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VIEW ON MALAYSIA

Malaysia

Capital: Kuala Lumpur

Chief of state: Paramount Ruler Tuanku Syed Sirajuddin

Prime Minister: Abdullah Ahmad Badawi

Border countries: Singapore, Thailand, Brunei, Indonesia, Philippines, Vietnam

Executive summary

In late July 2005, Australia concluded a second round of negotiations on a possible bilateral Free Trade Agreement with Malaysia with the agreement marked for completion by mid-2006, and indicated its intention to accede to ASEAN's non-aggression treaty by the end of the year. As our trade relationship with Malaysia and the region expands, the necessity to develop a deeper understanding of this important regional neighbour grows. Australia has had a long relationship with Malaysia, with a particularly strong emphasis on trade and security between the two countries. With signs that the new Malaysian leadership under Prime Minister Abdullah Ahmad Badawi will tread a more conciliatory path towards Australia, a historic opportunity is presented to Australia to build on this relationship. A robust relationship must also encompass shared values and a shared commitment to fundamental human rights that is the cornerstone of good governance. There will be hurdles to overcome, the first of which will be Australia's own capacity and confidence to embrace a more humanitarian approach overseas and to expand domestic rights and freedoms even in the current age of international migration and terrorism. However, if Australia is to become an influential regional neighbour, the need to progress this relationship with Malaysia beyond trade and security is essential.



Introduction

Malaysia has emerged in the last few decades as one of a number of rapidly developing modern economies in the Asian region. It exercises an influential role in regional political, economic and security organisations and initiatives. On the surface Malaysia appears to be a healthy, modern democratic state; however, there are systemic political and human rights issues that stem from problems within the federal and state political and judicial systems. These issues pose serious questions about Malaysia's human rights record and have attracted severe international criticism. The attention of respected monitors of human rights abuses such as Amnesty International and Human Rights Watch continue to highlight ongoing concerns.

One of the most significant milestones in recent modern Malaysian history was the long-anticipated resignation of Prime Minister Mahathir Mohammad in October 2003. Mahathir dominated Malaysian politics for 22 years and was widely credited with steering Malaysia towards unprecedented levels of economic growth and political influence. The ruling coalition party, with Mahathir at the helm, oversaw the transition of Malaysia from a dependant British colony and third world economy to a rapidly modernising regional power. Malaysia's economy suffered a serious downturn following the Asian financial crisis of 1997 and the SARS outbreak in 2002-2003 but is now recovering strongly, once again recording healthy economic growth.

Contentious methods such as the repression of political opposition, censorship of the media and mistreatment of prisoners and detainees have often been relied on to suppress challenges to the ruling coalition's monopoly on power. Mahathir reacted to persistent criticism of the Government's human rights record by suggesting that the emphasis on the rights of individuals was a Western concept whereas Malaysia, like

other countries in Asia, placed more emphasis on the importance of community rights over individual rights, which only had value within the context of the community.¹

Mahathir was a provocative critic of Western influence and concepts which he judged to be out of step with 'Asian' sensibilities. Mahathir challenged Australia's attempts to identify as part of the Asian region on many occasions. He persistently and caustically claimed that Australia would never overcome its overtly 'Euro/Anglo' orientation regardless of how multicultural it claimed to be.² These comments may well have found fertile ground and influenced the view of some political players in the region who may have been suspicious of Australia's sudden interest in Asia in the wake of the decline of Australia's traditional markets in the late 1970s.

Malaysia's relationship with Australia was regularly rocked by strident verbal exchanges between Mahathir and the then Australian Prime Minister, Paul Keating during the early 1990s. Mahathir was seen to be at the forefront in blocking attempts by Australia to play a greater role in the region. During one outburst he described Australia as a racist nation.³

More recently Mahathir has been highly critical of Prime Minister John Howard's comments regarding Australia's preparedness to conduct 'pre-emptive' military strikes against perceived terrorist threats in the region, accusing the Australian Government of assuming a role

¹ See the human rights section at the Malaysian Government Ministry of Foreign Affairs (MFA): www.kln.gov.my/english/Fr-foreignaffairs.htm

² "Mahathir: Australia can't be part of East Asian group", *Sydney Morning Herald*, www.smh.com.au/news/World/Mahathir-Australia-cant-be-part-of-East-Asian-group/2004/12/06/1102182222051.html.

³ Tom Allard, "Badawi belittles Howard's efforts in region", *Sydney Morning Herald*, 2 April 2005.

as ‘deputy sheriff to the US’.⁴ Mahathir enjoyed wide support within Malaysia and the region, where his views and attitudes appeared to resonate with post-colonial sentiments within countries in Asia emerging from third world disadvantage to claim an equal footing in global affairs.

In 2003, Abdullah Ahmad Badawi replaced Mahathir as Prime Minister and subsequently won a landslide electoral victory in March 2004.⁵ There are signs the new Prime Minister will tread a more conciliatory path. A seasoned coalition politician, Abdullah stated his commitment to continuing the agenda set by Mahathir; however he did promise sweeping reforms targeting graft, cronyism, police brutality and unjust laws. So far, little has changed to bring about genuine democratic reforms that respect and balance individual and group rights for the benefit of all who reside in Malaysia.⁶

Historical overview

The history of the settlement of Malaysia has had a significant impact on its present day cultural, political, social and economic makeup. Evidence of the presence of the Indigenous tribes of Orang Asli dates back over 11,000 years. The people now regarded as Malays migrated from Southern China to the Malay Archipelago via the

Pacific region, primarily from Sumatra, occupying the coastal regions and pushing Orang Asli tribes into remote areas of the hinterlands. From 100BC onwards migrants and traders from the Indian continent brought Hinduism and Indian forms of culture, organisation and government to the region.

By the 1400s the port of Malacca (Melaka) had become an important trading post. The travellers and traders who came to Malacca introduced Islam, which spread rapidly. Islam was adopted by Malay rulers and became firmly established as the dominant religion. In 1511 the Portuguese conquered Malacca, beginning a history of colonisation of the region by a succession of colonial powers that progressively superseded each other. By 1785 the British staked a claim by building a fort at Penang. British interests eventually monopolised the highly lucrative production and trade in tin and rubber. During the nineteenth century the British imported Chinese labour for the tin mines and Indian labour for the rubber plantations. Malays were encouraged to become farmers to produce food for the growing workforce.⁷

By 1914, Britain had either direct or indirect colonial control over all the lands known as British Malaya. As was characteristic of British colonial rule at the time, an intellectual elite emerged made up of locals descended from intermarriages between educated South Asians and Malays who became administrators and bureaucrats. They proved to be influential in the development of alternatives to British rule.⁸

⁴ BBC Asia Pacific, “Asian uproar over military strike threat”, December 2002, news.bbc.co.uk/2/hi/asia-pacific/2537337.stm.

⁵ The UNMO won back most of the support they lost to the Islamic parties in the previous elections. Professor Clive Kessler, an authority on Malaysia, suggested that this was the result of several factors. In the previous elections, middle class voters supported opposition parties as a protest vote against Mahathir. The return of support to the UNMO was because Mahathir was gone, Abdullah had more substantial Islamic credentials compared to Mahathir and there was disaffection for Islamic parties in the wake of terror attacks worldwide: ABC Radio, The Religion Report, 24 March 2005, www.abc.net.au/rn/talks/8.30/re/rpt/stories/s1072348.htm

⁶ Anil Netto, “Abdullah: Real Change or Rhetoric in Malaysia”, *Asia Times Online*, 23 March 2004, atimes.com/atimes/Southeast_Asia/FC23Ae03.html.

⁷ Kiat Net, “History of Malaysia”, www.kiat.net/malaysia/history.html.

⁸ Mahathir is a good example of this elite being of Indian and Malay descent: Damien Kingsbury, *Southeast Asia: a political profile*, Oxford University Press, Melbourne, 2001.

British dominance remained unchallenged until World War II when in 1941 the Japanese drove them out. As the British prepared to flee they pledged their support for a predominantly ethnic Chinese militia determined to resist the Japanese occupation in exchange for promises to look favourably on independence aspirations when the Japanese were defeated. The British returned after the defeat of the Japanese in 1945 and were confronted by a determined independence movement as well as a communist uprising comprised of many of the former members of the anti-Japanese militia. This period became known as the 'Emergency'. Malays, with support from moderate members of the Indian and Chinese communities, aided the British and Commonwealth forces (including Australian soldiers) in suppressing the uprising, which was not entirely extinguished until 1960. In the process more than 500,000 Chinese Malaysians were relocated in an attempt to dissolve any possible support base for the communist movement. As the 1950s progressed the British handed over much of the administration of the country and management of the emergency to the locals. What became known as Malaya was granted complete independence from British colonial rule in 1957.

Indonesia and the Philippines both objected to the legitimacy of the new state and laid claim to territory in east Malaysia (Sabah and Sarawak). The Philippines restricted their action to diplomatic representations while Indonesia undertook some military action. Known as the 'Confrontation' (*Konfrontasi*), Indonesia's actions were



meet by firm resistance by the fledgling state assisted by British and Commonwealth forces.⁹

Malaysia was established as a federated constitutional monarchy with the King as the ceremonial Head of State. There are thirteen states and three federal territories. Malaysia has political organisations and systems not dissimilar to Australia with state and federal governing bodies. It is split between two landmasses. It occupies a peninsular that juts into the South China Sea and

borders Thailand in the north. It also occupies the northern tip of the Indonesian island of Borneo where it shares a border with Indonesia and Brunei.

Singapore was initially included as part of the new federation. This soon became a problem for both territories. Singapore had an overwhelming Chinese majority and was a potential obstacle to Malaysian attempts to create a balance between Malay political influence and Chinese economic clout. Policies of positive discrimination for Malays became unworkable and restrictions, riots and curfews led to a breakdown in the relationship. In 1965 Singapore was expelled and became an independent state.

Malays constitute the largest ethnic group at 65% followed by 26% Chinese, 8% Indians and 10% others. While Islam remains the dominant religion, Buddhism, Hinduism, Confucianism and Christianity are also widely practised. Malay, Chinese

⁹ Indonesian President Sukarno ordered units of troops disguised as local volunteers to land on the Malaysian Peninsular and also funded the communist militias in Sarawak *ibid*.

and English are the main languages spoken.¹⁰

The post-independence landscape

Malaysia's emergence as a strong economy from the 1970s onwards has rapidly transformed the lives of Malaysians. The modern, sophisticated cities contrast markedly with less developed, traditional rural areas. This migration from community based rural life to modern, urban sophistication has taken place in a relatively short space of time although parts of Malaysia remain relatively undeveloped by the standards of developed nations. Travellers are often impressed by the contrast between the urban cities and the relatively undeveloped nature of parts of the countryside where life remains much as it has been for hundreds of years.

The contribution of agriculture to the economy has fallen to less than 16.5% of the GDP. In some respects Malaysia has yet to transcend some of the consequences of this trajectory into a largely industrialised economy. This may, in part, account for the various contradictions that exist within Malaysian society in relation to civil, political and human rights. A wealthy, educated, modern, increasingly reform-minded urban class that tend to support a strong secular state exists uneasily alongside and the more socially and religiously conservative rural and regional sectors who are less enamoured with the benefits of modernity and where Islamic fundamentalist parties tend to flourish. Those in power have, more often than not, reacted to the enormous changes and crises by relying on autocratic and repressive measures that have effectively stifled democratic development. Nevertheless, Malaysia has a highly successful economy and levels of education, health and living

standards have undergone dramatic improvements since independence.¹¹

With a ethnically diverse population estimated at 23.5 million in 2004, managing the ethnic and religious mix remains the single most important political issue for Malaysia. At the outset the new state had a liberal orientation. The different ethnic groups continued to be differentiated by their own particular areas of influence and occupation as they had been under British rule. The Malays controlled government and agriculture, while the Chinese dominated commerce and industry. They each resented the division of economic wealth and political power this represented and tensions erupted in bloody riots in 1969. A state of emergency was declared that effectively arrested the development of democratic processes until the mid 1970s. A new political alliance between parties representing the major ethnic groups was formed in an attempt to ease racial tensions and efforts were made to provide more economic equity. These included positive discrimination measures to improve conditions and outcomes for Malays – the so-called *Bumiputra* laws.¹² Elections were resumed and Malaysia settled into relative social and economic stability.

Political and human rights challenges

Since independence Malaysia's political landscape has been characterised by a centralisation of power in the political coalition known as the *Barisan Nasional* (BN).¹³ Over the long years of unbroken

¹⁰ Australian Government, Department of Foreign Affairs and Trade, "Malaysia Country Brief", 2005, www.dfat.gov.au.

¹¹ Christopher Lockwood, "The changing of the guard: a survey of Malaysia", *Economist.com*, 3 April 2003, www.economist.com/surveys/displaystory.cfm?story_id=1677228.

¹² Jomo K. Sundaram, "Malaysia's New Economic Policy & 'National Unity'", United Nations Research Institute for Social Development (UNRISD) Conference, Durban, South Africa, 3-5 September 2001, www.unrisd.org.

¹³ The *Barisan Nasional* (National Front or BN) was founded in 1946. The United Malay National Organization, the Malaysian Chinese Association

rule the BN has built the institutions of state into instruments of its own interests. As a consequence Malaysia has evolved into a 'strong' state that has exercised tight control over ethnic relations, social harmony, political opposition, the judiciary and the media.

The judiciary

Judicial independence is one of the areas that have been seriously compromised by BN's unbroken rule. Judicial independence has been limited by a series of provisions that have strengthened executive influence over the judiciary. In a constitutional amendment in 1998, judicial powers were conferred by the Executive rather than being vested directly in the courts. The Attorney General has control of all criminal prosecutions. Senior judges are appointed on the recommendation of the Prime Minister, leading to accusations that judges have been loathed to make decisions critical of government policy lest they lose their positions.

Beginning in 1999, international attention focused on the arrest, trials and imprisonment for alleged corruption and sexual misconduct of Anwar Ibrahim. Anwar was a former heir apparent and a deputy Prime Minister in the Mahathir Government who became critical of Mahathir and his policies. The treatment of Anwar and his supporters was widely regarded as politically motivated and tainted by a severely compromised judiciary.

In 2004, Malaysia's highest court released Anwar, overturning the conviction of sexual misconduct.¹⁴ The decision to re-

examine the conviction was taken, despite objections by the Attorney General, by the same three-judge Federal Court panel responsible for Anwar's original conviction. Given this unusual display of judicial independence by the court, it is likely this move was sanctioned by Abdullah Badawi to deal with a highly divisive and unpopular problem he had inherited from Mahathir.¹⁵ It is too early to ascertain whether this is an indication of a possible strengthening of judicial independence from political influence under Abdullah or simply a clever move by a shrewd and seasoned political player. Abdullah reaped the benefits in the subsequent election.

Freedom of expression

Freedom of expression is fragile in Malaysia. Freedom of speech is guaranteed in the Constitution but the Government has imposed a complex web of laws and regulations to monitor and control information. Publications and media outlets must reapply for a new licence every year, providing a subtle method of suppression. In 1996, human rights monitor Irene Fernandez was arrested and sentenced to 12 months jail for publishing material that drew attention to the ill treatment of foreign workers and detainees in Malaysia's detention camps. Her trial dragged on for several years and in 2000 her sentence was suspended, subject to appeal. Publishers and opposition politicians and activists complain about intimidation and have been accused of treason and sedition when they have raised issues critical of the Government. Following the elections in 1999 the Parti Islam Semalaysia (PAS) opposition party newspaper, *Harakah*, was restricted to less frequent publication and its editor and publisher arrested on charges of sedition. During the course of that same

and the Malaysian Indian Congress joined forces to maintain an unbroken monopoly on political power that was only seriously challenged by opposition parties in the 1999 elections: Damien Kingsbury, op. cit.

¹⁴US Department of State, "Country Reports on Human Rights Practices, Country Profile: Malaysia 2003", Bureau of Democracy, Human Rights, and

Labour, 2004, www.state.gov/g/drl/rls/hrrpt/2003/27778.htm

¹⁵Harvey Stockwin, "Anwar release burnishes Badawi's image", *The Japan Times*, 21 September 2004, search.japantimes.co.jp/search4.htm

year three magazines licenses were cancelled. Much of the media is intimidated into self-censorship. The Government justifies restrictions on the grounds that they are protecting national security and public order.¹⁶

The mantra of national security

The Government often invoke the idea of protecting Malaysia's 'national security' to suppress political opposition and human and civil rights. The Government has relied heavily on the provisions outlined in the *Internal Security Act* (ISA), originally designed by the British to deal with the challenges of the 'Emergency'. The ISA has been resurrected and refined by the Government on several occasions to justify the suppression and detention of political activists, students, journalists, academics and trade unionists critical of the Government as well as the detention without trial or legal aid of undocumented foreigners (including asylum seekers and refugees). It has recently been further refined to cater for the heightened sense of threat that followed the 'September 11' terrorist attacks in the US in 2001. Members of PAS, the main Islamic opposition political party, have been harassed, arrested and detained under the provisions of the ISA.¹⁷ The questionable nature of ISA allows for the declaration of a state of emergency whenever the Government decides it is called for. In reality, the various emergencies declared during a series of crises have never officially been cancelled and remain in force, allowing the Government to use the provisions of the ISA virtually at will.¹⁸

¹⁶ Committee for the Protection of Journalism (CPJ), "Attacks on the Press: Documented Cases from Asia 2003: Malaysia", 2003, <http://www.cpj.org/attacks03/asia03/malay.html>.

¹⁷ Human Rights Watch, "Malaysia's Internal Security Act and Suppression of Political Dissent", 2002, hrw.org/backgrounders/asia/malaysia-bck-0513.htm

¹⁸ Amanda Whiting, *Situating Suhakam: Human Rights Debates and Malaysia's National Human Rights Commission*, Stanford Journal of

Refugees and migrant workers

Throughout its modern history, Malaysia has absorbed large numbers of refugees and migrant workers. Tighter controls on the movement of people across Malaysia's borders were one consequence of the economic downturn in the late 1990s. The majority of refugees originate from Aceh and Burma/Myanmar. Muslim ethnic Rohingya refugees from Burma/Myanmar have recently been granted government recognition and their Rohingya status as residents formalised, whereas only about 10,000 out of 30,000 refugees from Aceh have so far been registered as refugees by the UNHCR.

In recent times most migrant workers have come from Indonesia, but they also originate from Bangladesh, India and the Philippines. It is estimated there are at present around 1.5 million documented workers as well as a possible 1.2 million undocumented workers. Relatively high wages in Malaysia make it an attractive destination for workers from poorer neighbours. Crime, vice, unemployment levels and other social ills have been blamed on the presence of migrant workers, reinforcing discontent with their presence in such large numbers, especially when the economy faltered. In 1998 the Malaysian Government began to expel illegal workers. Again in 2002 Malaysia deported about 500,000 undocumented workers to their countries of origin. Documented workers and refugees were reportedly caught in the expulsion, as were some Malaysian nationals. NGOs monitoring the expulsions reported that many suffered severe deprivation and disease as they struggled to reach a secure destination, and several deaths were reported. Since these mass expulsions illegal workers (and employers) risk imprisonment in detention camps prior to deportation, fines, and corporal

punishment.¹⁹ The scale and arbitrary nature of the expulsions has meant that individuals were often not accorded due process of their individual circumstances and not guaranteed a fair hearing. There were also reports of cruel or degrading treatment during their arrest, detention and punishment – for example, being denied adequate food, shelter and health care.²⁰

In 2004 Malaysia again announced its intention to expel all undocumented migrants in the country by the end of 2005.²¹ Reports suggested that the Malaysian Government planned to recruit armed reservists and community volunteers to assist with the expulsion.²² In May of 2005, the Government called an abrupt halt to the expulsions under pressure from the business community in the face of the severe labour shortage that had developed as a result of the expulsions underway. The problem of illegal workers is unlikely to be resolved while there is a tendency to rely on draconian expulsions in the absence of a consistent, comprehensive immigration policy.

The Orang Asli

The Orang Aslis represent at least nineteen separate groups with different languages and traditions, and presently number about 105,000. They have tended to live in

isolated and remote forests, outside the mainstream of Malaysian society. During the eighteenth and nineteenth centuries the Orang Asli became a primary source of slaves for the Malays. Adults were killed and the children were taken as slaves. During World War II the Orang Aslis retreated further into the interior. The Orang Aslis provided the communist forces fighting the Japanese with shelter and support. This relationship continued during the 'Emergency'. As a consequence, the Orang Asli were relocated and forced into guarded camps where they suffered appalling conditions. In recognition of the abject failure of this approach, conditions were improved and Orang Asli support for the insurgents faded.²³

The Orang Asli people continue to be subjected to dislocation and displacement. They have no rights to ancestral lands. The Government has dedicated certain areas as reserves, but these are vulnerable to arbitrary acquisition by the Government. Economic projects seen to be in the national interests, such as logging, the construction of roads, airports and dams, continue to drive the Orang Aslis from their lands.²⁴ To some extent the Malaysian Government's treatment of the Orang Asli people is a legacy of British rule and neglect. Initially there were attempts by the newly independent Malaysian state to address their disadvantaged position in a manner that respected their special status. Their program of integration appears to have given way, over time, to policies designed to assimilate them as part of the Malay 'ethnic' category. This policy redirection appears to have been based on political and cultural considerations. The very existence of the Orang Asli as a group distinct from

¹⁹ The UN Human Rights Committee considers whipping and other forms of corporal punishment to constitute cruel, inhuman or degrading punishment and contrary to international human rights law. The UN Special Rapporteur on Torture has stated that 'corporal punishment' is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment: Amnesty International, "Malaysia: Human rights at risk in mass deportation of undocumented migrants", December 2004, www.aimalaysia.org/reports/102.

²⁰ Ibid.

²¹ Amnesty International, "Press Release: Malaysia: Government must halt deportation of one million migrants", December 2004, web.amnesty.org/library/index/ENGASA280142004

²² Human Rights Watch, "Malaysia: Mass Expulsion Puts Migrants at Risk", November 2004, hrw.org/doc/?t=asia&c=malays

²³ Colin Nicholas, "Orang Asli of Peninsular Malaysia", Centre for Orang Asli Concerns, 1997, www.magicriver.net/oa.htm

²⁴ US State Department, "Malaysia Country Reports on Human Rights Practices: 2000", Bureau of Democracy, Human Rights and Labour, 23 February 2001, www.state.gov/g/drl/rls/hrrpt/2000/eap/740.htm

ethnic Malays challenges Malay claims to being the original inhabitants of the Malay Archipelago. These claims support policies of positive discrimination for 'ethnic' Malays. It also justifies the dominance of Malay customs, culture and religion in Malaysia.²⁵

The spearhead of this program of assimilation was to induce the Orang Asli to adopt Malay language and culture. Central to this approach in recent years has been an aggressive proselytising of Islam among the Orang Asli aimed at creating an 'Islamised sub-group'. It was thought that once Orang Asli became Muslims, all the other features of Malay language and



culture would follow. Despite a significant injection of money and resources, the attempts to convert the Orang Asli have nevertheless been a dismal failure. Furthermore, a failure to recognise and respect the binding nature of entrenched traditional religious beliefs and practices that are integral to Orang Asli culture created deep resentment among them.²⁶

Although the Orang Asli are citizens of Malaysia, their lives are highly controlled

and regulated compared to other citizens. Ironically, they are recognised as Indigenous, but if they do not become Muslims they are differentiated from Malays, and are therefore not eligible to take advantage of the special privileges available based on the special Indigenous status of Malays.

Malaysia's National Human Rights Commission (Suhakam)

The National Human Rights Commission was established in 2002 as an appendage of the Ministry of Foreign Affairs. Twenty prominent public figures, representative of Malaysia's ethnic and religious diversity, are appointed as members by the Executive. The mandate of the Commission is to promote awareness of human rights, conduct enquires into complaints, make recommendations to the Government regarding domestic human rights issues and advise the Government regarding international human rights protocols and instruments.

The Government openly admitted that the Commission was needed as a mechanism to deflect local and international criticism of its human rights record. The Commission was established and operates within the framework of an ongoing debate that pits notions of 'Asian Values' (championed by many prominent Malaysian Government representatives in particular) against Western concepts of universal human rights. Those who advocate the existence of 'Asian Values' insist that duty to the state, community, religion and family take precedence over individual rights in many Asian societies. Furthermore, Mahathir claimed in 1997 that civil and political rights were only possible once economic development eradicated poverty and cemented economic and social rights. This debate is highly complex and the subject of extensive scrutiny but many critics suggest that these arguments provide convenient justifications for repressive government policies.

²⁵ Robert K. Denton & Kirk Endicott, "Into the Mainstream or Into the Backwater: Malaysian Assimilation of Orang Asli", in *Legislating Modernity*, C. Duncan, ed. Cornell University Press, New York, 2004.

²⁶ Ibid.

The Commission has surprised sceptics by, initially at any rate, being more active in criticising government policy and action than expected. The Government responded by sacking several members of the Commission. Unfortunately as time passes it has proved to be very selective in what it chooses to pursue.²⁷

Mahathir, Islam and the Malay identity

Malaysia's identity is overwhelmingly Malay in so far as 'ethnic' Malays constitute by far the largest group, Malay language is taught in all schools, Islam is the official religion and important cultural symbolism is predominantly Malay.²⁸ One consequence is that Islam intersects with politics in a manner that would be considered unimaginable in Australia. Islam plays a defining role in the political process as well as the design and interpretation of laws and policy at a federal and state level. There is no clear separation of state and religion. There is little doubt the intersection between Malay ethnicity and Islam is a crucially important factor that unifies Malays and guarantees continuing cultural and political dominance. The resurgence of a more conservative fundamentalist Islam in the last two decades, and more specifically, its political agenda and aims, presents serious challenges for the Malaysian Government. On the one hand the Government wants to

promote an image of Malaysia as modern, tolerant, progressive and liberal, on the other, it wants to protect Islam as the defining characteristic of Malay ethnicity and the official religion in Malaysia. At the same time the Government do not want Malays to shift their allegiance towards politicised fundamentalist parties.

These complexities and their potential to destabilise Malaysia were well recognised by Mahathir, who attempted to harness and control the renewed vigour of Islam in Malaysia. An important concession to Islam has been the preservation of a two-tiered justice system. The federal government administers justice based on the common-law system established by the British. The states are permitted to maintain independent Shari'a court systems that rule on civil law and religious matters among ethnic Malays. This means that rulings by the Shari'a courts become law by proclamation rather than by legislation. The decisions of the Shari'a court in one state are not enforceable in other states, leading to gross distortions. For instance in some states, the rulings on polygamy are strictly regulated whereas, in others, men are able to take more than one wife virtually at will.

Mahathir's attempt to manipulate the political and religious dynamic rebounded on his coalition in northern and eastern peninsular states where the PAS gained significant support. In 2002 the PAS state government of Terengganu wanted to introduce legislation that required five Muslim male witnesses to prove a rape and proscribed stoning for pregnant unmarried women.²⁹ The new legislation also called for the amputation of the right hand for theft, execution and crucifixion for robbery and death for Muslims wanting to leave the faith.³⁰ While the States are not likely to obtain the required sanction of the Federal

²⁷ Whiting, op. cit.

²⁸ "The constitutional definition of this group as persons who profess the religion of Islam, habitually speak the Malay language and conform to Malay custom is evidence that Islam is considered an integral part of the Malay persona and a questioning of one part is considered an attack on the other, leading to a heightened sensitivity": Poh-Ling Tan, "Human rights and the Malaysian constitution examined through the lens of the *Internal Security Act 1960*", Symposium: Constitutions and Human Rights in a Global Age: an Asia Pacific Perspective, 2001; Reliable statistics are not available, however most sources claim that all 'ethnic' Malays are Muslims and all Muslims are Malays, but there are a small number of Malaysian Chinese and Indian Muslims.

²⁹ BBC News, "Rape bill angers Malaysian women", 17 June 2002, news.bbc.co.uk/1/hi/world/asia-pacific/2050014.stm

³⁰ Patrick Goodenough, "Malaysia State Approves Islamic Punishment", *CNS News*, 8 July 2002.

Government to implement the more extreme interpretations of ancient Islamic laws, their presence in legislation is indicative of deeply conservative forces within Malaysia.

Mahathir's approach to the role of Islam in Malaysia was to support the concept of Islam being inherently linked to Malay cultural and national identity. Mahathir saw revival of Islamic identity as an instrument to reinforce the moral principles of Islam as a guide for the Malays, in particular to become more useful, clean living and law-abiding members of society. Unfortunately, Mahathir's transformation as a champion of Islam did not sit well with those who questioned his Islamic credentials and he was widely despised for what was seen by many Muslims as an opportunistic appropriation of Islam for political purposes. As a moderate Muslim, Mahathir emphasised the tenants of Islam as a mechanism for progress and development and as a useful educational and ethical guide rather than the societal, political and legal framework more radical Muslims favoured.³¹ Mahathir did not hesitate to use arbitrary and undemocratic methods to force through his program of privileging Islam and Malays over other large ethnic groups such as the Chinese and Indians, raising serious questions regarding the fairness, equity and ultimate durability of this approach.

While there is some bureaucratic interference in non-Muslim religious matters such as restrictions on religious buildings and a ban on proselytising, non-Muslims enjoy freedom of worship and are not bound by Islamic law. Non-Muslim women enjoy rights that protect them from Islamic law. An example of this is the sex industry that thrives on the labour of largely Chinese and migrant women workers.

In many respects, Mahathir was spectacularly successful in managing potentially volatile religious, ethnic and economic differences within Malaysia during his long reign. But he was successful in doing this only by exerting strict social and political control and racial privileges, while suppressing minority interests. However, the heavy-handedness of Mahathir's treatment of Anwar, his overt suppression of political opposition and his lack of standing as a credible Islamic spokesperson backfired. He lost the support of the middle classes and added fuel to Islamic fundamentalism, leading to the biggest challenge to his power in the 1999 elections.

Malaysia and Australia: similarities and differences

Strong trade ties with Malaysia and other Southeast Asian countries reflect the progress Australia has made in the region. However, there is a perception that Australia has played favourites in Asia concluding trade arrangements with Singapore and Thailand but not with Malaysia.³² Nevertheless, the bilateral relationship between the two countries embraces a variety of interests and shared history. Malaysia is ranked as Australia's tenth largest trading partner overall. Two-way trade between Australia and Malaysia was worth around seven billion dollars in 2004. Malaysians and Australians visit each other's countries in about equal numbers every year. At the most recent census in 2001 there were over 78,000 Malaysian-born people living in Australia and in 2003 there were an estimated 32,000 Malaysian students attending our educational institutions.³³ Australia has shared some of Malaysia's most critical challenges since independence. Australian troops fought in Malaysia and Borneo in the 'Emergency'

³¹ Virginia Matheson Hooker, "Reconfiguring Malay and Islam in Contemporary Malaysia", *Review of Indonesian and Malaysian Affairs*, vol.34, no.2, 2000.

³² Wolfgang Kasper, "On the Asian road to freedom," *Quadrant*, June 2004.

³³ Commonwealth Government of Australia, *Country Brief: Malaysia*, Ministry of Foreign Affairs and Trade, 2005, www.dfat.gov.au.

and the 'Confrontation' (*Konfrontasi*). Australia's presence at these times is not easily dismissed as simply part of the final act of British colonialism unravelling in Asia. They are both long standing members of the Commonwealth, both are products of the British Empire, and their institutions and political systems have much in common.

Regional security has also been an enduring focus of consistent cooperation between the two countries. In recent years they have established close ties in countering international terrorism. The proximity of both countries to Indonesia is one important, if largely unacknowledged, consideration in this relationship. Indonesia is the world's largest Muslim nation and has experienced periodic political volatility and instability, often struggling to maintain and enforce unity among its diverse ethnic, cultural and religious mix. Australia and Malaysia wrestle with the complexities of their relationship with Indonesia. The most recent serious points of tension between Australia and Indonesia arose during the crisis in East Timor, while Malaysia and Indonesia continue to argue over long standing border disputes, such as the dispute over the potentially oil-rich Celebes (Sulawesi) Sea off Borneo's eastern coast.

Australia is not particularly well positioned to occupy the high moral ground in relation to Malaysia on human rights issues. Its own pathway to securing human rights principles has been a flawed one. The White Australia policy, a legacy of discrimination and disadvantage towards Indigenous Australians and the more recent actions and reactions to the spectre of international terrorism and the latest wave of asylum seekers reaching its shores suggests that Australia's attachment to its human rights obligations are fragile at times. Australia has its own version of Malaysia's ISA. Its 'anti-terrorism' laws underwent drastic revisions in 2003 and 2004 in reaction to the 'September 11' terrorist attacks in 2001 and the Bali

bombings in 2002. This has caused deep concern in Australia among politicians, church and Muslim organisations, academics, lawyers, and other concerned citizens over the erosion of political freedom, civil liberties and human rights that have been taken for granted in the past in Australia.³⁴ In light of the bombing attacks in London in July 2005, many social commentators are predicting that Australia will follow Britain's lead in strengthening its anti-terrorism laws at the expense of civil liberties.



The present Coalition Government in Australia has been taken to task by the United Nations over its human rights record in relation to its treatment of Indigenous Australians and its asylum seekers and refugees. Like many countries worldwide, Australia and Malaysia have both taken an increasingly hardline approach to the question of refugees in the past decade. Australia's tough stance and zero tolerance of 'illegal' asylum seekers, a policy of mandatory confinement in detention centres and forced repatriation is not dissimilar to Malaysia's approach, even though Australia is a signatory of the United Nations' 1951 *Convention Relating to the Status of Refugees* and the 1967 *Protocol Relating to Refugees*, whereas Malaysia is not. NGOs and private individuals and groups continue to urge both countries to respect the status

³⁴ Edmund Rice Centre, "Anti-terrorism powers: necessary measures or an assault on our rights?", *JustComment*, vol.7 no.1, 2004, erc.org.au/just_comments/pdf/1082703070.pdf; Australian Muslim Civil Rights Advocacy Network, www.amcran.org; NSW Council for Civil Liberties, www.nswccl.org.au/issues/terrorism.php.

and human rights of those seeking asylum. Non-government observers and advocates have reported human rights abuses in detainment camps in both countries – claims that are stridently denied at government level.

Intense focus on Indigenous issues in recent years has demonstrated that the problems of rights, status and welfare are common to almost all Indigenous populations in the post-colonial world. There has been considerable progress in recent decades in countries such as Canada and New Zealand. Unfortunately the ongoing chronic intransigence of Indigenous disadvantage and the repeated failure of policy approaches to improve the situation of Indigenous groups is something Australia and Malaysia share. Malaysia's policy approaches since independence appear to have been driven by political motives underwritten by an attempt to submerge the Orang Asli within the Malay ethnic milieu, so that any challenge to Malay claims to cultural and political dominance disappeared. Australian governments have also struggled with various identity issues and contradictions in relation to Indigenous Australians. In Australia the land was treated as *terra nullius* (uninhabited) and Indigenous Australians were not even counted in the national census until 1967. Both the Orang Asli and Australian Aboriginal and Torres Strait Islander peoples suffer serious social, educational and economic disadvantage. Both groups were driven off traditional lands with little compensation and no right of return and both struggle to retain control over cultural knowledge and religious integrity.³⁵

³⁵ The *Native Title Amendment Bill* in 1997 watered down the advances made by *Mabo* and *Wik* making the process of claiming Native Title more onerous. Up until the landmark High Court, *Mabo* decision in 1992 Native Title was not considered part of Australian federal law (even if it had ever existed, it had long been extinguished). The *Wik* decision in 1996 ruled that Native Title could exist along side existing uses of the land, eg pastoral leases: Aboriginal and Torres Strait Islanders Commission

A growing sophistication and understanding of the challenges and issues shared by most Indigenous people in post-colonial societies has been one consequence of the dialogue and contact between Indigenous delegates at non-government international conferences since 1977. In recent years the United Nations has made a concerted effort to bring Indigenous issues to the fore by establishing the International Decade of Indigenous People 1995-2004. Issues have been investigated and advanced by regular conferences and seminars working on the Draft Declaration of the Rights of Indigenous People. There is little indication that either the present Australian or Malaysian governments are prepared to concede policy failures and comprehensively address the crucial underlying issues many believe to be essential such as land and cultural rights. Both countries have serious human rights problems in relation to their Indigenous populations that undermine their international standing. International scrutiny and pressure is unlikely to diminish.³⁶

The future

Hopes that Australia was on the verge of a more inclusive future in the region were high when it was invited to attend the summit of the *Association of South East Asian Nations* (ASEAN) in Laos in late 2004. Goodwill faded towards Australia when Prime Minister, John Howard refused to sign ASEAN's *Treaty of Amity and*

(ATSIC), *Indigenous Rights*, www.atsic.gov.au/issues/indigenous_rights/Default.asp. In 2002 the Malaysia High Court declared the existence of Native Title recommending that compensation to be paid to Orang Asli dispossessed of tradition lands: Chandra Kanagasabai, "Native Rights & Minority Rights: Promotion or Repression? A Commonwealth Review", 12th Commonwealth Law Conference: Kuala Lumpur, September 1999, www.mlj.com.my/articles/chandra.htm

³⁶ Office of the UN High Commissioner for Human Rights, *Draft Declaration of the Rights of Indigenous People*, 2005, www.ohchr.org/english

Cooperation, a non-aggression/friendship pact. The only reason offered for not signing was that such a treaty is outdated. However, the Prime Minister retreated from his seemingly intractable position after New Zealand indicated it would sign. It was also becoming clear that Australia would not be included in ASEAN unless it acquiesced.³⁷ Australia is caught between its desire to maintain close alliance with the US and the disadvantages of being excluded from Asia.³⁸ While Australia has indicated that it will now formally accede to the non-aggression document before the eleventh ASEAN Summit in December 2005 in Malaysia, its initial reluctance to do so has already reinforced the perception that Australia remains aloof from, and indifferent to, a close identification with Asia apart from trade and commerce.

On the eve of Prime Minister Abdullah's visit to Australia in April 2005 he indicated in an interview that while Malaysia's trade and development relationships with Australia were in very good shape, Malaysia continues to worry about Australia's provocative political stance. Malaysia's opposition to the war in Iraq and support for the United Nations as the legitimate arbitrator in world conflicts is at odds with Australia's foreign policy position since 2003. Abdullah commented that Australia seemed 'more concerned with parroting views of the US than focusing on relations with Asia.'³⁹

Australia's close links to US views, policies and actions creates the perception that Australia agrees with and supports the

selective, ad hoc approach to human, civil and political rights many critics have accused the US of in its pursuit of the so-called 'war on terror'. If Abdullah's comments are representative of the region in general, then Australia will struggle to achieve the regional influence to which it aspires to.

Conclusion

Australia's enduring relationship with Malaysia has long been based on multi-layered foundations and it is in an historical position to consolidate and deepen this relationship. Malaysia has a new leader who seems reasonably open and well-disposed towards Australia. Australia has enjoyed unprecedented levels of prosperity in recent years, yet its interest in embracing a more humanitarian and welcoming approach to those in flight from persecution and war, as well as expanding domestic rights and freedoms, seems diminished. Political and civil rights have been sacrificed in response to the spectre of international migration and terrorism. Australia does not have to grapple with many of the geographical, population, political, security, religious and community pressures that burden countries such as Malaysia and that might precipitate a more retrogressive pathway. On the contrary, as a stable, prosperous and geographically isolated island continent, Australia seems uniquely placed to provide a sound ethical model, sending a strong message to its neighbours that political, civil and human rights and freedoms should be non-negotiable cornerstones of governance.

³⁷ Cynthia Banham, "Howard seeks compromise over Asia pact", *Sydney Morning Herald*, 14 April 2005.

³⁸ Peter Hartcher, "A Foot in Each Camp", *Sydney Morning Herald*, 16 April 2005 – provides an insightful analysis of the problems Australia experiences finding a secure place for itself between the USA and Asia.

³⁹ Malaysian Prime Minister Abdullah Badawi, interviewed by Michael Maher, "Can Australia and Malaysia get along?" *ABC Asia Pacific Focus*, 14 April 2005, abcasiapacific.com/focus

Further reading

ABC Asia Pacific, www.abcasiapacific

ABC Radio Australia, *Asia Pacific*, www.abc.net.au/ra/asiapac

Amnesty International, www.amnesty.org

Asian Times Online, www.atimes.com

Australian Commonwealth Government, Department of Foreign Affairs and Trade, *Malaysia Country Brief – April 2005*, www.dfat.gov.au

BBC News, www.news.bbc.co.uk/1/hi/world/asia-pacific/2050014.stm

Centre for Orang Asli Concerns, www.magickriver.net/oa.htm

Committee for the Protection of Journalism (CPJ), www.cpj.org

Human Rights Watch, www.hrw.org

Kiat Net, *History of Malaysia*, www.kiat.net

Malaysian Government Ministry of Foreign Affairs, www.kln.gov.my

United Nations High Commissioner for Human Rights, www.ohchr.org/english

US Department of State, *Country Profile: Malaysia*, www.state.gov

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