THE "LEAST RISKY SOLUTION"
Malaysia's Detention and Deportation of Acehnese Asylum Seekers

U.S. Committee for Refugees
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This paper was written by USCR policy analyst Jana Mason. It is based in part on a USCR site visit to Malaysia in late April 1998. Names of many individuals quoted in the report are withheld at their request. This report was edited by Virginia Hamilton and produced by Koula Papanicolas and Alka Kumar of the USCR staff.

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Cover photo: Mak Cik, an Acehnese woman in Blang Pulo, Lhokseumawe, Aceh.  
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THE "LEAST RISKY" SOLUTION:
Malaysia's Detention and Deportation of Acehnese Asylum Seekers

The existence of Acehnese GPK ["gang of security disturbers," i.e., members of the Free Aceh movement] in Malaysia has not only become a problem to the government of Indonesia, but it also has created a burden to the government of Malaysia.....

A political will regarding how to handle the remaining [Free Aceh members] in Malaysia should be developed by Indonesia. There are three alternatives that can be considered, i.e., (a) to return them to Indonesia, either by force or through voluntary repatriation, with the risk of resistance and international criticism; (b) to allow them to settle down in third countries, with the risk of having more and more propaganda on [the Free Aceh movement] in international fora; (c) to let them remain in Malaysia as they do now, with the risk of more reaffirming of their activities and their [involvement in] civil disorders in Aceh.

It seems that among the three alternatives, only the first one, i.e., to repatriate them to Indonesia, is the least risky which could resolve the problem....

Forced repatriation will only take place when there are no other alternatives, and it should not be publicly exposed, and special transportation will be used.

From a document purporting to be the result of bilateral discussions between the Indonesian and Malaysian governments concerning the presence of certain Acehnese asylum seekers in Malaysia.

I. EXECUTIVE SUMMARY

In early August 1998 and the months following, the Indonesian territory of Aceh was much in the news. The commander of the Indonesian military, which has dominated the nation's political life for decades, apologized to the people of Aceh for atrocities committed in the region during its status as a military operations zone in the early 1990s. He also promised to withdraw combat troops from the region within a month. These concessions came on the heels of the discovery of mass graves in Aceh.

Since those startling events, many Acehnese have renewed their hopes for peace and prosperity in their homeland. Others, however, want more. They want no less than the political independence of Aceh, a goal they have long held. The problem with any of these aspirations, however, is that conditions in Aceh are inexorably linked with those of Indonesia—a troubled nation by any standard. In May 1998, televisions around the world showed the Indonesian capital of Jakarta in flames, amid riots that led to the resignation of the country's long-term President, Suharto.

Since then, political and economic dissatisfaction have kept Indonesia in the news, with riots breaking out seemingly daily. Amidst this crisis, the future of Aceh—along with that of two other troubled Indonesian provinces, East Timor and Irian Jaya—hangs in the balance.

Aceh is located on the northern tip of the Indonesian island of Sumatra. For more than 120 years, the Acehnese have sought independence, first from Dutch colonizers and later from Indonesia, which obtained the territory in 1949 in what the Acehnese regard as an illegal transaction.

Although Indonesia has the largest Muslim population of any country, it is not an Islamic state. The Acehnese feel that they practice a purer form of Islam than other Indonesians. They also see themselves as culturally distinct from the rest of Indonesia, a vast archipelago with over 3,000 inhabited islands. The Indonesian government has granted Aceh "special territory" status, which purportedly allows for increased autonomy in religious, educational, and cultural matters. Acehnese say the autonomy is in name only.

The Least Risky Solution
In addition to believing Indonesia illegally occupies their territory, Acehnese resent what they view as Indonesia’s exploitation of Aceh’s natural resources. They also regard the Indonesian policy of “transmigration,” by which Indonesians from the island of Java are given land on other islands, as an attempt to favor the Javanese economically and spread the influence of Javanese culture.

In 1976, a long-held goal of independence was advanced through the founding of “Aceh Merdeka” (“Free Aceh”), an armed resistance group also known as the Aceh-Sumatra National Liberation Front. In the late 1970s, Indonesian authorities conducted mass arrests of Aceh Merdeka members and shut down their activities until 1989, when the movement was resurrected. In response, Indonesia declared Aceh a special military zone and launched a counter-insurgency campaign that led to the deaths and disappearances of many civilians. Torture, rape, and extrajudicial killings are among the reported human rights abuses.

During the past several years, a few thousand Acehnese have fled to Malaysia. Like most other Southeast Asian nations, Malaysia is not a signatory to the UN Refugee Convention and has no system for adjudicating asylum claims. It does, however, permit the office of the United Nations High Commissioner for Refugees (UNHCR) to operate in the country and, until 1998, has generally respected UNHCR grants of mandate refugee status.

Malaysia publicly regards all undocumented Indonesians, including Acehnese, as purely economic migrants. For a time, however, Malaysia refrained from deporting Acehnese without legal status, perhaps in recognition of their fears of persecution. With the growing economic crisis in Asia, however, Malaysia began a vigorous campaign of deporting illegal workers, primarily Indonesians, and eventually decided to include Acehnese. Observers surmise that Indonesia’s cooperation in the costly deportation effort may have been contingent on the Acehnese being included among those deported.

In March 1998, Malaysia forcibly deported more than 500 Acehnese, resulting in riots and the deaths of at least nine persons. Soon after, 49 Acehnese asylum seekers broke into the compounds of UNHCR and several foreign embassies in the Malaysian capital of Kuala Lumpur. Three embassies—Switzerland, France, and Brunei—handed over the Acehnese to Malaysian authorities.

The U.S. ambassador, John Malott, immediately asked Malaysia to increase security around the embassy, saying, “I run an embassy, not a refugee camp.” Malott did, however, permit the Acehnese to remain at the compound, as did UNHCR.

This was the situation when USCR conducted a site visit to Malaysia in late April 1998. USCR met with Acehnese asylum seekers and leaders of the Aceh Merdeka movement as well as with the U.S. embassy, UNHCR, and human rights workers. Since returning, USCR has met with leaders of the Acehnese community in the United States and has continued to follow developments in Malaysia and Indonesia.

In June 1998, UNHCR determined that the 14 Acehnese at its compound and the eight at the U.S. embassy were refugees in need of international protection, and it began seeking third-country resettlement on their behalf. The United States subsequently agreed to resettle about half of the Acehnese referred by UNHCR. Malaysia agreed to facilitate the resettlement of these 22 but offered no guarantees that other Acehnese, including others whom UNHCR has found to be refugees, would not be forcibly returned.

This paper is based on USCR’s April 1998 site visit to Malaysia and continued monitoring of the situation since then. It briefly discusses the history of Aceh, the Acehnese independence movement, the larger politics of Indonesia, and the treatment of Acehnese in Malaysia prior to 1998. It explores the events of 1998, including Malaysia’s decision to detain and deport Acehnese, the resulting riots and embassy break-ins, the solution—third country resettlement—for some Acehnese in Malaysia, and the continued uncertainty for others. The response of the U.S. embassy toward the Acehnese is treated in some detail, allowing for a general discussion of U.S. policy toward asylum seekers abroad (see box, page 16). After summarizing the dramatic events in Aceh since August 1998, the paper ends with USCR’s recommendations to Indonesia, Malaysia, UNHCR, the United States, and the international community.

Summary of Conclusion and Recommendations:

USCR encourages continued human rights monitoring in Aceh and urges the Indonesian government to refrain from all persecution of Acehnese. Despite positive developments, it is much too soon to believe the human rights situation in Aceh has meaningfully improved. Many Acehnese still want independence, and there is no indication that Indonesia is willing to grant it. It is likely, therefore, that conflict and persecution will continue in the region, making it difficult
for asylum seekers, particularly Aceh Merdeka members and sympathizers, to return home.

Although Malaysia is not a signatory to the UN Refugee Convention, it is bound by the principle of nonrefoulement, which has become customary international law. Malaysia should therefore refrain from the forced return of Acehnese who have been recognized by UNHCR as refugees or who have not yet had their status determined. In addition, Malaysia should allow Acehnese and other asylum seekers full access to UNHCR.

The United States should assert leadership in the international community on behalf of the Acehnese. It should encourage Indonesia and Malaysia to adhere to international principles of human rights and refugee protection. It should also clarify and enhance its policy toward asylum seekers at U.S. embassies to ensure that Acehnese and other asylum seekers in Malaysia—and throughout the world—are not discouraged from approaching the embassy to seek protection.
II. BACKGROUND—THE FREE ACEH MOVEMENT AND ACEHNESI IN MALAYSIA

A. Political History of Aceh

At first glance, the reasons behind the Acehnese struggle for independence and their assertion of refugee status are not self-evident. Aceh is, after all, overwhelmingly Muslim, like the rest of Indonesia, and the Acehnese make no claim to a distinct ethnicity or, necessarily, political ideology. A brief exploration of Aceh’s history, however, explains the mix of factors that led Aceh into a “war of national liberation” and turned thousands of its people into exiles.

According to some historians, Islam first entered the Indonesian archipelago, and possibly all of Southeast Asia, through Aceh sometime around the year 700. The first Islamic kingdom, Perlak (a prosperous trading port in what is now Aceh), was established in the year 804. Much later, in the sixteenth and seventeenth centuries, the port of Aceh became entangled, along with the rest of what is now Indonesia, in the European colonial powers’ competition for worldwide political and economic dominance. Interested parties included the Portuguese, Spanish, Dutch, and British.

Paul Wolfowitz, Dean of the Johns Hopkins School of Advanced International Studies (SAIS) and former U.S. ambassador to Indonesia, says that for many centuries Aceh was a very distinct and influential political entity. “The Sultan of Aceh,” he says, “along with the Sultan of Malacca, was a major controller of trade through the straits.”

The profitable spice trade led the Dutch to establish the Dutch East India Company (VOC) in 1602. The 1641 death of Aceh’s Sultan—Sultan Iskandar Thani—began Aceh’s decline and sparked Dutch and British efforts to dominate the region. In nationalizing the VOC in 1799, the Dutch government began to assert firm control over various Indonesian territories, ushering in the region’s Dutch colonial era.

One of the most significant events in Aceh’s history came in 1824 with the signing of the London Treaty (also referred to as the Anglo-Dutch treaty). Through this instrument, the Dutch gained control of all British possessions on the island of Sumatra (including Aceh, at the island’s northern tip). In exchange, the Dutch surrendered their possessions in India and withdrew all claims in Singapore. In the same treaty, however, the Dutch agreed to allow independence for Aceh. Nevertheless, in 1871, the British authorized the Dutch to invade Aceh, possibly to prevent French annexation. As one writer explains it,
Brokered under the auspices of the United Nations, the agreements provided for a transfer of sovereignty between the territory of the Dutch East Indies and a fully independent Indonesia. On December 27, 1949, the Dutch East Indies ceased to exist and became the sovereign Federal Republic of Indonesia, which in 1950 once again became the Republic of Indonesia when it joined the United Nations. The Kingdom of Aceh was included in the agreements despite not having been formally incorporated into the Dutch colonial possession. Subsequently, the Java-based Indonesian government used armed troops to annex Aceh. Since annexation, the Acehnese have continued to resent what they consider foreign occupation.

B. Aceh Merdeka (Free Aceh)

The precursor to Aceh’s independence movement began in the 1950s when Indonesia experienced the Darul Islam (“House of Islam”) rebellion, in which rebels on the major Indonesian island of Java tried to establish an Islamic state. The Acehnese lent support to this rebellion, which took years to crush.

In 1959, the government responded by giving Aceh the status of “special territory,” which ostensibly confers an unusually high degree of autonomy in religious, educational, and cultural matters. Although many Acehnese say the status is virtually

A montage of Acehnese women portrays the ethnic differences among the people of Aceh.

Photo credit: H. Mahud Achmad
meaningless, other observers say it led to greater prosperity and helped "bring Aceh into the Indonesian mainstream."\(^{17}\)

Despite some economic improvements and acceptance by some Acehnese of the Indonesian government, the desire for an independent Islamic state did not die. In 1976, Aceh Merdeka ("Free Aceh") was founded as an armed resistance group. The movement is headed by Tengku Hasan M. di Tiro, who has been in exile in Sweden since 1980. The Indonesian military refers to this group as the Gerombolan Pengacau Keamanan (GPK), which means "gang of security disturbers."\(^{18}\)

In the late 1970s, Indonesian authorities conducted mass arrests of Aceh Merdeka members and shut down their activities until 1989. In that year, the group, now also calling itself the Aceh-Sumatra National Liberation Front (ASNLF), came out of hibernation and vigorously renewed its quest for independence, often through attacks on police and military installations.

According to one writer who was in Aceh during the lead-up to the violence, the 1989 attacks began when a religious leader from Malaysia came to Aceh and "used several economic and social arguments to whip the young men into a state of eager anticipation at the prospect of a glorious holy war to liberate Aceh."\(^{19}\) The leader told the young men, many of them students, that Jakarta was siphoning off Aceh’s natural resources without putting money back into the region.

Many Acehnese say they are disadvantaged by Indonesia’s major industrial development projects in Aceh, which provide employment opportunities for outsiders, especially from Java.\(^{20}\) If Aceh were independent, the reasoning goes, its people could reap the economic benefit of its own resources. Aceh is rich in natural liquid gas and petroleum, providing 15 percent of Indonesia’s exports.\(^{21}\) However, critics state that Jakarta "plunders the westernmost territory’s wealth and leaves it impoverished."\(^{22}\) Acehnese in Malaysia told USCRI, "Aceh’s resources are taken by Jakarta, while the Acehnese live in poverty."

Another sore point for Acehnese is Indonesia’s "transmigration" policy. Two-thirds of Indonesia’s population of 180 million is concentrated on the fifth-largest island, Java. Transmigration, by which Jakarta helps residents of overcrowded Java to migrate to outlying islands in the Indonesian archipelago, partly addresses the issue of population density. According to Jafar Siddiq Hamzah, an Acehnese human rights lawyer currently living in New York:

"In Aceh's industrial zones on the coast, and in the mountains of Aceh, the people are primarily Javanese transmigrants and workers. So the Acehnese have no access to the coast or to the mountains. We can't get to the fish and the rice, which are the basis for our existence. We're suffocating in the middle and are starving."

Another motivation for the Free Aceh movement is religion. Although Indonesia has the largest Muslim population of any country (87 percent of the 180 million inhabitants are Muslim), it is not an Islamic state. Many inhabitants mix their faith with Hindu, Buddhist, or other beliefs.\(^{23}\) The Acehnese, however, are devoutly Muslim and are considered to "take their religion, their manners, and their morals very seriously."\(^{24}\) According to a 1993 book on Indonesian history, "the more than 3.4 million Acehnese are most famous throughout the archipelago for their devotion to Islam and their militant resistance to colonial and republican rule....[Aceh is] the part of Indonesia where the Islamic character of the population is the most pronounced."\(^{25}\)

Acehnese, however, take issue with being called "Muslim fundamentalists." According to Hamzah:

"The rest of Indonesia is very secular. Acehnese are Islamic, but we are not fundamentalist. You can see the difference, for example, with fundamentalist Islamic countries like Iran and Sudan, which don't give a role to women. Women have a high place in Aceh."

Hamzah’s wife is Jacqueline Siapno, a Filipino professor who wrote her doctoral thesis on "The Politics of Gender, Islam, and Nation-State in Aceh, Indonesia." According to Siapno:

"Islam in Aceh is fundamentally different from and even antagonistic to the way Islam is practiced in most of Indonesia. In [Indonesian] Islam, there’s a complete disregard for economic or social justice, which is really the foundation of Islam."

The Acehnese also view themselves as culturally different from other Indonesians, a view supported by former Ambassador Wolfowitz. As he explains:
The Acehnese language, unlike most other languages of Indonesia, is not a Malay language and is very different from the other languages in the region. And Acehnese culture is very distinctive—they have oral traditions, poems, and a unique tradition of dance.

Wolfowitz adds that the Acehnese are highland people and "they're clan-structured, like the Scots."

Despite these sources of tension between Acehnese and the Indonesian government, not all Acehnese supported the resurgence of the Aceh Merdeka movement in the late 1980s. Many, however, felt compelled to appear in public as if they did.26

In early 1990, responding to attacks by Aceh Merdeka, Indonesian security forces launched a counter-insurgency campaign code-named Red Net.27 The operation led to the deaths and disappearances of many civilians.28 Although some Acehnese felt the response was warranted, many believed the tactics went too far. The army would indiscriminately round up and detain local civilians after an incident attributed to Aceh Merdeka, and families of Aceh Merdeka supporters were often arrested without legal recourse. As one Acehnese described it:

The Indonesian military would come and accuse villagers of being involved in the liberation struggle, directly or indirectly, or of being sympathizers. Sometimes they burned the villages... The army took the men for interrogation and maybe put them in prison, and sometimes the women were raped and killed in front of the other villagers.

In 1991, Indonesia designated Aceh a military operations area, giving the army "a free rein to crush the separatists."29 Amnesty International reported that between 1989 and 1992 about 2,000 people were killed in military operations in Aceh.30 Independent Indonesian investigators have estimated that the number of people who were killed, missing, or phys-

(continued on page 9)
I was born into a peasant family in Aceh. Known by Acehnese as “the place where evil spirits throw their children away,” my village is a poor agricultural village located in North Aceh in Sumatra, Indonesia. I have brothers and sisters but no wife or children....

I attended an Islamic school (“Madrasah”). In Aceh, the Madrasah tailor their curriculum to highlight Acehnese culture and heritage. Acehnese parents send their children to Madrasah out of the fear that government-run schools (the only alternative) misrepresent the political history of the Acehnese people....

Throughout elementary school, middle school, and high school, I worked—first on my family’s farm, cultivating rice and tending to my family’s water buffalo, goats, and other livestock, and later in construction.... My technical degree enabled me to gain employment as a mechanic....

I first became interested in Aceh’s independence movement and the persecution of the Acehnese people as a child.... Once the Indonesian government’s counter-insurgency operations had begun, I decided that if I were going to be killed for being Acehnese, I may as well die fighting for Acehnese independence and joined Aceh Merdeka....

My position as a mechanic gave me ample opportunity to aid Aceh Merdeka. When Indonesian military officers brought military transports to the plant to be repaired, I gleaned from their conversations information about their next counter-insurgency strikes and provided the information to the individuals targeted.... When Aceh Merdeka members were wounded by the Indonesian military, I supplied them with pain killers, antibiotics, and other drugs from the medical supply closets. In addition, I provided refuge to Aceh Merdeka members running from the military by helping them hide in the jungle surrounding my village. I also contributed money and personal resources.

I was detained, interrogated, and beaten for my suspected involvement in Aceh Merdeka, but I had suffered beatings at the hands of the Indonesian military even before [then], because the Indonesian military is generally suspicious of all Acehnese and because the Indonesian military is engaged in a general program of harassment of the Acehnese people.

For example, on one occasion I was forced to stand watch over my own village for the military. The military forces the Acehnese people to assist them in their counter-insurgency measures. Having kept watch the whole night, I accidentally fell asleep at approximately 4:00 am. When the military officers discovered that I had fallen asleep, as had a number of other Acehnese who had been forced to stand watch with me, they made us stand in a line and beat us with their fists. They kicked us until we fell to the ground and could stand no longer. The officers then made us drink from a sewer drain brimming with waste. Finally, they marched us out to the roadside where they made us beat one another, instructing us to punch and kick each other.... They warned us never to fall asleep during watch again....

The Indonesian military had started to target my group of confederates within the larger Aceh Merdeka movement. Soldiers arrived at my home one morning but discovered that I had left for the day. They intercepted me...
later that same day on a road on which I was
driving my motorcycle. We arrived in the
afternoon, and the Kopassus [special security]
officers started to beat me as soon as I stepped
out of their transport. “Where do you work?
Do you know [certain people?], Are you a
member of Aceh Merdeka?” they probed.
Although it was impossible for me to deny
knowing [these people], I insisted that I did not
know if they participated in Aceh Merdeka
activities. They then beat me for several hours,
punching and kicking me in the head and
stomach. The Kopassus placed the legs of a
chair on the tops of my feet and took turns
standing on the chair. They also placed a wood
board on my chest and kicked the board into my
chest with their feet. They then placed me in a
7' x 7 cell with three other Acehnese who had
also been beaten. They gave us neither food
nor water and would not permit us to go to the
bathroom. Consequently, we were forced to
sleep in our own waste. In the middle of the
night, the soldiers returned to beat us all
again. After three more beatings, I was
finally released at 4:00 that afternoon. They
released me on the condition that I report every
day to the military post. I decided to flee
Aceh.

I fled Indonesia without a passport or any
travel documents. I traveled 18 hours through
three provinces by bus. Indonesian authorities,
not expecting Acehnese to escape from
Indonesia through a port so far from Aceh,
patrol the port there less rigorously than

The human rights group FORUM, which over-
sees 78 nongovernmental organizations in Aceh, says
it has compiled 668 reports of atrocities in Aceh during
the height of the military operation. Many witnesses
said they were kidnap victims who were forced to bury
people whom the military had shot or tortured to
death. The final keys to understanding Aceh’s fierce drive for
independence are the larger culture and politics of
Indonesia. The world’s fifth most populous nation,
Indonesia is an archipelago of more than 13,000 is-
lands, of which 3,000 are inhabited. With 360 tribal
and ethno-linguistic groups and more than 250 differ-
ent languages and dialects in Indonesia, the country is
far from homogenous. As noted, even the predomi-
cally abused between 1989 and 1998 runs into the
thousands, with more than 1,000 still in military
detention.

C. Indonesia’s Fragile Unity

The human rights group FORUM, which over-
sees 78 nongovernmental organizations in Aceh, says
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far from homogenous. As noted, even the predomi-
nant Muslim religion is infused with other beliefs and is characterized by regional variations. Thirteen percent of Indonesians practice a different religion altogether.

Partly because of its size and disunity, Indonesia experienced great political turmoil following independence, including seven governments in eight years (1949 to 1957), the imposition of martial law in March 1957, attempted communist takeovers, and finally the military coup of 1965 that brought Suharto to power. Since then, rebellion has been sporadic and, until recently, unsuccessful. In May 1998, after ruling the country for more than 30 years, President Suharto was forced to step aside. The new president, B.J. Habibie, was a close Suharto associate.

Throughout all of this, Indonesia has promoted the goal of “unifying” the nation’s various ethnic and religious groups, a goal not shared by all citizens. For this reason, the Acehnese, among others, view many government policies with suspicion. They see the transmigration policy, for example, as not only an economic strategy but an attempt to “dissolve local cultures into the predominant Javanese culture.”

The government, in turn, considers the Acehnese separatist movement unacceptable. This movement, however, is far from the most serious threat to national unity. Since its 1975 annexation of East Timor, an action not recognized by the United Nations, the Indonesian government has experienced ongoing rebellion and international condemnation. In addition, a secessionist movement in the province of Irian Jaya, which shares the island of New Guinea with Papua New Guinea, has created thousands of refugees since the 1980s. (For a detailed background on this conflict, see USCR’s 1985 report, “Refugees from Irian Jaya in Papua New Guinea.”)

Complicating matters is the economic crisis engulfing many Asian countries in 1998. Indonesia has been particularly hard hit, resulting in unrest that is hard to distinguish from purely political dissatisfaction. The well-publicized riots that led to Suharto’s downfall and sparked Habibie’s promises of reform resulted from a mix of factors.

Given Indonesia’s current problems and Aceh’s complex history, the Aceh Merdeka movement can be seen as part political, part religious, and part economic. One Acehnese referred to it as “a struggle for independence against Javanese Indonesian neo-colonialist rule.” Perhaps to make it more acceptable, the movement is now promoting the liberation of the entire island of Sumatra: “We want one independent country—Aceh Sumatra—which will be a confederation with rights for all ethnic groups.”

D. Acehnese in Malaysia

In recent years, more than a million Indonesians have gone to Malaysia in search of economic opportunity, and 90 percent have probably worked there illegally. In April 1998, an estimated 10,000 Indonesians were making the trip each month from the Indonesian island of Nunukan Timor to Malaysia. Indonesians have comprised a significant percentage of Malaysia’s workforce, with others coming primarily from Bangladesh and the Philippines. Although illegal workers were always subject to deportation in Malaysia—and some were indeed deported—the illegal Indonesian workforce was not considered a problem until recently.

Estimates of the number of Acehnese in the vast pool of Indonesian migrants vary widely. Also undetermined are the numbers who left Aceh due to fear of persecution or with mixed political and economic motives. According to members of the Acehnese Refugee Committee in Malaysia (ARCM), Acehnese started fleeing in large numbers in 1990 and 1991, with perhaps 2,000 going to Malaysia in those two years. At the time of the USCR site visit in April 1998, an ARCM leader estimated that there were 3,500 Acehnese refugees in Malaysia, although only a small percentage have come forward with requests for asylum. In addition, a smaller number of purely economic migrants from Aceh, perhaps 1,000, may be in Malaysia.

In recent years, the Malaysian public has come to believe that immigrants are responsible for a variety of the country’s social problems, including crime, drugs, and unwed mothers. At one point, the government announced that any Malaysian who married an illegal alien would be deported, even though it would clearly violate international law for a country to deport its own nationals.

Malaysia’s response to Indonesian immigrants as a whole and Acehnese in particular changed dramatically in 1997 and 1998. Although the Asian economic crisis has affected Malaysia less than Indonesia, Malaysia has still been hurt. Therefore, after years of being relatively soft on the illegal worker population, Malaysia announced in 1997 that it would begin deporting illegal workers, including Indonesians, in order to protect jobs for Malaysians and keep its currency in the country. The government later said its goal was to deport 200,000 Indonesians by August 15, 1998. In the first half of 1998, Malaysia deported more than 39,000 illegal immigrants, mostly Indonesians, compared to 30,000 for the whole of 1997.
The treatment of Acehnese has been more complex. Although, according to Acehnese in Malaysia, the Malaysian government arrested more than 280 Acehnese activists during 1991, they were kept in detention rather than deported. Like all Southeast Asian countries except the Philippines, Malaysia is not a signatory to the 1951 UN Refugee Convention and has no formal process for granting asylum. It does, however, permit UNHCR to operate an office in Kuala Lumpur, the Malaysian capital, and has shown de facto respect for UNHCR’s grants of mandate refugee status to asylum seekers from various countries.

Because Malaysia has no asylum system, UNHCR mandate status is the best available means of protection. At the time of the USCR site visit, UNHCR had granted such status to more than 70 Acehnese in Malaysia. The Malaysian government, however, had not promised to refrain from deporting them.

Some observers believe that UNHCR is under pressure not to overstep unspoken boundaries established by the Malaysian government and, therefore, does not press Malaysia sufficiently on the Acehnese issue. “They don’t want to offend the government,” said one advocate in Malaysia, “since they could get kicked out at any time.” Others, however, note that UNHCR must always operate with the permission of the host country, even if that country has signed the Refugee Convention, and that the pressures faced in Malaysia are not different from those felt in many countries.

Several persons USCR interviewed said Malaysia’s experience with Vietnamese refugees has strongly influenced its current policies. Beginning in 1975, Malaysia provided temporary refuge to nearly 255,000 Vietnamese asylum seekers, most of whom were “screened in” (determined to be refugees) under the Comprehensive Plan of Action for Indochinese Refugees, which ended in June 1996. Resettlement countries admitted most of the screened-in refugees, and nearly all the rest returned to Vietnam by 1997. The process, however, took much longer than Malaysia wanted and was not without incident. In early 1996, a number of Vietnamese rioted at the Sungei Besi camp in Kuala Lumpur, where all the remaining Vietnamese were housed. One Vietnamese was killed and 23 people were injured when refugees burned down two housing units to protest a police search of the camp for weapons.

Current policy is also influenced by Malaysia’s history with Acehnese. In early 1995, Malaysia granted temporary residence (indicated by an IMM-13 document or “yellow card”) and work authorization to 183 Acehnese. These included 53 Acehnese who had sought UNHCR protection and were camping at their compound, and another 130 who were in Malaysian detention centers. According to UNHCR in Kuala Lumpur, all 183 fled “the same situation in Aceh,” during the height of the violence. Several sources said the Indonesian government likely approved the grant of temporary residence.

Although Malaysia initially grants temporary status for one year, the Acehnese who received yellow cards in 1995 have had no problems renewing the status. After the 1995 arrangement, larger numbers applied to UNHCR for protection, but the agency determined that most of the more recent arrivals were not refugees.

On December 24, 1996, more than 50 Acehnese rioted at the Langkap detention center in northern Malaysia to protest their impending deportation (which ultimately did not occur). The following day, Christmas day, 40 Acehnese entered and sought asylum in the embassies of the United States, France, the Netherlands, Switzerland, Great Britain, and Italy. The U.S., French, British, and Italian embassies allowed Malaysian police to enter their premises and forcibly remove the Acehnese, whom the authorities then detained. Eight asylum seekers remained in the Dutch and Swiss embassies, and in 1997 UNHCR extended its mandate to all eight. That year, UNHCR also provided mandate status to three other cases on appeal, while it denied such status to 11 new asylum seekers. At the time of USCR’s site visit, UNHCR had granted mandate status to about 20 percent of the more than 100 Acehnese interviewed since the 1995 arrangement.

Some advocates have criticized UNHCR for using interpreters they describe as “unqualified” to interview Acehnese asylum seekers. They say that although most Acehnese can speak Bahasa Indonesia (which is supposed to be language of “national unity” for Indonesia), they are more fluent and comfortable speaking Acehnese. UNHCR staff told USCR they have been unable to locate a neutral Acehnese-speaking interpreter.

In 1997, Malaysia conducted a legalization program under which certain illegal immigrants were granted permanent residence. Although Indonesians were included, most of the Acehnese who are in Malaysia illegally and who support Aceh Merdeka did not have the documentation (in this case, an Indonesian passport) required for legalization. UNHCR is not aware of any Acehnese who legalized under that program.

At the time of the USCR site visit, approximately 500 Acehnese were permanent residents ("red
Early History  According to some historians, Islam first enters the Indonesian archipelago, and possibly all of Southeast Asia, through Aceh sometime around the year 700. The first Islamic kingdom, Perlak (a prosperous trading port in what is now Aceh), is established in the year 804.

1824  London Treaty (also referred to as the Anglo-Dutch treaty) is signed. Through this instrument, the Dutch gain control of all British possessions on the island of Sumatra (including Aceh, at the island’s northern tip). In exchange, the Dutch surrender their possessions in India and withdraw all claims in Singapore. In the same treaty, however, the Dutch agree to allow independence for Aceh.

1871  The British authorize the Dutch to invade Aceh, possibly to prevent French annexation. This begins the Aceh War, which lasts intermittently from 1873 to 1942. It is the longest war ever fought by the Dutch, costing them over 10,000 lives.

1942  The Dutch finally abandon their attempt to occupy Aceh, shortly before the Japanese invade Indonesia. After attacking Pearl Harbor, the Japanese turn south to conquer several Southeast Asian countries, including Singapore and the Dutch East Indies. In March 1942, the Dutch colonial army surrenders to the Japanese.

August 1945  Just days before the Japanese surrendered to the Allies, the Republic of Indonesia proclaims its independence. Soon, however, both the British and Dutch are back in the region, to pursue political and economic interests.

1947  Linggarjati Agreement is signed by Indonesia and the Netherlands in March 1947. In the agreement, the Dutch recognize Indonesian sovereignty over the islands of Java, Sumatra, and Madura. But, many Indonesians view the deal as a violation of Indonesia’s 1945 independence proclamation, which implied sovereignty over additional territory. The agreement leads to another four years of aggression and territorial disputes between the Netherlands and Indonesia.

1949  Round Table Conference Agreements are signed. Brokered under the auspices of the United Nations, the agreements provide for a transfer of sovereignty between the Netherlands’ territory of the Dutch East Indies and a fully independent Indonesia. On December 27, 1949, the Dutch East Indies ceases to exist and becomes the sovereign Federal Republic of Indonesia. The Kingdom of Aceh is included in the agreements despite the fact that it had never been formally incorporated into the Dutch colonial possession. Subsequently, the Java-based Indonesian government forcibly annexes Aceh.

1950s  Indonesia experiences the “Darul Islam” (“House of Islam”) rebellion, in which rebels in the West Java countryside attempt to establish an Islamic state. Acehnese support the rebellion, which takes years to crush. This movement is viewed as the precursor to Aceh’s own independence movement.

1959  Indonesia grants Aceh “special territory” status, which supposedly confers greater autonomy in religious, educational, and cultural matters.

1976  “Aceh Merdeka” (“Free Aceh”) is founded as an armed resistance group to pursue independence for Aceh. Acehnese want independence not only because of their history but because they see themselves as culturally distinct from other Indonesians, they feel they practice a purer form of Islam, they believe the Indonesian government exploits Aceh’s natural resources, and they reject the Indonesian policy of “transmigration.”

Late 1970s  Indonesian authorities conduct mass arrests of Aceh Merdeka members and effectively shut down their activities.

1989  Aceh Merdeka is reborn and is also known as the Aceh Sumatra National Liberation Front.

Early 1990s  The Indonesian military launches Operation Red Net, a counterinsurgency campaign. Aceh is designated a military operations area.

1990  Acehnese asylum seekers begin fleeing to Malaysia.
1991 Malaysia reportedly arrests over 280 Acehnese activists but keeps them in detention rather than deporting them.

1995 Malaysia grants temporary residence and work authorization to 183 Acehnese, including 53 who were camping at the UNHCR compound and another 130 who were in Malaysian detention centers.

Dec. 24, 1996 More than 50 Acehnese riot at Langkap detention center in Malaysia to protest impending deportation (the deportation does not occur).

Dec. 25, 1996 Forty Acehnese enter the U.S., French, Dutch, Swiss, British, and Italian embassies in Kuala Lumpur and request asylum. The U.S., French, British, and Italian embassies allow Malaysian police to enter their premises and forcibly remove the Acehnese, whom the police then detain. Eight asylum seekers remain in the Dutch and Swiss embassies (in 1997, UNHCR grants mandate refugee status to all eight).

1997 As a result of the Asian economic crisis, Malaysia starts deporting large numbers of Indonesian "illegal workers," but still refrains from deporting Acehnese.

March 26, 1998 Malaysia deports 545 Acehnese from detention centers. Riots break out in the detention centers, and an unknown number of Acehnese escape.

March 30, 1998 Fourteen Acehnese asylum seekers drive a truck through a gate of the UNHCR compound in Kuala Lumpur. UNHCR allows them to remain at the compound while it determines their status.

April 10, 1998 Thirty-five Acehnese break into U.S., Swiss, French, and Brunei compounds in Kuala Lumpur. All but the U.S. embassy hand them over to Malaysian authorities; eight remain at the U.S. embassy, which asks UNHCR to determine their status.

May 1998 Indonesia's President Suharto resigns from office following large-scale riots in Jakarta and widespread political and economic discontent. The new president, B.J. Habibie, promises reform.

June 10, 1998 UNHCR determines that the fourteen Acehnese at their compound and the eight at the U.S. embassy are refugees in need of protection. The United States agrees to resettle up to half of the Acehnese referred by UNHCR in Malaysia, but none from the U.S. embassy. Other Acehnese in Malaysia remain in detention or in hiding.


Early Aug. 1998 Mass graves are discovered in Aceh, supporting the contention of many Acehnese that Indonesian soldiers killed numerous Aceh Merdeka members and suspected sympathizers.

Aug. 7, 1998 The Indonesian defense minister, General Wiranto, apologizes to the people of Aceh for atrocities previously committed by the military and announces a withdrawal of combat troops from Aceh within a month.

Aug. 22, 1998 The first group of 250 combat troops is withdrawn from Aceh.


Early Sept. 1998 Following additional riots in Aceh, the Indonesian government sends 300 troops back into Aceh. They are withdrawn soon after, when peace is restored.


Oct.-Nov. 1998 Indonesia experiences continued civil unrest, which president Habibie says could threaten national unity. Although Malaysia is not known to have deported any Acehnese since March, it has not promised to refrain from deporting them. Many Acehnese asylum seekers in Malaysia remain in detention or in hiding.
card” holders) in Malaysia, most or all having obtained that status years ago. Until the crackdown on illegal workers, Acehnese, as Indonesian citizens, benefited from the favorable conditions applied to citizens of ASEAN countries regarding entry, initial stay, and recruitment as foreign workers. However, even permanent residence status does not remove the threat of deportation in Malaysia.

III. EVENTS IN 1998

A. A Change of Policy

Until 1998, Malaysia refrained from deporting Acehnese, perhaps in recognition of their fears of persecution. As Gottfried Koefner, head of the UNHCR Liaison Office for Malaysia, explained, “The Acehnese were the longstayers in the detention camps, which suggests that Malaysia did view them differently.” Although most Acehnese without legal status were not targeted for arrest, those who happened to be caught in worksite raids were held in indefinite detention.

In March 1998, that changed. As Malaysia intensified its deportation of Indonesian workers, it decided no longer to exclude the Acehnese from deportation. Many people believe Malaysia saw this change as necessary to ensuring Jakarta’s cooperation with the deportation. Under a 1995 Memorandum of Agreement that governs Malaysia’s return of Indonesian migrants, Indonesia provides ships and other resources to assist in the return of its nationals. Observers say the economic crisis has made cooperation between the two nations more important than ever.

Other sources said that members of the Association of Southeast Asian Nations (ASEAN), including Indonesia and Malaysia, regard non-interference as an important principle. Any disturbance in the deportation process, including refusal to return a particular group, could result in unwanted consequences, they said. Even quietly releasing the Acehnese from detention could be a problem, sources told USCR, because Indonesia is well informed of events in Malaysia.

As the deportation effort gained speed, Malaysia publicly declared all Indonesians prima facie economic migrants and said of the Acehnese, “They are not political refugees and are just like other illegal immigrants.” At this point, said one source, the Malaysian government started actively looking for Acehnese, instead of leaving them alone.

The Malaysian public has not generally crit-
cized this change in policy. According to one human rights worker, “Some of the public, especially the Muslims, are sympathetic to the Acehnese, but others believe they’re just part of the illegal Indonesian population.”

B. Deportation and Riots

On March 26, 1998, Malaysia forcibly deported 545 Acehnese who had been in four detention centers (Semenyihi, Macap Umboo, Linggeng, and Juru), some for as long as three years. This was the first known forcible return of Acehnese, despite the fact that Malaysia had regularly deported other Indonesians. During this mass deportation, riots in three of the centers resulted in the death of at least eight Acehnese and a Malaysian policeman. Aceh Merdeka said that at least 39 Acehnese died in the initial violence and that others died later—at Malaysian hospitals, on board the Indonesian naval warship en route to Aceh, or in the Indonesian army detention camp to which they were returned. News reports indicated that the death total may be higher than reported by the government, but this speculation was never confirmed.

According to Aceh Merdeka, among those who rioted and were returned to Aceh on March 26 were three yellow card holders (temporary residents), three red card holders (permanent residents), and four persons with UNHCR “mandate letters” (stating that they had been found to fall within UNHCR’s mandate as refugees in need of protection). UNHCR staff could confirm only that one person with a mandate letter and two permanent residents had been forcibly returned since March 1998, but they said they may be unaware of some deportations. Regardless of the exact numbers, Malaysian authorities appear to have decided in early 1998 that all Acehnese were subject to forcible return along with other Indonesians, regardless of their fears of persecution or their legal status in Malaysia.

Malaysia had attempted to deport smaller numbers of Acehnese twice in December 1996. It abandoned those efforts when the Acehnese resisted, and there was little publicity surrounding the incidents. This indicates that Malaysia sought to change its practice toward Acehnese earlier but refrained from doing so when implementation proved difficult.

During its site visit, USCR obtained a document that confirms the shift in policy that led to the mass deportation. The document appears to be the product of bilateral discussions on the presence of “Acehnese GPK” (Gang of Security Disturbers, i.e., Aceh Merdeka) in Malaysia. The paper refers to a “Joint Commission Meeting” and a “Joint Working Group” that included Malaysian and Indonesian police and intelligence agencies and was co-chaired by the foreign affairs ministers of the two countries. According to the English translation of the document:

The existence of Acehnese GPK in Malaysia has not only become a problem to the government of Indonesia, but it also has created a burden to the government of Malaysia. On one hand, Malaysia wishes to consistently maintain good relationship with the government of Indonesia, and will not sacrifice such relationship with those issues. On the other hand, Malaysia also has got pressure from UNHCR and both local and international NGOs, with the alleged human rights issues. Malaysia has therefore been [acting] very carefully in handling this matter.

The paper traces the history of Acehnese migrants to Malaysia, particularly “Acehnese GPK or sympathizers,” some of whom, according to the paper, received training in Libya. The document includes a frank discussion of conflicting opinions within the Malaysian government on how to address the situation, noting that “many Malaysian government officials and businessmen of Aceh origin sympathized with their activities and might have helped them.” In weighing the various interests, the document states that Acehnese have done no harm to Malaysia but have “conducted activities that would jeopardize the government of Indonesia in international fora.” If it indeed represents what it purports to, the document sheds light on the political and social factors that shape governmental responses to refugees.

As for Indonesia’s view of potential solutions, the document states that third country resettlement carries “the risk of having more and more propaganda on [Aceh Merdeka] in international fora,” and that integration in Malaysia includes “the risk of more reaffirming of their activities and their access to involve in civil disorders in Aceh.” The solution viewed as “least risky” is “to return them to Indonesia, either by force or through voluntary repatriation.”

Indonesia, say some advocates, is concerned that Aceh Merdeka is using Malaysian territory as a base for its movement and is recruiting other Acehnese who had not been politically active before. The head-
U.S. POLICY ON ASYLUM SEEKERS AT EMBASSIES

One method sometimes used by individuals seeking protection from persecution is to approach a foreign embassy and request asylum. This practice, sometimes referred to as “diplomatic asylum,” is by no means a guarantee of protection. Because international law does not clearly require embassies to offer a haven to asylum seekers, states have been left to adopt their own policies with respect to those who approach their diplomatic compounds.

U.S. policy toward asylum seekers at embassies is the subject of an unclassified State Department cable, which says the determining factor is whether an asylum seeker's life or safety appears to be in imminent danger. In such cases, the cable states that the Foreign Affairs Manual (hereafter FAM) is to be followed.

The relevant section of the FAM states the general rule first: “While it is the policy of the United States not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.” Specifically with regard to diplomatic and consular establishments, the FAM states, “As a rule, a diplomatic or consular officer shall not extend asylum to persons outside the officer's official or personal household.”

The FAM then states the exception: “Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.” Such protection is to be terminated “when the period of active danger is ended, except where authority to do so shall be obtained from the Department of State.” In the case of diplomatic and consular officers, “Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues. With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee’s personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law.”

The granting of temporary refuge is rarely a ticket out of the country, even if dangerous conditions persist. Although the United States or another country may wish to permanently resettle the refugee, the departure system in the host country must be followed unless the host government agrees to an alternate arrangement (which may be difficult if the refugee is a national of the host country). A famed example of this dilemma is the case of Hungarian Cardinal Joszef Mindszenty, who resided at the U.S. embassy in Budapest from 1956 to 1971. A human rights lawyer retained by Pope Pius XII helped negotiate the cardinal’s exit from the country. More recently, Chinese astrophysicist Fang Lizhi and his wife spent more than a year in the U.S. embassy in Beijing after the 1989 Tiananmen Square massacre.

According to the FAM, U.S. personnel within foreign jurisdictions should immediately notify the nearest diplomatic or consular post upon receipt of a request for temporary refuge or for U.S. asylum made by any foreign national. The embassy or consulate is to forward such information to the Department of State. But what constitutes a request for asylum or temporary refuge is unclear. If an individual approaches a guard at the embassy gate, says he wants U.S. asylum, is told to go to UNHCR, and then leaves, it is not likely that the embassy will deem the interaction a formal request. Therefore, the State Department may never have the opportunity to provide guidance in many cases where asylum is sought.

Even when an asylum request is clearly received, the FAM provides that “routine requests” for asylum need not be reported immediately to the State Department. Routine requests are cases where:

1. Adequate host government machinery is well established which, in the opinion of the embassy, assures satisfactory protection of the asylum seeker's rights; (2) There is no evidence of danger of forcible repatriation; and (3) Local authorities can be expected to assume responsibility for the asylum seeker.

Because most asylum seekers who approach embassies are not being chased by a mob, the State Department cable discusses the more common approach: “In general, cases of third country nationals in apparent need of immediate protection and assistance should be referred to the host country government or the local office of UNHCR. UNHCR
may be able to help the individual secure temporary protection in the country of asylum, or, if deemed appropriate, refer the case to a resettlement country. Many countries have established procedures for determining the merits of refugee claims and offer formal temporary or permanent protection to deserving asylum seekers.\(^{104}\)

This is the procedure most likely to occur. At many U.S. embassies, the first point of contact at the outside gate is a host country national hired by the embassy as a guard. Persons who are not U.S. citizens do not have the right to enter the embassy or speak with embassy personnel. If a noncitizen tells the guard that he wishes to request U.S. asylum, the guard will generally refer the individual to UNHCR (if UNHCR operates in that country) or to the appropriate agency of the host government, if that country has an asylum adjudication system and the applicant is a third country national. According to the State Department, if the person refuses to leave without speaking to a U.S. representative, the guard will generally contact someone in the embassy to resolve the situation.

From the language of the FAM, it appears that the guard at the gate is required to determine if an asylum seeker faces “danger of serious harm.” Except in the noted case of a mob, the harm may not be evident at first glance. The situation may require a detailed discussion that the guard may be linguistically or substantively unable to conduct. In addition, if the guard is a host country national, asylum seekers will be wary of discussing their lack of protection by that country. Although assessing the validity of the actual asylum claim would not be the role of the guard, the distinction between that claim and the claim of “danger of serious harm” might not be evident.

According to State Department officials, however, the guard is not usually the one to determine if such danger exists. The general approach, they said, is to usher the asylum seeker into the embassy, most likely the consular section, where U.S. personnel decide if there is a valid concern for the person’s safety. However, neither the FAM nor the cable specifies this process.

The FAM emphasizes coordination with UNHCR and with host country authorities. It states:

*Action with regard to third country nationals seeking asylum should normally be taken within the overall policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the embassy as soon as practicable of the request for asylum.*

The FAM also states that “UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees.”\(^{105}\)

The FAM notes that the United States is prepared “in the cases of selected refugees” to assist with local integration or third-country resettlement, even potentially to the United States. Although it mentions the prospect of embassy referrals for U.S. resettlement, the details are left to the “road map of refugee processing” in the cable. Such processing is conducted for refugees referred by UNHCR and U.S. embassies (known as “priority one”), as well as certain groups of special humanitarian concern to the U.S. (priority two) and, for certain nationalities, refugees with family members in the United States (priorities three, four, and five). Priority one is the only priority used in all regions of the world but is not as expansive as it seems, since it consists almost exclusively of UNHCR referrals. Only a handful of high profile cases have been referred by U.S. embassies (none from Indonesia). As State Department sources have told USCIRF, most embassy personnel have neither the time nor expertise to identify appropriate cases for resettlement.

United States embassy in Kuala Lumpur, Malaysia.
quarters of Aceh Merdeka is in Sweden, where the movement’s leader, Hasan de Tiro, has resided for many years. However, several persons told USCR that Aceh Merdeka recruits new members in Malaysia, including inside the detention centers.

“Indonesia wants the Acehnese back,” one advocate told USCR. “They are very afraid of the Acehnese. Indonesia’s own fight for independence started in Aceh, and the government doesn’t want the movement to gain strength now.”

The expert said Malaysia has accused some Acehnese of “forming illegal associations, having political discussions, collecting donations.” He added, “The government doesn’t feel comfortable with that, and that’s their right.” Malaysia’s Internal Security Act (ISA), a holdover from the British colonial administration, imposes restrictions on freedom of movement, speech, association, and assembly. Human Rights Watch has sharply criticized this law and has endorsed an October 1998 resolution by the Malaysian Bar Council calling for repeal of the ISA.

**C. Embassy Break-Ins**

During the March 26 riots at the Malaysian detention centers, an unknown number of Acehnese escaped (one press report said 247 inmates escaped, all from the Lenggeng detention camp, while other reports put the number at 100). Four days later, on March 30, 14 of the escapees drove a truck through the gate of the UNHCR compound and asked for protection. UNHCR permitted them to remain while it determined their status. On April 10, 35 Acehnese broke into the U.S., Swiss, French, and Brunei diplomatic compounds and requested asylum. The Acehnese reportedly used force to execute the break-ins, even injuring a U.S. security officer. All but the U.S. embassy handed them over to Malaysian authorities, citing the Acehnese’s use of force in breaking into the compounds.

Human rights activists were swift to condemn the three other embassies for allowing the Malaysian police to enter their compounds. Elizabeth Wong of SUARAM (Voice of the Malaysian People), wrote,

![An Acehnese family resettled in Houston, Texas in October 1988 after having been referred by UNHCR. Photo credit: YMCA International Services, Houston, Texas](image)
"We are shocked that countries such as Switzerland and France who are strong advocates for human rights in the international arena would have done such a heinous act." Wong said the embassies had made themselves accessories to the forced repatriation of Acehnese asylum seekers, in contravention of Article 14 of the Universal Declaration of Human Rights, which states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Wong added that if the embassies had any doubt as to the status of the Acehnese, they could easily have contacted UNHCR. The French foreign ministry said Malaysian authorities assured them the Acehnese were "social and economic refugees and therefore not political refugees." In the aftermath, Malaysian Prime Minister Mahathir Mohamad said his government would not back away from deporting the Acehnese. Foreign Minister Abdullah Admad told reporters he did not see how UNHCR could be involved in the matter, since the Indonesian influx was due to economic factors.

**D. The U.S. Response**

The eight Acehnese who entered the U.S. embassy did so by scaling the wall and injuring an embassy guard. Soon after, U.S. Ambassador John Malott called on the Malaysian government to increase security around the embassy, saying, "I run an embassy, not a refugee camp." The embassy also laid spirals of barbed wire along its periphery to prevent future asylum seekers from scaling the wall. Embassy spokesman Chip Barclay said, "We want to prevent a recurrence. The danger is still there." Nevertheless, the embassy allowed the eight Acehnese to remain in its compound and requested UNHCR to assess their claims to refugee status.

The U.S. embassy's response to the asylum seekers was governed by written State Department policy, and to a lesser extent by international law. The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations both recognize the concept of "inviolability" of diplomatic premises. Such premises are immune from searches, seizures, and other actions by the host country that might interfere with the official use of the premises. For that reason, an asylum seeker will enjoy some safety inside an embassy that chooses to house him. However, international law does not require that an embassy provide such protection. As one scholar notes, "Contrary to popular belief....diplomatic mission and consular post properties are not extensions of the sending state's territory. Both in fact and in law, diplomatic premises are within the territory of the receiving state." Thus, an asylum seeker who scales the wall of a U.S. embassy does not have the same rights as an asylum seeker on U.S. soil.

In addition, it is unclear whether Article 33 of the Refugee Convention, the nonrefoulement provision, applies in the case of asylum seekers at foreign embassies, even where the embassy's country is a signatory. Article 33 provides that a state may not "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened." Thus, some determination as to refugee status is required. It could be argued that the life and freedom of Acehnese refugees are threatened in Malaysia, since Malaysia does not screen asylum seekers and is deporting Acehnese whom UNHCR has recognized as refugees. However, the act of refusing to allow an asylum seeker to enter an embassy, or even removing such a person from an embassy without screening for refugee status, is not necessarily "expelling or returning," since foreign embassy grounds are legally part of the host country (that is, an asylum seeker cannot be expelled from a country he has never entered, nor returned to a country he has never left). Under this analysis, even refusing entry at an embassy in Indonesia would not be refoulement.

Even without the clear applicability of the Convention, however, the U.S. government has adopted policies that provide some, though little, possibility of protection at U.S. embassies. According to an unclassified State Department cable, the determining factor is whether an asylum seeker's life or safety appears to be in imminent danger. In such cases, the cable states that the *Foreign Affairs Manual* (hereafter *FAM*) is to be followed. For a detailed discussion of U.S. policy toward asylum seekers at embassies, see box, page 16.

The *FAM* emphasizes that it is the policy of the United States not to grant asylum at its embassies abroad, unless "extreme or exceptional" circumstances are present, such as "pursuit by a mob." Because such cases are not common, the general rule is for the embassy to refer third-country asylum seekers to the host country government or to the local UNHCR office. Even in exceptional cases, protection is to be temporary. It should terminate when the person is out of immediate danger.

In the case of Acehnese in Malaysia, the process dictated by the *FAM* offers no guarantee that temporary refuge will be granted when needed. The
decision as to whether the asylum seeker is in immediate danger apparently may be made by the guard at the outside gate, who, in Kuala Lumpur, is a Malaysian national. Although State Department personnel told USCR the general approach is to bring the asylum seeker into the embassy for discussions with U.S. personnel, neither the FAM nor the cable specifies this process. From discussions with embassy staff in Malaysia, it was not apparent that this procedure would be used if an Acehnese approached the guard gate rather than scaled the wall. Referral to UNHCR appeared to be the policy, absent exceptional circumstances.

The FAM requires that all requests for asylum or temporary refuge be referred to the U.S. State Department in Washington. An exception is made for “routine requests,” defined as when the host country has an adequate asylum adjudication system that protects against forced repatriation. There could presumably be no “routine” requests for U.S. asylum in Malaysia. Malaysia does not have a procedure to assure satisfactory protection of the asylum seeker’s rights, and there is a demonstrated danger of forced repatriation, particularly for Acehnese.

In April 1998, the Acehnese took an aggressive approach, scaling the wall of the U.S. embassy. Embassy personnel were understandably unhappy with this tactic and sought to prevent it in the future, particularly by asking the Malaysian government to strengthen security outside the compound. It is the host country’s responsibility to guard foreign embassies, although most embassies also have their own security staff (at U.S. embassies, Marines are often the second point of contact for visitors). To its credit, the embassy did not remove the Acehnese from the premises. The embassy officials asked UNHCR to determine the Acehnese’s status and, in the meantime, gave them shelter, food, and medical attention.

It is doubtful that these Acehnese would have been allowed into the embassy, let alone qualified for temporary refuge, had they simply approached the guard. There was no reported mob violence, and the FAM provides no further guidance on what constitutes “danger of serious harm.” The threat of deportation per se probably does not constitute such harm, since nearly all asylum seekers without legal status in the host country are under such threat. However, UNHCR has recognized some of the Acehnese as refugees in need of protection, and Malaysia has refused to guarantee that they will not be returned to Aceh. For Acehnese, the danger is clear.

USCR asked State Department officials in Washington whether, since Acehnese in Malaysia are at risk of refoulement, the U.S. embassy could provide some sort of “safe passage” to UNHCR. The officials responded that, first, that is not an appropriate role for the embassy and, second, it is not necessary since asylum seekers can approach UNHCR themselves (and are instructed to do so by the embassy). One official said that if the Acehnese could show they would be in danger by approaching UNHCR, perhaps something else could be arranged.

When the Acehnese drove a truck through their gate in March 1998, UNHCR, like the U.S. embassy, asked for increased security from the Malaysian government. The temporary police presence around the UNHCR compound may have prevented some asylum seekers from approaching. Acehnese may have been even more hesitant than other asylum seekers, since the government had followed, detained, and deported many of them. Koefner, the UNHCR liaison, said Malaysia told him he had made an inconsistent request—asking for more security but wanting asylum seekers to have free access to the office. Yet, the request was temporary in nature and was directly linked to the security of their staff. During the period of increased police presence at its compound, UNHCR interviewed some Acehnese at other locations.

In Koefner’s opinion, the dilemma faced by both UNHCR and the U.S. embassy detracts from the larger issue—that of Malaysia’s responsibility in dealing with asylum seekers in its territory.

E. A Solution for Some

As word of the 1998 break-ins began to spread, the Malaysian government reiterated its contention that the Acehnese are purely economic migrants. Human rights advocates were disturbed when Deputy Prime Minister Anwar Ibrahim said of the Acehnese, “Claims that they were political refugees only surfaced in the last few weeks.”58

USCR interviewed two Acehnese asylum seekers who had escaped detention during the March 26 riots and deportation. According to both men, on that date Malaysian guards attempted to subdue the Acehnese inmates by drugging their food. The riots, they said, occurred when the Acehnese realized what was happening and resisted deportation.

The two men said Indonesia persecutes anyone involved in the liberation movement or suspected of supporting it. One of the two, age 28, had been an active member of Aceh Merdeka since age 20. He had
served the movement by arranging transportation of food and medicine for combatants. In 1994, he said, the Indonesian military burned his family's house and threw his three-year-old brother into the fire. He also said his older sister was kidnapped by the military, who beheaded her and sent her head back to the village as a warning.

On June 10, 1998, UNHCR announced that all 22 Acehnese—the 14 in its compound and the eight at the U.S. embassy—were refugees in need of international protection. The agency said its decision was based on interviews with the asylum seekers as well as investigation into the fate of the Acehnese whom Malaysia deported. UNHCR then began arranging third country resettlement, which the Malaysian government said it would not hinder. The United States eventually decided to admit up to half of the Acehnese in Malaysia referred by UNHCR. However, to discourage future embassy break-ins, the United States said it would prefer not to resettle any of those residing at its embassy. Those eight were resettled by Denmark, Norway, and Sweden.

In response to UNHCR’s decision to grant mandate status, the Indonesian government said it had no objections to the 22 Acehnese being sent to third countries. A spokesperson for the Indonesian foreign ministry told reporters, “To us it is principally an illegal worker problem, and it is up to Malaysia what to do with them.” He noted that UNHCR “might have a different point of view” and said that while the Acehnese had the right to consider themselves refugees, “we never tried to persecute them.”

F. Continued Uncertainty for Most Acehnese

The fate of the other 27 Acehnese who broke into the Swiss, French, and Brunei diplomatic compounds remained uncertain at the time of this writing. Malaysia has refused to allow UNHCR access to this group, and Amnesty International warned that they were at risk of deportation.

At the time of the USCR site visit, about 100 Acehnese were being held at the Malaysian central police command in Kuala Lumpur (this was in addi-
tion to those still in the four detention centers). This group included those who were apprehended after escaping during the March 26 riots, as well as the 27 who were handed over by the embassies. Acehnese leaders said some of those at the police compound were brutally tortured during interrogation. Malaysian authorities have used the riots as justification for cracking down on the Acehnese. “If they start fighting with our police, then we have to take action,” said a Malaysian Foreign Ministry official.\textsuperscript{61}

Indonesian authorities detained the 545 Acehnese deported on March 26 at Rancung detention camp, a place where Amnesty International says inmates have been frequently subjected to torture and ill treatment.\textsuperscript{62} The Indonesian government refers to Rancung as a “rehabilitation camp” for illegal Indonesian workers deported from Malaysia. Most of the March returnees have since been released, although, according to Amnesty International, they “remain under the scrutiny of local military personnel.”\textsuperscript{63}

The impact of Acehnese having spent time in Malaysia is an open question for UNHCR and human rights advocates. UNHCR’s Koefner told USCR, “Some deported Acehnese probably were not part of the Aceh Merdeka movement in Aceh, but rather were recruited here and were only marginally involved. If they were low profile when they were deported, they might not have a problem when returned, but if they were active here, that might have an impact.” Koefner also said that if Acehnese are deported together as part of a special removal effort, “they could be seen as more important than they are.”

On April 20, 1998, the Indonesian government announced it would allow the International Committee of the Red Cross (ICRC) to monitor the status of returnees. The U.S. ambassador to Malaysia, John Malott, said he welcomed that decision, and UNHCR said such monitoring would help it determine the Acehnese claims.\textsuperscript{64} Acehnese, however, doubted that ICRC would learn the true fate of the returnees.

Although Malaysia’s decision to forcibly return Acehnese caused the riots, the riots themselves shined a spotlight on the Acehnese in Malaysia. Soon after, Malaysian authorities began targeting Acehnese for arrest and detention. At the time of the USCR site visit, many Aceh Merdeka members were living in hiding. During the week of the site visit, authorities detained several Acehnese, including a representative of the Acehnese Refugee Committee in Malaysia (ARCM), who had been scheduled to meet with USCR the day after he was detained.

Lack of access to detained Acehnese was a major concern at the time of the site visit, and remains so. Representatives of UNHCR and the human rights group SUARAM told USCR they have been trying unsuccessfully to visit detained Acehnese. According to Koefner, “Normally, when someone wants to apply to UNHCR here, we can get access at the detention centers. With the Acehnese, it’s all different.” ARCM has provided UNHCR with information on detained Acehnese. “We’ve tried repeatedly to get to see these people,” said Koefner, “but we were told that since they’re illegals from Indonesia, they don’t need access to UNHCR.”

UNHCR has also requested to see the Acehnese who were handed over to Malaysian authorities by the Swiss, French, and Brunei embassies, but this request was denied.

At the time of the site visit, one Acehnese with mandate refugee status was among those detained. Malaysian authorities told UNHCR he was detained because he did not have his mandate letter with him, but UNHCR was not provided access to confirm his status. Others with mandate status were reportedly deported, but UNHCR could not confirm this.

As to the Acehnese holding temporary resident cards, UNHCR told USCR during the site visit that it might have made some progress. “ Malaysian authorities have agreed that these persons shouldn’t be deported,” said Koefner, “but there’s still some element of insecurity. If the government suspects that they’re involved in activities here, they may follow them, detain them, etc.”

During its site visit, USCR issued a press statement urging Malaysia to “protect, not persecute, Acehnese refugees.” The USCR statement said:

[Malaysia] should respect the rights of Acehnese whom UNHCR has recognized as refugees, should permit other Acehnese in Malaysia to apply to UNHCR for refugee status, and should permit those whom UNHCR determines to be refugees to remain safely in Malaysia.

The U.S. embassy, UNHCR, and human rights groups have urged the same, but Malaysia has given no guarantees. Legal and human rights groups say this is not surprising. As one of them told USCR, “Human rights work is very difficult in Malaysia. You can discuss environmental issues, HIV/AIDS, women’s rights, etc.—but not human rights.”

The Malaysian legal expert said the March riots took the government by surprise. “The government probably won’t deport any Acehnese again soon,”
said the expert, “and there probably won’t be any more mass detentions. They’ll do it one at a time.”

Sources also said pressure from human rights advocates and other governments may soften Malaysia’s treatment of the Acehnese.

Other factors, however, weigh against the Acehnese. The Acehnese have shown a willingness to embarrass the Malaysian government, particularly with the embassy break-ins of 1996 and 1998. The Acehnese alerted the media before the 1998 break-ins. After driving the truck into the UNHCR compound, the 14 asylum seekers held up a banner for reporters to see.

From UNHCR’s perspective, Malaysia’s policy toward Acehnese is part of a larger problem. “Malaysia,” said Koefner, “declares all undocumented Indonesians prima facie economic migrants. This is a grave concern to us, even if there is eventually a resolution for the Acehnese.” Koefner said that although Malaysia has no formal asylum system, it has provided protection to other groups of refugees, including Vietnamese, Bosnians, and Filipinos. “They don’t always call them refugees,” he said, “but there are top-level decisions with respect to certain groups. Malaysia has allowed us to deal with these groups, saying they understand our mandate. So there’s a different policy with respect to the Indonesians.”

UNHCR estimated that as of May 1998 there were about 250 UNHCR-recognized refugees in Malaysia, including about 70 Acehnese. Malaysia’s formal policy is that all mandate refugees must be resettled in third countries, but the government has generally allowed them to stay for an extended period (although, because they cannot work, many are receiving UNHCR assistance). The policy toward Acehnese, however, has caused UNHCR to worry about other groups. Says Koefner, “Technically, refugees are illegal immigrants under Malaysian law.”

As for the Acehnese, one Malaysian-based source suggested a possible solution. The Malaysian government, he said, should grant permission for the Acehnese to remain in Malaysia, in return for which each Acehnese would promise to refrain from political activities. Human rights advocates, when asked about this suggestion, said the Acehnese should not have to forsake their rights to free expression in Malaysia simply because they are refugees.

An Aceh Merdeka activist said:

Rather than deport the Acehnese, it would be better for Malaysia to just keep them in the jails. Life is hard in jail, but the main thing we want is to not be sent back to Aceh. Right now, Acehnese have no alternative but to run to the embassies and UNHCR, because the Malaysian government just keeps harassing us.

The activist said Malaysia has put itself in a difficult situation by “letting Indonesia call the shots.” In doing so, he said,

Malaysia has opened itself up to criticism because they’ve associated themselves with Indonesia’s human rights record. By sending the Acehnese back, they’ve violated human rights themselves.

In July 1998, despite continued economic troubles, Malaysia unexpectedly announced it had decided to hire 100,000 foreign workers. According to Deputy Home Minister Tajol Rosli Ghazali:

We decided to repatriate most foreign workers in the service sector in January due to Malaysia's economic slowdown, but after six months we found no Malaysians were willing to take up those jobs.65

Once again, however, Indonesia’s wishes were part of the calculation. Saying that more than 8,500 Indonesians in detention would still be repatriated, Tajol Rosli added:

We can send back more, but the Indonesian manpower authorities have asked us to go slow as they have some two million jobless people.66

It was unclear whether this new policy would affect Acehnese.

Malaysia, Indonesia, and the eight other members of ASEAN gathered for their annual meeting in July 1998 and debated a proposal by Thailand and the Philippines to loosen the longstanding ASEAN principle of non-interference. Calling for a policy of “flexible engagement,” the Thai representatives said non-interference should not be absolute because ASEAN should be “mature and confident enough to be frank on issues that hurt the group.”67 Indonesia’s political unrest was used as an example of situations that affect other nations and should no longer be regarded as an internal affair. The ASEAN ministers did agree to speak more freely but drew the line at what Indonesian Foreign Minister Ali Alatas called “talking
about how a country should be run, like human rights and democratization. The new approach was not included in the ministers' joint communique. Some advocates felt this was the best, believing that any desire to discuss other members' human rights records was motivated by a desire to prevent more refugee outflows.

**G. New Hope . . . Perhaps**

On August 7, 1998, a startling event occurred. General Wiranto announced the planned withdrawal of 1,000 non-local combat troops from Aceh and apologized to the Acehnese people for human rights abuses committed by the Indonesian military, especially during the 1991-1993 crackdown. Said Wiranto:

*On behalf of Indonesia’s armed forces, I apologize to the people of Aceh if, during military operations, the armed forces have made you suffer.*

Wiranto promised to withdraw the 1,000 troops by August 31 (leaving about 2,000 troops there) and pledged to seek amnesty for Acehnese political prisoners. The general also said he hoped members of Aceh Merdeka would be persuaded to abandon their current activities and join the people of Aceh in conducting development programs as part of the Indonesian nation.

The next day, the governor of Aceh said he had set up a team to investigate the alleged human rights violations. The team included local public figures and members of NGOs. The country’s Human Rights Commission and a fact-finding team from the Indonesian parliament had already been investigating the matter.

The Wiranto announcement came on the heels of reports of mass graves discovered in Aceh by human rights investigators. During a visit to Aceh, Wiranto met with human rights groups planning to exhume at least nine suspected grave sites — including one known as “Skulls Hill” — for evidence of human rights violations. The rights groups claimed that since 1991, when Aceh was declared an operational military area (DOM), abuses have included abductions, tortures, rapes, and mass killings.

Amid these reports, community and religious leaders demanded the prosecution of troops accused of abuses. Said an Acehnese women's group leader:

*Rapists, torturers and murderers must be brought to justice. Houses must be rehabilitated. Orphans and widows must be compensated.*

According to Jafar Siddiq Hamzah, the Acehnese human rights lawyer living in New York, some 39,000 women in Aceh are demanding that the Indonesian government determine what happened to their missing husbands and compensate the widows of those who were killed. In partial response, the Indonesian government said it will form a team in Aceh to protect women against violence and to provide education and training to widows and orphans.

In addition, the International Committee of the Red Cross will establish education funds for Acehnese orphans and provide counseling for widows of men killed in the military campaign.

In late August, a team from Indonesia’s official National Human Rights Commission completed its investigation of the mass grave sites. Returning to Jakarta, they announced that they dug up the remains of at least 22 bodies from multiple graves, lending support to locals’ claims of mass slaughter by the military. The team said they had taken “a random sampling” and had the proof they needed.

The Commission took the remains to Sumatra’s main city, Medan, for forensic examination.

The Commission also released a preliminary report in which they said at least 781 people were killed during military operations in Aceh, while at least 368 were tortured, more than 102 women were raped, and 163 people were still listed as missing.

Although these estimates were cautious compared with those of other human rights investigators, General Wiranto criticized the Commission for issuing the report, saying, “These findings have no legal support.” He suggested that some of graves could date back to the independence battle with the Dutch in the 1940s.

Subsequently, Wiranto released the Indonesian military’s own estimates of the death toll from the Acehnese military campaign, putting the total figure at 760 people. Of those killed, 111 were soldiers, said the military. Wiranto said that 243 civilians were murdered by armed rebels, while the Jakarta Post said the military shot and killed 406 rebels.

According to human rights investigators, most of the atrocities in Aceh were carried out by the elite Kopassus special forces, which are also accused of the abduction and torture of political activists during the civil unrest that led to the resignation of President Suharto. A military tribunal investigated the
Indonesia has had much to contend with since the May 1998 change of leadership. On July 17, 1998, Indonesian authorities marked the 22nd anniversary of Indonesia’s annexation of East Timor, a former Portuguese colony. Human rights organizations say that up to 200,000 people may have been killed by Indonesian forces or died of hunger since the 1976 annexation. In response to independence demonstrations at the time of the anniversary, Abilo Soares, the Jakarta-based governor of the province, said, “East Timor’s integration was the wish of the East Timorese to be free from the Portuguese. Twenty-two years have passed, and East Timor has become an inseparable part of the Republic of Indonesia. I urge all the parties to avoid the anarchist actions that have been occurring recently.” That same month, Indonesia began withdrawing about 1,000 combat troops from East Timor.

Although years of negotiations on East Timor’s future had been unsuccessful, Indonesia’s change of government refocused international attention on this region. In early August 1998, representatives from Portugal, Indonesia, and the United Nations sat down for another round of talks, during which Indonesia proposed granting “wide-ranging autonomy” to East Timor. Indonesia said it might grant East Timor autonomy over everything but defense, foreign policy, and some economic matters. Although the agreement falls short of the referendum on independence sought by East Timorese, some pro-independence activists said it was a good first step.

Further talks at UN headquarters in New York concluded in November 1998 without resolution. New talks were scheduled for February 1999.

A separatist movement has also gained steam in Irian Jaya, which was taken over by Indonesia in 1963 and officially incorporated as a province in 1969. Irian Jaya shares the island of New Guinea with Papua New Guinea. Between 1984 and 1987, more than 12,000 Irian Jayan refugees fled to Papua New Guinea, and an estimated 8,000 remain there. On July 7, 1998, pro-independence demonstrators in Irian Jaya staged a rally after reports that seven people had died in recent clashes. After demonstrators hoisted a separatist flag, Indonesia’s defense minister and armed forces commander, General Wiranto, said the participants were guilty of “treachery” and that attempts to challenge the unity of Indonesia would not be tolerated.

The three separatist struggles are not identical. Yet, as an Asia Week article recently noted, the regions share common gripes, from Jakarta’s siphoning of resources (oil and coffee in East Timor, oil in Irian Jaya, natural gas and oil in Aceh) to the transmigration policy that creates disputes over land rights and business opportunities. The biggest issue, of course, is human rights: “Tight rule, deaths, and disappearances. The military’s response to insurgency is often ‘shock therapy’—cow the local population so they think twice about supporting rebels. Problem is, they also think twice about supporting Jakarta.”

The Acehnese have lived under what they consider illegal Indonesian occupation longer than both the East Timorese and the Irian Jayans. Yet, the international spotlight on these other regions, particularly East Timor, could not help but give Acehnese renewed hope for their cause.

These actions stem from a growing mood in Indonesia that a politically active military is unsuitable in an era of democratic reform.

U.S. Secretary of Defense William Cohen, who visited Jakarta in August, has stressed the link between the military and human rights. The United States suspended military training in Indonesia in 1998 after reports that troops receiving the training might have been involved in the kidnaping and torture of political activists. Indonesia was anxious to have role in the abductions played by former Kopassus commander Prabowo Subianto, Suharto’s son-in-law, who once had close ties with the U.S. military. On August 24, Subianto was dismissed from the military.

Around the same time, General Wiranto announced that the armed forces (known as ABRI) would be taking a less active role in Indonesia’s political affairs. “ABRI does not have to always be at the forefront,” he said. He also said the armed forces would review its code of ethics and leadership scheme.

EAST TIMOR AND IRIAN JAYA: SEPARATISM ELSEWHERE IN INDONESIA INSPIRES ACEHNESSE
the assistance resumed, particularly given the economic crisis.81

The first 250 of 1,000 Indonesian combat troops began withdrawing from Aceh on August 22, amid cheers from the local population. The second phase of the withdrawal, on August 31, did not go as smoothly. As trucks carrying more than 650 troops rolled out of Aceh, crowds hurled stones at the soldiers and eventually sparked full-scale rioting.

Most of the violence occurred in the town of Lhokseumawe, in north Aceh, site of the troop withdrawal ceremony. According to reports, at least 2,000 people stoned police cars and burned down buildings, including many businesses owned by ethnic Chinese. Although the eruption was triggered by bitterness toward the military, mobs turned their anger on the ethnic Chinese minority, a traditional scapegoat throughout Indonesia because they control much of the country's private wealth.82

The following two days, September 1 and 2, fresh rioting broke out in several towns in Aceh. Two people were killed and at least ten injured when security forces opened fire on rioters.83 According to reports, thousands of people, including school children, looted stores, burned goods, and damaged a Chinese temple.84

The riots in Aceh were among several that occurred around Indonesia that week, as the economic crisis drove food prices out of the reach of most people. For the Acehnese, however, the violence caused at least a brief setback of political gain. On September 2, General Wiranto reversed his decision to withdraw troops from the province and instead sent hundreds back in, saying, "From now on, the armed forces are taking over the security of Aceh."85 Nevertheless, following a week of relative calm, the military on September 9 quietly withdrew the remaining 300 combat troops from Aceh. "Starting today, Aceh is free from military personnel of Operation Red Net," said a military spokesman.86

In the wake of the violence, accusations flew. Military authorities blamed Aceh Merdeka for stirring up the riots,87 while some Acehnese accused the army of instigating the trouble as a pretext to remain in Aceh.88 Meanwhile, observers predicted the ongoing economic crisis would trigger more unrest.

During October, national and local human rights investigators updated their estimates of atrocities. A fact-finding team established by the North Aceh district government concluded that violence, torture, and rape were carried out by both sides in the conflict while Aceh was a military operation zone.89

Riots and other violence occurred sporadically around Aceh in October and early November, as it did throughout Indonesia as economic and political unrest worsened. After a November 2 demonstration in Lhokseumawe during which participants opened fire but caused no casualties, Aceh's police chief ordered that civilians carrying firearms be shot on sight.90

Whether the economy, political separatism, or both will drive future events in Aceh remains to be seen. Although the strong anti-military sentiment could signal a desire for independence, it could also simply indicate a need for justice. The Christian Science Monitor quoted an Acehnese sociologist as saying, "We need to know who is responsible for all these killings,"91 even while it reported that many Acehnese, including former political prisoners, have no desire to break from Indonesia:

"I just want Aceh to be safe," said an Acehnese woman who was reportedly tortured by Indonesian soldiers who believed she supported Aceh Merdeka. "I don't even know if Aceh Merdeka exists," she said.92

The existence, or at least the strength, of Aceh Merdeka is a good question. Some observers believe it is near defunct. The Jakarta Post reported Aceh's military chief as claiming that the group's activities have drastically declined and its number of armed members had fallen to only 54.93 A prominent Muslim scholar, Ibrahim Husein, said most Acehnese remain loyal to the Indonesian republic and that the military exaggerated its claims of rampant separatism in the province.94 Other Acehnese, however, said most of the local population still wants independence and will keep striving for it despite recent concessions from Indonesia.

Members of the Acehnese community in New York support independence but are sharply critical of Aceh Merdeka. Both the leadership in Sweden and the grass roots in Aceh are badly organized and not credible, says Hamzah, the human rights lawyer. The people of Aceh, he says, support the goals of the movement but need a different organization to achieve those goals. He says there is momentum in Aceh now but it might take some time to see results.

The Acehnese believe they have that time. They have been fighting for independence from one ruler or another for more than 120 years. They are in no hurry.
IV. CONCLUSION

Because Malaysia it is not a signatory to the UN Refugee Convention, it is not bound as a party to comply with the Convention’s prohibition on refoulement. However, many legal scholars and human rights advocates, including USCR, argue that the nonrefoulement requirement enshrined in Article 33 of the Convention has, due to years of consistent practice among states, become customary international law. When a practice rises to the level of customary international law (usually determined through the diplomatic pronouncements of governments about what they believe), it is as binding as a treaty. Unless a state openly and consistently objects to the rule during its formation, it is bound to a rule of customary international law even if not a party to a convention that codifies it.

No evidence exists that Malaysia openly and consistently objected to the prohibition on refoulement, and in fact there is evidence to the contrary. The Malaysian government allows UNHCR to operate in its territory and has generally respected the agency’s grants of mandate refugee status, despite Malaysia’s current treatment of Acehnese. For more than 20 years, Malaysia provided safe haven to as many as 250,000 Vietnamese refugees, in cooperation with UNHCR and the international community, and it continues to recognize as refugees more than 50,000 Filipino Muslims who fled to the Malaysian province of Sabah between 1972 and 1984. These actions, along with the fact that Malaysia previously resisted deporting Acehnese asylum seekers while aggressively deporting other Indonesians, suggests a recognition by Malaysia that persons fearing persecution should not be returned to their homeland. Indeed, Malaysia’s insistence that the Acehnese are “economic migrants” rather than “political refugees” indicates its acceptance of the need to protect genuine refugees.

Therefore, despite the political and economic factors that have caused them to change their policy toward the Acehnese, Malaysia is bound by the international obligation of nonrefoulement. A state cannot
legally force the return of an asylum seeker without determining whether that person is a refugee. Since Malaysia has no asylum adjudication procedure, it cannot forcibly return persons who claim fear of persecution in their homelands. Malaysia has therefore violated international law by returning Acehnese asylum seekers to Aceh. UNHCR’s grants of mandate refugee status to a number of Acehnese in Malaysia provide evidence (though not required evidence) that genuine refugees are among those returned. Malaysia commits *refoulement* if it forcibly returns mandate refugees or any Acehnese to whom UNHCR has been denied access.

In evaluating the Acehnese’s claims to refugee status, UNHCR has relied, though not exclusively, on information about the political situation in Aceh and the fate of Acehnese who were forcibly returned from Malaysia. UNHCR has granted mandate refugee status to only a percentage of the Acehnese who have sought such protection in Malaysia during the past several years. UNHCR says it has granted such status to persons who “came out of the same situation in Aceh in the early 1990s.” Although it has not elaborated, UNHCR may consider those Acehnese who were active in the Aceh Merdeka movement before coming to Malaysia to be most in danger if returned.

Based on events in Aceh and interviews with Acehnese asylum seekers, USCR believes the persecution fears of many Aceh Merdeka members appear well-founded. In addition, Acehnese who were not active in the resistance movement likely have well-founded fears, since the Indonesian government is probably suspicious of all Acehnese who fled to Malaysia. Despite recent political events in Aceh, Malaysia and the international community should remain cautious until there is more certainty about the safety of Acehnese returnees.

The United States and other countries with a diplomatic presence in Malaysia have legitimate concerns about their security and the need to ensure effective operations. However, these countries should be mindful of the precarious situation of asylum seekers in host countries that do not honor the nonrefoulement principle. While embassies may not technically be committing *refoulement* by refusing to protect asylum seekers, they certainly violate the spirit of both the 1951 Refugee Convention and the Universal Declaration of Human Rights by turning a blind eye to such protection needs. USCR is troubled by the March 1998 actions of the Swiss, French, and Brunei embassies, who handed over Acehnese asylum seekers to Malaysian authorities after simply accepting the government’s word that they were purely economic migrants.

USCR commends the United States for providing refuge to the eight Acehnese who broke into its embassy, and for assisting in the resettlement of other Acehnese in Malaysia. USCR is concerned, however, by U.S. embassy statements and actions that could prevent it from effectively implementing its policies toward asylum seekers. Although the embassy indeed is not a refugee camp, the Ambassador’s unfortunate remarks give the impression that U.S. embassies have no mechanism for helping an asylum seeker find protection from persecution.

Likewise, UNHCR admits that it sent a dual message, at least temporarily, by encouraging asylum seekers to approach UNHCR while at the same time expecting Malaysia to police the UNHCR compound. The agency has, however, taken many positive actions to address the difficult situation of Acehnese in Malaysia.

V. **RECOMMENDATIONS**

*To the Government of Indonesia:*

1. **Stop all persecution of Acehnese.**

Most Acehnese who have fled to Malaysia appear to have done so because of persecution and other human rights abuses, rather than simply to further the separatist movement. While welcoming General Wiranto’s acknowledgment of military abuses and his apology to the people of Aceh, USCR notes that reports of mass graves discovered by human rights investigators indicate the legitimacy of such fears. While President Habibie’s pledge of political reforms and the recent withdrawal of combat troops from Aceh are encouraging, the Indonesian government must go much further to ensure an end to the human rights abuses that have plagued Aceh. The government should take positive, nonviolent steps to address the Acehnese independence movement.

2. **Do not take reprisals against Acehnese returnees.**

The fate of Acehnese returnees has been a critical factor in UNHCR’s determination that certain Acehnese in Malaysia are refugees in need of international protection. Reports that returnees are immediately detained at Rancung prison, treated brutally, and put under surveillance after release, are extremely troubling. In order to encourage voluntary return, the
government should not punish Acehnese for having left the country and should guarantee fair and humane treatment to all returnees.

3. Allow full access by human rights monitors.

To ensure Acehnese and the international community that human rights are fully respected and that Acehnese need not fear going home, the Indonesian government should fully cooperate with the monitoring efforts of the International Committee of the Red Cross (ICRC) and other local, national, and international human rights groups. Such groups should have unfettered access to all areas of Aceh, including detention centers and the villages where returnees live.

4. Do not pressure Malaysia to forcibly return Acehnese.

Malaysia's decision to include Acehnese in its deportation of illegal Indonesians was likely due in large part to Indonesian pressure. The Indonesian government should acknowledge that Acehnese have the right to seek refuge in Malaysia, while also working to achieve conditions that will allow Acehnese to return home in safety and dignity.

To the Government of Malaysia:

1. Immediately halt the forcible return of Acehnese asylum seekers.

Although not a signatory to the UN Refugee Convention, Malaysia is bound by the customary international law of non-refoulement. To comply with this obligation, Malaysia must not forcibly return any Acehnese determined by UNHCR to be a refugee nor any Acehnese who has not yet had his or her claim decided by UNHCR.

2. Allow Acehnese full access to UNHCR.

Because Malaysia does not have a system for adjudicating the claims of asylum seekers, it is critical that all asylum seekers in the country, including Acehnese, have full access to UNHCR. In exercising its refugee protection mandate, UNHCR will identify those Acehnese who are refugees in need of international protection and will work to achieve durable solutions to their plight. Such solutions will include voluntary repatriation when it can be achieved in safety and dignity, as well as third-country resettlement when appropriate.

3. Adopt the United Nations Refugee Convention and encourage other ASEAN nations to do so.

Like nearly all East Asian countries, Malaysia is not a signatory to the 1951 Refugee Convention (or its 1967 Protocol, which incorporates by reference the major provisions of the Convention). Malaysia, has, however, demonstrated its recognition of fundamental principles of refugee protection through its years of hosting asylum seekers from Vietnam and elsewhere. It should formalize this recognition by adopting the Convention. If Malaysia, like Thailand, has concerns about the appropriateness of certain provisions of the Convention, these could potentially be addressed through reservations. In order to regionalize the Convention's system of refugee protection and make such protection more effective, Malaysia should encourage other ASEAN nations adopt the Convention as well.

To the Office of the United Nations High Commissioner for Refugees:

1. Urge the Indonesian government to improve the human rights situation in Aceh so that Acehnese refugees can return voluntarily in safety and dignity.

UNHCR can play an important role in reminding Indonesia of its fundamental human rights obligations. In addition, the agency can help to ensure favorable conditions for the voluntary return of Acehnese. UNHCR should closely monitor events in Aceh and inform the Indonesian government of needed steps to guarantee a safe, voluntary, and dignified repatriation.

2. Continue to urge Malaysia to cease detaining and deporting Acehnese refugees and asylum seekers and to provide full access to UNHCR; urge Malaysia to adopt the Refugee Convention.

Although the Malaysian government has at times questioned UNHCR's role with respect to Acehnese asylum seekers, it has also cooperated with some of UNHCR's efforts toward the Acehnese. Most recently, Malaysia agreed to permit third-country resettlement of Acehnese granted mandate status. UNHCR should continue to remind Malaysia of its international obligations, press for full and timely access to all Acehnese asylum seekers, and resolve the difficulties faced by Acehnese in Malaysia. UNHCR...
should also urge Malaysia to adopt the UN Refugee Convention, in order to formalize and enhance the protection of all asylum seekers in Malaysia.

3. Ensure that all Acehnese asylum seekers in Malaysia are able to seek UNHCR protection.

UNHCR should continue exploring ways to ensure that all asylum seekers in Malaysia have unhindered access to the agency. The recent decision to employ non-Malaysian guards at the compound is a positive development, as was the availability of alternate locations for refugee interviews during the period of increased police presence following the break-in at the compound. If Acehnese and others in fear of deportation remain hesitant to approach the UNHCR office, off-site interviews and other means of obtaining access to UNHCR staff should again be provided.

4. Await further information on the human rights situation in Aceh and the fate of returnees before determining the status of other Acehnese who seek protection.

UNHCR wisely waited to obtain information on the fate of Acehnese returnees before deciding the status of the 22 Acehnese asylum seekers at its compound and at the U.S. embassy. Given the discovery of mass graves in Aceh and official Indonesian acknowledgment of human rights abuses, UNHCR should continue to closely monitor the situation in the region. While recent developments give some hope for an improved human rights situation, it will take time to gather evidence of such improvement. In the meantime, there are still concerns that forced returnees from Malaysia, especially active members of Aceh Merdeka, may be subject to abuse.

5. Use competent, non-biased interpreters in deciding the claims of Acehnese asylum seekers.

As in all refugee status determinations, the use of competent and appropriate interpreters for Acehnese asylum seekers is critical to the quality of the adjudications. Efforts should be made to use interpreters who speak the Acehnese language and who are likely to be non-biased toward the asylum seekers.

To the United States:

1. Urge Indonesian President Habibie to live up to his promises of political reform by improving the human rights situation in all areas of the country, including Aceh.

Recent developments concerning Aceh and East Timor give hope for improvements in those troubled regions. The United States, as a leader in the international arena, should hold Indonesian President Habibie and other Indonesian officials to their promises of political reform. The United States should also lead the international community in ensuring that the human rights situation in Aceh is carefully monitored and addressed.

2. Ensure that Acehnese and other asylum seekers in Malaysia are not discouraged from approaching the U.S. embassy to seek protection.

The security and effective operations of the U.S. embassy in all countries, including Malaysia, is critical. However, U.S. policy concerning asylum seekers at U.S. embassies and other installations should not prevent persons from seeking and finding protection from persecution.

Current policy as delineated in cables and in the Foreign Affairs Manual (FAM) provides for both temporary refuge and, through resettlement, possible long-term protection for asylum seekers abroad. There are some problems with the policy, however, including the potential that host country nationals serving as embassy guards may be the first point of contact for asylum seekers, who may be hesitant to discuss their need for protection. In addition, these guards may be insufficiently trained to recognize a compelling need for temporary refuge.

Because the situations that accompany such a need are varied, it is not surprising that the FAM and the regulations do not list such situations. However, the lone reference to “pursuit by a mob” may lead to the conclusion that the danger must be immediate and observable to warrant protection. The policy, therefore, should clarify that other situations may suffice.

In addition, given the potential for continued reliance on embassies as a means of seeking protection, the U.S. State Department should revisit its policy to ensure that the persons most in need of this protection mechanism are able to benefit from it.

Because the United States should be a leader both in offering protection for the persecuted and in convincing other countries of their obligations to do so, the words and actions of U.S. diplomatic personnel should be carefully chosen. Declarations by the U.S. Ambassador to Malaysia gave the impression that
there is no mechanism by which refugees can seek protection at or through the U.S. embassy. While diplomatic missions understandably do not want to be magnets for potential asylum seekers, and indeed are not equipped to operate as long-term safe havens, the existing mechanisms for such protection should not be treated as a secret to be well kept and rarely used.

3. Continue to urge the Malaysian government to adhere to international principles of refugee protection.

The United States should actively engage the Malaysian government in adhering to the internationally recognized principle of nonrefoulement. It should urge Malaysia to cease deporting Acehnese and other asylum seekers, allow all asylum seekers full access to UNHCR, and refrain from the unnecessary detention of Acehnese.

4. Continue to work toward durable solutions for the situation of Acehnese refugees in Malaysia.

Both to enhance the prospect of Malaysian cooperation and to adhere to its own commitments, the United States should continue to work toward durable solutions for Acehnese. This should include promoting conditions that will allow for a safe return, as well as the U.S. admission of those Acehnese for whom resettlement is the most viable option. The U.S. should also urge other countries to do their part in resettlement and in funding UNHCR.

To the International Community:

Like the United States, other nations should urge the Indonesian government to improve the human rights situation in Aceh and to ensure that Acehnese refugees can return in safety and dignity. Refugee and human rights organizations should continue to monitor conditions in Aceh and should pressure Indonesia to implement democratic reforms.

The international community should urge Malaysia to cease detaining and deporting Acehnese asylum seekers, provide full access to UNHCR, and adopt the UN Refugee Convention.

Countries with embassies or diplomatic missions in Malaysia should provide some mechanism for asylum seekers to seek protection at these premises or should facilitate direct access to UNHCR. The situation of embassies handing asylum seekers over to Malaysian authorities should not be repeated.

NOTES

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2 FAM 229.1.

2 FAM 228.3.

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2 FAM 229.2.

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