THE EMERGING SECURITY PARADIGM IN THE WEST: A PERSPECTIVE FROM SOUTHEAST ASIA

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1. Introduction

A common topic of debate in newspapers, legislative chambers, courts, classrooms, and academic journals since the tragic terrorist attacks of 11 September 2001, has been the tension between the need for security on the one hand and the protection of human rights on the other. Much has already been said in this debate and most coherent positions have long been staked out concerning as to whether security and human rights can co-exist or whether one must be sacrificed for the sake of the other. This paper does not attempt to stake out a novel position on this particular question. Rather, it seeks to provide a perspective from Southeast Asia on

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† As a Canadian expatriate who has been researching and teaching law at the National University of Singapore since 1998, I have learned much about the legal, social, political, and cultural climate of Southeast Asia, but I do not consider myself Asian nor can I offer an indigenous Southeast Asian perspective. What I do offer is a perspective from Southeast Asia. Moreover, like “the West,” Southeast Asia is itself a complex and diverse region which gives rise to a number of different perspectives on terrorism as well as on security and liberty. This paper offers one perspective and does not purport to represent or reflect the views of Southeast Asia as a whole, although some attempt will be made to draw some broad conclusions about how the tension between security and liberty is generally regarded in the region. I do therefore offer some generalizations which, like all generalizations, must be taken with a grain of salt.
the broad shift in many jurisdictions in the West, particularly in the United States, toward a security paradigm and to examine its implications for the security-human rights debate in Southeast Asia.

Consider the claim made by one government official in the United States that security and liberty can co-exist; that security is effectively a precondition of liberty. This position implies that as far as the United States government’s commitment to human rights is concerned, nothing fundamental has really changed. But a survey of the recent changes in the security regime of the United States and other Western countries, when viewed from Southeast Asia, suggests instead that the West is indeed moving headlong toward a security paradigm – a paradigm that is both inconsistent with basic rights (such as the right to due process and the right to privacy, particularly as against unreasonable police searches) and is likely to become an entrenched feature of the legal landscape for years to come.

But the shift to a security paradigm also has serious implications for the protection of human rights more generally, through domestic constitutional rights instruments in Southeast Asia and many Western countries. And as the implications of international terrorism in both Southeast Asia and the West continue to unfold, there are important lessons to be learned from this shift toward a security paradigm. In Southeast Asia, particularly in Singapore and Malaysia, the Western shift to a security paradigm has at once bestowed a feeling of vindication, while at the same time shattering the rhetoric of a distinct “Asian way” – at least to the extent that this rhetoric was called to the aid of strict Southeast Asian security regimes. In the West, the new security paradigm has levelled the ostensible moral

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2 See, for instance, Assistant United States Attorney General Viet D. Dinh, “Freedom and Security After September 11” (2002), 25 Harvard Journal of Law & Public Policy 399 at 400: “The dichotomy between freedom and security is false. For security and freedom are not rivals in the universe of possible goods; rather, they are interrelated, mutually reinforcing goods. Security is the very precondition of freedom.”

3 These rights, while guaranteed either directly or indirectly in many liberal-democratic constitutions, are also recognized by international human rights instruments such as the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171. Article 9 provides, inter alia, a basic right to due process: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” As to privacy, Article 17 provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”