

Selling Security: The War on Terrorism and the Internal Security Act of Singapore

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Abstract

The Internal Security Act (ISA) of Singapore has been transformed from a security law into an effective political instrument of the Singapore government. Although the government's use of the ISA for political purposes elicited negative reactions from the public, it was not prepared to abolish, or make amendments to the Act. In the wake of September 11 and the international campaign against terrorism, the opportunity to (re)legitimize the government's use of the ISA emerged. This paper argues that despite the ISA's seeming importance in the fight against terrorism, the absence of explicit definitions of national security threats, either in the Act itself, or in accompanying legislation, renders the ISA susceptible to political misuse.

Keywords: Internal Security Act, War on Terrorism. People's Action Party, Jemaah Islamiyah.

Introduction

In 2001/2002, the Singapore government arrested and detained several Jemaah Islamiyah (JI) operatives under the Internal Security Act (ISA) for engaging in terrorist activities. It was alleged that the detained operatives were planning to attack local and foreign targets in Singapore. The arrests outraged human rights groups, as the operation was reminiscent of the government's crackdown on several alleged Marxist conspirators in 1987. Human rights advocates were concerned that the current detainees would be dissuaded from seeking legal counsel and subjected to ill treatment during their period of incarceration (Tang 1989: 4-7; Frank *et al.* 1991: 5-99). Despite these protests, many Singaporeans expressed their strong support for the government's actions. This latter view contrasted sharply with the negative public reaction toward the 1987 arrests, which stemmed from the belief that the government had misused the ISA (Hor 2002: 30-31; Tan 2002). Following the 1987 arrests,

the ISA was widely perceived as an instrument of the People's Action Party (PAP) regime to curtail dissent, rather than as an instrument to protect Singapore from security threats.

In the 'new security environment' that followed the September 11 attacks, many Western democracies have rushed to enact or fortify national security legislation. The features common in such anti-terrorism laws included: (i) a concentration and expansion of power in the executive arm of government; (ii) an erosion of political and civil liberties; (iii) a weakening of judicial procedures; and (iv) a focus on pre-emptive action against suspected terrorists (Barker 2003: 556; Hocking 2003: 355). For instance, under Section 412 of the USA Patriot Act, a non-US citizen may be detained if the attorney general has 'reasonable grounds to believe' that the suspect is or has been involved in terrorist activity.¹ A person, who is defined as a terrorist in Section 411 of the Act, is subject to indefinite detention regardless of whether he/she has in fact committed an act of terrorism or engaged in terrorist activity.² The attorney general is not compelled to provide the detainee with evidence supporting his/her detention or to grant an opportunity for the detainee to contest the evidence through administrative review procedures. The detainee's only recourse is to submit a writ of *habeas corpus*³ to the Supreme Court, a federal district court or the Court of Appeals, to seek his/her release from detention.⁴

Such draconian prescriptions have made global anti-terrorism legislation strikingly akin to the Internal Security Act of Singapore. Countries that had in the past been overtly critical of the ISA were now enacting similar legislation in their own jurisdictions. This prompted a Singapore commentator to remark: 'Has the rest of the world come to appreciate Singapore's position?' (Hor 2002: 31). The ironic turn of events has not prevented critics of Singapore's ISA from asserting that the Singapore government's use of the Act is still dictated by political considerations rather than security concerns. In the opinion of Geoffrey Robertson, an international human rights lawyer, the Singapore government is obsessed with 'prosecuting liberals instead of worrying about the people who are running unlawful arms and explosive shipments which would cost hundreds of lives in the region'.⁵ The Singapore government has defended its actions, arguing that:

We are not obsessed with crushing dissidents. You can disagree with us. We will accept the arguments. But when somebody poses a threat to our security, we take very stern action against them and when you're dealing with terrorists, it takes a long time. It requires intelligence networks, to

co-operate with one another, to know who they are and then you have just got to arrest them to prevent a bomb from going off. You can't work like the police – let the bomb go off first and then you catch them and put them on trial ... The Internal Security Act has not been used against the liberals. I mean, you have so many of them running around in Singapore. They are free to air their views. They are not persecuted.⁶

As controversy perpetually surrounds the Singapore government's use of the ISA, even in the new security environment, an examination of the reasons behind this phenomenon seems warranted. This paper will provide an analysis of the politicization of the ISA in Singapore. It will trace the evolution of the Act from a colonial security law into an instrument of political control. It will also examine the recent attempts by the Singapore government to recast the ISA as anti-terrorism legislation, with the intention of emphasizing the ISA's function as an effective defence against security and not political threats. I argue that despite the ISA's utility in the fight against terrorist threats, the absence of explicit definitions of national security threats, either in the Act itself or in accompanying legislation, does make the ISA susceptible to political misuse.

National Security and the ISA

The inherent difficulties in conducting research on the ISA have resulted in a dearth of academic literature pertaining to the subject. Although the Act is part of the Singapore statutes, its extraordinary status, as granted by the Singapore Constitution, places it beyond the responsibility of the judiciary. Researchers from the field of legal studies pioneered attempts to conduct comprehensive studies on the ISA (Rawlings 1983: 324-50; Tan 1987: 237-53; Yee *et al.* 1989: 66-103). Such studies were concerned mainly with the effectiveness of judicial review, which, prior to 1989, was the main legislative recourse for a person detained under the ISA. Until the late 1980s, there were no published accounts or reports of a detainee's treatment while incarcerated under the ISA. Following the 1987 arrests, several former detainees began speaking publicly about their experiences during preventive detention (Tang 1989: 4-7). Such accounts became the basis of investigative reports by international human rights groups, such as Amnesty International, which aimed to expose the absence of safeguards that resulted in the ill-treatment of ISA detainees (Amnesty International 1988: 1-15; Frank *et al.* 1991: 5-99). In addition to such reports, Francis Seow's *To Catch a Tartar* provides a first-hand account of the former solicitor-general's incarceration

under the ISA (Seow 1994). These published accounts of ill-treatment intimidated many Singaporeans, and this has invariably affected their societal and political behaviour. As a result, contemporary research on the ISA has not been carried out independently from studies that relate to Singapore politics and/or society (Rodan 1996: 95-127; Tay 2000: 170-89; Chua 2004: 78-101).

Singapore's National Security Paradigm

A brief examination of the city-state's national security paradigm is a useful starting point in the analysis of the Singapore government's use of the ISA. Economic sustainability is a major component of Singapore's national security paradigm. This is because Singapore's survival as a nation-state and the political survival of the PAP regime are both highly dependent upon the economy. Singapore's small stature, geographical location and lack of natural resources have made it overly reliant on international trade including basic necessities, such as food and water (Tan 2004: 67). The city-state is therefore extremely sensitive to internal and external conditions that might adversely affect its trade and economy. For this reason, 'Singapore was quick to embrace export-led industrialization and a pro-West, pro-capitalist orientation' following its independence from Malaysia in 1965 (Tan 2004: 67). As part of its plans to minimize potential threats to its economy from external elements, Singapore sought trade alliances with regional and international partners in the 1970s and 1980s. It was envisaged that if Singapore established strong trade links with regional and international players, the city-state's trading partners would have a vested interest in ensuring that she continued to prosper (Da Cunha 2002: 136). Such economic policies proved successful, as Singapore was transformed by the 1990s into an economic powerhouse that rivalled Taiwan, Hong Kong and Japan.

The PAP has a vested interest in maintaining Singapore's economic vibrancy. Low unemployment rates, positive growth rates and a general prosperity have been the key performance indicators used by the PAP to demonstrate its competence in governing the city-state. The PAP's impeccable performance on economic matters has been one of the main reasons for its continued re-election into power (Perry *et al.* 1997: 71). As such, a failure to produce economic benefits would have a negative effect on its political legitimacy. In view of this, the Singapore government has adopted certain domestic policies that are designed to maintain Singapore's attractiveness to foreign investors. The government believes that social and political stability facilitate a sound commercial sector, which

in turn forms the bedrock of Singapore's continued economic growth. It has thus enacted a set of laws to regulate business, state and societal relationships such that threats to the domestic social and political order can be minimized (Ganesan 1998: 588).

The Rule of Law

There appears to be a contradiction in the way the Singapore government applies the Rule of Law (ROL) to the commercial and non-commercial sectors.⁷ While Singapore's ROL has gained international accolades for its ability to attract foreign investment and stimulate trade, it has also been criticized as unduly harsh toward political dissent, crime and other social misdemeanours. As local constitutional lawyer Kevin Tan observes:

What human rights groups and international non-governmental organizations criticize is our [Singapore's] public law record, meaning things such as constitutional law, criminal law, anything involving the state. They are not concerned with the commercial areas, as our [Singapore's] record is very good for dealing with these matters.⁸

The ROL has been an instrumental part of Singapore's economic development; creating a sound business environment that facilitates trade. As James Cotton writes:

The People's Action Party regime recognised early that international business would not regard Singapore as a profitable field of investment without the protections for contracts, property and labour controls that were to be found in the system of law, which had been bequeathed to the island by the British. The government was careful, accordingly, to retain those elements of the system, which fulfilled significant commercial purposes. (Cotton 1999: 17)

The effectiveness of the ROL in sustaining investor confidence in Singapore was evident during the Asian financial crisis of 1997. The crisis, which crippled the once formidable 'Tiger economies', was caused by economic mismanagement which occurred in the absence of adequate legal standards and endemic corruption (Dibb *et al.* 1998: 9). The hard lesson learnt was that 'economic globalisation was feeding the Rule of Law imperative by putting pressure on governments to offer stability, transparency and accountability that international investors demand' (Carothers 1998: 98). In comparison with her neighbours, Singapore remained relatively unscathed. While massive withdrawals of foreign capital occurred throughout the Southeast Asian region, Singapore was able to retain the majority of its foreign investments (Pillbeam: 2001: 125). This was due to investor-friendly policies, which included a reliable set

of laws that investors could depend upon to protect their investments. Singapore's economy continues to be robust, as it has maintained 'a commercial and economic framework that is designed to provide economic freedom so that Singapore can compete at the highest levels within the global economic and trading system' (Worthington 2003: 104). The continued economic success of Singapore has in turn contributed positively to the PAP's political legitimacy (Ganesan 1998: 589).

The Singapore government has also utilized the ROL as 'a social, political and cultural legal framework that is designed to provide maximum control over society to enforce social and ethnic harmony, minimise sources of political opposition and dissent and impose a conservative framework' (Worthington 2003: 104). In terms of social control, misdemeanours such as spitting, chewing gum, littering, and failing to flush toilets, are regarded as crimes by the state and hence, are subjected to heavy penalties.⁹ Media control is enforced through the Newspaper and Printing Presses Act, and the Undesirable Publications Act, which prohibit publications that the government deems harmful to the public and political interest (Tay 2000: 175). The Public Entertainment Act is used to regulate public performances to ensure that government-defined moral and political standards of propriety are not breached. In the era of information technology, the Internet has not escaped state policing. This is achieved through the Singapore Broadcasting Authority Act and the Computer Misuse Act (Gomez 2002: 33-48). In its attempts to discourage political opposition, the PAP has used civil defamation suits against its political opponents. Members of opposition parties, as well as foreign journalists, have been taken to court over statements or articles that have allegedly besmirched the reputation of cabinet ministers (Worthington 2003: 140; Seow 1997).

The Internal Security Act

The Internal Security Act is Singapore's foremost national security legislation. The ISA empowers the Internal Security Department (ISD) to deal with security threats, such as espionage, subversion and terrorism, but also activities that have been classified as threats by the Singapore government (Rodan 1993: 91-96). The main prescription of the ISA is detention without trial or preventive detention. A person may be subject to preventive detention if it is believed that he/she poses a security threat or that his/her detention can facilitate investigations.

Although the authority to order preventive detention is vested in the president of Singapore as head of the executive, the decision to order preventive detention is made collectively by the cabinet. Section 8 (a) of the ISA states:

If the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order –
(a) directing that such person be detained for any period not exceeding two years

At the enforcement level, Section 74 (1) of the ISA allows:

Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe –
(a) That there are grounds which would justify his detention under section 8:

and

(b) That he has acted or is about to act or is likely to act in any manner prejudicial to the security of Singapore or any part thereof.

The initial detention period can be extended to 28 days following a maximum 48-hour limit if 'an officer of or above the rank of superintendent of police' believes it is necessary.¹⁰ Thus, the total time spent in detention pending investigations may last up to 30 days.

As decisions to order preventive detention and make arrests are based on the president's 'satisfaction' and a police officer's 'reason to believe', there is a high degree of subjectivity in the decision-making process. The courts have in the past allowed such subjectivity in light of the necessity for the executive to move quickly against security threats (Tan 1987:247). Moreover, the courts have held that as the cabinet bases its decisions on the advice of the minister of home affairs, who in turn is advised by the ISD, decisions to order preventive detention are not based on personal considerations but on substantiated facts (Rawlings 1983:337).¹¹ As a result, the judiciary prior to 1989 was reluctant to conduct reviews of cases that involved the ISA. This effectively made preventive detention, as Tan Yock-Lin observes, tantamount to 'executive detention' (Tan 1987: 238).

The judiciary's ability to exercise its powers of review of ISA-related cases was repealed by the Singapore government in the late 1980s. The ISA and all matters pertaining to national security, including the ability to define national security threats, enact national security laws, and enforce such laws, have now become the exclusive responsibility of the

executive, which is dominated by the PAP.¹² The ISA can thus be said to function as the legislative instrument that binds Singapore's national security to the survival of the PAP regime. And not surprisingly, the wide powers granted to the executive through the ISA have been jealously guarded ever since (Tan 2004: 71; Hor 2002: 42).

According to Article 149 of the Singapore Constitution, the ISA should not be interpreted as a normal Act of Parliament. Measures set out in the Act to deal with offences prejudicial to national security, such as preventive detention, supersede considerations of fundamental liberties guaranteed by the Constitution under Sections 9, 11, 12, 13, and 14.¹³ There are nonetheless safeguards set out in Section 9 (18) of the ISA and Section 151 of the Constitution that allow a detainee to obtain recourse against wrongful detention and to be protected against ill-treatment during incarceration (Amnesty International 1988).

Briefly, a detainee may engage legal counsel to appeal his/her detention to an advisory board. The board considers the representations and is free to make further investigations to assist in its deliberations. The board's recommendation to either continue with or cease the detention is made to the president of Singapore. The board's recommendation is only implemented if the president concurs. Should detention continue, the board is required to undertake an annual review of the case and make further recommendations.

To prevent the physical assault of detainees, a doctor is present before and after each interview session to examine the detainee. The examinations are recorded and complaints of the detainee are noted on his/her medical sheet. Discoveries of physical abuse are reported and investigations are subsequently carried out. Furthermore, a Board of Inspection may be convened to make unscheduled inspections to ascertain the well-being of detainees. The existence of these safeguards has not placated civil society groups, opposition parties, former detainees and human rights groups, which have vociferously argued that the ISA should be abolished as it is susceptible to political misuse (*South China Morning Post* 1998; *Agence France-Presse* 2000).

Misuse of National Security Legislation

In Asia, the ROL functions as an instrument of governance that enables state actors to pursue political objectives, such as facilitating economic development, exercising social control and enhancing national security (Jayasuriya 1999: 13). National security in Asia is framed within the context of political stability, economic development and social welfare

(Harris and Mack 1997: 3-4). As a consequence, Asian governments have been able to justify their use of the ROL to ensure social, commercial and political order, which, they argue, is tantamount to ensuring the security of the state. For example, the Asian Legal Resource Centre (ALRC) has observed that:

'National security' has been incorporated within national legal frameworks. Although known by different names, 'emergency' acts have deliberately incorporated a common flaw: vital concepts such as 'terrorism', 'subversion', 'state/public security', have not been clearly defined to describe the precise nature of the perceived threat. It is this ambiguity that has given governments wide scope in exercising such legislation, whether or not within an emergency situation, and thereby protect themselves from public scrutiny and criticism. In this militarized scenario, popular dissent is stifled and condemned as 'subversion'. The 'enemy' is among and within the population and consequently the people themselves are perceived to be a threat.¹⁴

In the Singaporean context, the city-state's national security paradigm similarly intertwines economics, law and order, and regime survival (Thio 2004: 185). As the demarcations are usually blurred, the government's use of national security measures, and in particular, the ISA, has resulted in accusations of misuse. Critics have argued that the ISA has been used not to contain actual security threats, but instead to suppress political dissent and opposition (*The Straits Times* [hereafter *ST*] 1999b). The Singapore government has strongly defended itself against these allegations, reiterating that its use of the ISA is governed by preventive and not punitive considerations (*Agence France-Presse* 2002b). However, as long as Singapore's national security paradigm is couched in terms of regime survival, the controversy over the government's use of the ISA will remain.

The Evolution of the ISA from Security Measure to Political Instrument

The Emergency Regulations, from which the ISA is derived, were enacted in 1948 by the British colonial administration to deal with the communist insurgents that threatened the state. However, since the end of the Malayan Emergency in 1960, the successive governments of Singapore have not made any attempts to abolish the ISA. Instead, they have sought to incorporate the ISA into the legislative framework, thereby ensuring the retention of 'exceptional and executive prerogative power' (Jayasuriya 2001: 93). The ability to exercise such powers has enabled the Singapore government to use the ISA to contain political

threats, which it perceives as national security threats. This evolution is linked to Singapore's historical development.

The Emergency Regulations

Although the Malayan communists fought alongside the British against the Japanese in the Second World War, their political objectives after the war put them on a collision course with the British colonial administration. The Malayan Communist Party (MCP) revived its plans to supplant the British administration and establish a Malayan People's Republic (Pillai 1976: 592; Turnbull 1989: 225). The MCP's initial strategy was to mobilize the trade unions, but when these attempts proved futile, a strategy of armed struggle was advocated (Pillai 1976: 591; Chin 1995: 28). The armed struggle aimed to disrupt the economy, drive the British forces to vulnerable strategic positions, and 'liberate' geographic areas from British control (Pillai 1976: 592). MCP guerrillas attacked remote police posts, plantations, railway lines, and even succeeded in assassinating the high commissioner, Sir Henry Gurney, in 1951 (Pillai 1976: 592-95).

In this time of crisis, the high commissioner was granted extraordinary powers to defend the colony and move against the insurgents (Lee 2002: 56; Ministry of Home Affairs 2002: 17). The Emergency Regulations, which were enacted as a result, enabled the authorities to use preventive detention, impose curfews and restrict publications for the purpose of eliminating the communist threat (Lee 2002: 57). The British also conducted mass arrests, carried out deportations, expanded their security apparatuses, and destroyed the homes of communist sympathizers (Hack 1999: 102). The adoption of such draconian counter-insurgency measures, coupled with an effective propaganda campaign, resulted in a reduction of communist attacks (Hack 1999: 123-25).

The Preservation of Public Security Ordinance (PPSO) (1955)

The demands for an independent Singapore, which had been delayed as a result of the Malayan Emergency, were revived in the 1950s. The Labour Front (LF) under David Marshall scored an impressive victory in the 1955 elections, and became the first local government in the post-colonial era. The People's Action Party (PAP), which was formed in 1954, was elected into opposition. The PAP had formed an alliance with two prominent communist trade unionists, Lim Chin Siong and Fong Swee Suan, in order to increase the party's appeal to the broader Chinese-educated electorate (Mauzy and Milne 2002: 39). The communist

alliance proved extremely risky. The PAP was not only held responsible for communist firebrands who preached and mobilized violent civil disobedience campaigns, but the party itself was also in danger of succumbing to a communist takeover (Fong 1979: 38; Yee *et al.* 1989: 70). From 1954 to 1956 a series of riots erupted throughout Singapore, which compelled the Labour Front government to act.

The Preservation of Public Security Ordinance (PPSO) was enacted in 1955 to replace the Emergency Regulations (Yee *et al.* 1989: 70). And although David Marshall had misgivings about retaining the Ordinance, he acknowledged that the PPSO would be instrumental in curbing the disruptive activities of the communists (Drysdale 1984: 115; Yee *et al.* 1989: 71). Although Marshall had the PPSO at his disposal, he demonstrated a reluctance to use the ordinance to quell the unrests and apprehend the ringleaders. This angered the British, who had grown increasingly impatient with Marshall's inability to restore law and order. Marshall resigned in 1956 and was succeeded by Lim Yew Hock.

Lim was not averse to utilizing the draconian measures granted by the PPSO, to purge the unions of communist influence. In October 1956, a student sit-in escalated into widespread rioting. The Lim Yew Hock government summarily carried out island-wide raids of union and MCP headquarters, and detained many people under the PPSO, including the communist leaders of the PAP. The PAP detainees included Devan Nair (the former president of Singapore but then adviser to the STC Employees Union), Lim Chin Siong, Fong Swee Suan, Sandra Woodhull, Chan Chiaw Thor and James Puthuchearry (Drysdale 1984: 157; Fong 1979: 50). The government conducted a similar purge of communist leaders in August 1957, which resulted in the arrest of 11 pro-communist PAP members (Fong 1979: 60-61).

The reduction of communist leaders in the PAP coupled with the loss of the LF's political legitimacy resulted in the election victory of the PAP in 1959 (Mauzy and Milne 2002: 16). The PAP's first act was to secure the release of all political detainees before it was officially sworn in on 5 June 1959 (Drysdale 1984: 221-25; Fong 1979: 77-79).

The Internal Security Act of Malaysia (1960)

Following the end of the Malayan Emergency in July 1960, the PAP leadership began to lobby for Singapore to enter into a federation with Malaysia. This was because Malaysia could provide the much-needed security, economic and political opportunities that would ensure Singapore's survival (Mutalib 2003: 59). On 27 May 1961, Tunku Abdul Rahman, the

prime minister of Malaya, suggested the establishment of a federation comprising Malaya, Singapore and the Borneo states. Lee Kuan Yew and the moderate PAP leadership expressed genuine interest over the Tunku's proposal, but were challenged by the communist wing of the party, led by Lim Chin Siong. The communists were eventually dismissed from the PAP and established the Barisan Sosialis party on 13 August 1961 (Fong 1979: 101). As the Barisan Sosialis became increasingly antagonistic in their orientation, their participation in the Malayan / Singapore political arenas became a cause for concern (Drysdale 1984: 314). Although the Special Branch compiled dossiers on political leaders who were regarded as potential threats, the British, Malayan and Singapore representatives of the Internal Security Council could not reach a consensus on who to detain (Drysdale 1984: 314). The disagreement stemmed from an inherent difficulty in distinguishing between those leaders that posed a genuine security risk and those who were deemed political threats. An armed uprising in Brunei on 8 December 1962 convinced the Internal Security Council to move against the Barisan Sosialis.

On the 2 February 1963, 'Operation Coldstore' was launched. The Special Branch conducted raids on Barisan Sosialis headquarters, the Rakyat party and Singapore Association of Trade Unions (SATU) premises, and other 'open-front communist organizations' (Abisheganaden 1963). Approximately 107 politicians and trade unionists, including Lim Chin Siong, were detained under the Internal Security Act of Malaysia (which had replaced the PPSO in 1960), to prevent 'subversives from establishing a communist Cuba in Singapore and mounting violence' prior to Federation (Abisheganaden 1963). With the Barisan Sosialis severely weakened by the arrests and detentions of its leaders, the plans for the inclusion of Singapore in the Federation of Malaysia proceeded (Turnbull 1989: 274). On the 31 August 1963, Singapore became part of the newly established Federation of Malaysia.

Singapore obtained her independence from Malaysia on 9 August 1965. The Barisan Sosialis was still active in Singapore politics but seemed to be facing an internecine crisis. In a dramatic move that signalled the change in strategy of the Barisan Sosialis, all its nine members of parliament resigned in October 1966. The party leader, Chia Thye Poh, announced that the Barisan Sosialis would be taking their struggle outside parliament where protests, strikes and demonstrations could be expected (Mutalib 2003: 106). The PAP, now firmly entrenched in government, perceived that the activities of the Barisan Sosialis posed a threat to stability. Moreover, skirmishes between police and Barisan supporters at a rally

in aid of Vietnam, convinced the government that the Barisan had to be stopped. On the 28 October 1966, 30 Barisan Sosialis cadres and unionists were arrested and detained under the ISA (Sam 1966b). Chia Thye Poh was among those arrested as the government opined it was 'necessary to arrest and detain the principal culprits involved in the planning and execution of these illegal activities to impress upon Barisan Sosialis leaders and other Communist United front operators that resort to violence will not advance their cause' (Sam 1966a; *The Sunday Times* 1966). Chia Thye Poh remained incarcerated under the ISA for 23 years, excluding the eight years he spent under house arrest (Amnesty International 1998; *ST* 1998). Chia was not released earlier because he had refused to recant communism or violence, which he maintains he never advocated in the first place (*South China Morning Post* 1998).

The Internal Security Act (1970)

In 1970, the ISA of Malaysia was incorporated into Singapore's legislative framework as the Internal Security Act of Singapore (Yee *et al.* 1989: 70). The Singapore government continued to use the ISA in its campaign to eliminate alleged communist subversives and other potential threats. During the 1970s, the government used the ISA to detain journalists, lawyers, university lecturers and students whom it suspected of having communist inclinations (see Appendix 1). Notable detainees included G. Rahman, Arun Senkuttuvan and Ho Kwon Ping (Lee 1978: 231-34). The government believed that preventive detention and a strong internal security force were a necessity against insidious communist threats (Goh 1967: 53-54).

In the 1980s, the Singapore government claimed that a more insidious form of communist subversion had been detected. In addition, communalism had seemingly emerged as a potential threat to the social fabric of the city-state. Both threats were regarded as serious enough for the government to employ the ISA to detain the suspects.¹⁵ Four Malays were detained on 24 April 1987 for spreading false rumours of an impending race riot (*ST* 1987d). On the 27 May 1987, the Ministry of Home Affairs revealed that a plot had been uncovered to 'overthrow the Government and establish a communist state' (*ST* 1987c). Sixteen people were initially arrested, and another six were arrested in subsequent raids. Of those detained, four were full-time social workers of the Catholic Church, six were volunteer workers with the Geylang Catholic Centre for Foreign Workers, four were part of the Third Stage drama group, and two were members of the Workers' Party Editorial Com-

mittee. The alleged mastermind was Tan Wah Piow, a former student union activist who was pursuing a law degree in the UK. According to authorities, Tan had collaborated with Vincent Cheng, a volunteer worker, to infiltrate student unions and Catholic groups and to use these organizations as a platform for political agitation. As all the detainees were English-educated professionals, the Ministry of Home Affairs claimed that Singapore had to 'contend with new hybrid pro-communist types who draw their ideological inspiration not only from Maoism and Marxism-Leninism, but also from the ideas of contemporary militant leftists in the West' (ST 1987c).

In September 1987, four of the alleged Marxist conspirators were released from preventive detention. Together with five other former detainees, they issued a joint statement protesting their innocence in April 1988. Their release orders were summarily revoked and they were re-arrested on the grounds that they continued to pose a security risk. The detainees then lodged an appeal under *habeas corpus* to challenge the validity of their re-arrests and detention. The Court of Appeal found that the minister of home affairs had not demonstrated sufficient grounds to order the re-arrests, and thus, issued a judgment in favour of the detainees. In doing so, the Court of Appeal demonstrated that it was willing to challenge the executive on national security matters. The government reacted swiftly by amending both the Constitution and the ISA to exclude judicial review on decisions relating to preventive detentions under the ISA.

Despite the government's claims of a 'Marxist conspiracy', and the detainees' public confessions, many Singaporeans were unconvinced that the detainees posed a real security risk. Furthermore, accounts of ill-treatment of the detainees during interrogation and detention provoked international outrage, which tarnished Singapore's global image (Mitton 1993: 46). Many observers came to the conclusion that the arrests were in fact politically motivated (Haas 1989: 48-77). For instance, former Singapore Solicitor-General Francis Seow opined that:

The plain unvarnished truth was that the prime minister had marked this group of sixteen young professionals, augmented by the later arrests of another six persons, for retributive action because of their effective assistance to opposition MP J. B. Jeyaretnam and the Workers' Party in snatching victory in the 1981 by-election and the 1984 general election. (Seow 1994: 79)

In 1988, Francis Seow was himself detained for 72 days under the ISA (Seow 1994). The government alleged that Seow had colluded with an American diplomat to contest the forthcoming elections, and it regarded

this act as interference in the domestic affairs of Singapore (ST 1988). The diplomat was formally expelled, while Seow was detained by the ISD for questioning. A rumour surfaced that Seow was incarcerated to prevent him from taking part in the 1988 general elections. However, his release and consequent participation in the elections did not dispel the perception that the ISA had once again been used for political purposes. As T. J. S. George, former political editor with the *Far Eastern Economic Review*, remarked:

Indeed, the colonialists had administered the Act [ISA] ... with a degree of grace; detainees were released after a decent period of time and often brought to trial under the due process of law. Under Lee [Lee Kuan Yew], the grace disappeared. He consolidated the Act and made it the permanent base of political life in Singapore. If a Gandhi had arisen to lead a popular civil disobedience movement against the Lee government in Singapore, he would have found the Asian premier a harsher overlord than faraway Westminster, and he would simply have disappeared behind the high walls of Changi Prison. (George 1984: 116-17)

During the 1990s, the Singapore government used the ISA to detain six people suspected of espionage. Although details are vague, the 1997 arrest involved a female civil servant who was caught forwarding classified documents to an agent of a foreign intelligence agency (ST 1999a; Ministry of Home Affairs 2002: 11). In 1998, four Singaporeans were arrested for gathering information on behalf of a foreign intelligence agency (ST 1999a; Ministry of Home Affairs 2002: 11).

The government's increasing use of the ISA to combat political threats in the name of security had a profound impact on Singapore society, and in particular, on political and civil society groups (Tremewan 1994: 209). As the government's level of tolerance towards political dissent was not always clear, prudence dictated that criticism of the government had to be done tacitly or not at all. As the Singapore electorate grew more sophisticated, the constant practice of 'self-censorship' became common (Gomez 2000). As a result, some dissenters chose to launch their protests from overseas, while others opted to stay in Singapore and operate within the OB ('out-of-bound') markers that delineated the level of political participation accepted by the Singapore government (Lee 2002: 108-10; Rerceretnam 2006). The Singapore government found it increasingly difficult to justify the retention of the ISA, but that did not imply that it was prepared to abolish the Act (ST 1999b). Notwithstanding, the events of September 11 and the resulting global War on Terrorism have precipitated a refocus on the ISA as a law that defends the state against national security threats.

The ISA as Anti-Terrorism Legislation and a Return to Security

In December 2001 and August 2002, the Internal Security Department (ISD) arrested and detained 37 people in connection with terrorist activities (Ministry of Home Affairs 2003; Nirmala 2004). Most of the detainees belonged to the Singapore branch of the Jemaah Islamiyah (JI) network. According to the Ministry of Home Affairs, the JI's prime objective was to create a Pan-Islamic state in the region through the use of armed struggle. The JI had forged links with other Southeast Asian and international militant groups, such as the Moro Islamic Liberation Front (MILF) and Osama Bin Laden's Al-Qaeda in order to pool and share resources (Ministry of Home Affairs 2003). As such, the JI was able to tap the expertise of its more experienced counterparts to conduct training programmes, procure weapons and obtain finance (Abuza 2002: 428). In order to evade detection, the JI established small cells with specific responsibilities in Malaysia, Indonesia, the Philippines and Singapore (Ministry of Home Affairs 2003: 6-9). The Singapore cell was set up as an operational unit that was tasked with planning and co-ordinating attacks against Western, and in particular American targets in Singapore (Abuza 2002: 456-57). Investigations revealed that the cell was planning to attack the US embassy, naval vessels, schools, commercial buildings and the Yishun substation (the substation is frequented by many US armed forces personnel) (Ministry of Home Affairs 2003: 11-14). It was also discovered that the cell was planning to attack local targets, such as the Singapore-Malaysia water pipeline, the Changi international airport, the Ministry of Defence and other civilian establishments (Ministry of Home Affairs 2003: 30-31).

Following the JI arrests and ongoing efforts to cripple the JI network, local politicians and academics predicted that the threat to Singapore from terrorism would remain unabated for many years (Latif 2002; Singh 2002: 6; Wong 2004). This was because the terrorist organizations in the region were not only highly resilient, but also because Singapore was closely aligned with the United States (*Reuters* 2002). In view of this, Singapore's leader advocated a policy of constant vigilance against potential security threats (Ramesh 2004; Ahmad 2004). Such terrorist threat assessments were given credibility in the wake of the JI attacks in Indonesia on two Bali nightclubs (2002), the Marriott hotel in Jakarta (2003), the Australian Embassy (2004), and a Bali shopping strip (2005) (*Agence France-Presse* 2002c; Wroe 2003; Mapes *et al.* 2004; Ramakrishna 2004: 54; Quijano *et al.* 2005).

Constant threat assessments, the JI attacks in neighbouring Indonesia, added security measures, and increased government spending on defence, have collectively contributed to the 'climate of fear' that has tacitly pervaded the city-state (Chia 2002; Ho and Pardesi 2004; Lee 2004). It is in this context that the justification for retaining the ISA, as an integral part of Singapore's defence strategy against terrorism, was successfully achieved. By empowering the ISD to pre-emptively move against the local JI cell, the ISA was deemed to have indirectly prevented the perpetration of the planned attacks.¹⁶ To further strengthen its arguments for retaining the ISA, the Singapore government undertook a promotion campaign designed to recast the ISA as a vital tool to combat terrorism (Rodan and Hewison 2004: 13).

Recasting the ISA

Direct Promotion of the ISA and ISD

The ISA and the ISD have in the past always evoked a sense of apprehension. Indefinite detention, maltreatment, physical and mental abuse, and public humiliation were common images associated with the law as well as the department (Tremewan 1994: 202). In an effort to dispel such negative perceptions, the Ministry of Home Affairs launched a series of public awareness campaigns, beginning with the publication of two documents that provided detailed information on the JI arrests, the ISA and the ISD (*Agence France-Presse* 2002a; *ST* 2002b). The publications were also complemented with other initiatives that were designed to raise the profile of the ISD. This resulted in a partial removal of the 'veil of secrecy' that had surrounded the inner workings of the department since its establishment (*ST* 2000). For instance, the ISD Heritage Centre was set up to 'showcase the operational history of the department', and although the Centre was a designated training facility for ISD officers, members of the public were allowed to view the displays and exhibits.¹⁷ A mobile version of the Heritage Centre exhibits also toured schools and community centres (Koh 2003). ISD officers were present at the exhibitions to respond to public queries. Also, ISD officer promotion ceremonies, that had in the past been conducted internally, were celebrated in public venues such as hotels (*ST* 2002b).

Indirectly Promoting the ISA: The Economic Dimension

As Singapore's economic growth and development have always been 'couched in terms of survival and security', the economic dimension of the 'War on Terrorism' enabled the government to indirectly promote the ISA (Tan 2004: 72). Linking terrorism, and in particular the JI arrests, to the economy in a 'trade-security nexus', was a recurrent theme in many ministerial speeches (Rodan and Hewison 2004: 9). For instance, former Prime Minister Goh Chok Tong, noted:

The JI episode is a threat to our economy. Foreign investors might become worried about the safety of their investments. And if Changi Airport and Jurong Island had been attacked, that would have done actual harm to our economic interests. If foreign investors keep away from Singapore, there would be fewer jobs for Singaporeans. Our livelihood would be affected.¹⁸

Implicit in such statements was the necessity for the Singapore government to maintain order and political stability through the ISA, in order to ensure the sustainability of Singapore's economy (Tan 2004: 72). This argument was validated with the conclusion of a Free Trade Agreement between Singapore and the United States in 2002, which had resulted from Singapore's assistance to US anti-terrorism efforts.

The US-Singapore Free Trade Agreement (USSFTA) was perceived as a reward for the city-state's unequivocal support for the US in the 'old' and 'new' security environments (Mitton 2003). The Republic had in the past granted the US access to military facilities, was fervently supportive of the US-led war in Afghanistan and Iraq, and was instrumental in preventing the JI attack on American interests (Rodan and Hewison 2004: 10-11). In light of these actions, US Congressmen Pete Sessions affirmed: 'Singapore supported us not only on the day of the terrorist attacks, but has since been very involved in our war on terror ... Countries which are our friends are those who will continue to reap the rewards of a closer relationship.'¹⁹

The advantages to Singapore stemming from the USSFTA were both economic and strategic (Koh, Y. 2003: 3). In economic terms, the USSFTA would reduce the initial amount of Singapore's export tariffs by 92 per cent with further reductions made in subsequent years. All impediments to e-commerce would be removed and service providers would be granted access to both federal and state governments (Washington 2003). The overall profits accruing to Singapore companies from such measures were predicted at S\$200 million.

Strategically, the Singapore government was anxious to 'entrench the US presence' in the region to ensure the continued security and stabil-

ity of Southeast Asia (Mitton 2003; Hadar 2002). It was envisaged that bilateral co-operation between the two countries would be enhanced in terms of 'counter-terrorism, counter-proliferation of weapons of mass destruction, joint military exercises and training, policy dialogues and defence technology' (Acharya 2004).

In short, linking strategic, social and economic benefits to the Singapore government's 'War on Terror' enabled the PAP to allude to the ISA as having indirectly facilitated these benefits. Furthermore the US, a once ardent critic of the ISA, had expressed its support for the government's use of the ISA to neutralize the local JI cell (*The Sunday Times* 2002). As Richard Boucher, a spokesman for the US State Department, noted: 'We're cooperating very closely with the Singaporean authorities. We welcome the active engagement that Singapore is taking against terrorism, and we've applauded the arrests that they've made in these matters' (*Channel News Asia* 2002). Such support has provided a measure of international legitimacy for the government's use of the ISA.

The government's promotional campaigns aimed to recast the ISA as anti-terrorism legislation. This was designed to lend credence to the government's argument that the ISA was still relevant and should not be abolished. As home affairs minister Wong Kan Seng argued:

Some people continue to be critical about the Internal Security Act. But for most Singaporeans today, they now know the value of the ISA ... without the ISA and ISD ... they would not have enjoyed this sense of safety and security today ... [I]t is because of the Home Team that Singaporeans can sleep well at night, in the comfort that there are thousands of Home Team officers keeping watch for them.²⁰

Some opposition politicians even recanted their former objections to the PAP's use of the ISA. For example, Chiam See Tong of the Singapore Democratic Alliance (SDA), noted:

My party, the Singapore Democratic Alliance (SDA), welcomes the Government's decision to introduce the White Paper on the JI detentions. The White Paper provides the factual background to the detentions and show how appropriate the Internal Security Act is in dealing with threats to national security.²¹

Human rights advocates and other opposition parties though remain sceptical about the government's use of the ISA, since the PAP's conception of national security does include an element of self-preservation (*Agence France-Presse* 2004).

The Inherent Limitations of the ISA

The new security environment has enabled the Singapore government to recast the ISA as an integral tool to defend the state against terrorist and other national security threats. The ISA has seemingly obtained a new lease of life and gained international and domestic legitimacy through the government's use of the Act to detain the JI operatives. Notwithstanding, the inherent limitations of the ISA suggest that the Act remains susceptible to misuse.

The fundamental flaw of the ISA is that it does not contain a clear definition of a national security threat (Chua 2004: 84). The Singapore government has defended the Act as 'a critical legal instrument of last resort to counter security threats such as racial and religious extremism, espionage, terrorism and subversion' and is 'not used to suppress political opposition but to counter extremist groups or radical groups that threaten Singapore's internal security or do harm to our people'.²² However, with the exception of terrorism (defined in the United Nations (Anti-terrorism Measures) Regulations 2001), other forms of national security threats have not been explicitly defined either within the ISA or in accompanying regulations/legislation. As threats to national security remain in definitional ambiguity, the responsibility for defining such threats remains the responsibility of the executive. This allows the executive to interpret certain types of political dissent as national security threats, which could result in the detention of the activists. As the ISA is Singapore's foremost national security legislation, and since national security is intimately connected to the political legitimacy of the regime, the ISA invariably becomes a law that protects the PAP from political attack.

As the safeguard of judicial review on executive decisions to order preventive detention has been absent since 1989, this removes any legislative recourse for individuals who may have been wrongfully detained.²³ And although the Advisory Board Review exists to prevent wrongful detention, the process itself has limitations. For example, the Board cannot secure a detainee's release without the consent of the president and the cabinet.

Conclusion

The ISA has been transformed from a security law into an effective political instrument of the Singapore government. As Hugh Hickling, who drafted the ISA in 1960, observes:

Since I drafted the original Act, the ISA has been tightened up and tightened up until now there's no provision for judicial review. Unfortunately over the years the powers have been abused. Instead of locking up people suspected of organizing violence, which is the phrase used in the preamble to the ISA, it's been used to lock up political opponents, quite harmless people.²⁴

Although the government's use of the ISA for political purposes elicited negative reactions from the public, it was not prepared to abolish, or make amendments to the Act (*ST* 1999b). In the wake of September 11 and the international campaign against terrorism, the opportunity to (re)legitimize the government's use of the ISA arose. As the ISA had been instrumental in preventing several terrorist attacks on domestic and foreign targets by empowering the ISD to move quickly against the organizers, the ISA has been heralded as an effective piece of anti-terrorism legislation. The government's recent use of the ISA also gained international and domestic validity, which further strengthened their resolve to retain the ISA. Despite the support for the government's use of the ISA, human rights advocates continue to voice their opposition to the ISA.

While the issue of human rights concerns used to dominate any discussion regarding the ISA, the new security environment has effectively weakened their impact. The spectre of international terrorism has vindicated the use of harsh national security legislation by governments, and drowned out demands for such legislation to be abolished based solely on human rights or civil libertarian concerns (De Castro 2005: 229). It cannot be expected that non-democratic governments would have any incentive to abolish national security laws, since liberal democracies have themselves enacted anti-terrorism legislation that contravenes human rights in some way. Hence, it is clear that draconian anti-terrorism laws will be a feature of both Western democracies and neo-authoritarian Asian states in the foreseeable future. If so, then the current strategy of human rights advocates, that is, to strenuously demand the abolition of anti-terrorism legislation, will be a futile gesture. In light of these circumstances, it may be prudent for human rights advocates to amend their strategies accordingly or risk being labelled as terrorist sympathizers.²⁵

In Singapore, human rights and civil libertarian concerns do not resonate as loudly as in the West. Singaporeans are however intimidated by the threat of indefinite incarceration and ill-treatment, and have concerns that national security threats will adversely affect their financial standing. This has deterred many from engaging actively in political debates for fear of incurring the wrath of the government; it has also resulted in expressions of support for the government's use of the ISA against the local JI cell. This does not imply that the younger generation of Singaporeans who are highly educated and more exposed to international trends are politically apathetic or are content with the limited level of political participation. There is a genuine eagerness to participate more actively in politics and a desire to express their criticisms of government policies without fear of being detained under the ISA.

The Singapore government has arguably made subtle changes in its policies regarding the ISA. The differences in treatment of the ISA detainees in 2001/2002 and 1987 are a case in point. This is however, not to naïvely suggest that a fair degree of 'psychological pressure'²⁶ was not applied during the interrogation of the JI detainees. Rather I simply wish to highlight that the government does realize that it cannot simply 'lock people up indefinitely' without experiencing a backlash. Nevertheless, the ISA and the ISD will remain part of the political landscape in Singapore for the foreseeable future.

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NOTES

- ¹ S 412 USA Patriot Act – Amendment to S 236 of *The Immigration and Nationality Act*, S 236A (a)(3).
- ² S 412 USA Patriot Act – Amendment to S 236 of *The Immigration and Nationality Act*, S 236A (a)(2); S 412 USA Patriot Act – Amendment to S 236 of *The Immigration and Nationality Act*, S 236A (a)(6).
- ³ A writ of *habeas corpus* is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody.
- ⁴ S 412 USA Patriot Act (b)(2).
- ⁵ *HARD Talk*, British Broadcasting Corporation, 23 September 2003.
- ⁶ Interview with Goh Chok Tong, *HARD Talk*, British Broadcasting Corporation, 23 September 2003.
- ⁷ In a Western context, the Rule of Law exists as a framework for governance, whereas in an Asian context, it exists as an instrument of governance.
- ⁸ Kevin Tan, cited in Chua Mui Hoong, 'Is Singapore's Legal System Getting a Bad Name?'. *The Straits Times*, 25 October 1997.
- ⁹ This has given rise to the characterization of Singapore as a 'fine-city'.
- ¹⁰ S.74 (3) (4) ISA.
- ¹¹ It is assumed that the evidentiary materials, supplied by the investigating department (the Internal Security Department [ISD]) to the Executive to assist it in its decisions, are devoid of personal considerations or unsubstantiated facts.
- ¹² Article 149 of the Singapore Constitution, S 1 (e).
- ¹³ See Article 9: Liberty of a Person, 11: Protection against retrospective criminal laws and repeated trials, 12: Equal protection, 13: Prohibition of banishment and freedom of movement 14: Freedom of speech, assembly and association.
- ¹⁴ Statement submitted by the Asian Legal Resource Centre (ALRC) to the UN Commission on Human Rights, Civil and Political Rights, Including the Questions of States of Emergency, E/CN.4/2002/NGO/78, (31 January 2002). Accessed 31 October 2004: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/ea32e95eddaefad3c1256b64004199de?Opendocument>
- ¹⁵ Lee Kuan Yew, Prime Minister's New Year Message, 1988.
- ¹⁶ Wong Kan Seng cited in 'Book on ISA to be released this Year', *The Straits Times*, 14 April 2002; 'Priority to Neutralise Terrorist Network Not Try Accused'. *Agence France-Presse*, 29 September 2002.
- ¹⁷ Internal Security Department, 'Security Education', Available: <http://www.mha.gov.sg/isd/se.htm>
- ¹⁸ Opening remarks by Prime Minister Goh Chok Tong at the Dialogue with Community Leaders on the Arrest of the Second Group of Jemaah Islamiyah Members, on 14 October 2002.
- ¹⁹ US Congressman Pete Sessions, cited in Jennifer Lienin Washington, 'Singapore Firms Set to Reap S\$200m a Year from US Trade Pact'. *The Straits Times*, 8 May 2003.
- ²⁰ Speech by Mr Wong Kan Seng, Minister for Home Affairs at the ISD Intelligence Service Promotion Ceremony, 3 April 2003.
- ²¹ Chiam See Tong, *Parliamentary Speech on JI Whitepaper*. Accessed 15 August 2005: <http://www.spp.org.sg/sp200103.html>.
- ²² Vanu Gopala Menon, *Letter from the Permanent Representative of Singapore: Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World*. Office of the United Nations High Commissioner for Human Rights, (19 March 2002). Accessed 31 October 2004 <http://www.ohchr.org/english/>

- ²³ S 8B (1) (2), Internal Security Act; S 149 (3), Constitution of the Republic of Singapore.
- ²⁴ Hugh Hickling, cited in Roger Mitton, 'The Long Story: Keeping the Streets Safe'. *Asiaweek*, 28 July 1993: 46.
- ²⁵ US Senate, 'Testimony of Attorney General John Ashcroft', *Department of Justice Oversight: Preserving our Freedoms while Defending Against Terrorism, Hearings before the Senate Committee on the Judiciary*, 107th Congress, 1st Session, 2001. Cited in Nancy V. Barker, 'National Security versus Civil Liberties'. *Presidential Studies Quarterly*, September 2003, 33 (3): 547-48.
- ²⁶ In the Marxist case, the then deputy prime minister, Lee Hsien Loong, admitted: 'The Government does not ill-treat detainees. It does however apply psychological pressure to detainees to get the truth of the matter.' See 'BG Lee Explains Rationale for Re-arrests'. *The Straits Times*, 22 April 1988.

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