter terrorism."

Also in the same speech the Deputy Prime Minister assured the political opposition of the country that the Internal Security Act would not be used arbitrarily against them. Referring to the preventive detention power under the Act, he said,⁵⁵

"..... A person is detained for what it is considered he may reasonably be expected to try to do but not what he proved beyond reasonable doubt to have done. He is detained because he represents a risk to the security of the country and not because he is a member of a lawful political party. The government has no desire whatsoever to hinder healthy democratic opposition in any way. This is a democratic country and the government intends to maintain it as such. It is the enemies who will be detained"

Nevertheless, with the assurance from the government that the powers would not be used arbitrarily, it has set a considerable influence on the tone and temper of the Houses of Parliament and on the relationship between government and opposition.⁵⁶

⁵⁵ Ibid., at p. 122.

⁵⁶ R.S. Milne, op. cit. p. 123.

The limitation imposed on the opposition is that they must not resort to unconstitutional means or work in conjunction with Communist Front Organisation. On occasions, the government has given warnings in Parliament about the restrictions imposed on opposition activities by the Act.⁵⁷ The existence of the Internal Security Act and the recollection of the arrests made under it have put the opposition members in a dilemma. No matter how healthy his political apathy is, it is very difficult to interpret his activities, since only the executive have the subjective satisfaction of deciding whether his act would fall under the ambit of subversion.

According to a very reliable source,⁵⁸ when asked about the likelihood of the detaining authority abusing his arbitrary power in securing an arrest he said, there is "little room for any flaws." The authority receives information from informers which in turn will be evaluated by the Special Branch. These

⁵⁷ Straits Times, March 13, 1963.

⁵⁸ An interview with the Minister of Information, Datuk Amar Haji Taib Mahmud, sometime in April 1976. He is also a member of the National Security Council (Due to personal reasons he declined to impart certain information on arrest and detention).

informations given were usually gathered for many years.⁵⁹

The suspect will be put under close surveillance, when the authority is satisfied that he represents a security risk to the nation, only then will he be arrested. Even so the information given by informers are checked with the information kept by the authorities. If the information given tallies with that of the authority he proceeds with the arrest and detention.

In justifying the necessity of the laws which are similar to those under Emergency rule, the source said that, "although the Constitution states that the country is under a democratic rule, it is however, not an absolute democracy. The country is still under a state of emergency."⁶⁰ According to the source "the law of Malaysia is not law at peace."⁶¹ Our law is a compromise between civil law and martial law. Looking at the present

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The same was said by the new Prime Minister, Datuk Hussein Onn in his speech when he opened the UMNO General Assembly reported in Malay Mail Friday July 2, 1976. The government took action against certain influential people whose activities have threatened national security after investigations and research over a number of years.

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He was referring to the sudden outburst of acts of terrorism and violence in 1975.

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This statement can be justified when Dr. Mahathir Mohammed (Deputy Prime Minister) in his opening address at the UMNO Youth and Wanita General Assemblies, stressed and warned that the country is at war with the Communist terrorists, and he called for an all out effort to gain a quick victory. New Straits Times July 2, 1976.

circumstances the law should be made to serve the society not vice versa."

Based upon the prevailing circumstances of the threat of subversion to the national security it is a necessity to have tough, though not repressive laws, in order to preserve the rule of law as provided by the Constitutional Convention of Rukunegara. It is up to the people of the country to judge the necessity of having these laws; failure on the part of the government would result in the voter's sanction in the next general elections. Be that as it may, the government is faced with a dilemma of encroaching the fundamental rights of a citizen and the desire to preserve their power. By right the government may adopt whatever means it deems necessary to overcome the threat of subversion, even to the extent of taking draconian measures, but the citizens of the country will have the final say.

IV Other legislation in general

There are other principal as well as subsidiary legislation preventing or controlling subversive activities in Malaysia. Although some of the legislation were enacted not for the sole purpose of fighting subversion, there are certain provisions in the legislation which are indirectly aimed at curbing subversive activities. There are a few subsidiary legislation enacted with the primary purpose of fighting subversion. However, it is not intended in this study to discuss the laws exhaustively. Only

the relevant provisions of the legislation will be treated.

The Public Order (Preservation) Ordinance, 1958⁶²

empowers the Minister charged with the responsibility for internal security to proclaim a state of danger in any area of the Federation if he is of the opinion that public order in that area is seriously disturbed or threatened.⁶³ The proclamation shall apply only to that area and remains in force for one month or until revoked by the Minister⁶⁴ and is renewable from month to month.⁶⁵ In the proclaimed area the government has special powers to maintain and restore public order. Under the Ordinance the government has very wide powers. The police may close or regulate the use of roads, waterways, etc.⁶⁶ They may also disperse or prohibit meetings and processions⁶⁷ and order a curfew.⁶⁸

The police may stop and search any person or vehicle without warrant with a view to ascertain whether the person or vehicle is carrying any offensive weapon, subversive document, corrosive

⁶² (No. 46 of 1958).

⁶³ Section 3 (1).

⁶⁴ Section (2).

⁶⁵ Section (3).

⁶⁶ Section 4.

⁶⁷ Section 5.

⁶⁸ Section 7.

substance or explosive substance⁶⁹ and may also without warrant, arrest and detain any person suspected of the commission of an offence against the Ordinance.⁷⁰ The Ordinance creates a number of offences relating to Public Order. The effect of this legislation is the delegation of authority to the police and security forces for the maintenance of law and order in that particular area even if it jeopardise human lives and property. It is felt that there is no such need for this legislation because the powers conferred under it are also available under the Internal Security Act.

Subversion may be effected through incitement and instigation from subversive elements, undesirable elements or anti-national elements. Any seditious act, speech, words or publication is governed by the Sedition Act, 1948.⁷¹ The Act provides for the punishment of sedition, that is, a person if convicted can be imprisoned for a term not exceeding 5 years or \$5,000 fine. After the May 13th tragedy, the government amended the Sedition Act by Emergency Ordinance, 1970 (45), until then the government were ridiculed by criticism that it is seeking to protect itself and keep itself in power.

⁶⁹ Section 15 (1).

⁷⁰ Section 17 (1).

⁷¹ Act 15 (Revised 1969).

However, the Court has decided that there is a line of distinction drawn between the right to freedom of speech and sedition as contained in the Act.⁷² If the words uttered or written was "intended to be a criticism of government policy or administration with a view to obtain its change or reform it is not sedition, but if the Court comes to the conclusion that the speech used naturally, clearly and indubitably has the tendency of stirring up hatred, contempt or disaffection against the government, then it is sedition."⁷³ It may seem that the breadth of the definition of sedition is very wide indeed. The free-flow of political opposition has been seriously handicapped by this Act.⁷⁴ In relation to the freedom of press in the country, it is also subjected to the Act, under which the Court has power to suspend the circulation of newspaper containing seditious matter or prohibits the circulation of seditious publications.⁷⁵

In the preceding chapters⁷⁶ we have seen how the Communist infiltrated higher learning institutions in their search for new leaders from the intellectual groups. The government is always

⁷² Section 3 (1) defined 'seditious tendency.'

⁷³ per. Raja Azlan Shah J. in P.P. v. Ooi Kee Saik & others [1971/ 2 MLJ 108.

⁷⁴ Sae Fan Yew Tang vs P.P. [1973/ 2 MLJ 231.

⁷⁵ Sections 9 and 10.

⁷⁶ Especially the University of Malaya Chinese Language Society.

keeping tabs on the developments of the students in these institutions. The Universities and University Colleges Act, 1971⁷⁷ was enacted, inter alia, for the maintenance and administration of Universities and University Colleges. In 1974 there were mass demonstrations held by students of institutions of higher learning over the alleged incompetency to eradicate social injustices. There was ample evidence showing that subversive elements were using the students in furtherance of the Communist 'revolutionary' objective, claimed the government.⁷⁸ It was also claimed that the student unrest was provoked by the CPM which eventually degenerated into illegal street demonstrations and resulted in physical conflict with the police.

The government took new measures, for fear that the student population might be manipulated by subversive elements. Thus, the Universities and University Colleges Act 1971 was amended by the Universities and University Colleges (Amendment) Act 1975.⁷⁹ Under the Act, student activities are tremendously restricted. By virtue of the amendments, the government prohibits a student or a students' organisation, body or group of students associating

⁷⁷ Act 30.

⁷⁸ See Activities within the University of Malaya Chinese Language Society, Kementerian Hal Ehwal Dalam Negeri.

⁷⁹ Act A295.

with societies, political parties, trade unions or any other organisation except as provided under the constitution of the University or approved by the Vice-Chancellor.⁸⁰ The effect of this section is the prohibition of political activities among the students. But the government did not stop there; it went on to prohibit a student or students' organisation from expressing or doing anything which may be construed as expressing support, sympathy or opposition to any political party or trade union or any unlawful organisation.⁸¹ Any person who violates this, would be liable to a fine of \$1,000 or imprisonment for six month or both. The collection of money is also banned under the Act. Any student convicted for a criminal offence shall cease to be a student of the University.⁸² There can be little doubt that these prohibitions were imposed to control or prevent students from being subverted by undesirable elements.

Apart from these Acts as mentioned above, there are other subsidiary legislation which are aimed at providing for security cases. The most important of these is the Essential (Security Cases) Regulations, 1975.⁸³ These regulation have

⁸⁰ Section 15 (1) and (2).

⁸¹ Section 15 (3) and (4).

⁸² Section 15 D (2).

⁸³ P.U. (A) 320.

become the target of criticism from the Bar Council of Malaya and opposition members. The regulations were made after the sudden outburst of terrorism in urban areas. The Essential (Security Cases) Regulation was validly promulgated under the Emergency (Essential Powers) Ordinance, 1969. (No. I). The Regulations were amended by the Essential (Security Cases) (Amendment) Regulations 1975 and were challenged for its validity on the ground that they "were unconstitutional and invalid" but the Court decided that the Regulations were validly promulgated.⁸⁴

The most alarming provision of the Regulations is contained in Rule 2 (1) where all offences under the Internal Security Act 1960 and all offences under the Fire-arms (Increased Penalties) Act 1971 are defined as security offences. Pursuant to Rule 2 (2) the Public Prosecutor may personally give a certificate to try any other offence in accordance with the provisions of these regulations. The Regulations provided for the practice and procedure which would be followed for security cases. The Regulations have a retrospective effect although not against Article 7⁸⁵ of the Federal Constitution. A person can be tried in accordance with the regulations notwithstanding that

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See New Straits Times 13 March 1976 and July 2, 1976.

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Protection against retrospective criminal laws and repeated trials.

the offence was committed before the coming into force of these Regulations. The powers conferred on the Public Prosecutor are very wide and arbitrary. The likelihood of abuse can be summed up by the words of a member of the Bar Council.⁸⁶

"..... This is the deadliest weapon⁸⁷ to be given into the hands of the Deputy Public Prosecutor. After all the Deputy is the servant of the government and the Cabinet controls the government. The Attorney-General himself being a member of the Cabinet, what guarantee has the man in the street that this power will not be abused. An over eager prosecutor with such wide powers will only be too tempted to invoke these Regulations when he finds that there is insufficient evidence to prosecute under the ordinary law. Hence, with the power in the statute the criminal law has now become uncertain. An offence which is not a security offence today can become such an offence the next day"

⁸⁶ P. Kumaraswamy - A paper presented in the 3rd. Malaysian Law Conference in Kuala Lumpur, 13-15 October 1975.

⁸⁷ He was referring to Rule 2 (2).

Under the Regulations there is no requirement to adhere to the strict compliance of established features of the law of evidence. All the essential features of a fair trial have been abolished. The prosecution does not have to prove a prima facie case when the case against the accused is closed. This is provided for in rule 15 which says that when the case for the prosecution is closed, the court shall call on the accused to enter on his defence. The effect of this section is that a person tried under these regulations is guilty unless proven innocent. Once the prosecution has put its case the judge has no option but to call the defence eventhough there is no sufficient evidence to prove a prima facie case. It is left to the accused to prove that he is innocent. This is against the universal principle of law, in that a person is innocent unless proven guilty. Upon deciding the guilt or innocence of the accused, the judge shall decide, having regard to the justice of the case but without regard for the technicalities of the rules of evidence or procedure.⁸⁸ This makes the burden of the Public Prosecutor to convict the person much easier.

The prosecution may apply for the examination of witnesses under special circumstances. Regulation 21 (i) allows the tendering

of evidence against the accused in his absence and in the absence of his counsel. It does away with the principle of natural justice. It is possible for the witness, when testifying in the presence of the accused, to conceal his identity by whatever means.⁸⁹ even to the extent of covering his face with a hood. Hearsay and secondary evidence shall be admissible and be given due weight and consideration as provided under Regulation 23 (3). On the whole, the provision of Regulation 23 makes it impossible for the credibility of any of the prosecution witness to be impeached.

There are no safeguards given in the statute but a person convicted of a security offence has a right of appeal where the court convicting him had imposed excessive penalty. Finally the convicted person may appeal to the Yang Di Pertuan Agong who has the exclusive power of pardon under Section 32 (1). However, in practice the Yang Di Pertuan Agong acts on the advice of the Prime Minister.⁹⁰ Therefore, the Prime Minister has a say in deciding whether a person should be pardoned.

Following the promulgation of this law, criticism

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Regulation 21 (3).

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Article 40 of the Federal Constitution.

was thrown at the government, alleging that it is manifestly unfair and unjust and that there is every likelihood that the innocent will suffer unjustly, without a fair trial. It will be regarded as oppressive laws, which do not win the confidence and loyalty of the people. This criticism was mirrored by an opposition Member of Parliament,⁹¹ when he reminded the government that "repressive and arbitrary legislation amounts to an admission of defeat, and will play directly into the hands of The Communist." There is no need for this law since the existing law, especially the Internal Security Act 1960, is more than sufficient to deal with any situation. It would be a morale booster to the enemy, who is gaining more confidence due to the government panicking.

Apart from these laws, the government has strengthened its measures against the intensified terrorism by underground forces by making it compulsory for all able bodied man to serve as vigilantes, and the Peoples' Volunteer Corps (RELA) under the Rukun Tetangga scheme. To show that the Communist threat is being taken seriously⁹² the government promulgated the Essential

⁹¹ per ~~Dr~~ Tan Chee Khoon - Time. February 9, 1976 at P. 8.

⁹² Malaysian Business 8 May 1976.

Community Self-Reliance) Regulations 1975.⁹³ The primary objective is aimed at mobilising a public force against crime and guerilla terrorism. The Prime Minister Datuk Hussein Onn had reminded Parliament that no one can be an 'observer' of the nation's crisis and the threat of subversion,⁹⁴ hence the scheme was launched to secure total commitment by everyone.

The Essential (Community Self-Reliance) Regulations, 1975, was promulgated under the authority of the Emergency (Essential Powers) Ordinance (No. 1) of 1970. The validity of these regulations was challenged in court,⁹⁵ but the High Court held that promulgation is a matter of fact which can be proved by evidence and that on the evidence the Yang Di Pertuan Agong has promulgated the Emergency (Essential Powers) Ordinance (No. 1) 1970 and that therefore regulations made under its authority are valid.

The Rukun Tetangga scheme was first launched on September 11, 1975. Notwithstanding the fact that it is very much like a security organisation, besides providing security to residents it has become a social organisation.⁹⁶ According to regulation 6

⁹³ U.P. (A) 279 - Came into force in W. Malaysia on 12.9. 1975
U.P. (B) 370/75.

⁹⁴
Loc. cit.

⁹⁵
N. Madhavan Nair v. Government of Malaysia [1975] 2 MLJ 286.

⁹⁶
The Star, Monday May 31, 1976.

of the Essential (Community Self-Reliance) Regulations 1975 all residents living in a Rukun Tetangga sector and aged above 15 must register themselves. The purpose of this provision is to identify residents and non-residents or aliens found in that area and thus facilitate the vigilantes' task of preventing crime and terrorism in that area. Under the scheme all male adults are required to do round the clock patrols. However, the success of the scheme cannot be gauged at this juncture, since it is still in its infancy.

The latest government measure of controlling subversive activities was taken by amending the Internal Security Regulations, 1960. The amendment provides for the registration of workers in certain industries. The amendment was approved on 29 June 1976, by the National Security Council, whereby all workers in the construction, building and timber logging industries would have to be registered. The registration would include the names addresses, national registration card numbers and other personal details. According to a spokesman of the National Security Council the workers were essential as these industries were vulnerable to the infiltration of subversive and anti-national elements.⁹⁷ This was evident with the frequent hoisting of Communist flags in buildings under

⁹⁷ Wednesday June 30, 1976 New Straits Times.

construction and the placing of bombs and booby traps by these elements. With the registration, the government would be able to keep tab on the workers and prevent them from being exploited by anti national elements.

Thus it can be seen from above that there are numerous existing laws to cope with the threat of subversion in Malaysia. However, it is to be noted, that some of the laws are not in fact necessary since it has already been provided for and covered by the Internal Security Act, 1960.

INTERNAL SECURITY ACT, 1960¹

We have seen in Chapter V the reasons for having the Internal Security Act, 1960, herein-after referred to as the Act. This chapter will be devoted to the study of the important provisions of the Act. The most significant feature of this Act is the power of preventive detention. The legislature saw the need to have preventive detention in time of peace due to the fact that the risks of subversion and turmoil still exist after the twelve year Emergency ended in 1960.

The powers of preventive detention found in the Act was actually the preventive detention under regulation 17 of the Emergency Regulation, 1948, which came to be embodied in the Act, with the repeal of the Regulations. The Act was passed pursuant to Article 149 of the Federal Constitution to provide for the internal security of the Federation, preventive detention, the prevention of subversion, the prevention of organised violence against persons and property and for matters incidental thereto.

This Act can be considered as the most potent weapon in controlling and preventing subversion. It empowers the executive with very wide powers of detention. Since the Minister is exercising quasi-judicial functions under the Act the principles of natural justice apply. Thus, by article 151 of the Federal Constitution

¹ Act 82 (Revised - 1972).

detailed and precise restrictions, are laid down on preventive detention. Any person detained under this Act shall, as soon as may be, informed of the ground for his detention and, the allegations of fact on which the detention order is based, and shall be given the opportunity of making representations against the order as soon as may be, by the detaining authority.² However, the Minister has the discretionary power whether to state the allegation of fact. The allegations of fact need not be disclosed by the authority if the disclosure would in his opinion be against the national interest.³ The detaining authority must, however, furnish the detainee with a statement in writing stating the nature and grounds of the detention within a reasonable time.

Article 151 (1)(b)⁴ imposes further restriction on preventive detention by providing that no citizen shall be detained under the Act for a period exceeding three months unless an advisory board has considered any representations made by him and made recommendation there on to the Yang Di Pertuan Agong. This safeguard is not available to a non-citizen. The effect of this clause is that the

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Article 151 (1)(a) of Federal Constitution.

³

Article 151 (3) of Federal Constitution.

⁴

Federal Constitution.

advisory board need merely consider the representations made by the detainee for an appeal to reconsider the decision.

These safeguards found in the Federal Constitution are embodied in the Act itself.⁵ By virtue of section 13 (1) of the Act the Advisory Board has the power to review every order or direction made or given to the detainee, so long as it remains in force, not less often than once in every six months.

Chapter II of Part II of the Act confers the Powers of preventive detention on the Minister. Section 8 (1) sets out the preventive detention power. It provides as follows:

"If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services thereⁱⁿ or to the economic life thereof, he may make an order directing that that person be detained for any period not exceeding two years."

The operation of this section was dealt in the most celebrated case of Karam Singh v. Menteri Hal Ehwal Dalam Negeri.⁶ The Federal

⁵ See Section 11.

⁶ 1969 2 MLJ 129.

Court decided that the authority may detain a person under the section on subjective satisfaction. The court has no power to decide whether the grounds for detention are sufficient or not.⁷ The court is unable to enquire whether grounds existed which would have created the subjective satisfaction of the detaining authority on which alone the order could have been made. In the mind of a reasonable person, the courts are only entitled to look at the face of the order.⁸

The power of the Minister to issue an order of detention is very wide under section 8 of the Act. It cannot be challenged that the allegations of fact supplied by the authority to the detainee in pursuance to article 151 (1)(a) and section 11 of the Act are vague, insufficient or irrelevant. As Suffian⁹ FJ as he then was, observed¹⁰ at page 263,

" Whether or not the facts on which the order of detention is to be based are sufficient or relevant, is a matter to be decided solely by the executive. In making their decision, they

⁷ per Kania C.J. in Bhim Sen v. State of Punjab /1952/ SCR 19.

⁸ Ram Manohar v. State of Bihar A.I.R. 1966 S.C. 740.

⁹ Now he is the Lord President of Malaysia.

¹⁰ Karam Singh v. Menteri Hal Ehwal, Malaysia. 1969 2 MLJ 129.

have complete discretion and it is not for a court of law to question the sufficiency or relevance of those allegations of fact."

Finally, the detention may be held illegal if the detainee could prove mala fides,¹¹ lack of good faith or non-application of the mind of the detaining authority in issuing the order of detention. The onus of proving the legality of the detention is on the Minister in the first instance. If the detainee alleges mala fides, then the onus shifts to him and it is for him to prove mala fides.

The Act further provides for the power to impose restriction to persons in relation to his movements. The Minister may make a restriction order imposing upon a person restrictions and conditions, if he is satisfied that for any of the purposes mentioned in Section 8 (1) of the Act that it is necessary that control and supervision should be exercised over that person in respect of his activities, freedom of movement or places of residence or employment.¹² If it is unnecessary to detain him, the Minister may prohibit him from being out of doors for certain hours except with written permission; require him to notify his movements; prohibit him from addressing

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Mala fides means not personal animosities towards the detainee, but a casual and cavalier attitude, and inadequate consideration on the part of the authorities as to the necessity for the detainee's detention.

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Section 8 (5) of the Act.

public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organisation or association, or from taking part in any political activities; and prohibiting him from travelling beyond the limits of Malaysia or any part thereof. These restrictions and conditions amount to serious deprivation of the freedom of movements of a person under article 9 of the Constitution. Nevertheless, the constitution allows the encroachment.¹³

Special powers relating to subversive publications are contained in chapter III. By section 22 the Minister has the power to prohibit absolutely or conditionally any document or publication if they purport to do any of these:

- a) contains any incitement to violence;
- b) counsels disobedience to the law or to any lawful order;
- c) is calculated or likely to lead to a breach of the peace, or to promote feelings of hostility between different races or classes of the population; or
- d) is prejudicial to the national interest, public order, or security of Malaysia.

The Minister charged with responsibility for printing presses and

publications has under the section, the discretionary power and subjective satisfaction of making the prohibition order.

However, the person affected by the order may, within one month of the date of publication of the order in the gazette, make an objection against the order to the Yang Di Pertuan Agong, whose decision shall be final and shall not be called into question in any court.¹⁴ A person who contravenes section 22 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three years or to both. There is a proviso that a person shall not be convicted if he proves to the satisfaction of the court that the document or publication was printed, published, sold, issued, circulated or reproduced, without his consent and knowledge, and without want of due care or caution on his part, and that he did not know and had no reason to suspect the nature of the document or publication.¹⁵

Further offences are created by sections 25 to 29 which deal with possession and importation of documents;¹⁶ posting and

¹⁴
Section 23.

¹⁵
Section 24.

¹⁶
Sections 25 and 26.

distribution of placards, circulars or other documents containing an incitement to violence, counselling disobedience to the law or to a lawful order or likely to lead to any breach of the peace;¹⁷ spreading false reports or making false statements likely to cause public alarm or despondency by word of mouth or writing in a newspaper, periodical, book, circular or other printed publication or by any other means;¹⁸ and without lawful excuse carrying or having in one's possession or under one's control any subversive document.¹⁹ Section 30 gives powers of search of premises, stopping and searching vehicles and seizure of offending documents or materials to a police officer not below the rank of Inspector.

Chapter IV of the Act provides for the control of entertainments and exhibitions. The purpose of having these provisions is to have close scrutiny in the field of entertainments and exhibitions which is likely to be in any way detrimental to the national interest. By virtue of section 35 (1) the Minister has the power to prohibit certain entertainments or exhibitions. Section 32 gives the Minister power to require information and section 33 gives power to impose conditions relating to the

¹⁷
Section 27.

¹⁸
Section 28.

¹⁹
The word 'subversive document' is defined in S. 29 (3).

holding of the entertainment or exhibition.

Under chapter V various powers are given to the Minister for prevention of subversion. In pursuant to section 41A (2) the Minister may prohibit the appointment or recruit of any person by person, body or authority, whose appointment is in the opinion of the Minister prejudicial to the interests of Malaysia. Further, by section 41B the Minister has the power to close schools or educational institution being used for a purpose detrimental to the interests of Malaysia or of the public; for the purpose of instruction detrimental to the interests of the public or of the pupils; or as a meeting place of an unlawful society. The effect of this section is to prevent schools or educational institution from being infiltrated with subversive teachings or subversive propaganda.

Part II of the Act deals with special situations in special areas such as the existence of Communist terrorists astride the Malaysia - Thailand border. Chapter I provides for the proclamation of security areas.²⁰ Section 48 empowers the Minister, if he considers it necessary or expedient in the public security to do so, to declare any area within a security area to be a danger area. No person other than the security forces in the performance of their duty are allowed to enter or remain in a danger area. A member of the security forces within a danger area is allowed to take such measures, including means dangerous or fatal to human life,

²⁰ Section 47.

as he considers necessary to ensure that no person prohibited from entering or remaining in a danger area shall enter or remain in such area.

By section 49, the Minister may declare an area within a security area to be controlled area. No person is allowed to reside in a controlled area elsewhere than in a residential part of it, and restrictions can be placed by the order on entering or remaining in a residential part of the controlled area. Section 50 contains special provisions for the declaration of protected places in security areas. Additional powers to exclude people from security areas, to impose a curfew, to take possession of any land or of any buildings, to order the destruction of unoccupied buildings, to control roads or waterways and to seize rice and other foods, are contained in section 51 to 56.²¹

Chapter III creates offences relating to security areas. Most important provision in section 57 which create an offence punishable by death where any person without lawful excuse, in any security area carries or has in his possession or under his control any fire-arm, ammunition or explosives without lawful authority. The same penalty applies to person consorting with a person carrying or having in his possession arms or explosives

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These powers are quite similar to those in Part III of the Public Order (Preservation) Ordinance 1958.

contrary to section 57.²²

Chapter IV lays down the powers of police. By section 64, any police officer may, without warrant, arrest any person suspected of the commission of an offence created by the part of the Act relating to security areas. Powers of search and seizure, without warrant, of any article or material being evidence of the commission of an offence against the Part of the Act are contained in section 65. Finally by section 66 a magistrate or coroner may dispense with the holding of a death inquiry or inquest on the dead body of any police officer or any member of the security forces in a security area or on the dead body of any person where the magistrate or coroner is satisfied that such person has been killed in a security area as a result of operations by the police or by the security forces for the purpose of suppressing organised violence.

The rest of the provisions of the Act deal with other minor aspects of security measures. In conclusion, we can say that the Internal Security Act 1960 gives very wide powers to the government to suppress subversion with great emphasis on the suppression of organised violence. It is felt that the Act is sufficient to cater for most kinds of subversion, thus, deeming

²²Section 58.

contrary to section 57.²²

Chapter IV lays down the powers of police. By section 64, any police officer may, without warrant, arrest any person suspected of the commission of an offence created by the part of the Act relating to security areas. Powers of search and seizure, without warrant, of any article or material being evidence of the commission of an offence against the Part of the Act are contained in section 65. Finally by section 66 a magistrate or coroner may dispense with the holding of a death inquiry or inquest on the dead body of any police officer or any member of the security forces in a security area or on the dead body of any person where the magistrate or coroner is satisfied that such person has been killed in a security area as a result of operations by the police or by the security forces for the purpose of suppressing organised violence.

The rest of the provisions of the Act deal with other minor aspects of security measures. In conclusion, we can say that the Internal Security Act 1960 gives very wide powers to the government to suppress subversion with great emphasis on the suppression of organised violence. It is felt that the Act is sufficient to cater for most kinds of subversion, thus, deeming

²²Section 58.

other similar laws unnecessary.

The statistics below show the number of Communist terrorist supporters and food suppliers arrested under the Internal Security Act from 1971 to mid - 1976. After investigations they are placed either under a detention order or restricted order.

TABLE D*

Year	No
1971	211
1972	177
1973	98
1974	118
1975	86
mid - 1976	92

Tabulated below are the number of Communist terrorists captured from the period 1970 to mid - 1976.

TABLE E*

Year	No
1970	97
1971	38
1972	39
1973	68
1974	26
1975	5
mid - 1976	5
Total	278

*Both statistics obtained from the Ministry of Home Affairs on September 1, 1976

CONCLUSION

Democracy would be shattered if the Communists gain the upperhand. Democracy means a lot to us, and we must defend and preserve it from being destroyed, since it gives us the rights and opportunities to lead our lives as real human beings. Democracy confers on us the right and freedom of organisation, the right and freedom to decide on who should represent us in the government and the right and freedom to profess any religion and the right and freedom of speech and expression.

Democracy is also firmly based on the concept of the Rule of Law so jealously cherished and guarded by every civilised society and on the impartial implementation of law, free from any political influence and political power. And if justice is denied, the citizens have the right to voice their protests, in fact choosing a new government through the process of democracy to prevent miscarriage of justice. Even democracy itself would be dead when these individual liberties and freedoms of the people are impinged upon arbitrarily by the authorities. On the contrary, if these rights and freedoms are misused or used without restrictions, democracy would also be dead.

Hence, to uphold the system and the democratic way of life and justice based on law, is a heavy and delicate task because there are numerous human weaknesses which give way to the temptations

for lust, position, wealth and power. Human beings are often easily swayed by emotions and the surrounding circumstances and are also prone to irrational thinking, whereas democracy and justice not only need sanity and rationalism but also calmness, sincerity, discretion and intelligence. These qualities are most important to those who are vested with the political powers entrusted by the people for the just implementation of the law - stemming from the lowest authority, that is from the police, right up to the Lord President of the Federal Court. The duty entrusted on these people to uphold the rule of law and justice is an invidious task, frequently resulting in abuse of power or arbitrary use of power.

The legislation considered in this paper were intended to strike at enemies of freedom. In many instances, however, they hit others instead - lecturers, students, political minorities, and even religious groups. Surely they create a general uneasiness about dissent, about advocacy, and about ideas unrelated to acts or threatened acts.

There are ways of fighting subversive ideas. One is the policy of repression. Though the Constitution gives the government the inherent right to use all means necessary to put down resistance to its authority, and restore peace, order, and obedience to law, it must bear with the fact that oppressive laws

do not win the confidence and loyalty of the people. This policy is contrary to the letter and the spirit of the Constitution of the country. It cannot be justly enforced, because it is impossible to tell precisely what people are thinking - they have to be judged by their acts. It has been generally thought that the widest possible attitude would be given to freedom of speech and healthy opposition, on the ground that the expression of differing points of view, some of which are bound to be unpopular, is the way to progress in the country.

What the country needs now is not an ever growing body of laws to deal with supposedly subversive persons or beliefs. For the State's legitimate protection they need merely to enforce the already large body of laws that concentrate on actions instead of opinions and associations. There are numerous laws already in the statutes which provide for the punishment of subversive acts.

Possibly the present period demands not more and more legislation, but a slight enlargement of calm and common sense. An element of panic would play into the hands of the enemies. So the task of the legislature is not merely to protect the people by passing laws that prevent the minority from overthrowing the government. It is to eliminate those social evils and those political injustices which are the sources of discontent and disaffection.

Finally we ought to be on guard against the sinister forces that do not rest in their attempts to undermine the democratic system of our country by secret and subversive means. The democratic system that we hold dear is in grave danger of being subverted. Once lost, freedom is hard to recapture.

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