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The Human Trafficking Problem in US-Malaysia Relations

BY POOJA TERASHA STANSLAS

The United States is Malaysia's largest trading partner, and US-Malaysia relations generally revolve around three main themes: economics, security, and Malaysian political modernization. Current events often have a role in highlighting particular aspects of these themes, which on occasion can give rise to contradictions in the bilateral relationship. The listing of Malaysia to Tier Three, the lowest rank, in the annual Trafficking in Persons (TIP) report by the US Department of State in its 2001, 2007 and 2009 publications is one such instance. In the 2009 report, Malaysia was one of seventeen countries cited in Tier Three, alongside North Korea and Myanmar. The report states that "The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so, despite some progress in enforcing the country's new anti-trafficking law." In the main, trafficking victims are mostly Indonesians, Filipinos, Cambodians, and Vietnamese, although increasingly they include victims from countries such as Iraq, Sri Lanka, and Afghanistan.

Furthermore, in light of ongoing international pressure on the military junta in Myanmar to adopt the rudiments of democracy, it was very embarrassing for Malaysia when the US Senate Committee on Foreign Relations released a report in April 2009 that investigated allegations of trafficking and extortion of Burmese migrants/refugees into Malaysia along the Thai-Malaysian border. The report implicates Malaysian immigration officials and police in both human trafficking and human-rights abuses against Burmese refugees. In addition to land-borders, sea routes have always been another preferred medium for the movement of people and goods in the region since pre-colonial times, offering a means of cheap and relatively inconspicuous transit. The long, permeable, and loosely monitored coastlines of Malaysia provide easy access for a thriving trade in modern-day slavery.

Malaysia enacted the Anti-Trafficking in Persons (ATIP) Act in 2007 to prosecute human traffickers and to protect victims. ATIP was passed after the US Department of State criticized the Malaysian government for failing to investigate and prosecute the perpetrators of these crimes, in large part due to the absence of specific laws against human trafficking within Malaysia. Prior to the ATIP Act, the Malaysian government did not criminalize debt bondage or labor practices that promote involuntary servitude, and there was also an absence of judicial cases prosecuting traffickers. Instead, suspected traffickers were charged under an antiquated penal code, and victims were customarily deported back to their country of origin. To emphasize Malaysia's appalling record in human trafficking, an NBC episode of Dateline in 2007 focused on a heart-wrenching story about an American man who rescued his Filipino niece from her captors in Penang state, in the northwest of Malaysia. Thus, the ATIP Act was designed to punish the actual human traffickers and corrupt law enforcement officers who implement these operations, as well as to identify and protect victims from further abuses. Malaysian Foreign Minister Anifah Aman met with Secretary of State Hillary Clinton in 2009 and assured her of Prime Minister Najib Tun Razak's "seriousness" in tackling the issue of human trafficking and smuggling. A direct outcome of this meeting, and Prime Minister Najib's commitment, was implemented in 2010 with the increase in incarceration sentences for traffickers to 20 years and/or a fine up to one million Malaysian ringgit (US\$300,000).

Pooja Terasha Stanslas, a Malaysian citizen who works for a research institute based in Kuala Lumpur, discusses Malaysia's recent efforts to address human trafficking in and around Malaysia, noting that "Malaysian Foreign Minister Anifah Aman met with Secretary of State Hillary Clinton in 2009 and assured her of Prime Minister Najib Tun Razak's 'seriousness' in tackling the issue of human trafficking and smuggling."



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The Anti-Human Trafficking Council (MAPO) was established in 2008 to coordinate, implement, and formulate anti-trafficking programs. Between 2008 and March 2010, 1252 trafficking victims were rescued and placed in shelters while authorities arrested 282 traffickers, although only sixteen have been convicted. However, a government amendment to the 2007 ATIP Act in October 2010 to include the smuggling of people hampers efforts at tackling trafficking effectively, as front-line law enforcement officials can now treat trafficking victims as undocumented migrants who may then face immediate deportation. This will, in turn, destroy prosecutorial evidence against traffickers. As such, addressing Malaysia’s trafficking dilemma remains a major challenge for its government. In June 2010, Malaysia was upgraded to Tier Two of the Watch List in the TIP report, recognizing the country’s efforts to clamp down on human-trafficking crimes. This indicates Malaysia is on the right track. However, the coordination and cooperation of national, regional, and international bodies are essential but, in practice, an extremely complex task to execute. Large ocean spaces and long stretches of uninhabited coastlines throughout the Southeast Asian archipelago give rise to permeable borders that are easily penetrated by organized criminal groups, which in turn complicate monitoring and security surveillance. Furthermore, evidence continues to surface that some law enforcement officials continue to collude with traffickers. In September 2010, seven immigration officials were placed in preventive detention under the Internal Security Act for allowing entry of undocumented foreigners into Malaysia.

One constructive step to these problems would be new legislation that updates the ATIP Act to the United Nations international definition of human trafficking. Furthermore, a multifaceted approach is another key towards an effective resolution, and outmaneuvering trafficking syndicates involves strengthening maritime security surveillance using advanced border management technology. Augmented sea patrols must go hand in hand with the implementation of effectual trafficking-prevention legislation. The current existence of deep-seated rivalries among competing government agencies, particularly when budgets and funding are at stake, will have to be overcome. Poor communication, duplication of efforts, and conflicting mandates should not be allowed to get in the way of required reforms. Cooperation between regional and multilateral institutions is equally important. Organizations that could be utilized include the Bali Process, which brings together nations in the Asia-Pacific region to adopt practical measures to combat smuggling and trafficking in persons and related transnational crimes, and is co-chaired by Indonesia and Australia. Furthermore, the Colombo Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origins and the ASEAN Senior Officials Meeting on Transnational Crime are two other multilateral organizations that can constructively help address this issue. To date, the Malaysia-Australia Bilateral Technical Legal Working Group on People Smuggling and Trafficking has played an important role in producing effectual legislation against human trafficking and smuggling, but potentially could do more to address irregular migration holistically.

Unilaterally, Malaysia could also boost economic ties with source countries via investment projects and other economic development programs to help alleviate poverty, a main driving factor of trafficking in Asia. In addition, Malaysia would be well-advised to offer financial assistance to these countries in boosting their maritime security. Reforming Malaysian immigration policy is also crucial to curbing undocumented migration. A more flexible immigration policy will make it easier for legal entry of unskilled workers into Malaysia to meet domestic labor requirements within the agricultural and construction sectors. Regularizing or legalizing irregular migrants will increase tax revenues and regulate the underground economy, as well as "wipe the slate clean" for future immigration enforcement. Such a policy will also end the thriving counterfeit document industry currently in existence. As highlighted above, this past June, Malaysia was upgraded to Tier Two of the Watch Lists in the TIP report. This indicates that Malaysia is somewhat on the right track to end forced labor migration and enslavement, but much still remains to be done.

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