

CASUALTIES OF THE WAR  
ON TERROR?  
HUMAN RIGHTS IN  
SOUTHEAST ASIA  
BEFORE AND AFTER 9/11

Pablo Pareja Alcaraz



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# **Casualties of the War on Terror? Human Rights in Southeast Asia Before and After 9/11**

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*The aim of this paper is to analyze the impact of international counter-terrorist policies on the protection of human rights in Southeast Asia. As in many other areas in the world, the first reaction of this region to the events of September 11, 2001 was the condemnation of the terrorist attacks and the offer of support to the United States. With the outbreak of the war in Afghanistan and the emergence of internal pressures coming from Muslim communities, the position of several Southeast Asian countries became deliberately more ambiguous and nuanced. This was the case of Indonesia and Malaysia, two states that have wavered in their support for the United States and its goal to combat “rogue states” suspicious of hiding international terrorists. At first sight, this situation does not seem surprising. A more detailed analysis shows, however, that the situation is certainly more paradoxical. Albeit with varying intensities, states like Indonesia and Malaysia, which have expressed legal and moral reservations toward the United States’ attempts to combat international terrorism, are also enforcing internal laws that contradict international standards of human rights in order to prosecute terrorist suspects. This duality is reinforced by a change in the U.S. foreign policy agenda and the domestic political equations of these countries. In the nineties, the United States was remarkably critical of the human rights record of many Southeast Asian countries. Since 9/11, its security concerns in the region have been accompanied by a decrease in the level of criticism. This, in turn, has contributed to a very unpromising scenario in which certain human rights have become the indirect casualties of the war on terror.*



## **Introduction: Aims and Structure**

The terrorist attacks of September 11, 2001, brought about a change in perceptions of global security. In the early nineties, the collapse of the Soviet Union and the end of the Cold War altered the traditional understanding of security threats and risks through the emergence of multiple, non-state actors in international affairs and the spread of internal conflicts throughout the world (Diamond, 1999). The events of September 11 were not the first to demonstrate this new reality, but their impact on individual and collective perceptions of security was and continues to be remarkable.

Southeast Asia is no exception to this global trend. Philippine Prime Minister Gloria Macapagal-Arroyo was one of the first world leaders to condemn the attacks and to offer support to the United States. Similarly, in late September 2001, Malaysia and Thailand expressed their outrage and the need to take additional measures to combat international terrorism. The existence of a terrorist threat in the minds of many Southeast Asian citizens was, nevertheless, not new. For decades, the region had witnessed the intensification of terrorist activities and non-military threats (Chanda, 2003).

What was different now was the location of the attacks and their effect on the counter-terrorist measures carried out by some Southeast Asian countries. In its efforts to prosecute international terrorists, the United States urged many states to pass new restrictive legislation and arrest individuals perceived to be security threats. This trend was intensified by the Bali bombing in October 2002, a dramatic event that highlighted the urgency to tackle the terrorist threat in Southeast Asia even more. The darkest side of the new situation was that many countries who *“sought to entrench rights-restrictive policies moved quickly to take advantage of the new political space afforded by the international war on terror.”* (Human Rights Watch, 2003b, 175). In addition, the new environment brought to the surface the challenges confronting many Southeast Asian leaders and their

Western counterparts when walking the fine line between maintaining popular legitimacy, promoting human rights and preserving security.

However, the difficult accommodation between counter-terrorist policies and human rights in Southeast Asia is not the result of the September 11 attacks or the subsequent war on terror. This “confrontation” existed before and has been the subject of extensive debates on democratization over the last few decades. The impact of September 11 on Southeast Asia in terms of human rights was the creation of a wider hole in the region’s already fragile architecture. As U.N. High Commissioner for Human Rights Mary Robinson clearly expressed:

*“The taking of measures to combat terrorism is not new. They always existed and they always posed problems for human rights. But the problem has intensified. September 11 gave a sort of legitimacy. Where states once criticized these measures, now what we find is a kind of tolerance.”* (Robinson, 2002)

The aim of this paper is to analyze the impact of the international war on terror on the protection of human rights in Southeast Asia, particularly in Indonesia and Malaysia. As with any study of units of a subsystem, there are limits to the responses these cases can give to all the events and realities of the region. The analysis of Indonesia and Malaysia can, however, offer some useful insights into the way the international war on terror has brought to the surface some of the main challenges confronting Southeast Asia and the complex interplay between domestic and external factors.

With these observations in mind, the paper will first analyze the promotion of human rights in this region throughout the 1990s. This will provide a picture of the main regional trends and some of the obstacles precluding the effective democratization of Southeast Asia. The second section will look at the changes induced by the September 11 attacks in two complementary dimensions: the foreign policy of the United States toward the Pacific region and the internal policies of many Southeast Asian countries. The third section will provide a deeper study of two individual countries: Malaysia and Indonesia. While the first offers a good example of a corporatist regime in suspension between democracy and



authoritarianism, the second can be regarded as a democratizing country embedded in dramatic socio-political change (Dalpino, 2000). Finally, the last section will summarize the main lessons of the analysis and will discuss different scenarios for the next five years. Acknowledging that foreseeing the future is always a risky exercise, the paper will conclude that the evolution of the trend toward the marginalization of human rights and democracy in Southeast Asia will primarily depend on the interactions between a limited set of factors.

## **The Promotion of Human Rights in Southeast Asia Over the 1990s**

A significant level of political diversity characterizes Southeast Asia: from the repressive military regime in Burma to the emerging democracies of Thailand and the Philippines, this region contains the widest spectrum of political systems in the world. In general, however, authoritarian practices and inertias could be found in most countries during the 1990s. At least in part, this situation explains why this decade witnessed the intensification of pressures upon Southeast Asian governments for greater openness, accountability, transparency and the effective protection of human rights (Vatikiotis, 1996; Dalpino, 2000).

The origin of these pressures was both internal and external. Internally, the civil societies of many states were disillusioned by the incapability of many leaders to cope with complex economic, social and political challenges such as the 1997 Asian financial crisis<sup>1</sup>. Externally, the end of the Cold War and the gradual normalization of diplomatic relations

1. The role played by these internal pressures needs further evaluation. The low levels of accountability and transparency, as well as the lack of plural media in many countries within the region, make it difficult to evaluate the effective impact of demonstrations and local pro-human rights movements on several governments.

between many Southeast Asian states and other international actors (especially the United States, Australia and the European Union) led to a rise in the level of foreign pressures to take additional steps to protect human rights and accelerate democratic reforms. Although, as several NGOs and authors have put forth, these pressures were generally affected by ideological assumptions and were only activated after a major abuse of rights had taken place, they played a significant role in publicizing human rights violations and “forcing” some Southeast Asian governments to modify their course of action (Donnelly, 1999; Dalpino, 2000; Human Rights Watch, 2003a). Among others, the impact of external pressures on the reduction of crimes perpetrated by Indonesian militias in East Timor since 1999 constitutes a comprehensive example.

The intensification of both external and internal pressures did not lead, however, to a dramatic transformation of the relations between Southeast Asia and the rest of the world. Over the decade, human rights gradually gained space in the agendas of Western actors, but economic, commercial and security interests remained the top priorities (Graham, 1995; Dalpino, 2000). As Dalpino has pointed out, both the European Union and the United States used diplomatic and economic sanctions against Myanmar to promote dialogue between the military and the opposition forces. The United States also used the Jackson-Vanick process to include human rights clauses in its trade agreements with communist states. Albeit with varying intensities, Australia took some diplomatic steps to help the spread of human rights and democracy in Southeast Asia. In addition, for the first time since the Second World War, Japan decided to incorporate these issues into its foreign policy toward the region (Dalpino, 2000; Jendrzczyk, 2001).<sup>2</sup>

2. China's criticism of crimes and abuses on ethnic Chinese in Indonesia over the 1990s could be considered part of these increasing pressures upon Southeast Asia. However, the complex character of Sino-Southeast Asian relations and China's human rights' record in the past seem to suggest that these criticisms may be better understood in terms of China's domestic realities (rather than in terms of this country's real commitment to the effective promotion of democracy and human rights).

The decade of 1990s also witnessed the emergence of a more coordinated and unified international action in Southeast Asia. The creation of the United Nations Transitional Authority for Cambodia (UNTAC) in the early 1990s constituted a watershed in the involvement of multilateral organizations in the region. Similarly, the measures taken by the International Monetary Fund and the World Bank in response to the Asian financial crises which started in 1997 are indicative of the more coordinated actions of international actors. Finally, the participation of the European Union, Australia and the United States in the process that led to the independence of East Timor also illustrates this trend toward more unified strategies aiming at the promotion of democratic reform and human rights in Southeast Asia (Donnelly, 1999; Dalpino, 2000).

Together, the aforementioned factors pushed the Association of Southeast Asian Nations (ASEAN) to include democracy and human rights in its political agenda. Since this organization is based on the principle of non-interference, however, its role in promoting human rights and democratic reform during the 1990s was limited to non-member states such as Vietnam, Laos, Burma and Cambodia (Donnelly, 1999; Dalpino, 2000). In addition, six other factors reduced the organization's effective capability to prevent and condemn human rights violations in the region: first, ASEAN's difficulties in adapting its structures to the needs and dynamics of the post Cold-War international system (Anwar, 2001); second, differences of opinion among the organization's members on the best way to approach human rights violations in countries such as Burma or Cambodia; third, the philosophical and pragmatic debate about the (in)compatibility between human rights and the so-called "Asian values" (Donnelly, 1999; Palmer, 2002)<sup>3</sup>; fourth, ASEAN's limited resources for implementing and enforcing the organization's agreements; fifth, the

3. For a more detailed analysis of the Asian values debate, see Bauer, J.R. & Bell, D.A. (eds.) (1999): *The East Asian Challenge for Human Rights*, Cambridge: Cambridge University Press.

impact on the organization's balance caused by Suharto's resignation and democratic change in Indonesia; finally, the damaging effects of the 1997 financial crisis on most members of the organization, especially Thailand, Malaysia and Indonesia.

In spite of their limitations and weaknesses, the combination of the different pressures analyzed in this section contributed to the gradual amelioration of the situation of democracy and human rights in Southeast Asia over the 1990s. As Amnesty International and Human Rights Watch have acknowledged, the past decade witnessed not only the reduction of human rights violations throughout this region, but also the gradual strengthening of transnational attempts to protect and promote them (Amnesty International, 2002; Human Rights Watch, 2003). Human rights violations and obstacles to the work of human rights activists in the region were still very significant in the year 2000, but there is general agreement that improvements over the 1990s had a significant effect on the region's security environment, the level of democratic reform and the protection of human rights.

Yet, the presence of a set of mutually reinforcing factors debilitated the region's fragile architecture for the promotion of human rights. As Dalpino has outlined, the existence of weaknesses in the legal systems of many Southeast Asian states, the uneven enforcement of rights, the absence of public education about these rights, the lack of a strong civil society to counterbalance governments and, more significantly, the unsolved issues of civil-military and communal relations posed important challenges to the "spread" of human rights throughout the region in the twenty-first century. As the next section will discuss, the pre-existence of these weaknesses clearly facilitated the relegation of human rights to a secondary place resulting from the renewed emphasis on security that followed the September 11 attacks.

## **The Impact of 9/11: Changes in US Policy and Southeast Asian Reactions**

In broad terms, the impact of the September 11 attacks on the protection of human rights in Southeast Asia was their gradual marginalization in favor of security concerns. In the 1990s, trade and commercial interests had supplanted human rights as the centerpiece of international dialogue in the region, but the combination of both issues in many cases had proved useful for the promotion of democracy and human rights. After September 11, the new focus on security and international terrorism relegated human rights to the periphery of the agenda, allowing some Southeast Asian countries to approve and implement deliberately ambiguous counter-terrorist measures.

In the United States, the reevaluation of foreign policy that followed the attacks led to a transformation of the country's view of Southeast Asia. The fear that Al-Qaeda terrorist networks could "migrate," transforming the region into a "second front" in the war on terror, changed the nature of US-Southeast Asian relations. As Chanda has put forth, *"the benign neglect of Southeast Asia that marked the Clinton administration continued well into the Bush administration until the shock of September 11 jolted relations back onto a security track."* (Chanda, 2003, 118). The nuances of most bilateral relations gave way to the imperative of the war on terror.

In politico-military terms, this shift took two complementary forms. On the one hand, the United States muted its criticism of opportunistic repression by some Southeast Asian governments in order to ensure their support for the war in Afghanistan. As the 2002 Human Rights Watch describes, longstanding US concerns about human rights and democratization in Indonesia, Malaysia and Singapore were muted after September 11 (Human Rights Watch, 2003)<sup>4</sup>. In part, this was also the

4. In this regard it is important to note here the relative, when not absolute omission, of human rights issues in the talks that President George W. Bush held in Washington with different Southeast Asian leaders in late 2001 and early 2002.

case of the European Union and Australia, who opted for softer levels of criticism and sided with the US in the war on Afghanistan. Simultaneously, the US focus on security led to a rise in the level of military cooperation with some Southeast Asian countries.

The first US counter-terrorist effort in the region was the Philippine-US joint “training exercise” aimed at the elimination of Abu Sayyaf, a criminal group whose linkage to the Al-Qaeda network has not been proved to date. This effort was followed by the inclusion of Singapore in the “Cobra Gold” exercises<sup>5</sup>, the most important framework for US-Southeast Asian military cooperation in the last two decades (Dalpino, 2003). The result of these operations did not substantially change the security environment in the region, but these examples reflect Washington’s growing concern about Southeast Asia in security terms.

Fears of this particular region becoming the “second front” of international terrorism increased in January 2002. In a joint action between police and intelligence forces, Singapore arrested several members of Jemmah Islamiah, a regional network with some links to Al-Qaeda. Some documents seized from the organization during the operation revealed plans to attack international institutions in Southeast Asia, including several US diplomatic missions (McNally & Morrison, 2002; Dalpino, 2003). Some months later, the killing of more than 200 foreign tourists in Bali on October 12 aggravated US perceptions and gave way to a greater “securitization” of its foreign policy toward the region. As a result, the greater involvement of the US in the domestic and regional affairs of Southeast Asia contributed to the partial recovery of the high levels of influence and power that had characterized the US position during the Cold War period.

5. Before September 11, these exercises only brought together military forces from the US and Thailand. Soon after the incorporation of Singapore into these activities, the Bush administration announced the participation of Malaysia and the Philippines in the year 2003 (Dalpino, 2003).

For Southeast Asia, the emphasis on security that followed the September 11 attacks came at a bad time. By late 2001 the region was starting to pull itself out of the economic crisis and, for the first time in years, the longstanding debate about the (in)existence of a clash between human rights and “Asian values” that had given many states an excuse to maintain repressive practices was fading. The terrorist acts of September 11 and the subsequent emphasis on security not only interrupted this trend, but also provided some governments with new arguments to justify their policies. As Lim has pointed out, “*Governments previously chastised (...) for human rights violations in their internal crackdowns on Islamic radicals (were) suddenly claiming that the recent events (vindicated) their own tough and generally unpopular security actions*” (Lim, 2001, 2).

Western interpretations of the impact of September 11 contrasted with the views of many Southeast Asian citizens and regional observers. The idea that these attacks had changed everything and had placed terrorism at the top position of international threats to security did not meet the realities of a region that has witnessed almost all types of terrorism over the last fifty years. Public opinion in these countries was outraged by these dramatic events and condemned the attacks, but the view of September 11 as a new form of insecurity was simply viewed as an overstatement.

Although Chanda acknowledges several differences among the reactions of Southeast Asian countries, he identifies four broad phases in the evolution of Southeast Asian-US relations in the aftermath of September 11 (Chanda, 2003). The first phase of “shock and sympathy” lasted for approximately one month and was characterized by a diplomatic rapprochement between the US and Southeast Asia, at least in rhetorical terms. This brief phase gave way to the emergence of concern and anger at the US war in Afghanistan launched on October 8. In a public speech at a mosque, Indonesian President Megawati Sukarnoputri affirmed that “*No individual, group or government has the*

*right to look for terrorists by attacking another country's territory.*" (Gopalakrishnan, 2002). In a similar tone, Malaysian Prime Minister Mahathir Mohammed declared that *"We should really not participate in war. If we do, we will only help to escalate the problems because an all-out war is the wrong solution, because many innocent people are going to be killed."*(quoted in Chanda, 2003). These were not isolated reactions: albeit with different intensities, other Southeast Asian leaders expressed similar concerns and tried to distance themselves from US foreign policy towards Afghanistan. In most cases, the internal social pressures that propelled these declarations show the complex interaction between domestic and foreign factors in the areas of security, religion, democratization and human rights in Southeast Asia.

The third phase began with the discovery of the bomb plot in Singapore already mentioned. The importance of this event cannot be overstated. Strengthening a trend that had begun right after the September 11 attacks, this discovery altered the level of US attention to the region on three complementary fronts. First, it led to a greater focus on non-traditional security threats. Second, it resulted in a greater attention to regionalist structures in Southeast Asia, especially ASEAN. Third, it reduced the previous level of US emphasis on the promotion of democracy and human rights throughout the region. The signing of the US-ASEAN anti-terrorist treaty in August 2002 is illustrative of these three trends.

Finally, the fourth phase began after the October 2002 Bali bombing that killed more than 200 tourists and placed *"the war on terror on the region's front burner."* (Chanda, 2003, 119). This terrorist act, the worst in the history of Southeast Asia, increased US security concerns even more and heralded an unprecedented cooperation between local and foreign law-enforcement agencies.

As for internal transformations in Southeast Asian countries, the attacks of September 11 and the emphasis on security that followed them gave way to three major changes. First, in countries like Indonesia,



police forces became ascendant over the military. In many cases, this “gradual” confusion of roles resulted in human rights abuses, such as aggressive crack-downs on peaceful demonstrators. Second, September 11 fueled new problems for elected politicians with regard to their anti-terrorist policies. As the next section will show in more detail, some Southeast Asian states not only used these policies to combat international terrorism, but also to prosecute political dissidents and other social groups. Whereas the public response to the use of policies for the former purpose was very limited, reactions of anger to the latter in some countries increased pressures on politicians not to commit or allow human rights violations. Finally, the new emphasis on security and the international war on terror led to both the rise of Islamic extremism and the consolidation of Islamic moderates in Southeast Asia, especially after the detention of Jemmah Islamiah and the dramatic Bali bombing, in January and October 2002 respectively (McNally & Morrison, 2002).

## **Two illustrative cases: Malaysia & Indonesia**

As has already been seen, all countries in Southeast Asia condemned the September 11 attacks. In contrast, their respective responses to the US-led war on terror were different, depending on the political nature of each government, the internal mobilization of each civil society and the relative importance of Islam in each country’s domestic environment (Chanda, 2003). By November 2001 some Southeast Asian leaders became aware that a pro-American position had political costs at home. Simultaneously, some of these governments found new justifications for longstanding repression in measures to counteract terrorism. This was clearly the case of Malaysia and, to a lesser extent, Indonesia. Both Malaysian and Indonesian leaders discovered that support from important constituencies could be jeopardized if their

support of the US bombing of Afghanistan, a Muslim-majority nation, seemed too unconditional in the eyes of civil society.

In late November, Indonesian President Megawati asked President Bush to end the bombing before Ramadan and large demonstrations against the US strikes on Afghanistan erupted in October in Indonesia and Malaysia (Jendrzeczyk, 2001; Human Rights Watch, 2003b). On November 30, Malaysian Deputy Prime Minister Abdullah Ahmad Badawi announced that Malaysia might amend its security laws to deal more efficiently with “modern day terrorism”, prompting warnings that this could lead to further repression of peaceful political dissent (Johnson, 2003). In Indonesia, the government arrested activist Muhammad Nazar on November 20 for having hung banners at a campus rally calling for a referendum on the political future of Aceh and criticizing the military. Although Indonesian President Megawati was able to counterbalance external and internal pressures for new norms, the Bali bombings of October 2002 added new pressures and facilitated the comeback of laws once used to detain critics of former President Suharto (McNally & Morrison, 2002; Human Rights Watch, 2002).

The following subsections will analyze in more detail the sequence of events in Malaysia and Indonesia, the two Muslim-majority countries in Southeast Asia, paying special attention to the complex interplay between domestic and external forces in each country.

### **Malaysia: The Internal Security Act as a Tool for Political Repression**

The attacks of September 11 had a dangerous effect on Malaysia’s use of internal security legislation. For several decades, the Internal Security Act (henceforth, ISA), a preventive detention law originally enacted in the 1960s to fight a communist rebellion, had been widely abused as a tool to stifle peaceful political dissent. Both state and non-state actors had criticized this abuse. On the one hand, Malaysian human rights groups, the Malaysian Bar Council and international human rights

groups had repeatedly called for the repeal of the ISA. In addition, the US and the European Union had been sharply critical of the arrest, flawed trial, imprisonment and physical mistreatment of several political dissidents such as Mahathir's former heir apparent, Anwar Ibrahim, who was detained in 1998. While the criticism of the former actors remained after September 11, the criticism and concern of the latter was muted as Mahathir offered cooperation in intelligence gathering and investigations into alleged Al-Qaeda cells.

This international "mutism" and the emphasis on security that followed September 11 "allowed" Prime Minister Mahathir to justify the use of the ISA on counter-terrorist grounds. Presenting the laws passed by the United States and the United Kingdom to combat international terrorism as a defense of the ISA, Mahathir declared on October 2002 that *"It is more necessary than ever. Even the rich countries, the so-called liberal democracies, have decided that there is a need for some preventive action to stop people from doing things that are harmful. People have been detained in other countries now, just as we detain people because they are a threat to security."* (quoted in Human Rights Watch, 2003b). These remarks by the Malaysian prime minister clearly illustrate the marginalization of human rights to a secondary position and the consolidation of security as the main concern for many Southeast Asian countries in the post-September 11 scenario.

In broad terms, the detrimental use of the ISA has taken three different forms since 2001. First, this law has been used to detain political activists and members of opposition parties without a trial. Under Section (73) 1 of the ISA, police units may detain anyone for up to two months, without warrant or trial and without access to legal counsel, if they have "reason to believe" that that person has acted or is likely to act "in any manner prejudicial to the security of Malaysia." After this period of time, the Minister of Home Affairs can extend the detention without trial for up to two years, without submitting any evidence for review by the courts, by issuing a detention order (Human

Rights Watch, 2002). In the last two years, Malaysian police forces have detained more than 60 members of opposition parties on suspicion that they had links with Islamic extremist organizations. In spite of Mahathir's claims that they pose a threat to both national and international security, however, no significant proof has been submitted to judiciary bodies to date (Kent, 2003).

Second, the ISA provisions that allow for restrictions of assembly, association, expression, movement, residence and employment have been used to disperse both peaceful and non-peaceful public protests. While the former use seems to be accepted by a majority of Malaysians, the latter has received severe criticism from local and international NGOs and significant sectors of Malaysian civil society (McNally & Morrison, 2002). Finally, the Mahathir government has used the ISA to suppress political opposition by restricting media and academic freedom. In early October 2001, more than sixty university lecturers alleged to be engaged in anti-government activities were warned by official authorities, transferred or fired (Katoppo, 2002). In order to justify these operations, the government has alleged the control of university student associations by the main opposition party, the *Parti Islam Se-Malaysia*. In addition, Mahathir has publicly declared that the objective of this pledge is to check the poisoning of students' minds so that they "*stick to the original purpose of entering universities to gain knowledge and not to indulge in anti-government activities.*" (quoted in Human Rights Watch, 2002).

The root causes for this increase in the level of political oppression are to be found in Mahathir's goal of enhancing national and international security while strengthening his political position at the expense of opposition parties. The relative "mutism" of international actors such as the US or the EU, however, has contributed to the marginalization of human rights in Malaysia. Especially since last winter, both EU and US representatives have emphasized that the fight against terrorism does not justify the wholesale use of internal laws to suppress dissent, but

their more permissive approaches to human rights violations in Southeast Asia in the aftermath of September 11 cannot be ignored. Contradicting declarations in July 2001 that a meeting between President George W. Bush and Mohammed Mahathir could only take place if there were progress made on Anwar's case and on the treatment of political dissidents, the US administration avoided any reference to Malaysia's human rights record or abuse of the ISA in the October 2001 APEC summit in Shanghai (Jendrzeczyk, 2001). In addition, responding to the new US security concerns in Southeast Asia, George W. Bush agreed to receive the visit of President Mahathir in May 2002 to thank Malaysia for its efforts against international terrorism.

In sum, the emphasis on security that followed the September 11 attacks, the internal situation of the country and the reconfiguration of US and, to a lesser extent, EU priorities in Southeast Asia led to the relegation of human rights to a very unprivileged position. Mahathir extended the much-berated Internal Security Act to detain opposition activists who were alleged to have links with Middle-East-based terrorists, disperse public protests and curb the political activities of students and academics. However, some judicial decisions and initiatives by the Human Rights Commission of Malaysia were viewed as having bolstered respect for human rights principles, while the judiciary was striving to improve its sagging public image.

### **Indonesia: From Initial Reluctance to the Gradual Accommodation of Anti-Terrorist Laws**

The Indonesian approach to human rights and security issues in the post-September 11 scenario differs from the Malaysian experience. In broad terms, this country's response to non-traditional security threats and political dissent has gone through two different phases over the last two years. As different authors have pointed out, through 2001 and most of 2002 the government of Megawati Sukarnoputri argued that the passage of extensive anti-terrorist measures and the precipitous

arrests of Islamic activists would only help polarize the fragile political environment and probably lead to more violent reactions (Chanda, 2003; Human Rights Watch, 2003b). Although some may argue that this shows the real commitment of Megawati's government to democratization and human rights, a more plausible explanation sustains that she feared alienating the Muslim constituencies needed for re-election in 2004.

Whether this was the case or not, however, the year following the September 11 attacks did not witness the emergence of more restrictive laws or a significant rise in the prosecution of political dissent in Indonesia. This is not to say that the protection of human rights experienced a clear amelioration in 2002. In spite of restoring some political stability to Indonesia during this period of time, President Megawati Sukarnoputri failed to deal with several human rights challenges such as continued violations of international human rights law by military forces, pervasive corruption, religious violence in Maluku and Poso, separatist conflict in Papua and Aceh, and attacks on human rights activists (Human Rights Watch, 2003b). In part, these failures stemmed from the administration's lack of will to stand up to supporters of the Suharto regime, but the absence of strong international pressures in the months that followed September 11 also played a role.

The second phase in the evolution of Indonesia's position vis-à-vis security and human rights began after the Bali bombing on October 12, 2002. The dramatic nature of this event put President Megawati under tremendous international pressures to issue anti-terrorist legislation and arrest leading Islamic activists. In what Katoppo has defined as a shift from "*musyawarah* to *Musharraf*"<sup>6</sup>, the US multiplied its diplomatic

6. *Musyawarah* is an Indonesian word describing a democratic process of deliberation and consultation moving toward consensus. *Musharraf* is General Pervez Musharraf, Pakistan's self-appointed, authoritarian "chief executive", who has become a key US ally in the war on terrorism.

efforts to convince Megawati's administration of the need for new regulatory measures and processes to face non-traditional security threats in Southeast Asia (Katoppo, 2002). In a similar way, both Australia and, to a lesser extent, the EU increased their criticism of Indonesia's weak response to international terrorist networks.

The immediate result of these pressures was the signing of two presidential decrees in late 2002 and the proposing of new anti-terror legislation to the Indonesian Parliament. The decrees, which contain a vague definition of the term "terrorism" that could be used to target political dissidents, allow for the detention of suspects by the police for up to seven days on the basis of scant preliminary evidence and then for up to six months without charge. More importantly, some human rights organizations have expressed their concern that these new measures may "*allow the military to resume the role in law enforcement that for decades –especially during the Suharto era– led to serious human rights abuses.*" (Human Rights Watch, 2003b, 176). Under the new regulatory regime, the military would be allowed to conduct arrests and investigators would have the power to go through personal mail and to tap any form of communication. In addition, while it is true that intelligence-gathering actions have to be reviewed by judiciary bodies, the weak nature of the Indonesian court system and the existence of corruption at many levels of the judiciary make this system of judicial review a very limited guarantee for the effective protection of human rights.

In this new regulatory framework, it is not surprising that peaceful critics of government policies were put on trial for allegedly "spreading hatred" toward government officials in December 2002 (McNally & Morrison, 2002). Justifying its actions against this vaguely defined offense, frequently used by Suharto against perceived political enemies, Megawati's administration has taken a stronger stance on the maintenance of internal security and, in turn, has joined Malaysia in the trend toward a gradual marginalization of human rights.

In contrast to the limited societal response to the abuse of the ISA in Malaysia after September 11, the dramatic change in the government's approach to security threats and anti-terrorism has fueled concern and anger among many Indonesian citizens. A majority of the population seems to agree that new policies must be devised to counteract the actions of terrorist networks, but many Indonesians oppose new legislation that could be used to suspend civil and human rights, the rule of law and democratic freedoms (McNally & Morrison, 2002). As Katoppo has put forth, *"the last thing most Indonesians want is a return of the antiterrorism laws used by Indonesian military government from 1963 to 1998, which allowed for unlimited detention and suspension of all rights of anyone suspected of opposing the government."* (Katoppo, 2002, 2). With regard to their perception of US foreign policy after September 11, many Indonesians seem to be troubled by the consolidation of US unilateralism and its growing insensitivity toward its allies (Johnson, 2003)<sup>7</sup>.

In sum, the post-Bali bombing scenario has forced Indonesia to face the difficult dilemma of how to conduct a firm policy against international terrorism without sacrificing its fragile experiment with democratization and both civil and human rights. As Katoppo and Chanda have suggested, the real choice is not between security or democracy and human rights, as many defenders of the Suharto era maintain, but the new international emphasis on anti-terrorism seems to have provided them and some members of Megawati's government with new excuses for containing the advance of human rights in Indonesia (Katoppo, 2002; Chanda, 2003).

7. The renewal of links between the US and the Indonesian military in late 2002, the announcement by US Secretary of State Colin Powell in late 2002 of a new \$50 million program to assist Indonesian security forces in the campaign against terrorism and the \$16 million package approved by the US Congress to improve the capabilities of Indonesian police forces seem to have mitigated these perceptions, but most Indonesians remain concerned about the pre-emptive doctrine of the US and its growing interference in the affairs of other countries (Ressa, 2002; Johnson, 2003).



## **Conclusions: Lessons and Future Trends**

The ideas expressed in previous paragraphs lead to four main conclusions. First, the attacks of September 11 and the emphasis on security that followed them have given way to the relegation of human rights to a secondary place in many Southeast Asian countries. Although some international actors such as the US or the EU have tried to emphasize the need to counteract terrorism and the urgency of promoting democracy and human rights in this region, their greater attention to the former has debilitated previous concerns and criticisms with regard to respect for civil and human rights. In turn, this attitude has provided the political leaders of some countries with new arguments to justify the marginalization of human rights policies on counter-terrorist grounds.

Second, as the experiences of Malaysia and Indonesia have shown, this trend has not taken a single form. In the case of Malaysia, the relative “mutism” of the international community toward Mahathir’s abusive use of the ISA helps explain the gradual marginalization of civil and human rights in this country. In contrast, the case of Indonesia points to the growing international pressures that followed the Bali bombing as one of the main explanatory factors of Megawati’s more restrictive laws. Moreover, while Malaysia has witnessed a clear marginalization of human rights and democratization efforts in the last two years, the experience of Indonesia is somewhat more ambiguous.

Third, it is important to note here that this trend toward the prioritization of security and the relegation of human rights to a secondary front is not exclusive to Southeast Asia. Although they acknowledge different intensities and forms, several reports by Amnesty International and Human Rights Watch put forth the idea that this is indeed a global trend (Amnesty International, 2002; Human Rights Watch, 2003a). Mary Robinson’s decision to resign as the UN High Commissioner for Human Rights in late 2001 on the basis that

counter-terrorism had endangered the international structure of human rights protection points in a similar direction.

Finally, the cases of Indonesia and Malaysia have revealed the complex interaction between domestic and international factors in the areas of security, democratization and human rights in Southeast Asia. Both regional and national structures for protecting human rights are fragile and permeable to internal and foreign pressures. This situation not only illustrates the extent to which the advancement of human rights in the region depends on the political will of elected leaders, but it also reveals the weaknesses of current regional structures in Southeast Asia and the crucial role played by certain international actors.

The aforementioned conclusions suggest three possible scenarios for the near future of human rights in Southeast Asia. In the first scenario, the emphasis on security will remain and this trend toward the relegation of human rights to a secondary place will deepen. In the second one, the current trend will gradually be reversed and human rights will receive greater attention. Within this scenario, the security discourse may take two different forms. On the one hand, improvement in human rights may be compatible with the emphasis on security if certain international actors decide to take a more critical position *vis-à-vis* human rights violations and are able to accommodate human rights policies in their security strategies. On the other hand, the progressive amelioration of human rights may be feasible if the emphasis on security loses *momentum* and civil societies within Southeast Asian countries put additional pressures on their respective governments. Finally, the third scenario foresees the crystallization of the current situation without any substantial modification.

Which of these different scenarios is most likely to occur? In general, one may argue that the “desecuritization” of the foreign policies of international actors such as the US or the EU is very unlikely in the near future and that, as a result, the likelihood of a serious accommodation of human rights in their foreign policy agendas is certainly limited. This analysis is,

nevertheless, not sufficient. Granted, foreseeing the future is never an easy task, but the analysis of four different factors and their impact on the future of human rights in Southeast Asia can shed some light.

First, the emphasis on security and the international promotion of human rights in the next few years will primarily depend on the foreign policy priorities of the United States and, to a lesser extent, the European Union, Japan and other international actors. Although *continuism* seems to prevail in the definition of foreign policy among most of these actors, these priorities are, nevertheless, not static. The emergence of strong internal pressures coming from their respective citizenries may force the current US administration and other governments to come up with better mechanisms to reconcile security concerns, human rights and democratization. More significantly, a victory of the democrats in the 2004 US presidential elections may lead to a change in security perceptions and international priorities and, in turn, may have the knock-on effect of creating new pressure on human rights and democratization in US strategy toward Southeast Asia.

Second, the evolution of ASEAN and other regional structures is likely to affect the democratization process and the extension of human rights in many Southeast Asian countries. In past years, the internal situation of Indonesia has undermined ASEAN's efforts to become a clear international interlocutor and address the different challenges confronting Southeast Asia. The incorporation of some of the countries with the worst human rights record in the region in the late 1990s and the so-called "ASEAN way" (a mixture of consensus and a set of techniques to bypass, rather than resolve, conflict) have also affected the organization's potential as the motor for democracy and human rights in Southeast Asia. In the near future, the crystallization of these factors may not only weaken the fragile regional structure even more, but also facilitate a greater marginalization of human rights. In spite of these considerations, however, the possibility of a stronger ASEAN should not be dismissed. As Dalpino put forth in early 2001:

*“Despite ASEAN’s present deficits in addressing human rights issues from a regional perspective, (certain) developments provide some evidence that a turn toward a more pro-active role is possible and even likely (...) With regard to an ASEAN human rights policy, the task at this point is not necessarily in recasting the ASEAN way, but in accelerating it.”* (Dalpino, 2001, 12).

The third factor affecting the future of human rights in Southeast Asia is related to the discovery of new links between regional terrorist organizations and international networks such as Al-Qaeda. If Palmer’s suspicions are true and the known linkages between several Southeast Asian terrorist groups, Al-Qaeda and some “rogue” states constitute only the tip of the iceberg (Palmer, 2002), new discoveries may increase international pressures on Southeast Asian states to combat terrorism, therefore providing some political leaders with additional excuses for circumventing human rights and delaying democratization.

Finally, the interaction between Southeast Asian political leaders and civil societies will be crucial for the future of human rights in the region. In past years, some elected leaders such as Malaysian Deputy Prime Minister Mahathir have shown ambiguous commitments towards democratization and human rights while deciding on and implementing measures to enhance internal and regional security. Other leaders, like Indonesian President Megawati, have demonstrated a greater political will for change, but the unsolved civil-military and communal relations pose new challenges to their experiments with democracy and the protection of civil and human rights. In both cases, the rise of pro-human rights social movements may be crucial. As has already been explained, internal pressures coming from society play a prominent role in shaping the political decisions of Southeast Asian leaders. If Chanda is correct when he suggests that the next few years are likely to witness the gradual ascendance of pro-democracy and pro-human rights groups in Southeast Asia, then their pressures on some governments may lead to the gradual reversal of the trend toward the marginalization of democracy and human rights (Chanda, 2003). The political future of the region and the protection of civil and human rights remain, nevertheless, considerably uncertain.

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