

TERRORISM – THE THREAT TO DEMOCRACY, PEACE AND SECURITY

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ABSTRACT

This paper looks at terrorism as a threat undermining the security and stability of a nation and that governments throughout the whole world have galvanized into actions by passing laws relevant to counter terrorism and their connected activities. Terrorism must be looked upon in its most undeserving nature.

Keywords: Terrorism, terrorist threats, relevant laws, preventive nature, preventive measures, security offences, security and stability and security initiatives.

INTRODUCTION

Numerous articles have been written on terrorism. The devastation and the result of each attack/s and what these actions permeate have been written and reported worldwide. The scenes at the devastation sites were also focused and shown to the world at large. The scale of horror is unimaginable with bloodied or maimed bodies strewn all over the place and the damage done to infrastructures around the area. The question still remain to this day is when the threat from terrorism or acts linking to terrorism is going to stop and takes an end.

The very minimal that all legitimate governments hope is that the threat takes a deep dive towards an entity of non-existent especially with regards to the threats from quarters like the Mujahedeen/Taliban in Afghanistan, the Boko Haram in Sudan, the Laskar et Tayyiba in Pakistan, those in the name of Al-Qaeda throughout the globe and for that matter those groups opposing any legitimate governments chosen by the people in a valid referendum.

Threat from terrorism undermines the security and stability of a loving peace nation and the threats and their results thereafter have always been too taxing on the economy of a nation not to mention in the long run, a deplete to democracy and finally sending a nation into chaos or disarray. These chaotic situations brought about politically displaced people from their own home towns and robbing the people of their economy and social life as should be in a civil society. For the young terrorism may means losing the opportunity to proper education. Lack of education brings a human capital to zero level of intelligence application, thus open the possibility on the preoccupation towards criminal elements. The vicious cycle if unchecked will push the world into two divides namely that of people supporting terrorism as a result of failures by the government to take care of its own people and the other of course the people or group maintaining the issue that terrorism as a threat to their well being.

Terrorism in its form is a threat either real or perceived but both are equally dangerous in whatever level or forms of terrorism will take effect.

Governments throughout the world have galvanized efforts in ensuring that such threat from terrorism does not affect the economy which in turn affect the social strata of the people in a particular country. Civil society thrives on independence and free from any forms of threats and as such this situation must be upheld and maintained.

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BACKGROUND

Terrorist attacks on September 11 2001 have galvanized many nations to introduce laws to tackle issues connected to terrorism. Basically the laws aim at cutting the funding towards terrorism activities and to enable the governments and their agencies to collect information and thereby share the said information with other countries. Many of the laws too empower the Immigration Office or Department to tighten procedures and adopt any forms of measure or element to detain suspects on grounds of suspicion as a preventive measure. A number of countries have even extended the police powers and to an extent work on police cooperation among police forces of the world to curb all activities connected to terrorism threats which undermine peace and security.

The laws today have become more advanced in the sense that security measures enhanced areas where nuclear technology is in question due to threats from nuclear terrorism. Science and law jurisprudence must now go hand in hand. The aviation industry of which at one time is hardly heard of but now has been given full scale coverage. Carriage of goods by air has become an imminent future consideration and any dangerous substances involve; the security measures shall not be taken for granted.

There have been a number of attempts in the aviation industries especially involving passenger lines and air cargo as well as the combination of passenger and cargo carriage. One of the attempts which has been considered and given priority is the botch attempt to detonate an American Flight on Christmas day 2009 on the American soil by a Nigerian and this act has been dubbed as the “underwear bomb plot” terrorist. To date, the sophistication of the threats has taken to a new height. The new form latest sophistication was developed more refined via a detonation system and the device did not contain metal, meaning which probably could have passed through an airport detector (*The Star May 9 2012*). Accordingly, this could have been the work of a bomb master maker Hassan al-Assiri or one of his protégés. If this device is planted in a body, certainly the metal detector fails to trigger any alarm thereby putting all passengers in the mercy of the bomb carrier. Although this has not been proven yet but the possibility of such device being planted in a body of a suicide bomber cannot be ruled out. If and when this takes place, the devastation would be of a magnitude unimaginable.

INTERNATIONAL LAWS DEALING WITH TERRORISM

The uses of laws connected to terrorism were also given a broad coverage and the United Nations has been pivotal in the fight against terrorism. The definition given by the United Nations on terrorism is “*Any action that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act*”. Scores of international rules through conventions have been formulated and these inter-alia includes Nuclear Materials Convention 1980, New York 1971 Hostages Convention, Montreal Convention 1971 – Aviation Sabotage, Hague Convention 1970 – Aircraft Hijacking, Rome 1988 Terrorism on Ships, Rome 1988 Terrorism on Fixed Offshore Platforms, Montreal Convention 1991 Facilitating Detection on Plastic Explosives, United Nations General Assembly Res. 1997 Terrorist Bombing, United Nations General Assembly Resolution 2000 Terrorist Financing and finally the inclusion of Convention For the Suppression of Unlawful Acts Against The Safety of Maritime.

Many nations of the world have to that extent enacted their own laws to tackle issues connected to terrorism for example the Australian Terrorism Act 2005, Terrorism act 2000 United Kingdom, Tanzania (Tanganyika Preventive Detention 1962), Bangladesh (Special Powers Act 1974), Ghana (Preventive Detention Act 1958), Israel (Emergency Powers Detention Law) and Sri Lanka (Prevention of Terrorism Act 1982) and finally the United States itself enacted The Patriot act 2001 and at the state levels the inclusion of The Homeland Security Act 2002. These are signs of how serious the threats coming from terrorism and its elements.

Generally speaking terrorism is quite ambiguous in its meaning because if it is in the context of a revolution to free a country, then such act may be excused even if the whole population was terrorized

in the process of getting a freedom for a freedom fighter in the beginning may end up as a terrorist at the end of that revolution.

Terrorism are synonymous with the order committed in the name of God/religion or for a certain political goal and may also serve as a sectarian belief in order to help those deprived of their basic human rights by the state.

Terrorist have killed people of all nationalities professing different faith and coming from any social backgrounds. The terrorist aim is “end justifies means” at whatever cost may be inflicted to human lives and sufferings.

REAL AND PERCIEVED TERRORISM THREATS IN MALAYSIA

Malaysia is not isolated from the threats posed by terrorists and the country could not ruled out the possibility of “who and who” could be terrorist. As such any security threats should be countered and measures should be implemented and detection to any terrorist threats would be prohibited or taken accordingly. These measures would involve all levels of society and they include the military (Angkatan Tentera Malaysia - ATM), the police (Polis Di Raja Malaysia - PDRM), the Maritime Enforcement Agency (Agensi Penguatkuasa Maritim Malaysia - APMM), the Malaysian Royal Customs Department, Border and Infrastructure Security and the Civil Defence (Jabatan Pertahanan Awam Malaysia - JPAM). The country too is to that extent has its medical quarters ready and psychologically prepared to counter the onslaught of the terrorism attack should it occur.

The nation actually has experienced terrorism since 1948 during the battle against the communist. A number of incidents timeline as terrorism attacks have occurred and these include among others the attack by the faction called “Al Mauna” in 2000 when 111 military firearms and ammunitions were stolen from the Territorial Army post in Kuala Rui Perak; the murder of Joe Fernandez (November 4 2000), a member of the Legislative Assembly in Lunas, Kedah. He was gunned down by someone believed to be one of the members of a militant religious group. In 2002 Malaysia has arrested six members of the Jemaah Islamiyah group who were involved in the Bali bombing that killed 202 people. Malaysia has also arrested six suspect terrorist of the Indonesian JI (Zakaria Bin Samad, Ahmad Bin Zakaria, Terhamid Bin Dahalan, Mahfudi Bin Saifuddin, Mulyadi and Ariffin). The famous detention of Mas Selamat in Skudai, Johore (2009) signaled on how effective the Malaysian police in handling terrorist and the said man was re-arrested after he escaped from Whitley Detention Center in Singapore (2008).

These are but some of the incidences involving terrorism and they have moved the country to formulate anti terrorism law to ensure and give legal protection that brings threat to the national democracy and security. The militant movements must be checked at all material time and all forms of violence must be “dibanteras” or eradicated to prevent chaos and disruption to the nation’s economy.

At the very forefront in the battle against terrorism are specialized military, law enforcement and the civil defense units are inter-alia the 11th Uniform Squadron Regimen Gerak Khas, Alpha Platoon of PASKAL, Flight Hostage Rescue Team PASKAU, Counter-Revolutionary Warfare 69th Commando Battalion of PGK, Special Actions Unit of PGK, UNGERIN, Trup Tindakan Khas and Special Task and Rescue. The Royal Malaysia Police since 2010 has its own special unit to look into terrorism issues that is the Royal Malaysia Police Counter-Terrorism Task Force.

The Unit or the Counter-Terrorism Task Force will look into and determine issues connected to terrorism per se and the Task Force among other duties would be to establish counter-measures against or on the use of explosives devices and suicide bombers, the assassination of political, military or media figures, hostage taking, the hijacking of airplanes or other vehicles, the destruction of infrastructure and communications, the use of bio-chemical and nuclear weapons.

Democracy lies in the hearts and mind of the people. The terrorist aim is at most of the time to get the attention of the media and thereby, they are willing to kill indiscriminately and mass murder is thus their explicit objective.

JURISDICTION - SECURITY OFFENCES (SPECIAL MEASURES) ACT

In determining to protect democracy, peace and security, the Malaysian government has instituted a new Act that is the Security Offences (Special Measures) Act 2012 which is having elements preventive in nature so that lives and property can be protected before the death or damage can be done. The Act is to provide for special measures in dealing with security offences and at the same time recognizing the grave risks to internal security and public order presented by the threat of terrorism, sabotage and espionage. This Act is made under Article 149 of the Malaysian Federal Constitution.

The Act underlies the special powers for security offences, special procedures relating to electronic monitoring device, special procedures to sensitive information, special procedures relating to protected witness and matters related to evidence.

The very onset of the Act specifically mentioned WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia –

- (1) *To cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;*
- (2) *To excite disaffection against the Yang di Pertuan Agong;*
- (3) *Which is prejudicial to public order in, or the security of the Federation or any part thereof; or*
- (4) *To procure the alteration, otherwise than by lawful means, of anything by law established.*

Security offences are tried in High Court and no bail is allowed. Any protected witness involved shall be taken to mean as a witness whose exposure will jeopardize the gathering of evidence or intelligence or jeopardize his life and well being.

Elucidation to the laws on security offences :-

- *A police officer has special powers of arrest and detention over persons whom he has reason to believe to be involved in security offences*
- *No person however shall be arrested solely for his or her political belief or political activity*
- *A detainee is allowed to inform his next of kin and to consult a legal practitioner subject to certain limitation of time (48 hours) if there are reasonable grounds such interference by counsel will diminish the investigation and evidence connected to security offences*
- *The power to intercept communication may be done without the authorization if in urgent and sudden cases where immediate action is required. This however still subject to discretionary powers.*
- *The Act Sets out procedures when the police intends to attach an electronic monitoring device*
- *What are sensitive information and when the accused may use such information as well as when the prosecution may use such sensitive information*
- *Evidence to sensitive information. A safeguard to the accused whereby his counsel shall be allowed to view the sensitive information and submit against its admission if the accused objects to the admission of the statement or summary of the sensitive information as evidence. When the accused intends to use the sensitive information in his defence*
- *Provision to conviction based on testimony of child of tender years*
- *Provision to conviction base on evidentiary document seized during raid or in the course of investigation*
- *Evidence of accomplice and agent provocateur*

JURISDICTION - PROCEDURAL SAFEGUARDS

Threats to security, peace and democracy can be caused by various people or groups of people. These problems can be violent and quickly can expand to a point that they have become broad and complex which may later on impacted the independence and the integrity of the nation thereby giving rise to disorder which threatens the security and strength of the country.

Malaysia does ensure some form of freedom. All forms of freedom however must be exercised subject to certain limitations. Democracy should not be that absolute. According to a Lebanese Poet Kahlil Gibran, only three groups of people having that absolute freedom namely, the unborn, the insane (demented) and the dead leaving the rest of us subject to limitations that include events or things that do not cause conflicts, defamatory and derogatory, obscenity and profanity, threats on any forms (criminal and tortuous), sub-judice, contempt of court, incitements towards violence, terrorism, blasphemy or for that matter bringing hatred or contempt or exciting disaffection against any ruler or the government.

The reasons behind such limitations are for preservation of order, peace, harmony and for the betterment of Malaysian democracy.

International scenarios have proven that total freedom given to public to express whatever sentiments they believed may cause global tension and may also caused economic downturn as what happened a few years back to Denmark when their press came out with a cartoon caricature of Prophet Mohammad wearing a turban. Tension and havoc caused may push to terrorism and to recoup peace may take a long time to heal and to a certain extent may break the diplomatic ties of certain countries.

Malaysian Constitution entrenched under its Article 10, freedom of speech, assembly and association but such freedoms have to be exercised in the cause of public interest or order and harmony as well as morality of the country. The rational or wisdom behind the policy makers drafted the Article 10 of the Constitution where limitations accrued would be to preserve the order, peace and security of the country and there would be no abrogation of rights especially in or to where people practice different ethnic rights and religious beliefs.

Conclusively, the citizens must appreciate the words of Article 29(2) of the Universal Declaration on Human Rights that those issues confronting the society should be discussed subject to or through a peaceful and rational discourse as given by the latest Act in Malaysia namely the Peaceful Assembly Act 2011. Terrorism should not be a threat to the basic human rights of life and property.

JURISDICTION - MALAYSIAN RELATED LAWS TO TERRORISM

Mutual Assistance in Criminal Matters Act 2002

“An Act to make provision for mutual assistance in criminal matters between Malaysia and other countries and for matters connected therewith”.

The object of the Act is to provide and obtain international assistance in criminal matters including:-

- *providing and obtaining evidence and things;*
- *the making of arrangements for persons to give evidence or to assist in criminality investigations;*
- *the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;*
- *the restraining of dealings in property , or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;*
- *the execution of requests for search and seizure;*
- *the location and identification of witnesses and suspects;*
- *the service of process;*
- *the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a serious foreign offence;*
- *the recovery of pecuniary penalties in respect of a serious offence; and*
- *the examination of things and premises.*

Anti-Money Laundering Act 2001 (Act 613)

a) Its preamble states;

“An Act to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and to provide for forfeiture of property derived from, or involved in, money laundering and for matters incidental thereto or connected therewith”.

b) The legislation applies to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date of the Act. The legislation also applies to any property whether within or outside Malaysia.

c) “Serious offence” captures a wide range of offences provided in the Second Schedule of the Act. Examples of serious offences relevant to crimes relating to terrorism:-

- * Offences of money laundering itself
- * Banking offences by individuals, banks or purported financial institutions.
- * Possession of corrosive or explosive substance for the purpose of causing hurt.
- * Prohibition of manufacture, possession or import of especially dangerous explosives.
- * Acts causing explosions of fire,
- * And various other offences relating to explosives including the important sections of making or possessing explosives under suspicious circumstances,
- * Possession and trafficking in firearms under Firearms Regulations.

The new amendments to the **Penal Code** (which came in force in stages since 2007)

Section 130B – 130T (terrorism includes supporting, providing, conspiring with terrorist activities; inclusive of financing committed by individual or body corporate by attaching liability to alter egos of the corporation).

Section 125 – waging war against any power in alliance with the King,

Section 125A – harbouring person waging war,

Section 121 – waging war against Ling/Ruler in Malaysia or state in Malaysia,

Section 302 – murder,

Sections 319 – 338 – causing hurt and grievous hurt.

However, recently Malaysian Parliament did defunct the Internal Security Act 1960 and along the line a number of Acts have to be instituted to suit the new law taking effect replacing the Internal Security Act 1960 namely the Security Offences (Special Measures) 2012 which came into force on the gazette date the 22nd of June 2012. The amendment to the Penal Code by Penal Code (Amendment) 2012 was by way to specifically deal with organized crimes, activities detrimental to parliamentary democracy, sabotage and espionage. The new law provides that any person who commands another to do criminal act becomes an abettor thereby guilty by such reason. The law further reiterates the meaning to what activity regarded as detrimental to “parliamentary democracy”, “document or publication detrimental to parliamentary democracy”, “espionage”, “essential services”, “publication”, “sabotage” and “sensitive information”.

The amendments to the **Criminal Procedure Code** (which came in force in stages since 2007)

Section 106A and Section 106C (provisions used to intercept, detain and open postal articles and messages transmitted via telecommunications – all intercepted communications can be used as evidence for trial in terrorism).

The old provision above dealt on the powers of the Home Affairs to intercept communications of the terrorist but Section 106A was amended recently to remove the words “communication” and “communications service provider” and that provision 106C was deleted and the new Sections 116A, 116B and 116C were instead inserted. These new Sections lend more credibility in handling issues connected to telecommunications which includes the power to “search and seizure without warrant”, “access to computerized data” and “interception of communication and admissibility of intercepted communications” – Criminal Procedure Code (Amendment) (No.2) Act 2012.

The **Strategic Trade Act 2010** which came into force on 1st July 2011 could also be considered as one of the laws that safeguard the Malaysian democracy and security. Malaysia has to that effect made significant fulfillment to the Nuclear Security Summit in Washington USA in 2010. The government has acceded to the Convention on Physical Protection of Nuclear Material (CPPNM) and its 2005 Protocol; ratifying the International Convention for the Suppression of Acts of Nuclear terrorism

(ICSANT) and the International Atomic Energy Agency (IAEA) Additional Protocol and does adopt the various code of conduct.

Accordingly the Strategic Trade Act 2010 contributes to global efforts to curb the proliferation of weapons of mass destruction. Since terrorism is regarded as one of the most challenging threats to democracy and international security, Malaysia has also endorsed the Statement of Principles to the Global Initiatives to Combat Nuclear Terrorism (GICNT). As such if illegal trafficking on materials is involved, the government has implemented the Container Security Initiative (CSI) and the Megaport Initiative. Both CSI and Megaport Initiative have been implemented at several ports in Malaysia.

Corrosive and Explosive Substances and Offensive Weapons Act 1958.

An Act to provide certain penalties relating to the unlawful possession of corrosive and explosive substances and the carrying of offensive weapons. It shall be unlawful if;

- *possession of corrosive or explosive substances for the purpose of causing hurt*
- *using a corrosive or explosive or offensive weapons for the purpose of causing hurt*
- *consorting with person carrying corrosive or explosive substance*
- *carrying offensive weapons in public places unless lawfully authorized*
- *consorting with persons carrying offensive weapons in public places unless lawfully authorized.*

The presumption of the law under this Act is where any corrosive or explosive substance is found in or on any premises the occupier of such premises shall be deemed to be in possession of such substance unless he can prove otherwise.

Firearms (Increased Penalties) Act 1971

An Act to provide increased penalties for the use of firearms in the commission of certain offences and for certain offences relating to firearms and to make special provision relating to the jurisdiction of courts in respect of offences thereunder and their trial. The expedient and seriousness of the Act can be gleaned from the provision hereunder;

- *any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence discharges a firearm with intent to cause death or hurt to any person, shall, notwithstanding that no hurt is caused thereby, be punished with death.*

Aviation Offences Act 1984

An Act to give to the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on the 14th September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on the 16th December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on the 23rd September 1971, and for purposes connected therewith. The Act gives meaning to;

- *violence against passengers or crew committed in the aircraft*
- *hijacking*
- *power to the Commander in the aircraft*
- *extradition of perpetrator / position relating to extradition where there is no arrangement (subject to Fugitive Criminals Act 1967)*
- *evidence in connection with aircraft*
- *destroying, damaging or endangering safety or aircraft*
- *abetting the commission of acts outside Malaysia*

Explosives Act 1957

An encompassing Act pertaining to the manufacture, use, sale, storage transport, import and export of explosives; inclusive provisions to:-

- *penalty for causing explosion likely to endanger life or property*
- *penalty for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property*
- *penalty for making or possessing explosives under suspicious circumstances*
- *search for explosives under warrant*

CONCLUSION

The fight against terrorism is an ongoing concern for all countries including Malaysia. As a country where democracy is flourishing, Malaysians cannot sacrifice this nation to the hands of certain unscrupulous group or terrorist who claims to be fighting for the cause of public interest when in reality they are not. The majority rules as a principle through the ballot box and terrorism must be looked upon in its most undeserving nature for it is a form of psychological oppression which brings unbearable suffering to mankind.

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