

SOUTH EAST ASIA AND INTERNATIONAL LAW January–June 2003

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I. INTRODUCTION

South-East Asia continues to be faced with the need to undertake and execute co-operative efforts to address the terrorist threat in the region. In addition, the region was faced with the threat to public health associated with the outbreak of Severe Acute Respiratory Syndrome (SARs) which necessitated a collective response to containment from ASEAN states. Other noteworthy issues include the continuing separatist imbroglio in Aceh, and the divided responses of ASEAN states towards the United States led war on Iraq in March 2003.

II. TERRORISM AND PUBLIC ORDER

A. General Developments

The spectre of terrorism posed by *Jemaah Islamiyah* (JI), an affiliate of *Al Qaeda*, persists in the region.¹ There is strong evidence to link the bombing of two Bali nightclubs in October 2002 with these terrorist organisations.² Concerns were raised in March 2003 that JI and *Al Qaeda* may have perpetrated a series of increasingly frequent pirate attacks in the Malacca Straits and Indonesian waters.³ *Al Qaeda* is known to have devoted a maritime arm to surface and sub-surface attacks.⁴

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1 'JI Threat persists, say experts', *Straits Times* (Singapore), 8 January 2003, at A1; 'Terror Group Remains a Threat', *Straits Times*, 10 January 2003, at 1; 'Possibility of Terrorism in Africa, Asia Worries US', *Washington Post*, 15 May 2003, at A20; 'Fleeing JI Men Active In Thailand and Cambodia', *Straits Times*, 31 May 2003, at A16.

2 'Bali Suspect Says Osama May Have Bankrolled Attack', *Straits Times*, 21 January 2003, at A6; 'Jakarta Links JI directly to Bali Blasts', *Straits Times*, 29 January 2003 at 4.

3 'Pirate Attacks Raise Spectre of Terrorism at Sea', *Straits Times*, 31 March 2003, at A11.

4 'Ship Piracy May be Linked to Al-Qaeda', *Straits Times*, 14 March 2003 at A10. The Maritime and Port Authority of Singapore (MPA) will adopt stringent anti-terror

The JI have employed both legal and illegal means to raise funds,⁵ including running legitimate enterprises such as selling computer software and medical supplies to committing bank robberies and kidnapping. The US Federal Bureau of Investigation (FBI) also discovered that the Indonesian JI head, Hambali, has directed his members to establish non-governmental organisations (NGOs) as a front to raise funds.⁶

ASEAN made a joint declaration to combat terrorism with the United States (US) and the European Union (EU) on 1 August 2002 and 27–28 January 2003 respectively. The participants reaffirmed their commitment to fight terrorism under the UN aegis in accordance with UN Charter principles, international law and UN Security Council Resolutions 1373, 1267, 1377 and 1390.⁷ In particular, the participants agreed to designate and strengthen ties between law enforcement agencies of ASEAN, the EU and US as the central point of contact in implementing the Declarations.⁸

There are concerns that the terrorist presence is growing in Thailand and Cambodia as JI and *Al Qaeda* members flee security clampdowns in other South East Asian countries.⁹ Some commentators, however, have dismissed claims that Thailand has become a terrorist base, as they believe it is used as a transit point for meetings and collecting false documents.¹⁰ These developments, however, underscore the insidious nature of the terrorist network and the need for sustained co-operation within ASEAN to contain this threat.

B. Developments in Specific ASEAN Countries

(i) Indonesia

Indonesia was until recently criticised for its desultory response towards terrorism.¹¹ However, the Bali bombings has altered the political landscape.¹² The

measures outlined by the International Maritime Organisation (IMO), which will take effect from July 2004. See 'Shipping Lines Face Tighter Rules', *Straits Times*, 6 May 2003, at 1.

5 'Terrorist Funds Find Path to South East Asia', *Straits Times*, 22 March 2003, at A1; 'Besides Terror, Al Qaeda also Restores Cars', *Straits Times*, 23 March 2003, at 20.

6 *Ibid.*

7 See the Joint Declarations with the EU and US online at <http://www.aseansec.org/> and <http://www.state.gov/> respectively (accessed 8 May 2003). Under the rubric of general norms of international law, the ASEAN-EU joint declaration expressly includes respect for human rights and humanitarian law.

8 *Ibid.* See also 'Asean and EU to Fight Terror Together', *Straits Times*, 25 January 2003, at A13 and 'EU-Asean Talks a Crucial Step to Improved Ties', *Straits Times*, 27 January 2003 at A7.

9 'Fleeing JI Men Active in Thailand and Cambodia', *Straits Times*, 31 May 2003, at A16; 'Thai Police arrest Four Militants in Bomb Plot', *Washington Post*, 11 June 2003, at A20.

10 'Thailand Tiptoes in Step With American Antiterror Effort', *New York Times*, 7 June 2003 online at www.nytimes.com. (accessed 8 June 2003).

11 'National Tragedy', *The Jakarta Post*, 14 October 2002, online at <http://www.thejakartapost.com/> (accessed 25 March 2003). See also report by Chiew et al, 'South East Asia and International Law' (2002) 6 *Sing JICL* 604 at 612.

12 'Indonesia Does Well', *Straits Times*, 5 February 2003, at 12. But contrast with 'War On Terror: Doubts Irk Jakarta', *Straits Times*, 15 May 2003, at A17.

spiritual leader of JI, Abu Bakar Ba'asyir, who only a year ago avoided arrest because the Indonesian police feared a public backlash, was charged with treason in Jakarta in April 2003.¹³ The charges leveled against him include his attempts to supplant the Indonesian government with an Islamic State and his role in a series of church bombings on Christmas Eve in 2000.¹⁴ Ba'asyir has not been charged for the Bali bombings although one of the witnesses at his trial, Faiz Abu Bakar Bafana, has testified that he was the leader of JI and had endorsed the church bombings and foiled attacks in Singapore.¹⁵ To date, more than 30 people have been detained in connection to the Bali bombings.¹⁶

In February 2003 President Megawati issued Government Regulations in Lieu of Law Numbers 1/2002 and 2/2002.¹⁷ The Peraturan Pemerintah Pengganti Undang-Undang (Perpu) must be ratified by the House of Representatives or Dewan Perwakilan Rakyat (DPR) at the next session, failing which it will lapse. There are some significant provisions in Perpu 1/2002. Chapter V now allows suspected terrorists to be arrested up to 7 days and detained for 6 months for questioning and prosecution. The most troubling provision is probably article 26: intelligence reports may be adduced as legal evidence. Apart from the generally unimpressive quality of Indonesian intelligence, there are fears that the now discredited security forces, a Leviathan under President Suharto, will abuse these anti-terrorism measures.¹⁸

Perpu 2/2002 provides for the retrospective application of Perpu 1/2002 to the Bali bombings. It is open to speculation if the DPR will strike it down when

13 'Cleric Rejects Charges as Jakarta Trial Starts', *Washington Post*, 24 April 2003, at A18.

14 'Case Against Bashir Is Flawed, Say Cleric's Lawyers', *Straits Times*, 1 May 2003, at A11.

15 'Spore JI Trio Accuse Bashir', *Straits Times*, 27 June 2003, at 1. See also 'Jakarta to Charge Bashir with Treason', *Straits Times*, 1 March 2003, at 4 and 'How Bali Witnesses May Have Hurt Bashir', *Straits Times*, 30 May 2003, at A7.

16 'No 2 man behind Bali blasts arrested with 10 others', *Straits Times*, 1 July 2003 at 4; 'First Suspect Charged in Bali Bombings', *Washington Post*, 30 April 2003, at A16. Amrozi, a member of JI and also the first suspect to be arrested is presently being tried under Indonesia's anti-terrorism laws in May 2003. See 'Bali's "Laughing Bomber" goes on trial', *Straits Times*, 12 May 2003, at A5; 'Bali Blasts Trial: "Laughing Bomber" Sheds His Smile', *Straits Times*, 13 May 2003, at 6. Iman Samudra, allegedly another key JI member and also the mastermind behind the Bali bombings was tried in June 2003 in Denpasar, Bali. See 'Alleged Mastermind of Bali Blasts Goes On Trial', *Straits Times*, 3 June 2003 at 4; 'Bali Bomb Suspect Faces Death Sentence', *Straits Times*, 6 June 2003, at A6.

17 Respectively, the 'Eradication of Criminal Acts of Terrorism' and the 'Eradication of Criminal Acts of Terrorism in Relation to the Bomb Explosion Incident in Bali, 12 October 2002'. While Article 20 of the 1945 Constitution of Indonesia (as amended) confers legislative powers upon the DPR, Article 22 allows the President to issue a Perpu 'in the event of a compelling emergency'. See 'Indonesia's Unease over Anti-Terror Decrees', *BBC News*, 19 February 2003, online <http://news.bbc.co.uk/> (accessed 4 May 2003). For a lucid commentary of key provisions, see Tim Lindsey, 'Indonesia's New Anti-Terrorism Law: Damned If You Do, Damned If You Don't', online at <http://www.law.unimelb.edu.au/> (accessed 4 May 2003).

18 'Terror has Deep Roots in Indonesia', *The Guardian*, 16 October 2002, online <http://www.guardian.co.uk/> (accessed 6 May 2003).

they convene, since article 28(I), Chapter XA of the Constitution proscribes prosecution under retrospective laws as a breach of human rights.¹⁹

The Perpu is significant because it stemmed from a revised form of the Anti-Terrorism bill which was debated without progress in the DPR for months. There now appears to be a convergence in Indonesia's practice of using preventive detention laws, eschewed since Suharto's fall from power, and that of Singapore and Malaysia under their Internal Security Acts (ISA). While President Megawati was able to circumvent the legislative process due to the bloody nature of the Bali bombings, she now faces the antinomies of a suspicious DPR, continued demands from the international community (especially the US) to fight terrorism, the need to assure both political allies and opponents in the world's most populous Islamic state that Islam is not being targeted, and the prospect of 2004 elections.

(ii) *Singapore*

The Singapore government released a White Paper—'The Jemaah Islamiyah Arrests And The Threat of Terrorism' in January 2003.²⁰ The paper examined the historical background of JI and their network in Singapore.²¹ The report provided details about plots by *Jemaah Islamiyah* to attack western targets in Singapore.²² It also sketched the psychological profile of the 31 detainees arrested under the ISA.²³

Preventive detention under the ISA is not new in Singapore.²⁴ But the unprecedented threat posed by JI, including the potentially deleterious effect on racial harmony has precipitated swift government measures.²⁵ Crucially, the government felt it was necessary to justify the arrests under the ISA by publishing a White Paper. The Minister for Home Affairs, Wong Kan Seng, while acknowledging that a sustained public discussion on this delicate subject will be difficult, made the case in Parliament for a dispassionate and rational discourse due to the extant threat of terrorism.²⁶

19 But see Lindsey, *supra* n17, who suggested that Perpu 2/2002 will probably survive if Megawati is able to demonstrate some extreme Islamist involvement in the Bali bombings.

20 Cmd 2 of 2003 (7 January 2003). Full report is also available online <http://www.mha.gov.sg> (accessed 1 May 2003).

21 *Ibid.*, see pp 3–10 of White Paper. See also 'Inside The Mind of The Man Who Sold Terror' and 'JI Waged Psy-War On Members', *Straits Times*, 10 January 2003, at H4–H5 and 1 respectively; 'At the Heart of Terrorism, Inc', *Straits Times*, 11 January 2003, at H6.

22 See part IV, White Paper.

23 Cap 143. See especially Part IV and Annex C, White Paper.

24 See Michael Hor, 'Terrorism and The Criminal Law: Singapore's Solution' [2002] *Sing JLS* 30 at 30–32.

25 This has earned plaudits from the US and previous demurrals against the purportedly illiberal preventive detention laws in Singapore are now conspicuously muted. See Hor, *ibid* at 31. See also 'Spore Fight Against Terror Praised', *Straits Times*, 8 May 2003, at 13.

26 See the principal ministerial speech, Vol 75 *Singapore Parliamentary Debates*, 20 January 2003, cols 2035–2051. See also 'Support For US Puts Spore High On Al-Qaeda Hit

III. SEPARATIST MOVEMENTS

A. General

Peace negotiations related to regional separatist conflicts have broken down, accompanied by increasing governmental impatience with separatist groups who carry little international support for their cause. The governments of Indonesian and Philippines consider various separatist groups in Aceh and Southern Philippines as terrorists and continue to conduct military action against them.

B. Developments in the Philippines

The violent conflict between the government and the Moro Islamic Liberation Front (MILF) in Southern Philippines continues. This culminated in the Davao Airport blast in March, killing 21 people.²⁷ The incident has been attributed to the MILF and observers view this as an attempt to push the government back to the bargaining table.²⁸

(i) Foreign Intervention

A key issue was the cooperation of US troops in dealing with the terrorist problem. A spat arose initially because US officials wanted American Special Forces in the Philippines not merely to train Filipino forces, but to directly engage in combat against Muslim extremist forces. This proposal was rejected because Article XVIII, section 25 of the Philippine Constitution, bars foreign troops from combat.²⁹

This position changed as violence mounted and MILF fighters, ignoring an interim pact to resume talks with the government, staged bloody

List', *Straits Times*, 24 May 2003, at 4; but contrast with 'No New Alerts On Terror Strikes In Spore, Says US', *Straits Times*, 25 May 2003, at 6.

27 'Philippines hit by fresh attacks as Arroyo demands new terror laws', *Agence France Presse* (International News Section), 7 March 2003, online at <http://www.lexis.com> (accessed 30 May 2003).

28 'Manila Police Link Davao Airport Blast to MILF', *Straits Times*, 7 March 2003, at A6; 'Rebels in bloody bid to force Manila to negotiate', *Straits Times*, 10 March 2003, at A6.

29 'Arroyo rejects combat for US troops', *Straits Times*, 6 March 2003, at A7. Article XVIII Section 25 of the Constitution of the Republic of Philippines reads:

After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

This was qualified by the Agreement between the Government of the Republic of Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines (Manila, 10 February 1998).

attacks.³⁰ Further attacks at a wharf³¹ and mosques³² in Davao led President Arroyo to declare Davao to be in a state of 'lawless violence'.³³ Arroyo also finally approved the deployment of US troops in Sulu.³⁴ This departure from past practice was consolidated when US President Bush announced, during Arroyo's visit to Washington, that the Philippines would now be a 'major non-Nato ally'. As a result, the Philippines may receive higher priority in terms of access to sophisticated US military hardware and other defence supplies.³⁵

(ii) *Imposing the Terrorist Tag*

The developments above reflect a heightened impatience with the MILF. The likelihood that the MILF will be branded a terrorist group increased when a suspected commander confessed that they had planned bomb attacks with the JI, hence providing evidence of ties between both groups.³⁶ The government issued an ultimatum, demanding that the MILF end attacks on civilians and sever their links with terror groups, or be treated as terrorists themselves.³⁷ If so designated, the military would be able to attack the MILF without fearing accusations of human rights violations.³⁸ However, Manila will resume peace negotiations with the MILF in Kuala Lumpur, Malaysia, by September 2003.³⁹

C. *Developments in Aceh*

The Indonesian government remained resolute in its offer of 'special autonomy status' to Aceh and Papua, but made clear its position that any attempt to hold an East Timor-styled vote for self-determination will not be tolerated. Force will continue to be an option as long as the separatists envisage an independent state.⁴⁰

A peace deal brokered on 9 December 2002 had formalised the government's agreement to allow special autonomy status under which, among other

30 'Rebels in Philippines stage raids despite peace move', *Straits Times*, 1 April 2003, at A7.

31 'Evening Explosion—8 die as blast rocks wharf area in Davao city', *Straits Times*, 3 April 2003, at A6.

32 'Hours after wharf blasts gunmen hurl grenades at Davao mosques', *Straits Times*, 4 April 2003, at A6.

33 'Catholic Church in Manila slams mosque blasts', *Straits Times*, 5 April 2003, at A8.

34 'Arroyo approves deployment of US troops in Sulu', *Straits Times*, 10 April 2003, at A4. This decision later extended to include strongholds of Muslim separatist guerillas, including the MILF, in joint Philippine-American troop exercises. See 'Manila to take US military exercises to rebel territory', *Straits Times*, 9 May 2003, at A7.

35 'Aceh peace deal breached by both sides', *Straits Times*, 17 February 2003, at A8.

36 'Philippines may brand MILF a terrorist group', *Straits Times*, 11 March 2003, at A7; 'JI plotted Manila bombings, says captured MILF rebel', *Straits Times*, 10 June 2003, at A4.

37 'Manila sets June 1 deadline for rebels to cut terror links', *Straits Times*, 14 May 2003, at A6.

38 *Ibid.* This will also entail a cessation of peace negotiations and the government will be able to unleash the US Special Forces on the MILF.

39 'Manila set to resume talks with rebels', *Straits Times*, 28 June 2003, at A14.

40 'Jakarta's warning to Aceh and Papua: Secession bids will be crushed by force', *Straits Times*, 2 January 2003, at A1.

things, Aceh was to retain up to 70% of its natural resources revenue. However, officials from the Free Aceh Movement (GAM) stoked anger among Indonesian authorities when they continued to maintain that they want the election in 2004 to be a referendum on whether Aceh should remain within Indonesia.⁴¹

While the Swiss-based Henry Dunant Centre (HDC), which is involved in mediating this conflict, initially thought the peace deal was reducing the level of regional conflict, the continued killings led to a revised view that both government troops and separatists in Aceh were guilty of serious breaches of the peace deal.³⁵

The peace deal collapsed when both sides refused to take steps to demilitarise in accordance with the deal.⁴² Stability was further undermined with the orchestration of mob attacks on HDC personnel and premises⁴³ and the Joint Security Committee (JSC),⁴⁴ resulting in the withdrawal of international security personnel. In a move reminiscent of the tactics applied in East Timor, the Indonesian army (TNI) appeared to have mobilised the mob attacks.⁴⁵

Under pressure from Indonesia's sponsors, a final bid for peace was initiated with government negotiators and GAM representatives at a meeting in Tokyo.⁴⁶ The possibility of a peaceful resolution was compromised when 5 GAM representatives were arrested while making their way to catch their flight to Tokyo. While GAM condemned the arrests as 'uncivilised and intolerable', the Indonesian military responded stating that more decisive action in Aceh was needed as diplomacy had 'clearly yielded limited results'.⁴⁷ The government issued an ultimatum on 18 May 2003, demanding that the separatists abandon their independence goal or face military attack.⁴⁸ The talks failed after 12 hours.⁴⁹

(i) *Humanitarian Crisis*

War was declared in Aceh on 19 May 2003.⁵⁰ Senior military officials have said the war would feature both military and humanitarian components, echoing the 'hearts-and-minds approach' applied by the US in their recent invasion of Iraq.⁵¹ Despite this assurance, a humanitarian crisis seems imminent. So

41 *Ibid.*

42 'Demilitarisation under Aceh pact yet to go ahead', *Straits Times*, 22 February 2003, at A13.

43 'Mob attacks peace monitoring office in Aceh', *Straits Times*, 4 March 2003, at A7.

44 'Peace monitors withdraw after Aceh mob attacks', *Straits Times*, 9 April 2003, at A6.

45 'Aceh peace pact close to collapse', *Straits Times*, 14 April 2003, at A1.

46 'Last-ditch bid to salvage Aceh ceasefire deal', *Straits Times*, 16 May 2003, at A6.

47 'Arrests in Aceh jeopardize last-ditch peace talks', *Straits Times*, 17 May 2003, at A6.

48 'Deadline is today, Aceh rebels told', *Straits Times*, 18 May 2003, at 19.

49 'We are ready for war, say Aceh rebels', *Straits Times*, 19 May 2003, at 4.

50 'Military chief orders Aceh rebels' destruction', *Straits Times*, 20 May 2003, at 5.

51 'Jakarta takes cue from Iraq war', *Straits Times*, 20 May 2003, at A4. There are doubts if the military is committed to avoiding human rights abuses and civilian casualties. While they have displayed a capacity to curb excesses by court martalling 3 soldiers for beating up 3 civilians, the Indonesian National Commissioner for Human

far, the government has sent aid packages and tents to students in Aceh.⁵² However, more may need to be done as an influx of refugees is threatening to overwhelm the authorities in neighbouring areas, and food supplies have dwindled to critically low levels.⁵³ The situation is exacerbated by the inability of the Indonesian Red Cross (PMI) to deal with the mounting casualties.⁵⁴ Indonesia has also attempted to isolate Aceh by imposing strict restrictions on foreign media and aid.⁵⁵

(ii) *International Support for Aceh Offensive*

In marked contrast to Timor Leste,⁵⁶ Indonesia has secured broad domestic and international support for the military offensive in Aceh. Jakarta's attempts at peace talks and its humanitarian pledge seem to have won over the international community.⁵⁷ GAM's lack of international support further weakens its claim to secession. While Indonesia's donors have urged both sides to resume talks, the international community including the US, view Aceh as an internal issue.⁵⁸ The resumption of this conflict by Jakarta, which has cost more than 12,000 lives in 26 years, is therefore unlikely to draw harsh international criticisms.⁵⁹

(iii) *Imposing the Terrorist Tag on Separatist Groups*

Reflecting developments in the Philippines, and following arson attacks on nearly 200 public buildings during the May 2003 offensive in Aceh, the Indonesian government signaled its intention to label GAM leaders as 'terrorists'.⁶⁰ This move is likely to thwart the peace talks and will give the military

Rights, Komnas Ham, has also reported the murder of unarmed civilians. See, respectively, 'GAM supporters may face death penalty', *Straits Times*, 4 June 2003, at A6 and 'Another 12,000 flee Aceh villages amid fresh fighting', *Straits Times*, 15 June 2003, at 20.

52 'Jakarta sends aid to Aceh students', *Straits Times*, 1 June 2003, at 21.

53 'Panic in Aceh', *Straits Times*, 13 May 2003, at A4; 'Food supplies to Aceh dwindling', *Straits Times*, 24 May 2003, at 6.

54 'Aceh unable to cope as bodies pile up', *Straits Times*, 26 May 2003, at 6.

55 'New curbs imposed on foreign media in Aceh', *Straits Times*, 28 June 2003, at A13.

56 Through UN resolutions, the international community had condemned the conflict in Timor Leste as violating the right of Timorese to self-determination. See, for example, General Assembly Resolution 3485 (XXX) (12 December 1975) and General Assembly Resolution 31/53 (1 December 1976), online at East Timor and United Nations website: www.etan.org (accessed 8 June 2003).

57 'Military chief orders Aceh rebels' destruction', *Straits Times*, 20 May 2003, at 5. Australia, for example, has articulated its concern about regional instability if Aceh was to secede. Malaysia has said that the separatists should abandon its separatist agenda and focus instead on securing autonomy. See 'Separatists threat to regional stability', *Straits Times*, 26 May 2003, at A6.

58 'Aceh ablaze', *Straits Times*, 21 May 2003, at 6.

59 'Arrests in Aceh jeopardize last-ditch peace talks', *Straits Times*, 17 May 2003, at A6. The British government, however, has voiced concerns that the fighter jets that they have sold to the Indonesians may have been used to perpetrate human rights violations in Aceh. See 'Jakarta deploys fighter jets and tanks in Aceh', *Straits Times*, 24 June 2003, at A5.

60 'Jakarta wants to tag Aceh rebels as terrorists', *Straits Times*, 22 May 2003, at A1.

more latitude in its operations, especially in using force.⁶¹ The Indonesian and Philippines experiences, however, do not clarify the criteria for officially designating local separatist groups as 'terrorists'. This raises the issue of whether the 'terrorist' tag will be used by governments to legitimise the suppression of local rebellions and also to gain international support or acquiescence, in the aftermath of events since 11 September 2001.

The Indonesian government has warned that it will use its anti-subversion laws, which carries a death penalty, against GAM supporters.⁶² These laws are widely perceived to grant the military and the prosecution exceptional powers.⁶³ Indonesia has also appealed to its neighbouring countries not to offer sanctuary to fleeing rebels from Aceh. Malaysia has agreed to deport such illegal entrants.⁶⁴

IV. TERRITORIAL DISPUTES

In recent months, a series of territorial disputes have arisen among ASEAN states. Rather than resort to ASEAN's conciliatory mechanisms, peaceful means of settlement such as referrals to the International Court of Justice (ICJ) have been made. The altercation between Thailand and Cambodia over the Angkor Wat, however, was marked by reciprocal demonstrations and heated exchanges between the respective governments. The parties finally agreed to settle the dispute informally through a compensation agreement.⁶⁵

61 *Ibid.*

62 Under Indonesia's controversial Anti-Subversion Law (Presidential Decree 11/1963), Subversive activities are broadly defined to include actions which '*distort, stir up trouble or digress*' from *Pancasila* or the state (Article 1.1a). People considered to be '*spreading feelings of hostility or creating hostility, dissension, conflict, chaos, instability or restlessness among the population*' may also be charged with subversion (Article 1.1c). In addition, activities considered to disturb, hamper or stir up trouble for industry, production, distribution or trade are punishable under the Anti-subversion Law (Article 1.1d) as is "*expressing sympathy with the enemy of the Republic of Indonesia or with a state which happens not to have friendly relations with the Republic of Indonesia*" (Article 1.2).

63 "The Anti-Subversion Law: A Briefing", Amnesty International, (ASA 21/003/1997), 1 February 1997, online at Amnesty International website: <http://web2.amnesty.org/library> (accessed 8 June 2003). Supporters of GAM already on the wanted list include student activists and NGO members. See 'GAM supporters may face death penalty', *Straits Times*, 4 June 2003, at A6.

64 *Ibid.*, see 'GAM supporters may face death penalty'.

65 "Thais evacuated after night of Cambodia riots", *Straits Times*, 31 January 2003, at 3; "Cambodian PM says border closed over economic inequality, drugs war", *Agence France Presse*, 6 March 2003 online <http://www.lexis.com> (accessed 25 March 2003); "Thai embassy in Cambodia beyond repair after riots: official" *Agence France Presse*, 4 February 2003; "Team from Thailand to investigate anti-Thai riots in Cambodia" *Agence France Presses*, 25 February 2003 online <http://www.lexis.com> (accessed 1 March 2003).

A. *Pedra Branca & the ICJ*

On 6 February 2003, Singapore and Malaysia concluded a Special Agreement to refer the territorial dispute over Pedra Branca to the ICJ.⁶⁶ While the foreign ministers of both countries agreed that the status quo would prevail in the interim, both sides differ as to what this is. Singapore maintains that its permission must be sought before Malaysia can access the island and its territorial seas. Malaysia insists that its enforcement agencies, vessels and aircraft can exercise their right of entry during this interim period. According to Singapore's then Minister of Defence, Teo Chee Hean, Malaysian state vessels have consistently violated the territorial waters around Pedra Branca, although they eventually leave when instructed to do so.⁶⁷

The dispute over Pedra Branca arose in 1979 when Malaysia published a new map, claiming the island as its own. Singapore contends that it has exercised sovereignty over Pedra Branca since the 1840s when the British government built the Horsburgh Lighthouse on the island.⁶⁸ Disputing this, Malaysia has argued that the lighthouse was only built and administered with the Sultan of Johor's consent, which did not entail ceding the island to the British.⁶⁹ The exchange of the instruments of ratification of the special agreement between the two countries took place on 9 May 2003.⁷⁰

B. *Pulau Merambong*

United Malay National Organisation (UMNO) politicians are currently pressing the Johor state government to pre-empt another territorial dispute with Singapore by gazetting Pulau Merambong, an uninhabited island to the west of Singapore and Johor.⁷¹ These politicians from the leading Malaysian political party have exhorted the government to issue a land title for Pulau Merambong to its investment arm, Johor Incorporated, and buttress its territorial claims through such evidence of factual control.

66 'Special agreement to refer Pulau Batu Puteh to ICJ', *New Straits Times*, 7 February 2003 online <http://www.lexis.com> (accessed 1 April 2003). Malaysia names Pedra Branca as 'Pulau Batu Puteh'. It is 7 nautical miles from Johor and 25 nautical miles from Singapore and includes the adjacent rocky outcrops of South Ledge and Middle Rocks.

67 'Malaysian Patrol Do Leave—Eventually', *Straits Times*, 15 March 2003 online <http://www.lexis.com> (accessed 1 April 2003).

68 'An Islet In The Storm', *Sunday Times* (Singapore), 12 January 2003 online <http://www.lexis.com> (accessed 1 March 2003).

69 *Supra* n 67.

70 'Pedra Branca: Now Ready for ICJ' *Straits Times*, 10 May 2003 online <http://www.lexis.com> (accessed 20 May 2003).

71 'Politicians push Johor to claim uninhabited island', *Straits Times*, 14 January 2003 online <http://www.lexis.com> (accessed 1 March 2003). Pulau Merambong is about a 20 minute boat ride from Kampung Ladang in Tanjung Kupang near the Second Link. Presently, the island serves as a shelter for Johor fishermen during storms. It houses a beacon light, which is maintained by Malaysian marine officers on a monthly basis.

C. Indonesia: After the Sipadan Decision

In response to the loss of Sipadan and Ligitan to Malaysia last year, the Indonesian government and the House of Representatives have agreed to discuss a bill on the definitive demarcation of national boundaries.⁷² This is a precautionary measure against future territorial disputes with neighbouring countries, although no time frame has been established as yet for initiating this bill.⁷³

Based on the latest satellite data analysis, the Indonesian Aviation and Space Institute has revealed that the country has about 18,108 islands, about a thousand more than it had previously thought.⁷⁴ Indonesia has come under great pressure to assert its sovereignty over outlying islands. The Ministry of Maritime Affairs has estimated that there are presently over 5000 uninhabited islands. 87 are susceptible to competing territorial claims as they share maritime borders with neighbouring countries.⁷⁵ President Megawati has informally allocated the task of co-ordinating border-related matters to the Ministry of Foreign Affairs.⁷⁶

The government issued a decree in 2002 claiming the island of Miangas, which lies between the Philippines and Indonesia.⁷⁷ Although the Philippines government has yet to declare its official position on Indonesia's asserted claim, the Philippines Department of Foreign Affairs has advised President Arroyo on the importance of lodging a prompt official protest to remove the inference of acquiescence.⁷⁸

Although the decree of ownership by Indonesia over Miangas is fairly recent, the famed 1928 *Island of Palmas* arbitral ruling by Max Huber awarded the island to the Netherlands, the colonial power then governing Indonesia.⁷⁹ However, Roque has suggested that the arbitration ruling over Miangas

72 See judgment of ICJ in *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia/Malaysia)*, 17 December 2002 online at <http://www.icj-cij.org> (accessed 29 June 2003).

73 'Govt, House Plan bill on Border Areas', *Jakarta Post*, 30 January 2003 online <http://www.lexis.com> (accessed 1 March 2003).

74 'Indonesia discovers 1000 more islands', *Agence France Presse*, 17 February 2003 online <http://www.lexis.com> (accessed 20 March 2003).

75 'Maritime borders neglected', *Jakarta Post*, 28 January 2003 online <http://www.lexis.com> (accessed 1 May 2003).

76 *Supra* n 74.

77 'Jakarta, Manila Headed for Island Dispute', *The Straits Times*, 22 February 2003 online <http://www.lexis.com> (accessed 1 March 2003). Miangas island lies halfway between Mindanao (the Philippines) and the Nanusa Group of Islands. It is 3.2 km in length and 1.2 km in width. Nonetheless, the island is located close to strategic sea-lanes and rich fishing grounds. According to Harry Roque, an international law professor at the University of the Philippines, the site surrounding Miangas is also conducive for the erection of large-scale ocean thermal energy plants.

78 *Ibid.*

79 'Island of Palmas' Case. *Netherlands v. U.S.* (1928) Permanent Court of Arbitration. 2 R.I.A.A. 829. See also *Cases and Materials on International Law*, D.J. Harris, (London: Sweet & Maxwell, 1998).

applied only to the parties before the case, the US and Netherlands, and does have any legal effect on the Philippines' claim over the territory.⁸⁰

D. *The Angkor Wat dispute*

Hundreds of protesters burned and looted the Thai embassy and Thai-owned businesses in Phnom Penh, Cambodia, following alleged comments by Thai actress Suvanant Kongying that Cambodia should return the Angkor Wat temples to Thailand.⁸¹ Thai-Cambodian relations were soured when protests were staged outside the Cambodian embassy in Bangkok.⁸² The Angkor Wat issue has been a point of contestation between the two nations for centuries. The 1962 ICJ *Temple of Preah Vihear* decision that the temples belong to Cambodia had upset many Thai nationalists.⁸³

The apparent cause of the clashes may have stemmed from the Cambodian Prime Minister Hun Sen's public condemnation of Suvanant's remarks, although they were never verified. In light of the surprising speed at which violence had escalated, it has been suggested that Cambodian politicians had hoped to stir up nationalist sentiments ahead of elections in July.⁸⁴

The issue of whether Cambodia has incurred international responsibility for the damage to Thai property is evident, with it being clearly accepted that states are responsible for the acts of a mob which are attributed to the state itself.⁸⁵ Here, Cambodia accepted responsibility; Hun Sen apologised and agreed to allow Thai officials to participate in investigations and to pay for all damages unconditionally.⁸⁶ Some of the perpetrators were also arrested.⁸⁷

However, until compensated, Thailand downgraded diplomatic relations and both sides closed their borders.⁸⁸ Cambodia also accused Thailand of human rights abuses in its war on drugs.⁸⁹ The bilateral dispute adversely

80 'Jakarta, Manila Headed for Island Dispute', *Straits Times*, 22 February 2003 online <http://www.lexis.com> (accessed 1 March 2003).

81 'Cambodians Attack Thai Embassy Over Actress's Alleged Comments', *Agence France Presse*, (International News section), 29 January 2003, online <http://www.lexis.com> (accessed 1 March 2003).

82 'Thais evacuated after night of Cambodia riots', *Straits Times*, 31 January 2003 at 3.

83 'Festering Anger Explodes In Orgy of Attacks', *Straits Times*, 31 January 2003 at A5; *Temple of Preah Vihear Case*, I.C.J. Rep. 1962 at 6.

84 'Cambodian government "seriously regrets" embassy burning', *Agence France Presse*, 30 January 2003 online <http://www.lexis.com> (accessed 1 February 2003).

85 See *Yeager v Iran* (1987) 17 Iran—U.S.C.T.R. 92; See also International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (A/CN.4/L.602/Rev. 1) 26 July 2001, Article 2, Chapter II.

86 "Thai embassy in Cambodia beyond repair after riots: official" *Agence France Presse*, 4 February 2003; "Team from Thailand to investigate anti-Thai riots in Cambodia" *Agence France Presse*, 25 February 2003 online <http://www.lexis.com> (accessed 1 March 2003).

87 "Editor and 42 others charged over anti-Thai riots", *Agence France Presse*, 1 February 2003 online <http://www.lexis.com> (accessed 2 March 2003).

88 "Thai embassy in Cambodia beyond repair after riots: official" *Agence France Presse*, 4 February 2003, online at <http://www.lexis.com> (accessed 2 March 2003).

89 'Cambodian PM says border closed over economic inequality, drugs war', *Agence France Presse*, 6 March 2003 online <http://www.lexis.com> (accessed 25 March 2003).

affected trade, investment and tourism.⁹⁰ There were also reports of near starvation for people living near the borders, leading to an appeal for international food aid.⁹¹ The borders were finally reopened with the first payment of damages in March 2003.⁹² Both countries are now expected to sign agreements on, among other things, border security, eliminating human trafficking and easing cross-border movements.⁹³

Acharya has suggested that while the ASEAN way stresses informal and non-legalistic approaches to conflict management, the availability of legal mechanisms would help ASEAN members to depoliticise bilateral disputes. In particular, he points to the ASEAN Troika as a potential mechanism for regional preventive action, crisis management, and the still unused provision of a High Council for dispute settlement.⁹⁴

V. INTERNATIONAL CRIMINAL LAW

There have been considerable developments in the field of international criminal law, which is now regarded as a trans-boundary matter.

A. *Developments in Indonesia*

With respect to victims of past human rights abuses, there have been disagreements over the amount of compensation that the state will be liable for. A bill to establish a truth and reconciliation commission in Indonesia is being withheld by the State Secretariat.⁹⁵

The bill was drafted two years ago, which provides the mandate for establishing a permanent commission rather than an *ad hoc* trial system.⁹⁶ Under the draft bill, the 15 member commission would be empowered to grant amnesty to human rights violators, subject to a guilty plea and the provision of forgiveness by the victims' families. The draft bill does not specify a time limit on the human rights violations that the commission may investigate.⁹⁷

90 'Thai-Cambodian crisis: impacts on trade, investment and tourism', *Financial Times Information, Global News Wire, Thai Press Reports*, 24 February 2003 online <http://www.lexis.com> (accessed 1 March 2003).

91 'Cambodians facing near starvation after Thai border closure', *Agence France Presse*, 9 March 2003, online <http://www.lexis.com> (accessed 10 March 2003).

92 'Cambodia to pay Thailand \$10 m for riots damage', *Straits Times*, 18 March 2003, at A6; 'Thailand and Cambodia reopen joint-border', *Straits Times*, 22 March 2003, at A14.

93 'Hun Sen and Thaksin pledge to improve ties', *Straits Times*, 1 June 2003, at 21.

94 'Asean needs new tools for new threats', *Straits Times*, 4 June 2003, at 20.

95 'Bill set to address human rights abuse in Indonesia', *Straits Times*, 26 March 2003, online <http://www.lexis.com> (accessed 1 April 2003).

96 *Ibid.* Pursuant to Law No. 26/1999 on human rights. Indonesian law provides that these ad hoc tribunals may only hear human rights cases committed after 2000, except for abuses committed during the 1999 East Timor turmoil and the 1984 massacre in Tanjung Priok.

97 'Commission to unravel dark side of Indonesian history', *Jakarta Post*, 24 March 2003, online <http://www.lexis.com> (accessed 1 April 2003).

The Minister of Justice and Human Rights, Yusril Ihza, explained that the establishment of this commission is necessary to resolve past human rights abuses, so that different factions in the country may achieve reconciliation and move forward.⁹⁸ However, the Indonesian Legal Aid and Human Rights Association (PBHI) has dismissed the bill as an attempt by the government to exempt the perpetrators of past human rights violations from possible criminal sanctions.⁹⁹

B. *Timor Leste*

The United Nations prosecutors in Timor Leste have continued to indict military officials and civilians involved in the atrocities committed in 1999. To date the Serious Crimes Unit has filed 58 indictments charging a total of 225 people. No Indonesians have been handed over by the Indonesian government.¹⁰⁰ Timor Leste's President, Xanana Gusmao, has expressed disapproval of these indictments, as he believes that they do not benefit the country's national interest of promoting reconciliation with Indonesia.¹⁰¹

In March 2003, the Indonesian human rights tribunal sentenced Indonesian Brigadier General Muis to five years imprisonment. He is presently the highest-ranking army officer convicted of human rights abuses in East Timor.¹⁰² In January, Lieutenant Colonel Hulam Goeltom, a former Indonesian police chief in East Timor's capital, Dili, was also sentenced to three years imprisonment.¹⁰³

Indonesian Brigadier General Tono Suratman is one of 18 former military or police officials under trial for human rights violations committed in East Timor.¹⁰⁴ Tono, however, was acquitted on 22 May 2003.¹⁰⁵ Retired General Wiranto, who has been indicted by Timor Leste's prosecutors, is believed to be ultimately responsible for the East Timor bloodshed as the commander of the Indonesian armed forces. He has not been called before the tribunal to face judgment.¹⁰⁶

98 *Ibid.* The abuses include the persecution of hundreds of thousands of communist sympathisers in the mid 1960s and the sexual assaults on Chinese women in the May 1998 riots.

99 'Compensation row delays truth bill', *Jakarta Post*, 20 March 2003, online <http://www.lexis.com> (accessed 8 May 2003).

100 'East Timor indicts former police chief and others over 1999 atrocities' *Agence France Presse*, 28 February 2003, online <http://www.lexis.com> (accessed 3 May 2003).

101 'Timor's Gusmao criticizes indictment of top Indonesian officers', *Agence France Presse*, 28 February 2003 online <http://www.lexis.com> (accessed 3 May 2003).

102 '10 year jail term sought for general over E. Timor violence', *Japan Economic Newswire*, 14 April 2003 online <http://www.lexis.com> (accessed 3 May 2003).

103 *Ibid.*

104 *Ibid.* The tribunal has to date acquitted 11 military and police officers, including Indonesian and East Timorese officials who were accused of participating in the 1999 violence but it has convicted all but one civilian.

105 'Indonesian General acquitted over E. Timor violence', *Japan Economic Newswire*, 22 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

106 *Ibid.*

The US based Human Rights Watch NGO has dismissed the efforts taken to date as feeble, since the prosecutors have generally charged the defendants for failure to act rather than organising and perpetrating the alleged atrocities.¹⁰⁷ Future progress is also unlikely as the UN High Commissioner for Human Rights (UNHCHR) has decided on 17 April 2003, subsequent to a tripartite meeting between Indonesia and East Timor, to drop charges of human rights abuses committed before and after the referendum in East Timor.¹⁰⁸ Future commission meetings will only focus on Timor Leste issues from the aspect of technical human rights cooperation and the UNHCHR.

C. Cambodia

On 17 March 2003, the UN and Cambodian negotiators reached a draft agreement to establish a genocide tribunal to try surviving Khmer Rouge leaders responsible for the deaths of nearly 2 million Cambodians during Pol Pot's regime between 1975 and 1979.¹⁰⁹

The UN returned to Cambodia on March 13 to resume talks, which broke down almost a year ago, over a disagreement as to whether Cambodia or the UN would oversee the judicial process.¹¹⁰ The draft agreement provides that the genocide tribunal will comprise a trial chamber with Cambodia appointing three out of five judges, and a seven-judge supreme court with four Cambodian appointees. However, decisions must be reached by a super majority, with at least one international judge voting with the majority.¹¹¹

The draft agreement has been passed by the Cambodian cabinet and was adopted by the UN General Assembly on 13 May 2003. The accord must now be brought before the Cambodian National Assembly for final ratification.¹¹² The entire trial operation is expected to cost the UN about \$US 19 million. Funding would largely come from voluntary contributions by member states.¹¹³

107 'Indonesian court jails former police chief over Timor atrocities', *Agence France Presse*, 20 January 2003, online <http://www.lexis.com> (accessed 1 June 2003). More than 1000 East Timorese civilians were killed in the months prior to and days after the August 1999 independence referendum, when the Indonesian military and pro Jakarta Timorese militias went on a rampage of murder and arson. See 'Human Rights Watch calls on Jakarta to turn over indicted officials', *Agence France Presse*, 26 Feb 2003 online <http://www.lexis.com> (accessed 8 May 2003).

108 'Chance for justice fades for East Timor victims,' *Jakarta Post*, 21 April 2003, online <http://www.lexis.com> (accessed 1 May 2003).

109 'UN, Cambodia agree on technical terms for Khmer Rouge trial.', *Agence France Presse*, 17 March 2003, online <http://www.lexis.com> (accessed 8 May 2003).

110 This round of negotiations has been held pursuant to the General Assembly Resolution 57/228 of 18 December 2002. See 'Cambodia: UN official briefs press on Khmer Rouge trial procedure', *BBC Worldwide Monitoring*, 20 March 2003, online <http://www.lexis.com> (accessed 8 May 2003).

111 'U.N. committee OKs creation of Khmer Rouge tribunal', *Japan Economic Newswire*, 2 May 2003, online <http://www.lexis.com> (accessed 3 May 2003).

112 'Cambodia remembers Pol Pot's victims with calls for genocide trial', *Agence France Presse*, 20 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

113 'U.N. committee OKs creation of Khmer Rouge tribunal', *Japan Economic Newswire*, 2 May 2003, online <http://www.lexis.com> (accessed 3 May 2003).

However, Human Rights Watch has urged the UN General Assembly to make major changes to the draft agreement. As the Cambodian judiciary will constitute the majority at the tribunal, there were concerns that justice would not be served since the Hun Sen government has had a history of interfering with the domestic court process.¹¹⁴

VI. BILATERAL FREE TRADE AGREEMENTS

A. Impact on ASEAN Free Trade Area (AFTA)

The implementation of AFTA was hampered as the 10 ASEAN members are in different stages of development.¹¹⁵ As a result, the poor progress of AFTA initiatives, the economic benefits reaped from cementing links with stronger economies and the need to keep up with the global trend towards rapid liberalisation led Thailand and Singapore to establish bilateral Free Trade Agreements (FTA) with non-ASEAN members.¹¹⁶

However, the strategy of forging bilateral FTAs has drawn criticisms from some ASEAN member states, particularly from Malaysia. There were concerns that the establishment of bilateral FTAs with a number of non-ASEAN countries undermines ASEAN as a trade bloc and at the expense of multilateral frameworks, particularly AFTA.¹¹⁷ There were also charges that Singapore's FTAs are Trojan horses for the back-door entry of non-ASEAN goods into the ASEAN region, hence breaching terms on the rule of origin in AFTA.¹¹⁸

Singapore has defended her shift towards bilateral FTAs by arguing that they complement ASEAN's integration efforts and increases the region's competitiveness by promoting free movement of trade and investments.¹¹⁹ Thailand echoed this argument by suggesting that the bilateral FTAs would not adversely affect multilateral efforts to boost trade, services and investment.¹²⁰ The bilateral FTAs are important as they aim to attract foreign direct

114 'Human Rights Watch urges U.N. to change pact with Cambodia', *Japan Economic Newswire*, 30 April 2003, online <http://www.lexis.com> (accessed 1 May 2003).

115 'Singapore FTAs spurred by need to strengthen links', *New Straits Times*, 14 Aug 2002, at 4.

116 'OVERDRIVE: Govt may undermine Afta with bilateral pacts', *The Nation*, 23 August 2002, online <http://www.lexis.com> (accessed 8 June 2003).

117 *Supra* n 115.

118 'Impact of USSFTA on Asia will be massive', *Straits Times*, 9 May 2003; 'Agreement on free trade agreements?', *Straits Times*, 14 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

119 *Supra* n 115. Between January to June 2003, Singapore signed two more bilateral FTAs with Australia and the U.S. Singapore has also signed FTAs with New Zealand, Japan and EFTA (European Free Trade Association) and is currently involved in free trade agreement discussions with Mexico, Canada, ASEAN and the People's Republic of China, the Republic of Korea and India. See <http://www.mti.gov.sg>

120 *Supra* n 115. Thailand has signed bilateral FTAs with Bahrain and China. It is presently engaged in FTA negotiations with India, Japan, the USs and South Korea. Thailand is also involved in talks on establishing bilateral FTAs with Asian and Pacific-Rim countries like China, Australia and Mexico. See 'OVERDRIVE: Govt may undermine Afta with bilateral pacts', *The Nation*, 23 August 2002, online <http://www.lexis.com> (accessed 8 June 2003).

investment (FDI) into the South-East Asian region which has been crippled by the 1997–1998 economic malaise.¹²¹ It is notable that even the strongest critic of bilateral FTAs appears to have been persuaded by the benefits of bilateral FTAs. Malaysia is currently considering the cost and benefits of having free trade agreements with countries such as the U.S., Japan and China.¹²²

B. Singapore

(i) US–Singapore Free Trade Agreement (USSFTA)

On 6 May 2003, President George W. Bush and Prime Minister Goh Chok Tong signed a historic bilateral FTA. The wide-ranging USSFTA marked the first time such an agreement was signed between the US and an Asian Pacific country.¹²³ The US began talks with Singapore during the final months of former President Bill Clinton's administration in late 2000.¹²⁴ After two years of talks, negotiations were concluded.¹²⁵ In contrast to Chile, the Bush administration had given priority to the signing of the USSFTA because of Singapore's support for the US led war in Iraq.¹²⁶

The USSFTA is a comprehensive agreement covering trade in goods, textiles, customs cooperation, general services, financial services, telecommunications and e-commerce, investment, competition, government procurement, intellectual property, transparency, general provisions, labour and environment.

Singapore is America's 12th largest trading partner.¹²⁷ The USSFTA allows US law firms, banks and other financial service companies to expand their presence in Singapore.¹²⁸ US investors in Singapore will enjoy the same legal protection given to Singapore investors.¹²⁹ The US, on the other hand, has

121 *Supra* nn 115 and 116.

122 'Malaysia changes stance, now open to FTAs', *Straits Times*, 26 Oct 2002, online <http://www.lexis.com> (accessed 1 June 2003).

123 President Signed US-Singapore Free Trade Agreement, <http://www.whitehouse.gov> (accessed 1 June 2003).

124 Joint Statement by President Bill Clinton and Prime Minister Goh Chok Tong on a USSFTA, 16 November 2000, <http://www.mti.gov.sg> (accessed 1 June 2003).

125 Trade Act 2002 Fact Sheet online <http://www.whitehouse.gov> (accessed 1 June 2003). Pursuant to the Trade Act of 2002, which grants the U.S. President trade promotion authority, President Bush notified Congress in late January that he intended to sign the trade pact. The USSFTA is now before the U.S. Congress who will decide whether to pass or reject it. It may also be necessary to implement legislation to ensure that the current US laws complies with the trade pact. See "FTA still has to get past Congress", *Straits Times*, 9 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

126 'US sets date to sign free trade agreement with Chile', *Washington Post*, 28 May 2003, at E01.

127 President Signed US–Singapore Free Trade Agreement online <http://www.whitehouse.gov> (accessed 1 June 2003).

128 'US banks express interest in local market', *Straits Times*, 18 Jan 2003; 'Cheaper beer likely under free-trade deal', *Straits Times*, 17 Dec 2002, online <http://www.lexis.com> (accessed 1 June 2003).

129 'FTA will give US investors protection', *Straits Times*, 18 Dec 2002, online <http://www.lexis.com> (accessed 1 June 2003).

consistently been Singapore's most important trading and investment partner.¹³⁰ The USSFTA is expected to save Singapore exporters over \$200 million annually in tariff cuts.¹³¹

The USSFTA not only benefits Singapore but is also expected to generate positive spillover effects to a neighbouring state—Indonesia. Under the USSFTA's integrated sourcing initiative, companies in Singapore are allowed to relocate production to the Riau territories and still enjoy preferential tariffs from the US if the products are shipped to Singapore for value-added operations, as part of the manufacturing process.¹³² This agreement would expand trade liberalisation in ASEAN and benefit all member countries.¹³³

In light of the Enterprise for ASEAN Initiative (EAI), the USSFTA sets an important precedent for other ASEAN countries who are considering FTA discussions with the US.¹³⁴ Under the EAI, the US offers the prospect of bilateral trade pacts with any interested ASEAN nations who are World Trade Organisation (WTO) members and have also signed Trade and Investment Framework Agreements (TIFA) with the US.¹³⁵

(ii) *Singapore–Australia FTA*

Negotiations for a Singapore–Australia Free Trade Agreement (SAFTA) began in November 2000 and was signed by the Trade Ministers of both countries in February 2003.¹³⁶ SAFTA covers key areas such as trade in goods and services, telecommunication and financial services, investment, movement

130 See remarks by Singapore Prime Minister Goh Chok Tong at the signing of the USSFTA at the White House, Washington D.C. on 6 May 2003 online at <http://www.mti.gov.sg> (accessed 1 June 2003).

131 'PM Goh, Bush to sign free-trade pact', *Straits Times*, 4 May 2003, online <http://www.lexis.com> (accessed 1 June 2003). Singapore mostly exports high-technology goods such as electronic and electrical products and components to the US. Under the USSFTA, Singapore will commit to tariff elimination on beer, stout and samsoo. See 'Cheaper beer likely under free-trade deal', *Straits Times*, 17 Dec 2002, online <http://www.lexis.com> (accessed 1 June 2003). Under the pact, Singapore retained the right to impose capital controls in certain circumstances but has to accord U.S investors adequate protection. Also, it allows Singapore pharmacies to sell sugarless gum to consumers with a prescription from a doctor or dentist. See 'US–Singapore reach Trade Agreement', 16 Jan 2003, online at <http://www.bizasia.com>; 'Singapore's Bubble Bursts', *TIME Asia*, 2 December 2002, online at <http://www.time.com> (accessed 1 June 2003).

132 'Singapore-Riau tie-up offered as strong alternative to China', *Straits Times*, 30 Jan 2003; 'Boomtown Bintan', *Straits Times*, 6 Apr 2003, online <http://www.lexis.com> (accessed 1 June 2003).

133 'US–S'PORE: Pact 'boosts all of Asean', *The Nation*, 8 May 2003, online <http://www.lexis.com> (accessed 8 June 2003).

134 US–ASEAN Business Council Welcomes Conclusion of US–Singapore FTA Talks, 17 Jan 2003, online at <http://www.us-asean.org> (accessed 1 Jun 2003).

135 'Going to market', *Straits Times*, 30 Oct 2002, online <http://www.lexis.com> (accessed 1 June 2003).

136 'S'pore, Australia agree to start free trade talks', *Straits Times*, 16 Nov 2000, online <http://www.lexis.com> (accessed 1 June 2003).

of business persons, government procurement, intellectual property rights, competition policy, e-commerce and education cooperation.¹³⁷

SAFTA commits Singapore and Australia to eliminate cross-border tariffs, encourage investment flows by minimising restrictions, enhancing investment protection and increasing market access as well further collaboration in education.¹³⁸ Under the SAFTA, Australia will completely free up key service sectors such as real estate and tourism.¹³⁹ SAFTA is expected to come into force in the second half of 2003, after the Agreement has undergone the necessary legislative processes in both countries.¹⁴⁰

(iii) *European Free Trade Association (EFTA)–Singapore FTA (ESFTA)*

The ESFTA, which was signed in Iceland on 26 June 2002, came into force on 1 January 2003.¹⁴¹ EFTA is a trade grouping comprising Switzerland, Liechtenstein, Norway and Iceland.¹⁴² ESFTA is significant as it is the first agreement between an Asian country and a European trade group.¹⁴³ ESFTA covers goods and services, intellectual-property protection, government procurement, investments, competition policy and anti-dumping.¹⁴⁴

C. *Thailand*

(i) *Thailand–China FTA*

Thailand's FTA with China on fruit and vegetables was signed on 16 June 2003 and will take effect on 1 October 2003.¹⁴⁵ The Thailand-China FTA was first suggested during Prime Minister Thaksin Shinawatra's official visit to China in 2002. Under the FTA, tariffs on importing fruit and vegetables will immediately be scrapped.¹⁴⁶

137 'S'pore, Australia FTA: Talks successful', *Straits Times*, 3 Nov 2002, online <http://www.lexis.com> (accessed 1 June 2003).

138 'Level playing field awaits S'pore investors' and '4 law schools Down Under get official nod online', *Straits Times*, 18 Feb 2003, online <http://www.lexis.com> (accessed 1 June 2003).

139 'Australia's \$500b services sector open to S'pore', *Straits Times*, 18 Feb 2003, online <http://www.lexis.com> [accessed 1 June 2003]. Key Australian exports to Singapore include petroleum products while Singapore's exports to Australia include manufactured goods such as computers.

140 <http://www.mti.gov.sg/> (accessed 1 June 2003).

141 'Latest FTA may up Europe–Asia ties', *Straits Times*, 30 June 2002, online <http://www.lexis.com> (accessed 1 June 2003).

142 <http://www.efta.int/> (accessed 1 June 2003).

143 'S'pore bid for EU trade pact gets boos', *Straits Times*, 27 June 2002, online <http://www.lexis.com> (accessed 1 June 2003).

144 *Supra* n 142.

145 'Apec states keen to sign FTAs with Thailand', *The Nation*, 2 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

146 *Ibid.* According to Srirat Rathapana, deputy director-general of Thailand's Commerce Ministry's Department of Trade Negotiations, tariff on importing fruit and vegetables to China was 30 per cent, while Thailand charged 25–30 per cent.

(ii) *Thailand–Bahrain FTA*

Thaksin and his Bahraini counterpart, His Highness Shaikh Khalifa Bin Salman Al-Khalifa, witnessed the exchange of the Thai-Bahraini economic cooperation agreement on 16 January 2003.¹⁴⁷ The Thailand-Bahrain FTA was signed on 29 December 2002.¹⁴⁸

The agreement includes trade and investment liberalisation, development of joint product standards and economic cooperation in areas such as electricity, finance, banking, production, insurance and fisheries.¹⁴⁹ Under the bilateral agreement, both parties agreed to cut tariffs on 642 items to between zero and 3 per cent.¹⁵⁰ Thailand views Bahrain as a strategic springboard to 6 other Gulf Cooperation Council countries: Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.¹⁵¹

(iii) *Thailand–India FTA*

It is expected that the Thailand-India FTA will be completed by September 2003.¹⁵² India's deputy premier, LK Advani, has said that the pact aims to increase annual two-way trade between the two countries, which is worth more than US\$1 billion.¹⁵³ The chief obstacle to the Thai-Indian FTA negotiations is import tariffs. Indian tariffs on Thai imports averaged 24.6 per cent compared to 9.4 per cent levied by the Thai government on Indian imports.¹⁵⁴

Thailand is actively seeking a FTA with India. Thaksin has created a special trade policy board chaired by Deputy Prime Minister, Korn Dabaransi, to promote the free trade agenda with India.¹⁵⁵ Thailand aims to use the FTA as a springboard to secure trade agreements with other potential South Asian markets such as Bangladesh and Sri Lanka.¹⁵⁶

(iv) *Thailand–Australia FTA*

Negotiations for the Australia–Thailand FTA are ongoing but it is expected to be completed by October 2003.¹⁵⁷ Key sticking points include tariffs

147 'Economic pact with Bahrain to see tariffs fall' *The Nation*, 17 Jan 2003, online <http://www.lexis.com> (accessed 8 June 2003).

148 *Ibid.*

149 *Ibid.*

150 *Ibid.*

151 'Business mission heads off to the Middle East', *The Nation*, 1 May 2003, online <http://www.lexis.com> (accessed 8 June 2003).

152 'Trade pact with India by Sept: PM', *The Nation*, 1 May 2003 and 'Free Trade: Thailand, India will mull pact', *The Nation*, 2 Feb 2003, online <http://www.lexis.com> (accessed 1 June 2003).

153 'Free Trade: Thailand, India will mull pact', *The Nation*, 2 Feb 2003, online <http://www.lexis.com> (accessed 1 June 2003).

154 *Supra* n 152.

155 'Thaksin seeks FTAs with China and India', *Straits Times*, 1 Apr 2003, online <http://www.lexis.com> [accessed 1 June 2003].

156 *Supra* n 153.

157 'Aust tables FTA offer', *The Nation*, 5 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

reduction or elimination on 'sensitive' agricultural goods, processed foods and industrial products, issues relating to investment services and joint pacts on anti-dumping, quarantine, competition, intellectual property rights, electronic commerce, and government procurement.¹⁵⁸

However, this agreement will create new opportunities in the service and automotive sectors, as well as agriculture and textiles industries.¹⁵⁹ The FTA, which calls for lower tariffs, is also seen as leverage in dealing with issues of public and private sector corruption in Thailand.¹⁶⁰

A comprehensive FTA proposal covering both the manufacturing and services sectors had been submitted by Australia to the Thai government.¹⁶¹ A wide-ranging FTA is expected to boost Australia's GDP by US\$6.6 billion (Bt275 billion) and Thailand's GDP by \$25.2 billion over a 20-year period.¹⁶²

(v) *Thailand-US FTA*

The US and Thailand will begin negotiating a wide-ranging FTA in early 2004.¹⁶³ The US has expressed concerns over compact and optical discs piracy in Thailand, inefficient customs procedures and investment regulations such as measures to protect local businesses, particularly in telecommunications.¹⁶⁴ Thaksin traveled to the US and met President Bush in June 2003. The two leaders discussed, among other things, the Thai-US FTA, the Thai-US Treaty of Amity which is negotiable every ten years and copyright violations.¹⁶⁵

(vi) *Thailand-Japan FTA*

Thaksin and the Japanese Prime Minister, Junichiro Koizumi, failed to start governmental negotiations for a bilateral FTA during their meeting on 6 June 2003.¹⁶⁶ Thailand plans to conclude an FTA with Japan by December 2003, but Tokyo is divided over how to treat its agricultural sector.¹⁶⁷

158 'Aust "ready with ambitious trade offer"', *The Nation*, 2 Apr 2003, online <http://www.lexis.com> (accessed 1 June 2003).

159 'Trade with Australia: Aust exports likely to rise', *The Nation*, 29 Mar 2003, online <http://www.lexis.com> (accessed 1 June 2003).

160 'Trade deal "would rebuild faith"', *The Nation*, 5 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

161 *Supra* n159.

162 *Supra* n 159.

163 'Talks on a free-trade deal with the US to start next year', *The Nation*, 4 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

164 *Ibid.*

165 'US businesses prepared to transfer investment base to Thailand', *Xinhua General News Service*, 14 June 2003. See also 'PM gets his meeting with Bush', *The Nation*, 22 May 2003 and 'Thai-US Summit: Free trade tops agenda', *The Nation*, 3 June 2003, online <http://www.lexis.com> (accessed 25 June 2003).

166 'Japan, Thailand postpone full-fledged trade talks', *Kyodo News Service*, 6 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

167 *Ibid.*

D. Malaysia

(i) Malaysia–Japan FTA

Malaysia and Japan have agreed a closer economic partnership (CEP) to pave the way for a broad-based Malaysia–Japan FTA.¹⁶⁸ The CEP would cover areas of technical collaboration, technical transfer and an extension of the ‘Look East’ policy. Negotiations for a Malaysia–Japan bilateral FTA was launched after Prime Minister Mahathir Mohamad announced in December 2002 that Malaysia would enter into a broad-based bilateral FTA with Japan by 2003.¹⁶⁹ The Malaysia–Japan FTA is expected to go beyond economic areas by including areas like culture and education.¹⁷⁰

(ii) Malaysia–US FTA

Members of the US–ASEAN Business Council are encouraging Malaysia and the US to complete a bilateral double taxation treaty, and to sign a trade and investment framework agreement (TIFA) as a precursor to a FTA.¹⁷¹ It is not clear if the Council’s proposal will be accepted. Malaysia’s International Trade and Industry Minister, Rafidah Aziz, has said that Malaysia would not follow Singapore in signing FTAs as it considers the rules under the World Trade Organisation to be sufficient, and will only open its services market gradually.¹⁷²

VII. HUMAN RIGHTS ISSUES

A. Indonesia

Indonesia has been elected for the second time to the UNHCHR. The elected members begin their three-year term in January 2004. Nurgroho Wisnumurti, Indonesia’s permanent representative in Geneva, is expected to fill the seat on the commission. Indonesia last won the membership during the 1999/2001 period.¹⁷³

B. Myanmar

In March 2003 the UN Special Rapporteur, Paulo Sergio Pinheiro, who was in Myanmar to monitor the condition of political prisoners, halted his mission

168 ‘Tokyo agrees to closer economic ties with KL’, *Straits Times*, 17 Feb 2003, online <http://www.lexis.com> (accessed 1 June 2003).

169 ‘Dr M: Malaysia to enter into FTA with Japan’, *New Straits Times*, 14 Dec 2002, online <http://www.lexis.com> (accessed 1 June 2003).

170 *Ibid.*

171 ‘US–Malaysia trade ties intact despite differing views on Iraq’, *New Straits Times*, 17 April 2003, at 2.

172 ‘KL will not follow suit Singapore move’, *New Straits Times*, 9 May 2003 at 4.

173 ‘Indonesia wins seat on world human rights commission’, *Xinhua General News Service*, 1 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

ahead of schedule when he discovered that his conversation with the prisoners was bugged.¹⁷⁴

Aung San Suu Kyi was taken into 'protective custody' following violent clashes between her supporters and opponents in Northern Burma on 31 May 2003.¹⁷⁵ This was sharply condemned by the US, EU, Japan, Thailand and Australia.¹⁷⁶ There was initial optimism for a new momentum in political dialogue with the junta after she was released from house arrest in May 2002. The talks stalled, prompting Suu Kyi to accuse the ruling junta of not engaging in meaningful dialogue.¹⁷⁷

After a spell of reticence and under intense international pressure, ASEAN finally issued a statement urging the junta to release Suu Kyi and to resume dialogue with her party.¹⁷⁸ This is a departure from ASEAN's policy of non-interference and constructive engagement with Myanmar.¹⁷⁹ It should be clear now that these policies are deficient and require urgent reassessment, if ASEAN is to stay relevant and credible. This episode has been a setback for Myanmar and ASEAN.¹⁸⁰

174 'UN Envoy In Burma Bugging Row', *BBC News*, 24 March 2003; 'UN Rights Envoy Criticises Burma', *BBC News*, 26 March 2003 online at <http://news.bbc.co.uk/> (accessed 1 June 2003). UN Commission for Human Rights in Resolution 2003/12 expressed grave concern at the ongoing systematic violation of human rights, disrespect for the rule of law, a lack of independent judiciary, the situation of internally displaced persons and flow of refugees to neighbouring countries. See Resolution 2003/12, which can be found in the Charter-Based bodies database online at <http://www.unhchr.ch/> (accessed 1 June 2003).

175 Suu Kyi's party headquarters in Rangoon was also sealed. A week before, 10 members of the pro-democracy movement were sentenced to stiff jail terms for organising public protests and being involved in clandestine activities. See 'Burmese Activist Taken Into Protective Custody', *Washington Post*, 1 June 2003, at A17.

176 The EU, US and Japan, in particular, have threatened significant trade sanctions. See 'Myanmar Ignores calls to Free Suu Kyi', *Straits Times*, 4 June 2003, at A1.

177 *Ibid.*

178 See Para 21, Chairman's statement 10th ASEAN regional forum, Phnom Penh, 18 June 2003 online at <http://www.aseansec.org/14845.htm>. (accessed 28 June 2003) The joint statement also stressed the fundamental importance of democracy for regional stability.

179 'Nine asian countries call for Suu Kyi's release', *Washington Post*, 17 June 2003, at A13.

180 Singapore's Foreign Minister, Professor Jayakumar, had remarked that the junta's crackdown on the democracy movement was 'a setback, not only for Myanmar but also a setback for ASEAN'. See 'ASEAN steps up pressure on Burma to free Suu Kyi', *Financial Times*, 18 June 2003, at 6; 'ASEAN makes its move', *Straits Times*, 21 June 2003, at 32. But contrast Hiro Katsumata, 'ASEAN serves as a bridge between East and West', *Straits Times*, 28 June 2003, at 20. Katsumata argues that while ASEAN's 'accommodating diplomatic manoeuvres' may not produce drastic or immediate improvement, it nevertheless serves as a 'vital bridge' between the East and West. The writer suggests that without this ASEAN framework, there will be no common ground to connect these diverse states and the Western states. However, in the case of Myanmar, not only has the value of ASEAN's 'accommodating nature' been exaggerated, its practice of non-interference has proven to be more pernicious than it is beneficial. Until ASEAN demonstrates a collective ability to act decisively and robustly against recalcitrant members like Myanmar, how can the bloc speak as one effective and credible voice with other states, much less serve as a 'vital bridge'?

C. Thailand

In February 2003 Thaksin declared an open war against the illicit drug trade and pledged to completely eradicate the drug scourge within three months.¹⁸¹ The crackdown has produced some results. Significantly, the Prime Minister has received strong support from the public and the country's human rights commission.¹⁸²

Thai authorities reported that more than 70,000 people have turned themselves in to avoid arrest. The government has also started rehabilitation programs in the provinces to cater to chronic drug users and minor dealers who only sold drugs to support their habits.¹⁸³ Encouraged by the success of his anti-drug campaign, Thaksin initiated another drive to eliminate influential criminal figures actively involved in illegal activities like narcotics, human trafficking, extortion and smuggling.¹⁸⁴

However, his crusade has also claimed the lives of many innocent victims.¹⁸⁵ One month after the crackdown, more than 1,000 people have been killed.¹⁸⁶ Thaksin has admitted that the Thai police may have committed some 'mistakes'.¹⁸⁷ Police death squads are believed to be executing drug traffickers in the country's aggressive campaign against drugs. Prison conditions in Thailand have also deteriorated as thousands of arrests related to the war against drugs exacerbated the over-crowded state of prisons.¹⁸⁸ This has led inmates to protest to the Thai authorities demanding improvements to food, medical services and better living conditions in prison.¹⁸⁹

The Thai police have acknowledged responsibility for some of the deaths but insisted that there were largely self-defence shootings.¹⁹⁰ Thaksin has insisted that the deaths were not a result of government orders but the work of gang members who feared that investigations could implicate them.¹⁹¹

181 'Thaksin sets 3-month deadline in anti-drug war', *Straits Times*, 16 January 2003, online at <http://www.lexis.com> (accessed 1 June 2003).

182 It was reported that over 90 per cent of 20,000 respondents in nationwide surveys were satisfied with the Thai government's war-on-drugs policy. See 'Thaksin's war on drugs rides wave of public support', *Straits Times*, 21 Feb 2003; 'Thailand's human rights chief praises drug war', *Straits Times*, 8 April 2003 and 'Drug war gets backing', *The Nation*, 7 June 2003, online <http://www.lexis.com> (accessed 8 June 2003).

183 'Blood in Bangkok Streets', *Newsweek*, 10 Mar 2003, Atlantic Edition, World Affairs at 37.

184 'Thaksin targets underworld bosses', *Straits Times*, 17 May 2003 online <http://www.lexis.com> (accessed 1 June 2003); 'From drugs and bugs to thugs', *South China Morning Post (Hong Kong)*, 25 May 2003 at 12.

185 'Bloody crackdown leaves many caught in line of fire', *Straits Times*, 2 Mar 2003 and 'Thailand's anti-drug war claims 9-year-old victim', *Straits Times*, 25 Feb 2003 online <http://www.lexis.com> (accessed 1 June 2003).

186 'Thailand's drug war leaves over 1000 dead', *Washington Post*, 9 March 2003, at A17.

187 'Drug war: Thaksin unfazed by mistakes', *Straits Times*, 2 Mar 2003, online <http://www.lexis.com> (accessed 1 June 2003).

188 'Thai prisoners revolt against cell conditions', *Straits Times*, 24 May 2003, online <http://www.lexis.com> (accessed 1 June 2003).

189 *Ibid.*

190 'Police death squads "executing traffickers"', *Straits Times*, 17 Feb 2003, online <http://www.lexis.com> (accessed 1 June 2003).

191 *Supra* n 187.

However, the police have only arrested a few suspects in relation to the deaths.¹⁹² This robust position against the drug trade has elicited retaliatory threats of assassination against Thaksin.¹⁹³

The UN Secretary General's Special Representative on Human Rights, Hina Jilani, has criticised the Thai Government for its handling of the anti-drug campaign.¹⁹⁴ Human rights groups and prominent Thai liberals have also denounced the violent conduct of the anti-drug campaign.¹⁹⁵ Thaksin has vigorously rebutted these criticisms by maintaining that his government is committed to upholding the law in Thailand and under international human rights.¹⁹⁶

D. Cambodia

While the Commission for Human Rights welcomed Cambodia's efforts to cooperate with the UN in establishing the Khmer Rouge Tribunal, the government's progress in improving the status of women and initiatives against human trafficking, Resolution 2003/79 also noted with 'serious concern' the problem of child labour. It expressed 'grave concern' about the continued violations of human rights, such as mob killings, and urged the Cambodian government to take 'all necessary measures' to prevent such violations. The Resolution also noted that a situation of impunity exists when the Cambodian government prosecutes these perpetrators without regard for due process of law.¹⁹⁷

¹⁹² *Supra* n 190.

¹⁹³ 'TARGET: Thaksin', *Straits Times*, 20 May 2003 and 'Politician and drug lords' want Thaksin dead', *Straits Times*, 21 May 2003, online <http://www.lexis.com> [accessed 1 June 2003].

¹⁹⁴ 'Thai drugs war "targeted minorities"', *BBC News*, 27 May 2003 online <http://news.bbc.co.uk> (accessed 2 June 2003). Jilani has accused the government of using the campaign to target minority groups in the country, and remarked that respect for human rights in Thailand has diminished since Thaksin assumed power in 2001. According to Jilani, human rights activists are working in a 'climate of fear' because they have been intimidated and harassed by the State. See 'UN envoy cites climate of fear', *The Nation*, 28 May 2003, online <http://www.lexis.com> (accessed 8 June 2003).

¹⁹⁵ 'Thai drugs war "targeted minorities"', *BBC News*, 27 May 2003, <http://news.bbc.co.uk> [date accessed 2 June 2003] and 'Thaksin's iron fist unlikely to damage his popularity', *The Straits Times*, 30 May 2003, online: <http://www.lexis.com> (date accessed 1 June 2003).

¹⁹⁶ 'PM slams UN envoy as biased', *The Nation (Thailand)*, 29 May 2003, online: LEXIS <http://www.lexis.com> (accessed 8 June 2003). Letter from Chuchai Kasemsarn, Ambassador and Permanent Representative of Thailand to U.N., 'Thailand's Drug War', *New York Times*, 16 April 2003, online <http://www.lexis.com> (accessed 1 June 2003) and Letter from Tharit Charungvat, Consul-General, Royal Thai Consulate-General, Hong Kong, 'Thailand Acting Lawfully on Serious Drug Problem', *South China Morning Post (Hong Kong)*, 8 Mar 2003, at 14.

¹⁹⁷ See Resolution 2003/79 online at <http://www.unhcr.ch/>. (accessed 1 June 2003).

VIII. IRAQ WAR: ASEAN DIVIDED

On 20 March 2003, a 'coalition of the willing' led by the US and UK attacked Iraq. This war has split the international community. On the eve of the attack, ASEAN failed to forge a common response at the Foreign Ministers' Informal Meeting.¹⁹⁸ This is markedly different from their support for the strongly worded UN Security Council Resolutions 660 and 678 during the 1991 Gulf War. This time, however, Singapore and the Philippines who supported the US-led war, resisted attempts to forge a common response to oppose the coalition's decision to bypass the UN.¹⁹⁹

Singapore has attempted to buttress its position by arguing that, under UN Security Council Resolution 1441 of 2002, Iraq is in 'material breach' of a series of UN resolutions for more than a decade.²⁰⁰ However, this view still fails to address a vital point: Resolution 1441 and all previous resolutions did not authorise the use of force against Iraq.²⁰¹ Singapore has emphasised that its support was also designed to protect its national interests.²⁰² When the war was concluded, Singapore and the Philippines received US approval for their supportive efforts against terrorism.²⁰³

In contrast, Indonesia and especially Malaysia stridently opposed the war.²⁰⁴ Prime Minister Mahathir Mohamad denounced the war as a 'tendency of the powerful to wage war when faced with opposition to the spread of their dominance'.²⁰⁵ The US ambassador to Malaysia, Marie T Huhtala, warned that this is bound to create a 'harmful effect' on bilateral relations.²⁰⁶

198 See statement by Chairman of the ASEAN standing committee on the looming war in Iraq (ASEAN Foreign Ministers' Informal Meeting) on 19 March 2003, online at <http://www.aseansec.org/14531.htm> (accessed 1 June 2003)

199 'ASEAN Split Over Iraq To Be Expected', *Straits Times*, 23 March 2003 at 21.

200 See the principal ministerial speech by S Jayakumar, Vol 75 *Singapore Parliamentary Debates*, 14 May 2003, col 858.

201 'Lawyers Doubt Iraq War Legality', *BBC News*, 7 March 2003 online <http://news.bbc.co.uk> (accessed 10 June 2003). In their letter to 10 Downing Street, a group of international lawyers, including Professors James Crawford and Christine Chinkin, wrote: 'a decision to undertake military action in Iraq without proper security council authorisation will seriously undermine the international rule of law. Of course, even with that authorisation, serious questions would remain'.

202 *Supra* n 200 at col 859. See also 'Standing Out Within August Company', *Straits Times*, 8 May 2003, at 18.

203 'Spore Fight Against Terror Praised', *Straits Times*, 8 May 2003, at 13; 'US Offers Increase in Philippines Terror Aid', *Washington Post*, 20 May 2003, at A12.

204 'Non-Aligned Movement (NAM) Opposes War', *Washington Post*, 23 February 2003, at A29. Information on NAM can be found online at <http://www.nam.gov.za/> and <http://www.namkl.org.my/> (accessed 1 June 2003).

205 See Dr Mahathir's speech at Opening Session of the XIII Summit Meeting of the Non-Aligned Movement at Putra World Trade Centre, Kuala Lumpur on Monday, 24 February 2003 online <http://www.nam.gov.za/media/030225na.htm> (accessed 31 May 2003).

206 'Malaysia's Criticism Is Offensive: US Envoy', *Straits Times*, 29 May 2003, at A5. See also 'US May Penalise KL For Opposing War: Mahathir', *Straits Times*, 20 May 2003, at A5; 'Mahathir Stands By Anti-US Remarks', *Straits Times*, 30 May 2003, at A11.

ASEAN's failure to reach a common position on Iraq raises questions about its unity. However given the political, social and religious diversity of the 10-member bloc, it is unsurprising that internal political concerns and realpolitik would prevail over institutional cohesion.

IX. THE SARS CRISIS

A. Public Health Threat

SARS (Severe Acute Respiratory Syndrome), the first serious and readily transmissible new disease to appear in the 21st century, originated in mid-November 2002 in Guangdong Province, China.²⁰⁷ The cause of this disease remains obscure. The SARS outbreak has demonstrated the global havoc that can be wreaked by a newly emerging infectious disease, with present and future costs in dealing with the disease being estimated at US\$30 billion in the Far East alone.²⁰⁸

(i) Reaction of Individual States: Fear and Discrimination

Globally, the SARS experience highlighted the power of a little understood infectious disease to incite widespread public anxiety. Fear of SARS had spread faster than the virus.²⁰⁹ This led to criticisms of unwarranted discrimination and caprice in the methods adopted by countries to deal with the crisis, particularly during the initial panic. It must be noted that the International Health Regulations, the only international agreement on infectious diseases binding on World Health Organisation (WHO) member states, is inapplicable to the SARS outbreak as the Regulations only applied to three infectious diseases—cholera, plague and yellow fever.²¹⁰

In the wake of the unprecedented travel advisory issued by the WHO against certain SARS-infected countries, Asia faced increasing isolation from the rest of the world as countries imposed border restrictions and airlines cancelled flights. Caution bordered on paranoia in some cases. Thailand, for example, denied a Singaporean entry into Chiang Mai because he had a fever – a measure well beyond the airport screening recommended by the WHO.²¹¹ In Singapore, the Education Ministry had to relax its imposition of new rules on foreign students traveling overseas after announcement of the

207 The disease then quickly spread along routes of international air travel to Hong Kong, Singapore, Toronto, Vietnam and other countries.

208 'Severe Acute Respiratory Syndrome (SARS): Status of The Outbreak and Lessons For the Immediate Future', World Health Organisation (WHO), 20 May 2003, online at WHO website: www.who.int (accessed 31 May 2003).

209 *Ibid.*

210 David P. Fidler, *SARS and International Law* (April 2003), online at ASIL website: <http://www.asil.org/insights> (accessed 8 May 2003).

211 'Asia Faces Increasing Isolation', *Straits Times*, 14 April 2003 at 4. Malaysia also imposed a ban on all visas for visitors from Hong Kong and China, although this was reversed after only a week following heavy criticisms. Malaysia and Singapore also ran into conflict following accusations from Malaysia that Singapore had allowed travelers with

onerous rules stirred unhappiness among its 37,500 strong foreign student population.²¹²

Such measures generally prompted protests from affected countries. Fidler has questioned whether the responses to SARS should be reviewed under international human rights law, including the obligation not to discriminate on any grounds in the application of SARS control measures.²¹³ In particular, it has been suggested that while containment methods such as isolation and quarantine are not illegal per se under international human rights law, governments must fulfill certain conditions before interference with a civil or political right on public health grounds survives scrutiny under international law.²¹⁴

(ii) *Reaction of ASEAN: Unprecedented Cooperation*

Despite some extreme individual responses, ASEAN leaders agreed on a tough and collective response to SARs by speedily proposing concrete measures at the Bangkok summit on 29 April 2003.²¹⁵ They also issued a unified statement asking the international community to adopt similar measures and to avoid making indiscriminate advice to their citizens to refrain from dealing with member countries, in order to help restore business confidence in the region.²¹⁶ The success of the cooperative measures has prompted Singapore's Foreign Minister, S Jayakumar, to observe that ASEAN is able to pool its resources speedily during an emergency.²¹⁷

The declarations above restated the earlier statement of 26 April 2003, where the leaders of ASEAN Plus Three had already agreed to impose

SARS symptoms to cross the Causeway. The dispute was resolved with Singapore inviting Malaysian officers to its checkpoints to observe the SARS screening procedures. See, respectively, 'Malaysia: Visa Ban for HK, China Visitors; Cathay Halts Flights', *Straits Times*, 11 April 2003, at H8; 'Malaysia: Ban On Tourists lifted After Backlash', *Straits Times*, 18 April 2003, at 3.

212 'Strict Rules for Foreign Students Who Travel', *Straits Times*, 17 May 2003 at 1; 'Rules On Travel For Foreign Students Eased', *Straits Times*, 29 May 2003, at 3.

213 *Supra* n 210.

214 *Supra* n 210. Fidler has noted that public health measures that infringe on civil and political rights must (1) be prescribed by law; (2) be applied in a non-discriminatory manner; (3) relate to a compelling public interest in the form of a significant infectious disease risk to the public's health; and (4) be necessary to achieve the protection of the public, meaning that the measure must be (a) based on scientific and public health information and principles; (b) proportional in its impact on individual rights to the infectious disease threat posed; and (c) the least restrictive measure possible to achieve protection against the infectious disease risk.

215 'ASEAN To Take Tough Joint Action', *Straits Times*, 30 April 2003, at 1. In their joint declaration they pledged, among other things, to establish an ad hoc Ministerial-level Joint Task Force to monitor the implementation of the decisions made on SARS, to cooperate and establish standardised measures for proper health screening at borders and entry points between affected ASEAN countries and to extend equal treatment to foreign nationals.

216 Joint Declaration, Special ASEAN Leaders Meeting on Severe Acute Respiratory Syndrome (SARS), Bangkok, Thailand (29 April 2003), online at ASEAN website: <http://www.asean.or.id/sars2.htm> (accessed 31 May 2003).

217 'Asean "better prepared" next time', *Straits Times*, 20 June 2003, at A6.

stringent pre-departure border checks and mandatory health declaration forms for travelers from affected countries.²¹⁸ This effort was lauded by the WHO.²¹⁹

ASEAN leaders also issued a joint statement with China which, while more limited in scope, included an agreement to take rigorous measures for immigration and customs control to prevent the outbreak of SARS, including pre-departure and arrival screening and better flight management. China also pledged RMB 10 million *yuan* to launch a special fund in support of China.²²⁰ This was followed up by another meeting, where Chinese and ASEAN immigration officials agreed to extend SARS containment methods previously applicable only to air travellers to land and sea travellers as well.²²¹ As a result of these cooperative initiatives, China has proposed a new agreement to form a strategic partnership with ASEAN.²²²

Beyond ASEAN, the ministers of the Asia Pacific Economic Cooperation (Apec) also agreed to establish common health measures and screening procedures at borders and airports, and affirmed that SARS would not be used by their respective nations as a pretext for protectionism or raising non-tariff barriers.²²³

B. WHO: An Increase In its Powers

WHO played a prominent role during the SARS pandemic and was generally consulted as the international authority on the crisis. Notably, WHO made an unprecedented decision on 15 March 2003 to issue a rare emergency travel advisory as a global alert to international travelers, health care professionals and health authorities.²²⁴ The WHO was also able to make use of the Global Outbreak Alert and Response Network (GOARN) as a mechanism to keep the international community alert to outbreaks and ready to respond.²²⁵

218 Joint Statement, ASEAN + 3 Ministers of Health Special Meeting on SARS, Kuala Lumpur, Malaysia (26 April 2003), online at ASEAN website: <http://www.asean.or.id/sars1.htm> (accessed 31 May 2003).

219 'WHO welcomes ASEAN unity against SARS' (29 April 2003), online at WHO website: <http://www.who.int/mediacentre/releases/2003/pr34/en/> (accessed 31 May 2003).

220 The 'ASEAN bilateral cooperation programmes on SARS control, prevention and the eradication of its multifarious impacts'. See Joint Statement of the Special ASEAN-China Leaders Meeting on the Severe Acute Respiratory Syndrome (SARS), Bangkok, Thailand (29 April 2003), online at ASEAN website: <http://www.aseansec.org> (accessed 31 May 2003).

221 'Isolation extended to land and sea travellers', *Straits Times*, 2 June 2003, at 4.

222 'China seeks pact to seal its Asean ties', *Straits Times*, 20 June 2003, at 1.

223 'Apec maps out plan to fight virus', *Straits Times*, 4 June 2003, at A3.

224 World Health Organisation, Geneva, "Severe acute respiratory syndrome (SARS): Status of the outbreak and lessons for the immediate future" (20 May 2003), online at WHO website: www.who.int (accessed 31 May 2003).

225 *Ibid.*

ASEAN leaders gave strong support to WHO's efforts and pledged their commitment to enhancing cooperation between ASEAN and the WHO.²²⁶ This support was reflected worldwide when more than 190 countries participating in the World Health Assembly unanimously approved a resolution on SARS.²²⁷ A resolution setting out procedures and a timetable for revision of the International Health Regulations, which has remained unchanged for 30 years, was also passed. Significantly, the resolution requested the WHO to take into account information about epidemics from sources other than official government notifications, and to conduct on-the-spot studies within countries to ensure that control measures are adequate to prevent international spread.²²⁸ These newly authorised functions are expected to correct the weaknesses exposed by the SARS epidemic and increase the WHO's relevance.²²⁹

X. CONCLUSION

This year's developments demonstrate the increasing importance of intra-regional unity and the need to work with non-ASEAN countries and institutions like the WHO. This implies a need to change old attitudes towards sovereignty and non-interference. Acharya has suggested that while not all ASEAN countries have suffered equally under the blows of various crises, these differences are 'obscured by the burden of geographical proximity and the reality of close economic interdependence.' ASEAN's institutional mechanisms now face the urgent task of overcoming these challenges.²³⁰

226 Joint Declaration, Special ASEAN Leaders Meeting on Severe Acute Respiratory Syndrome (SARS), Bangkok, Thailand (29 April 2003), online at ASEAN website: <http://www.asean.or.id/sars2.htm> (accessed 31 May 2003).

227 WHO Disease Outbreak Report, "SARS resolution adopted, situation in Taiwan" (27 April 2003, update 67), online at WHO website: http://www.who.int/csr/don/2003_05_27a/en/ (accessed 31 May 2003).

228 *Ibid.*

229 'WHO Gets More Bite To Fight Outbreaks', *Straits Times*, 29 May 2003, at 3.

230 'Asean needs new tools for new threats', *Straits Times*, 4 June 2003, at 20.