

@CHAPTER = MALAYSIA

The Bush administration by and large ignored human rights in Malaysia in 1989 with one important exception -- the forcing back to sea of Vietnamese boat people attempting to land on the Malaysian coast. This brought vigorous criticism from the State Department. But with regard to restrictions on the independence of lawyers and the denial of worker rights, the administration preferred to pretend there was nothing amiss. Its silence on these issues was particularly unfortunate given its unprecedented opportunities to raise them during a visit by Prime Minister Mahathir Mohamad to the United States in May and a visit by Vice President Quayle to Malaysia in September. Mutual security interests and the fear of offending a valuable trading partner appeared to override human rights considerations.

In 1988, the major human rights issue in Malaysia was the continued detention of dozens of political activists arrested in late 1987 under the Internal Security Act ("ISA"). In April 1989, the last two detainees of that group were released, and post-release restrictions on other former detainees' freedom of movement and association were later dropped. But the potential for abuse inherent in the ISA, which provides for indefinite detention without charge or trial, did not cease with these developments. Some 70 people, many of them suspected criminal offenders, were believed in custody under the ISA in mid-1989, and in June, the Malaysian parliament passed amendments to the ISA that eliminated judicial review. Judicial review was also eliminated in the case of two other laws permitting administrative detention -- the Emergency Ordinance on Public Order and the Prevention of Crime and the Dangerous Drugs Act. The administration made no comment on these restrictions.

In 1988, the independence of the Malaysian judiciary was severely weakened by the dismissal of the Lord President of the Supreme Court and two other Supreme Court judges and the temporary suspension of three others. In 1989, the independence of lawyers came under attack. Manjeet Singh, secretary of the Malaysian Bar Council, faces contempt-of-court charges relating to statements contained in an affidavit he filed in April on behalf of the Bar Council against Abdul Hamid Omar, the new Lord President of the Supreme Court appointed after Prime Minister Mahathir dismissed his predecessor. Hamid was deeply involved in the series of events leading to that dismissal, and Singh had challenged the propriety of Hamid's actions. In return, the Attorney General Abu Talib Othman issued contempt-of-court charges against Singh in what appears to be an attempt to silence legitimate criticism.

Worker rights continued to be restricted in Malaysia despite the April 1989 decision of the U.S. Trade Representative that Malaysia was sufficiently in compliance with internationally recognized labor rights to continue to qualify for trade benefits under the Generalized System of Preferences ("GSP"). According to the Malaysian *Straits Times* of April 22, 1989, a Bush administration official said that the United States found Malaysia's labor practices, in a broad sense, "relatively good compared with other countries." This is despite what he described as U.S. concern about two aspects of Malaysia's labor practices -- the "lack of ability" to form a national union for its electronic workers, of which there are about 85,000, and the lack of a minimum-wage requirement in its pioneer-industry program for foreign investments in Malaysia. The "lack of ability" to form a national union has its origins in concessions given by the Malaysian government to foreign electronics firms since 1972 which ensure that workers in their factories will not form trade unions.

Under pressure from the International Labor Organization and the imminent GSP review, the Malaysian government dropped its ban on unions in the electronics

industry in 1988, but allowed only in-house unions. To date these in-house unions have failed to provide adequate worker protection, and workers continue to be denied the freedom to form a union of their choice.

U.S. pressure in this instance played a significant role in encouraging the Malaysian government to change its labor practices, but the Bush administration has fallen short of ensuring that the Malaysian government in fact affords its workers internationally recognized labor rights. The United States is Malaysia's second-largest export market after Japan. (Two-way trade amounted to \$6 billion in 1988, with a U.S. deficit of \$1.2 billion, attributable largely to imports of semiconductors manufactured in U.S.-owned plants in Malaysia.) Considerations of commerce thus appear to have outweighed human rights concerns.

The administration has acted more firmly on the issue of Malaysian "push-offs." Between May and November over 2,500 Vietnamese seeking asylum in more than 40 boats were forced from Malaysian territorial waters. At least four people are known to have died as a result of the "push-offs" but the number of deaths could be much higher. The "push-off" policy violates the terms of the Comprehensive Plan of Action ("CPA") for Indochinese refugees negotiated earlier in 1989. Under the CPA, first-asylum countries are to "screen" asylum-seekers to determine whether they are refugees or economic migrants. Only after such a determination are efforts permitted to be made to encourage economic migrants to return to the country of origin voluntarily. The Malaysian government, which ironically chaired the CPA conference and played a key role in the agreement, has turned away large numbers of asylum-seekers under extremely dangerous conditions and before the status of each new arrival could be effectively determined.

Robert Funseth, a senior State Department official for refugee programs, stated in his November 17 testimony before the House Subcommittee on Asian and Pacific Affairs that the administration has vigorously protested these actions both in the United States and in Kuala Lumpur. Condemnation of the Malaysian government's policy has also been expressed in two U.S. Congressional reports and by individual members of Congress.

U.S. Ambassador to Malaysia Paul Cleveland, in his confirmation hearing before the Senate Foreign Relations Committee in September 1989, praised Malaysia's past role in granting first asylum to Indochinese refugees and its role in the formulation of the CPA. Although he did not mention the recent "push-offs," he did stress the need for Malaysia to continue its support of the CPA, and he vowed to make that support one of his top priorities.