

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 Expatriation Act 1910, the British Resident

¹ 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 Department of 1946. 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 provides for the Registration and Control of Trade Unions. The Enactment makes 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.

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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.

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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 Gheart. 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 Ghent, 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, detentions, 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 loc. cit.; 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.