

SOUTH EAST ASIA AND INTERNATIONAL LAW
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I. INTRODUCTION

Terrorism remains a major concern for South East Asian states and ASEAN, renewed threats of terrorist attacks from land, air and sea. Continuing separatist conflicts and claims to self-determination trouble the region, particularly the long-standing conflicts in Indonesia and the Philippines. The past six months also saw several bilateral issues between Singapore and Malaysia, and Malaysia and Brunei, moving towards or undergoing third-party dispute settlement mechanisms. While ASEAN continued to collectively explore potential free trade agreements with its trading partners, certain members like Singapore nevertheless pursued bilateral FTAs. Other noteworthy issues include ASEAN's collective, unique response to its perennial transboundary haze pollution problem, and continuing public health concerns over the AIDS epidemic, and over a possible recurrence of the SARS coronavirus.

II. TERRORISM

A. General Developments

Increasingly sophisticated terrorist methods, beyond car bombs, are being contemplated. The spectre of bio-terrorism has been elevated as a possible threat given the recent SARS outbreak in Asia¹ and a

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¹ 'Terrorism will take on a new face', *Straits Times*, 15 Nov 2003 at 24.

false alarm sounded in the southern Philippine city of Cotabato.² Aviation security is threatened by the potential terrorist deployment of surface-to-air missiles,³ whilst countries like the United States⁴ have called for better maritime security⁵ in the region in anticipation of a partnership between terrorism and piracy in the Straits of Malacca and around the Indonesian Archipelago. In response, ASEAN members, together with India, China and South Korea, on Japan's initiative have launched an anti-piracy program with more extensive co-operation being negotiated.⁶

Concerted governmental efforts to crackdown terrorist networks have met with uncertain success. Information about the plans, resources and personnel of *Jemaah Islamiyah* (JI), a terrorist group linked with *Al-Qaeda*, are obtained mostly from confessions of arrested suspects. JI's funding channels reportedly remain largely intact, with senior leaders of the group still at large and training camps still operative in the region.⁷ Interpol evidence points to the sale of counterfeit goods as one of *Al-Qaeda*'s source of funding, with China and ASEAN being the largest global producers of such goods, according to the European Commission.⁸ The United Nations (UN) warned that 108 out of 191 UN member states have failed to report actions taken to freeze terrorist assets and identify terrorist suspects within their borders, including 4 ASEAN countries—Brunei, Indonesia, Myanmar and Cambodia.⁹

An inaugural Asia-Pacific Homeland Security Summit and Exposition was jointly organized by the State of Hawaii Department of Defense and Department of Business, Economic Development and Tourism in Honolulu from 19–21 November this year to share and

2 'Philippines "bio-terror" fear', *BBC News*, 20 Oct 2003, available at <http://www.news.bbc.co.uk/hi/asia-pacific/3206790.stm> (accessed 12 Dec 2003); 'Raid on hideout raises fears of JI bio-terror plans', *Straits Times*, 21 Oct 2003 at 4.

3 'Surface-to-air missiles the new terrorist threat', *Straits Times*, 19 Nov 2003 at H7.

4 'US wants Asia-Pacific to boost terror watch at sea', *The Sunday Times*, 23 Nov 2003 at 18.

5 'Greatest threat at sea? A terrorist-pirate link up', *Straits Times*, 14 Nov 2003 at H9; 'Terrorism will take on a new face', *Straits Times*, 15 Nov 2003 at 24; 'Terror at sea: The world's lifelines are at risk', *Straits Times*, Commentary, 17 Nov 2003 at 14.

6 'Greatest threat at sea? A terrorist-pirate link up', *Straits Times*, 14 Nov 2003 at H9.

7 'JI still dangerous despite arrests', *Straits Times*, 13 July 2003 at 26; 'JI is badly shaken but still a force, insist experts', *Straits Times*, 9 Oct 2003 at A4.

8 'Al-Qaeda Financing: Terrorists "selling pirated goods to get money"', *Straits Times*, 21 Nov 2003 at A17.

9 'Too little done to stop Al-Qaeda: UN', *Straits Times*, 3 Dec 2003 at 1; List available at <http://www.un.org/Docs/sc/committees/1267/Appendix%20V.pdf> (assessed 12 Dec 2003).

develop collective solutions to address common security concerns.¹⁰ Representatives from the 10 ASEAN countries attended.¹¹ Aside from pointing out that JI terrorists are largely related by blood or marriage,¹² a three-tier training system was also identified: first, indoctrination with “twisted teachings” in religious schools founded by Islamic extremists, second, developing military or specialized skills training in various camps, and finally participation in actual terrorist attacks.¹³

The linkage of Islam with terrorism has caused moderate Muslims to speak out against radicalism, extremism and a literal interpretation of Islam that is being used to justify such attacks as *jihad*.¹⁴ At the World Ulama Conference held in Malaysia this July, a congregation of 800 top Islamic scholars condemned terrorism for bringing disrepute to the religion, saying that “the difference between jihad in Islam and extremism is like the earth and the sky”.¹⁵ They also called for books by extremists to be banned and more dialogue with the West.¹⁶ Similar sentiments were expressed by the Indonesian Ulama Council, the highest Islamic authority in Indonesia, that issued an edict on 16 December 2003 condemning terrorism and suicide bombing.¹⁷ Additionally, censure ensues from Islamic communities when terrorist groups wound or kill fellow Muslims.¹⁸

B. Indonesia

(i) JW Marriott Hotel Attack

The American-owned JW Marriott Hotel located in Jakarta was bombed on 5 August 2003, killing 14 and injuring 150.¹⁹ It is believed the blast was carried out by JI as it was similar to the Bali bombing a year ago, with its hallmark of mass fatality.²⁰ This speculation was subsequently confirmed upon identifying the suicide bomber as a JI

10 Inaugural Asia-Pacific Homeland Security Summit & Exposition: Summit Exposition at <http://www.scd.state.hi.us/summit/content/aboutthesummit/summitexposition.htm> (accessed 12 Dec 2003).

11 *Ibid.*

12 ‘Terror runs in the family’, *Straits Times*, 22 Nov 2003 at 10; ‘JI members’ sons training for attacks’, *Straits Times*, 22 Nov 2003 at 1.

13 ‘The making of a terrorist’, *Straits Times*, 22 Nov 2003 at 8.

14 ‘Moderates in Indonesia find their voices’, *Straits Times*, 26 July 2003 at A17.

15 ‘Islamic scholars condemn terror’, *Straits Times*, 12 July 2003 at A16.

16 *Ibid.*

17 ‘Indonesia’s top Islamic body bans terror’, *Straits Times*, 18 Dec 2003 at 6.

18 ‘JI militants split over deaths of Muslims in attacks’, *Straits Times*, 11 Dec 2003.

19 ‘14 dead in JI terror strike’, *Straits Times*, 6 Aug 2003 at 1.

20 ‘Finger pointed at JI militants’, *Straits Times*, 6 Aug 2003 at 6.

member.²¹ Like the Bali bombings carried out a year ago, this attack was also funded by Al-Qaeda.²²

The attack is perceived as being directed against foreign interests in general and American interests in particular, as the Marriott is patronized heavily by Americans. Possibly, the attack was in retaliation against the US treatment of Al-Qaeda and Taleban suspects detained at Guantanamo Bay,²³ evidenced by the broadcast of a taped audio message by an Arab satellite television station warning that “crusader America will pay dearly for any harm done to any of the Muslim prisoners it is holding”.²⁴

The attack came shortly after President Megawati vowed to uproot terrorism in Indonesia and coincided with two major terrorist trials in Indonesia: (1) the day Muslim cleric Abu Bakar Bashir was due back in court for charges of plotting the President’s assassination and involvement in a series of church bombings in 2000; (2) the day before Indonesian courts were to deliver its verdict on the first of three dozen suspects prosecuted for last year’s Bali bombings which left 202 dead.²⁵

International reaction was one of unanimous condemnation of the attack, coupled with support for Megawati to carry out her commitment to vanquish terrorism.²⁶

Arrests have been made following investigations.²⁷ Some have confessed and expressed remorse for their acts,²⁸ although a history of forced confessions casts doubts upon their authenticity.²⁹

(ii) *Bali Bombing Trials*

The Marriott bombing did not prevent the court from returning a guilty verdict and imposing a death sentence the next day at the conclusion of the first trial of the Bali bombing.³⁰ What was disturbing was the reaction of the convicted terrorists: a number of them rejoiced

21 ‘Indonesia Identifies Hotel Bomber’, *New York Times*, 9 Aug 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003).

22 ‘Hambali’s admission: Al-Qaeda “funded Marriott attack”’, *Straits Times*, 29 Sept 2003 at A8.

23 ‘Warning to Megawati, Message to US’, *Straits Times*, 6 Aug 2003 at 4.

24 ‘Connection to Terror Threats is seen in Jakarta bombing’, *New York Times*, 6 Aug 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003).

25 *Supra*, n. 23.

26 ‘World condemns attack’, *Straits Times*, 6 Aug 2003 at 8.

27 ‘Indonesia nabs 2 suspects in Marriott blast’, *Straits Times*, 31 Oct 2003 at A5.

28 ‘Marriott bomb suspects say “sorry”’, *Straits Times*, 3 Nov 2003 at A6.

29 ‘Surprise public confession: Marriott bombers dressed to die’, *Straits Times*, 5 Nov 2003 at A6.

30 ‘Court decides to sentence Bali bomber to death’, *New York Times*, 8 Aug 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003); ‘JI ops chief gets death for Bali bombings’, *Straits Times*, 3 Oct 2003 at 3; ‘Bomber on death row has no regrets over carnage’, *Straits Times*, 13 Oct 2003 at A2.

at their death sentences,³¹ even encouraging others to continue such attacks,³² though there were a few repentant ones, suggesting division within JI.³³

Al-Qaeda's financing of JI for terrorist activities, including the Bali bombing, was confirmed by separate confessions of Wan Min³⁴ and Hambali,³⁵ both of whom were allegedly JI leaders.

(iii) *Trial and Conviction of Abu Bakar Bashir*

Muslim cleric Abu Bakar Bashir has been widely identified as the leader of JI that is responsible for terrorist attacks like that of the Bali Bombing. Failing to convict him of masterminding terrorist attacks, he was sentenced to four years imprisonment for aiding and abetting treason and minor immigration violations in September.³⁶ The international community criticized the lightness of his sentence, questioning Jakarta's resolve to root out potential terrorists.³⁷ On appeal, the Jakarta Superior Court overturned his conviction for treason and sedition, reducing his term of imprisonment to three years, of which 13 months have already been served.³⁸ Prosecution intends to appeal against the ruling³⁹ and Bashir has also appealed to the Supreme Court to overturn his conviction for immigration offences and forgery.⁴⁰

(iv) *Other Terrorist Activities*

The National Parliament in Jakarta was bombed on 14 July 2003, striking at the symbolic heart of Indonesia's fledgling democracy, although there were no casualties.⁴¹ Indonesian officials attribute the blast to JI, interpreting it as retaliation against recent measures to clamp down on JI,⁴² including the arrests of several of their leaders and the seizing of stores of weapons, explosives and chemical raw materials.

31 'Bali bombing "mastermind" sentenced to death', *The Independent*, 10 Sept 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003); *ibid.*

32 'Bali Bomber urges others to continue terrorist fight', *Straits Times*, 26 Nov 2003 at A5.

33 'Repentant Bomber: Bali blasts show militants failing', *Washington Post*, 15 Sept 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003) or <http://www.washingtonpost.com/wp-dyn/articles/A12170-2003Sep15.html> (accessed 12 Dec 2003).

34 'Bali blasts: Al-Qaeda funded JI attacks, says witness', *Straits Times*, 1 Aug 2003 at A6.

35 'Al-Qaeda funded Bali strike: Hambali', *Straits Times*, 7 Oct 2003 at A5.

36 'Islamic cleric gets mixed verdict in Indonesian trial for terrorism', *New York Times*, 3 Sept 2003, online at <http://www.lexis.com> (accessed 12 Dec 2003).

37 *Ibid.*, 'Cleric cleared of treason, jail term cut', *Straits Times*, 2 Dec 2003.

38 'Cleric cleared of treason, jail term cut', *Straits Times*, 2 Dec 2003.

39 *Ibid.*

40 'Bashir petitions Supreme Court in protest', *Straits Times*, 20 Dec 2003 at A20.

41 'Bomb set off at Indonesian Parliament', *Straits Times*, 15 July 2003 at 1.

42 'JI arrests mar plans for new attacks', *Straits Times*, 12 July 2003 at 1.

The Indonesian government has stepped security measures for the Christmas holiday season⁴³ especially around likely targets of attacks like churches and international schools.⁴⁴

C. Philippines

The US accused the Moro Islamic Liberation Front (MILF), a Muslim separatist group in southern Philippines, of having ties with JI and threatened to withhold financial aid from Manila unless the rebels stop harbouring “outlaws” and “terrorists”.⁴⁵ Further information from captured Indonesian militants reveals that JI maintains a training camp in southern Philippines protected by MILF.⁴⁶ MILF however declared that it had cut links with JI and *Al-Qaeda* since it decided to enter peace talks with the Philippines government, reaching a cease-fire agreement in August. To verify the authenticity of MILF’s claim, the Philippines government has requested the group to hand over a list of wanted militants.⁴⁷

D. Malaysia

Outgoing Prime Minister Mahathir Mohamad in a BBC interview appealed to Muslims worldwide to return to the “original, true teachings of Islam” and embrace values such as “peace, friendship, brotherhood and tolerance of people”.⁴⁸ He added that Malaysia is very vigilant on this issue and that “the country’s Internal Security Act had not been passed ‘just for fun’”.⁴⁹ Indeed, Malaysia preventively detained 13 students of a religious school in Johor, most of whom are relations of currently detained JI members,⁵⁰ after discovering the school to be “an incubator of terror”.⁵¹

Since Abdullah Ahmad Badawi took over as Malaysia’s Prime Minister in October, a package of legislative amendments has been

43 ‘Christmas terror risk “high”’, *Straits Times*, 21 Oct 2003 at A6.

44 ‘Jakarta police uncover list of terror targets’, *Straits Times*, 14 Nov 2003 at 1; ‘Holiday terror alert: Indonesia prepares “for the worst”’, *Straits Times*, 8 Dec 2003 at A8; ‘Jakarta on alert for bloody Christmas’, *Straits Times*, 25 Nov 2003 at 1.

45 ‘Manila rebels have links with JI, says US’, *Straits Times*, 2 Oct 2003 at A4.

46 ‘JI trained hundreds of men in Philippine camp’, *Straits Times*, 19 Nov 2003 at A7.

47 ‘Philippines enlist Muslim Rebels against JI’, *Reuters*, 29 Oct 2003, available at <http://www.reuters.com> (accessed 12 Dec 2003).

48 ‘Message to Islamic World: Mahathir calls for peace, tolerance’, *Straits Times*, 11 Oct 2003 at A17.

49 *Ibid.*

50 11 of the 13 detained are either sons or nephews of JI members already in custody. See ‘Terror incubator’, *Straits Times*, 13 Nov 2003 at A1.

51 *Ibid.*

proposed to criminalize terrorist acts under Malaysia's Criminal Code, the Penal Code and the Anti-Money Laundering Act.⁵² These amendments have been criticized as being vague, excessive and may be abused to silence legitimate expression of political dissent.⁵³

E. Singapore

Prime Minister Goh Chok Tong reiterated the importance of tackling terrorism on the ideological front, working together with moderate Muslims to counter the intolerant message of those misusing their religion to advance their own objectives.⁵⁴

In addition to the fairly comprehensive anti-terrorism laws already in place, Singapore passed the Maritime Offences Bill⁵⁵ to allow for the prosecution or extradition of a terrorist suspect caught here, regardless of whether the offence was committed within Singapore waters, thus clarifying the law on jurisdiction and bringing it in line with the Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation.⁵⁶

An amendment⁵⁷ to the existing Computer Misuse Act⁵⁸ was also passed to empower police and other security agencies to foil cyber-terrorists attacks,⁵⁹ notwithstanding the reservations expressed by some parliamentarians who dubbed the bill as the "cyberspace equivalent of the Internal Security Act" since it allows for pre-emptive action.⁶⁰

III. SEPARATIST MOVEMENTS

A. *Developments in the Philippines*

The Philippine government and the Moro Islamic Liberation Front (MILF) came to an initial agreement in June 2003 to begin peace talks in Kuala Lumpur in hopes of ending the decades-old separatist conflict. However, the process was obstructed by the government's reluctance to lift arrest warrants and bounties against senior MILF

52 'KL's anti-terror laws under fire', *Straits Times*, 13 Dec 2003 at A32.

53 *Ibid.*

54 'Fight terror on ideological front too', *The Sunday Times*, 7 Dec 2003 at 17.

55 Bill No. 23/2003, passed on 10 Nov 2003, draft available at <http://www.parliament.gov.sg/Legislation/Htdocs/Bills/030023.pdf>

56 Preamble of Bill No. 23/2003, *ibid.* The Convention comes under the umbrella of the International Maritime Organization (IMO) and was adopted on 10 March 1988 in Rome.

57 Via Bill No. 22/2003 Computer Misuse (Amendment) Act 2003.

58 Cap. 50A, 1998 Revised Edition.

59 'Tough new laws to foil hacking attacks', *Straits Times*, 11 Nov 2003 at 1.

60 *Ibid.*

officials for their alleged role in the Davao bombings earlier this year,⁶¹ which Malaysia insisted, in brokering negotiations, was essential as part of “confidence building measures” to bring Manila and MILF together.⁶² President Gloria Arroyo agreed to drop the warrants if MILF petitioned the judiciary for relief.⁶³ The resumption of peace talks again met with fresh obstacles, namely the MILF’s alleged failure to initiate a judicial review and possible involvement in the Koronadal bomb attack.⁶⁴ The government and the MILF however managed to overcome the stalemate and agreed to proceed with negotiations.⁶⁵

While many previous ceasefire deals between the government and the MILF have proved futile, Arroyo appeared to be optimistic about this peace process, announcing the ceasefire agreement entered into ahead of planned peace talks in Malaysia.⁶⁶ Both parties however diverged on their expectations of securing a peace deal before

61 ‘Malaysian deputy premier arrives for talks with Arroyo on peace deal’, *Agence France Presse* (International News Section), 9 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); ‘KL sets condition for peace talks’, *Straits Times*, 5 July 2003, at A13.

62 *Ibid.*

63 *Ibid.* Under the Philippine legal system, only the courts have the power to lift arrest warrants.

64 ‘Philippine rebels blamed for blocking peace talks as blast rocks south’, *Agence France Presse* (International News Section), 10 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); ‘Philippine leader warns Muslim rebels after new bomb blast’, *Agence France Presse* (International News Section), 11 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003). Responding to the government’s assurances regarding the warrants and bounties, the MILF countered that if it was to apply to the courts, it would effectively be recognising the government’s jurisdiction in the contested areas of southern Philippines.

65 ‘Peace talks between Philippines, Muslim rebels to resume next week’, *Agence France Presse* (International News Section), 17 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); ‘New clashes won’t stop talks with Muslim rebels: Philippine leader’, *Agence France Presse* (International News Section), 22 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003). The MILF fulfilled several conditions including condemning terrorism and the MILF chairman Salamat Hashim’s agreement to personally head the MILF panel in the talks. The government in turn agreed to lift the bounties and to issue safe conduct passes to MILF representatives so that they could travel to Malaysia for the formal talks.

66 ‘Manila signs ceasefire with MILF’, *BBC News*, 18 July 2003, online at <http://www.news.bbc.co.uk> (accessed 9 Dec 2003). Despite exchanged accusations of ceasefire violations, MILF chairman Hashim’s death in Aug and ancestral domain issues, both the government and the MILF expressed continued commitment to the peace process. See ‘Muslim guerrillas charge Philippine military with breaching new truce’, *Agence France Presse* (International News Section), 20 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); ‘Philippine military accuses MILF of violating truce’, *Agence France Presse* (International News Section), 21 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); ‘Top Muslim rebel dies but talks go on’, *Straits Times*, 6 Aug 2003, at A6; ‘Hereditary issues obstacles in Philippine-Muslim talks’, *Agence France Presse* (International News Section), 9 Sept 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

Arroyo's current term ends in June 2004.⁶⁷ MILF stated it was virtually impossible to sign a peace agreement before then due to the current administration's lack of political will.⁶⁸ A government ceasefire panelist insisted the peace process was progressing smoothly.⁶⁹ Significantly, the government had enlisted the MILF's help to fight against terrorist group JI by handing over wanted criminals and militants in MILF-controlled areas.⁷⁰ However, recent clashes⁷¹ and a verbal skirmish over the government's claim of a MILF power struggle⁷² threaten to derail formal peace talks set to commence early January 2004.

The signing of a peace agreement is significant for the reconstruction of strife-torn Mindanao, as the US government and the World Bank have pledged development assistance for the island once this is signed.⁷³

B. *Developments in Aceh*

The military operation in Aceh against the Free Aceh Movement (GAM), which began on 19 May 2003, has been criticised for its human rights abuses, largely failing to win the "hearts and minds"

67 'Philippine rebels see no peace deal under Arroyo', *Reuters Alertnet*, 3 Dec 2003, online at <http://www.alertnet.org/thenews/newsdesk/> (accessed 15 Dec 2003).

68 *Ibid.* Three issues were said to be delaying the resumption of formal talks: the failure to deploy foreign ceasefire observers in Mindanao as of then (an advance Malaysian team of ceasefire observers has since been deployed), and the government's non-compliance with an agreement to withdraw all criminal cases against MILF and withdraw its troops from Buliok, a guerilla enclave in Mindanao.

69 *Ibid.*

70 'Manila pits Moro rebels against JI', *Straits Times*, 30 Oct 2003, at A6. The MILF later issued a joint statement with a government peace negotiating panel, denying government allegations that it had maintained tactical links with JI, and expressing support for the campaign against JI and similar terrorist groups linked to MILF. See 'Philippine Muslim rebel group rejects terrorist training charge', *Agence France Presse* (International News Section), 3 Dec 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

71 'Three Muslim rebels killed, four soldiers wounded in Philippines clash', *Agence France Presse* (International News Section), 10 Dec 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); 'Twelve slain as Philippine troops clash with Muslim rebels, kidnapers', *Agence France Presse* (International News Section), 15 Dec 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003). It is still unclear whether these recent clashes would affect the talks.

72 'Philippines Muslim group's power struggle may hamper peace talks: government', *Agence France Presse* (International News Section), 11 Dec 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); 'Defense chief trying to derail talks, claim MILF', *Inquirer News Service*, 13 Dec 2003, online at <http://www.inq7.net> (accessed 16 Dec 2003).

73 'US to underwrite Philippines peace accord with Muslim rebels', *Agence France Presse* (International News Section), 8 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); 'Arroyo wins promises of military and economic assistance', *Straits Times*, 24 Oct 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); '4 killed in attack on Philippines mosque', *Straits Times*, 4 Oct 2003, at A12.

of the Acehnese, as the operation has focused on military objectives at the expense of much-needed humanitarian assistance.⁷⁴ The Aceh offensive reportedly resulted in nearly 400 civilian casualties, displacing 11,000 people.⁷⁵ Restrictions on media access to Aceh have made it difficult to obtain independent information as to the actual situation of the civilian population there. Human Rights Watch stated the lack of access and monitoring by independent observers has allowed both the military and rebels to commit abuses with impunity.⁷⁶ The severe restrictions on foreign aid workers,⁷⁷ as well as the misuse of refugee funds by military soldiers,⁷⁸ have exacerbated the humanitarian crisis. Military officials disputed the allegations of human rights abuses, referring to soldiers who had been court-martialled and given relatively light jail sentences after being convicted of rape, theft, robbery or excessive violence.⁷⁹ Military chief General Endriartono Sutarto also made an unprecedented public apology for soldiers' looting of abandoned civilian homes.⁸⁰ However, governmental efforts in addressing human rights violations have been perceived as inadequate.⁸¹

(i) *Extension of Martial Law*

Despite reports of human rights violations and the ensuing pressure on the Indonesian government to withdraw troops, the government

74 'Soldiers accused of human rights abuses', *Straits Times*, 2 Aug 2003, at A11; 'Jakarta to extend Aceh military ops', *Straits Times*, 30 Oct 2003, at A6; 'Military set for next phase of Aceh crackdown', *Straits Times*, 11 Nov 2003, online at <http://www.lexis.com> (accessed 6 Dec 2003). Human Rights Watch reported that the Indonesian military was pursuing a campaign of extra-judicial executions, forced disappearances, beatings and arbitrary arrests of civilians in Aceh. See 'Indonesian troops engage in killings, kidnappings of civilians in Aceh: HRW', *Agence France Presse* (International News Section), 17 Dec 2003, online at <http://www.lexis.com> (accessed 18 Dec 2003).

75 'Jakarta to extend Aceh military ops', *ibid.*

76 'Muzzling the Messengers: Attacks and Restrictions on the Media', Human Rights Watch, Nov 2003, Vol. 15, No. 9, online at Human Rights Watch website: <http://www.hrw.org> (accessed 6 Dec 2003); 'International rights group calls for lifting of press restrictions in Aceh', *Agence France Presse* (International News Section), 26 Nov 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

77 'EC worried over access to Aceh after aid worker held', *Reuters*, 10 July 2003, available at <http://www.reliefweb.int> (accessed 5 Dec 2003).

78 'Soldiers accused of human rights abuses', *supra* n. 74.

79 'Soldiers accused of human rights abuses', *ibid.*; '3 soldiers charged with Aceh rapes', *Straits Times*, 8 July 2003, at A5; 'Lenient sentence sought for soldier accused of rape', *Straits Times*, 13 July 2003, at 25; 'Two soldiers on trial for stealing in Aceh', *Straits Times*, 23 July 2003, at A5. Human Rights Watch noted that indictments for murder of civilians have yet to be issued against Indonesian soldiers. See 'Indonesian troops engage in killings, kidnappings of civilians in Aceh: HRW', *supra* n. 74.

80 'Jakarta military chief says "sorry" for Aceh looting', *Straits Times*, 27 July 2003, at 17.

81 *Ibid.* Rights groups expressed their preference for increased and harsher convictions of wrongdoing soldiers rather than an apology.

extended martial law in Aceh on 6 November 2003 for another six months, with a monthly evaluation of the operation.⁸² Though Indonesia promised amnesty for rebels who surrender and a special economic recovery package for Aceh,⁸³ it was silent on resumption of peace negotiations with the separatists.⁸⁴ The extension was heavily criticized as potentially intensifying the conflict, with Parliamentarians, observers, and human rights groups suggesting the establishment of a transitional government to replace the military administration and initiate the reconstruction of this war-torn province.⁸⁵ The military defended the extension on the grounds that its presence was needed to maintain stability and to crush the remaining separatist forces.⁸⁶ Critics argued that in reality the Acehnese were too fearful to do anything,⁸⁷ pointing out that the extension of martial law ultimately benefits the military which stands to receive more governmental funding for its operations, allowing it to safeguard its business interests in resource-rich Aceh, and to consolidate its political position.⁸⁸

(ii) *International Response to Aceh Offensive*

Though GAM's secessionist agenda lacks international support,⁸⁹ the US, EU and Japan, which had sponsored peace talks between Indonesia and GAM earlier this year, issued a joint statement expressing concern over the extension of martial law,⁹⁰ which the Indonesian

82 'Jakarta extends military operations in Aceh', *Associated Press* (International News Section), 6 Nov 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

83 *Ibid.*

84 *Ibid.* See also 'No terrorist label for Aceh rebels', *Straits Times*, 19 Nov 2003, at A8 (Security Minister Susilo stated that the govt had no plans to enter into new round of peace talks with GAM). Cf Chalief Akbar, Head of Information Section, Embassy of Republic of Indonesia, 'Extension of martial law in Aceh has wide support', *Straits Times*, Forum 19 Nov 2003, online at <http://www.lexis.com> (accessed 6 Dec 2003). The writer stated that "the Indonesian government [is] willing to hold dialogues, provided GAM is willing and ready to embrace concept of Aceh as integral part of the unitary State of Indonesia".

85 'Jakarta to extend Aceh military ops', *supra* n. 74.

86 *Ibid.*; 'Military set for next phase of Aceh crackdown', *supra* n. 74.

87 'Jakarta to extend Aceh military ops', *ibid.*; 'Life in Aceh returning to normal', *Straits Times*, 6 Nov 2003, online at <http://www.lexis.com> (accessed 6 Dec 2003).

88 'Martial law may be extended in Aceh: General', *Straits Times*, 5 July 2003, at A12.

89 For example, Libya recently promised to assist Indonesia with military equipment and training to fight separatist rebels, and also offered to help detect rebels who had undergone military training in Libya. 'Libya to support and train Jakarta troops', *Straits Times*, 15 Nov 2003, at A22.

90 'Jakarta hits out at "foreign meddling" over Aceh', *Straits Times*, 8 Nov 2003, at A13; 'Indonesia slams US, Japan & EU for statement on Aceh', *Asia Pulse* (Northern Territory Regional Section), 10 Nov 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

government criticised as improper interference with Indonesian sovereignty.⁹¹

Due to Indonesian pressure and the fear of a worsening refugee crisis, Malaysia agreed to deport Acehnese asylum seekers.⁹² This reflects Malaysia's supportive stance on Indonesia's policy towards Aceh. The arrests and detention of hundreds of Acehnese asylum seekers was criticized by the United Nations High Commissioner for Refugees (UNHCR), US representatives and human rights groups as contravening international humanitarian law. While Malaysia is not a signatory to the 1951 UN Convention on Refugees,⁹³ it is bound by the customary principle of non-refoulement and the rights of asylum-seekers as enshrined in the Universal Declaration of Human Rights (UDHR).⁹⁴ Malaysia rejected UNHCR's criticism over the arrests, stating that UNHCR was wrong to register the Acehnese as potential refugees.⁹⁵

(iii) *Terrorist Label for Separatist Groups*

The Indonesian government appeared initially to back down on its plan to ask the U.N. to label GAM as a terrorist organisation. Security Minister Susilo Yudhoyono stated that the government did not want to internationalise the Aceh issue, and that Indonesia was instead requesting other countries to declare Aceh rebels as criminals rather than terrorists.⁹⁶ However, Minister of Foreign Affairs Hassan Wirayuda later refuted Susilo's statement, stating that the government still retained the option of having GAM listed as a terrorist group, and that Aceh had always been and would always be considered as an internal issue.⁹⁷

91 *Ibid.*

92 'Msia walks tightrope on Aceh refugees', *Asia Times*, 9 Sept 2003, online at <http://www.atimes.com> (accessed 6 Dec 2003). See also 'KL and Jakarta cement anti-terror alliance', *Straits Times*, 29 Aug 2003, at A1.

93 Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954.

94 Article 14, Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). See *ibid.*; 'KL vows to deport 250 Acehnese despite UN protest', *Straits Times*, 21 Aug 2003, at A5; 'Malaysia: Deporting Asylum Seekers—Violation of Intl Law', Amnesty International (ASA 28/025/2003), 5 Sept 2003, online at Amnesty International website: <http://www.web.amnesty.org/library> (accessed 8 Dec 2003). The principle of non-refoulement prohibits forcible deportation of immigrants to countries where they would face serious human rights abuses.

95 'KL rejects Acehnese refugee bid', *Straits Times*, 26 Aug 2003, at A4.

96 'No terrorist label for Aceh rebels', *Straits Times*, 19 Nov 2003, at A8. Listing the group as a terrorist organization would oblige UN member countries to arrest GAM leaders, many of whom are abroad, and freeze their assets. However this would lead to demands to allow international observers to monitor the situation in Aceh.

97 'Plan to have GAM listed as terrorist group still on', *Jakarta Post*, 21 Nov 2003, available at <http://www.malra.org/posko> (accessed 15 Dec 2003). It may be noted that 3 former GAM representatives were charged and recently convicted under the anti-terrorism

C. Developments in Papua

The Indonesian government renewed its warning to Papuan separatists that harsher measures by security forces would ensue should they continue their secessionist movement.⁹⁸ Papuan police had earlier killed a separatist after he and several others raised an outlawed separatist flag in Wamena town.⁹⁹ Pro-independence activists' attempts to mark separatist anniversaries were quelled by the Indonesian authorities.¹⁰⁰ Seven Papuans also potentially face treason charges over the raising of separatist flags.¹⁰¹ Amnesty International and Human Rights Watch have previously condemned Indonesia's treatment of peaceful pro-independence activists.¹⁰²

The military, Tentara Nasional Indonesia (TNI), has shown signs of stepping up anti-separatist operations in Papua. It dispatched 2000 troops to Papua after violent protests broke out over Jakarta's decision to divide the province into three.¹⁰³ Jakarta maintained the planned division of the province was to improve administration, but critics charged the government of wanting to control rising separatist sentiment via a "divide-and-rule" strategy, violating the special autonomy granted to Papua in 2001.¹⁰⁴ While the increasing unrest has caused Indonesia to postpone the province's division into West and Central Irian Jaya, the government has nonetheless indicated plans to

legislation enacted after the Bali bomb blast in Oct 2002. See 'Aceh negotiators put on trial', *BBC News*, 29 July 2003, online at <http://www.news.bbc.co.uk> (accessed 6 Dec 2003); 'Aceh activist jailed 11 years for treason', *Straits Times*, 22 Oct 2003, at A7.

98 'Papuan separatists get blunt warning from the Indonesian government', *Radio NZ International*, 10 July 2003, online at <http://www.rnzi.com> (accessed 28 Nov 2003).

99 'Papuan killed for raising flag', *Straits Times*, 8 July 2003, at A6. Three other pro-independence activists were also arrested.

100 See 'Indonesia bans commemoration of separatist day in Papua on Dec 1', *Agence France Presse* (International News Section), 10 Nov 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003); 'Indonesian police arrest 50 in Papua town over raising of separatist flag', *Agence France Presse* (International News Section), 27 Nov 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

101 'Papuans face treason charges over flag', *Straits Times*, 29 Nov 2003, at A26.

102 'Papuan separatists get blunt warning from Indonesian govt', *supra* n. 98.

103 'Jakarta's army tightens grip on Aceh, Papua', *Straits Times*, 6 Sept 2003, at A18; 'Indonesia shelves Papua division', *BBC News*, 27 Aug 2003, online at <http://www.news.bbc.co.uk> (accessed 6 Dec 2003). The division of Papua into 3 provinces was decided in 1999 but never implemented. In 2003 there was a presidential instruction to revive the decision.

104 'Indonesia shelves Papua division', *ibid*.

Under Law No.21/2001 on special autonomy for Papua, any partition of Papua into different provinces must be made with the approval of the Papuan People's Assembly (MRP), the Papuan legislative council (DPRP), and after due consideration has been taken of the local culture, human resources, and the economic potential of Papua. See 'Govt to revise conflicting laws on Papua', *Jakarta Post*, 19 Nov 2003, available at <http://www.malra.org/posko> (accessed 4 Dec 2003).

revise the law to exempt this division from the need to seek Papuans' approval.¹⁰⁵

IV. BILATERAL DISPUTES

Malaysia-Singapore relations have been somewhat shaken by disputes over the thorny issues of water, reclamation works, and railway land. Both countries have generally sought to resolve the disputes by referrals to international tribunals, or international arbitration.¹⁰⁶ Both Malaysia and Singapore have demonstrated their desire to maintain continuing close ties and to co-operate, for example, in the areas of defence and SARS,¹⁰⁷ and in establishing an expert panel to study the effects of Singapore's reclamation works after the International Tribunal for the Law of the Sea (ITLOS) judgment.¹⁰⁸

Malaysia and Brunei appear to be adopting a more moderate negotiating stance and working towards a pragmatic "win-win" solution to their territorial offshore dispute over oil-rich waters in the South China Sea.¹⁰⁹

A. Water Agreements: Malaysia and Singapore

Singapore's water supply from Malaysia is based on the 1961 Tebray and Scudai Rivers Water Agreement and the 1962 Johor Water Agreement, which fix the price at 3 cents per 1000 gallons.¹¹⁰ Malaysia seeks an upward price revision, but Singapore argues that Malaysia has no legal basis to review the price, as the water agreements provided for price revisions after 25 years in 1986 and 1987, which had not been done.¹¹¹

In March 2003, Singapore's Ministry of Information, Communications and the Arts (Mita) published a book, "Water Talks? If Only

105 'Govt to revise conflicting laws on Papua', *ibid.*

106 Amin, Seah, Soh and Yap, 'Southeast Asia and International Law: January-June 2003', (2003) 7 Sing JICL 1, at 9.

107 'Singapore, KL can rise above bilateral disputes and continue to cooperate', *Channel NewsAsia*, 2 Sept 2003, available at <http://sg.news.yahoo.com> (accessed 9 Dec 2003); 'Singapore, Malaysia discuss SARS plans', *Straits Times*, 18 Oct 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

108 'Talks on panel set-up made good progress', *Straits Times*, 24 Nov 2003, at 13.

109 'South China Sea: Pact won't calm waters', *Asia Times*, 2 July 2003, online at <http://www.atimes.com> (accessed 18 Dec 2003).

110 'KL to buy ads to give its version of water dispute', *Straits Times*, 13 July 2003, at 27; Cheah, Neo and Jegathesan, 'Southeast Asia and International Law: July-Dec 2002', (2002) 6 Sing JICL 1073, at 1100.

111 'KL to buy ads to give its version of water dispute', *ibid.*

It Could”, setting out Singapore’s position. The book consisted of the Foreign Minister’s statement in Parliament on 25 January, and documents, exchanges of diplomatic correspondence and notes made public at that sitting.¹¹² Malaysia criticised Singapore’s publication as fictitious, and labelled as “unethical”¹¹³ making private correspondence between the leaders public. In July, the Malaysian government’s National Economic Action Council (NEAC) launched a publicity campaign in major Malaysian newspapers and the Asian Wall Street Journal (AWSJ) to give Malaysia’s version of the water issue.¹¹⁴ Malaysia also published its own booklet called “Water: The Singapore-Malaysia Dispute—The Facts” to refute Singapore’s stand.¹¹⁵ The main points highlighted in the advertisements were: (1) Singapore greatly profited from buying water cheaply and selling treated raw water back to Malaysia;¹¹⁶ (2) Malaysia was actually subsidising Singapore as it would have cost much more to substitute Malaysian raw water with recycled water;¹¹⁷ (3) Malaysia was still legally entitled to a price review.¹¹⁸ Singapore responded that the Malaysian advertisements merely repeated old arguments and overlooked essential facts.¹¹⁹ One important fact noted by Singapore was that it had offered to raise the water price from three sen to 45 sen for current water and 60 sen for future water. Malaysia initially agreed to this but later retracted its acceptance, proposing instead a price of RM3 and then more than

112 ‘Water talks: KL to give its side of the story in a book’, *Straits Times*, 1 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

113 *Ibid.*; ‘S’pore tactics ‘unethical’: Mahathir’, *Straits Times*, 2 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

114 ‘KL to buy ads to give its version of water dispute’, *supra* n. 110. The Malaysian government stated that the advertisements and the booklet were intended to set out the bare facts, but they have been described by commentators as more emotive than factual. See *e.g.* Mafoot Simon, ‘Emotions and the politics of envy’, *Straits Times* (Commentary/Analysis Section), 25 July 2003, online at <http://www.lexis.com> (accessed 15 Dec 2003).

115 *Ibid.*

116 ‘KL’s water ads accuse Singapore of making profits’, *Straits Times*, 14 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003); ‘S’poreans pay just 26 cents for a year’s supply of water: KL’, *Straits Times*, 16 July 2003, at A7.

117 ‘KL accuses Singapore of portraying it as a miser’, *Straits Times*, 19 July 2003, at A18.

118 ‘Malaysia claims right of price review in latest ad’, *Straits Times*, 17 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

119 ‘KL’s water ad blitz ignores crucial facts, says Singapore’, *Straits Times*, 15 July 2003, at 3.

RM6 without giving a satisfactory rationale for its pricing formula.¹²⁰ Singapore also queried the timing of the advertisements, coming some six months after Malaysia had called off negotiations in October 2002 and initiated the arbitration process as provided for in the water agreements.¹²¹ These points were reiterated in Singapore's advertisements in the AWSJ and Malaysian newspapers, which Singapore maintained was not a retaliatory move,¹²² although this provoked a swift counter-advertisement from Malaysia.¹²³

Indication of a possible transfer of water management from Malaysian states to the federal government rang warning bells that Malaysia may enact a law to subject water supply to off-shore parties to its domestic needs first, which may effectively supersede the Water Agreements.¹²⁴ However, Malaysia assured federal control over water resources will not affect the supply of water to Singapore.¹²⁵

120 *Ibid.* See also Statement by Minister for Foreign Affairs, Prof S Jayakumar, in Parliament, 25 January 2003, Compilation of Documents Vol I, 'Chronology of developments', online at Singapore Ministry of Foreign Affairs website: <http://www.mfa.gov.sg/press/event.html> (accessed 15 Dec 2003).

121 'KL's water ad blitz ignores crucial facts, says Singapore', *supra* n. 119. Political analysts have suggested several possible rationales, *e.g.*: (1) to offset the political cost paid by the Malaysian ruling party after Singapore released correspondences which showed the Malaysian government changing its position several times; (2) to 'correct' domestic perceptions of the water issue; (3) to rally the citizens and raise nationalist sentiments with a possible general election on the horizon. See 'Why run the water dispute ads now?', *Straits Times*, 19 July 2003, at A1; 'Spore places water ad', *Today*, 26 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

122 'Spore ad sets out facts on water row', *Straits Times*, 26 July 2003, at 6. The advertisement emphasized Singapore's stand: that it is prepared to negotiate the water price, but the issue is "not how much Singapore pays, but how any price revision is decided upon". Singapore cited international law and "the sanctity of treaties voluntarily entered into by governments" as the foundation of state-to-state relations. In his 25 Jan '03 Parliamentary statement, Foreign Affairs Minister Prof Jayakumar stated that apart from the sanctity of the Water Agreements, the significance of the water price is Singapore's existence as an independent nation separate from Malaysia. The Water Agreements were confirmed and guaranteed in the 1965 Separation Agreement, or the Independence of Singapore Agreement. If the terms of the Water Agreements could be unilaterally varied, the Separation Agreement and thus Singapore's independence and sovereignty would be undermined. See Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003); Statement by Minister for Foreign Affairs, Prof S Jayakumar, in Parliament, 25 Jan 2003, online at Singapore Ministry of Foreign Affairs website: <http://www.mfa.gov.sg/press/speech.html#main> (accessed 15 Dec 2003).

123 *Ibid.*; 'Water dispute: Spore takes out ads in KL papers', *Straits Times*, 29 July 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

124 'Malaysian govt move could herald new water laws', *Business Times*, 1 Aug 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

125 'Water supply deal will remain: Mahathir', *Straits Times*, 2 Aug 2003, at A15.

Malaysia has closed the door on water negotiations, preferring a swift resolution of the issue through arbitration.¹²⁶

B. *Land Reclamation Case: Malaysia and Singapore*

In a surprising move, Malaysia unilaterally broke off negotiations, and referred its objections against Singapore's reclamation works at Pulau Tekong and Tuas to international arbitration.¹²⁷ A separate application was also made by Malaysia to the ITLOS for provisional measures, including immediate stoppage of reclamation works. Malaysia made the suspension of works as a pre-condition to further talks, but Singapore refused to halt works, stating that suspending works was very serious and justifiable only if there was "clear evidence of serious and imminent danger".¹²⁸

Malaysia's case as presented to the ITLOS rested on two main arguments: (1) Singapore's reclamation works encroached on Malaysia's territorial waters; (2) the works were damaging its marine and coastal environments.¹²⁹ Besides arguing ITLOS had no jurisdiction over the case as Malaysia had failed to meet the legal requirement to exchange views with Singapore and attempt to resolve the dispute via negotiations,¹³⁰ Singapore refuted both arguments made by Malaysia as follows: (1) Singapore owned the disputed territorial area as provided for in two bilateral treaties of 1927 and 1995 binding on Malaysia,¹³¹ (2) Singapore's environmental research demonstrated no adverse impact, and further, the waters in the Johor Straits were already affected by Malaysia's Tanjung Pelapas reclamation.¹³² In concluding its case, Malaysia appeared to backtrack on certain aspects of its legal request.¹³³ It focused on a new area south of Pulau Tekong—"Area D"—and requested Singapore to give an undertaking not to reclaim this area at least until the arbitration decision.¹³⁴ Three of the provisional measures sought were also withdrawn.¹³⁵ Singapore

¹²⁶ *Ibid.*

¹²⁷ 'Reclamation in S'pore: KL takes legal action', *Straits Times*, 7 Sept 2003, at 4.

¹²⁸ *Ibid.*

¹²⁹ 'KL argues reclamation case', *Straits Times*, 26 Sept 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

¹³⁰ The argument was made based on Article 283.1, United Nations Convention of the Law of the Sea (UNCLOS), U.N.Doc A/Conf. 62.122 (1982).

¹³¹ 'Singapore's rebuttal of KL's claims', *Straits Times*, 27 Sept 2003, at H2.

¹³² *Ibid.*

¹³³ 'KL's last-minute mystery request', *Straits Times*, 28 Sept 2003, at 22.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.* Malaysia had requested as part of the provisional measures that Singapore must provide information on the extent of its reclamation works, that Malaysia must be

maintained it would not suspend reclamation works, but assured irreversible action would not be undertaken on Area D until the completion of a joint environmental impact study as agreed upon by Malaysia and Singapore in August 2003.¹³⁶

The ITLOS unanimously ruled in favour of Singapore.¹³⁷ The stop-work order as requested by Malaysia was not granted. The reasons given by the tribunal were: an existing claim to an area of territorial sea was not *per se* an adequate basis for the grant of provisional measures, and Malaysia had failed to show a situation of urgency or that there was a risk that its rights as claimed with respect to the above-mentioned territorial area would be irreparably damaged pending arbitration.¹³⁸ The tribunal however did prescribe that Malaysia and Singapore should cooperate and consult on various matters, including the establishment of an expert panel and regular exchange of information. Singapore was also directed not to conduct reclamation works in ways that might irreparably prejudice Malaysia's rights or seriously harm the marine environment.¹³⁹

Soon after the ITLOS ruling, both countries began talks on the establishment of an expert panel to study the impact of Singapore's reclamation works¹⁴⁰ and the details of future arbitration.

given the opportunity to comment on them, and that Singapore must agree to negotiate the remaining unresolved issues. Malaysia explained it withdrew these requests because Singapore had further clarified its willingness to comply with these three requests. The Singapore legal team pointed out that Singapore had already agreed to comply with these requests before the hearing.

¹³⁶ *Ibid.*

¹³⁷ See *Case concerning Land Reclamation by Spore in and around the Straits of Johor (Malaysia v. Singapore)*, *Provisional Measures*, Order of 8 Oct 2003, online at ITLOS website: <http://www.itlos.org> (accessed 15 Dec 2003) [hereafter ITLOS Order of 8 Oct 2003]. While the ITLOS decision was viewed by Singapore and foreign media as indicating that Singapore could continue her reclamation works, the Malaysian media only referred briefly to the tribunal's decision not to grant Malaysia the stop-work order, and instead highlighted the point that Malaysia had been granted provisional measures, for example, countries must set up expert panel to study the impact of land reclamation projects, and Singapore must not conduct works in ways which could cause irreparable prejudice to Malaysia's rights and harm to marine environment. See 'Round 1 to Singapore', *Straits Times*, 9 Oct 2003, at 1; 'KL papers put positive spin on panel ruling', 10 Oct 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003).

¹³⁸ ITLOS Order of 8 Oct 2003, para 71–2.

¹³⁹ ITLOS Order of 8 Oct 2003, at 22.

¹⁴⁰ 'Moves started to set up expert panel', *Straits Times*, 17 Oct 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003); 'Reclamation: Talks on panel set up today', *Straits Times*, 20 Nov 2003, online at Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003); 'Talks on panel set-up made good progress', *supra* n. 108.

C. *Railway Land: Malaysia and Singapore*

The longstanding dispute over railway land centres on the Points of Agreement (POA) concluded between Singapore and Malaysia in 1990.¹⁴¹ The agreement states the terms of development and status of railway land in Singapore. To date, Malaysia has not implemented the stipulated terms, and has sought to vary the POA by asking for extra land parcels not covered by the POA.¹⁴² The main point of contention now is the operative date of the POA. Singapore's stand is that the POA came into effect on the day it was signed, whereas Malaysia argues it only comes into effect when Malaysia decides to relocate the Tanjong Pagar railway station.¹⁴³

In October 2003, Singapore proposed that the dispute be referred either to the International Court of Justice (ICJ) or the Permanent Court of Arbitration.¹⁴⁴ While Malaysia acknowledged Singapore's right to do so,¹⁴⁵ it has not yet responded to this proposal.¹⁴⁶

D. *Kikeh and Limbang: Brunei and Malaysia*

The Brunei-Malaysia territorial dispute over the Kikeh oilfield ensued after Malaysia's state-owned oil company Petronas discovered oil in waters off Borneo island.¹⁴⁷ Both countries claimed that the area fell within their exclusive economic zone (EEZ) in 2000.¹⁴⁸ Instead of pursuing the issue of sovereignty,¹⁴⁹ Malaysia proposed a joint-exploration arrangement to Brunei in July 2003, although Brunei has been advised that acceding to this deal may entail conceding that Malaysia has territorial rights.¹⁵⁰

Malaysia indicated the former dispute may be used as leverage to resolve other issues, including the countries' overlapping claims on

141 See Singapore and Malaysia Issues website: <http://app.sgmy.gov.sg/SgMy.html> (accessed 15 Dec 2003); 'Railway land: Spore wants third party help', *Straits Times*, 17 Oct 2003, at 4.

142 *Ibid.*

143 *Ibid.*

144 'Railway land: Spore wants third party help', *supra* n. 141.

145 'Spore has right to bring railway issue to ICJ: Abdullah', *Straits Times*, 21 Oct 2003, at A6.

146 *Ibid.*

147 'KL plan to end oilfield row with Brunei', *Straits Times*, 3 July 2003, online at <http://www.lexis.com> (accessed 9 Dec 2003).

148 *Ibid.*

149 See 'South China Sea: Pact won't calm waters', *supra* n. 109.

150 'Malaysia-Brunei oilfield dispute still simmering', *Straits Times*, 23 Aug 2003, at A19.

Limbang which involve land and maritime borders and the EEZ.¹⁵¹ These offshore disputes remain unsettled.¹⁵²

V. INTERNATIONAL CRIMINAL LAW

A. Timor Leste

In August 2003, Major-General Adam Damiri was found guilty of human rights abuses and sentenced to three years imprisonment by the Indonesian ad hoc human rights tribunal for East Timor.¹⁵³ Damiri is the highest-ranking military officer to appear in the trials. As Damiri was the last of 18 suspects to stand trial, his conviction effectively draws the tribunal proceedings to an end.¹⁵⁴ Only five other defendants were convicted and given light sentences. They, including Damiri, are free pending appeals. Human rights groups have criticized the tribunal process and nominal sentences as a mere façade,¹⁵⁵ although many expected an acquittal given that the prosecution had asked for charges to be dropped due to lack of evidence.¹⁵⁶

151 'KL plan to end oilfield row with Brunei', *supra* n. 147; 'KL to hold border talks with Brunei', *Straits Times*, 8 July 2003, at A6. Malaysia has already rejected the possibility of referring the Limbang issue to the ICJ, which, as Horton comments, makes it more difficult to reach a settlement that mediates satisfactorily between Malaysia's and Brunei's sovereignty. See Dr AVM Horton, 'During the Second Quarter of 2003—Tensions with Malaysia and Further Efforts at Economic Diversification', *Asian Analysis*, Aug 2003, online at ASEAN Focus Group website: <http://www.aseanfocus.com/asiananalysis> (accessed 18 Dec 2003). According to the Malaysian Foreign Minister, both governments are regarding the Limbang issue not as a dispute but rather a "discussion" aimed at finding a balanced resolution which will benefit both sides. See 'Progress made on Limbang', *New Straits Times*, 23 Aug 2003, online at <http://www.lexis.com> (accessed 19 Dec 2003).

152 *Ibid.*; Horton, 'Foreign Affairs at Centre Stage, particularly the offshore dispute over with Malaysia (Third Quarter '03)', *Asian Analysis*, Nov 2003, online at ASEAN Focus Group website: <http://www.aseanfocus.com/asiananalysis> (accessed 18 Dec 2003). Horton noted the Borneo Bulletin had opined that there was only a "glimmer of hope" of a resolution.

153 'Indonesian general sentenced to three years over Timor violence', *Associated Press* (International News Section), 5 Aug 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003); 'General found guilty over E Timor', *BBC News*, 6 Aug 2003, online at <http://www.news.bbc.co.uk> (accessed 10 Dec 2003).

154 'Indonesia: Transfer convicted general from Aceh', Human Rights Watch, 5 Aug 2003, online at Human Rights Watch website: <http://www.hrw.org> (accessed 6 Dec 2003).

155 *Supra* n. 153; 'Surprise at E Timor guilty verdict', *BBC News*, 6 Aug 2003, online at <http://www.news.bbc.co.uk> (accessed 10 Dec 2003); 'Indonesian court's final E Timor sentence "joke"', East Timor Action Network (ETAN), 6 Aug 2003, online at <http://etan.org/news/default.htm> (accessed 17 Dec 2003).

156 'General found guilty over E Timor', *supra* n. 153. The US criticised the tribunal for the relatively few convictions and for permitting convicted defendants to remain free pending appeals. It stated that the overall process had been "flawed and lacked credibility".

The Damiri trial has been especially controversial,¹⁵⁷ since Damiri, who was actively engaged in the Aceh offensive in his military capacity, had missed several court appearances,¹⁵⁸ delaying the verdict.

The East Timor Special Panels for Serious Crimes, which was established by the UN Transitional Administration in East Timor (UNTAET) in 2000 to try those charged with grave violations of international humanitarian law during the 24-year Indonesian occupation and violence surrounding the 1999 independence referendum,¹⁵⁹ sentenced a former Indonesian army sergeant, Marcelino Soares, to 11 years for crimes against humanity of murder, torture and persecution committed in 1999. This conviction was hailed as “an important milestone in pursuit of justice”.¹⁶⁰ However, the delivery of justice is hampered by Indonesia’s refusal to hand over indicted Indonesian soldiers. To date the Serious Crimes Unit has indicted 367 people, of which 280 remain at large in Indonesia.¹⁶¹ The UN has raised the possibility of establishing an international war crimes tribunal for East Timor.¹⁶²

The East Timor Commission for Reception, Truth and Reconciliation began a three-day hearing on massacres and executions during the Indonesian occupation.¹⁶³ The purpose is to allow survivors and

157 *Ibid.*

158 *Supra* n. 155.

159 See Coalition for Justice (East Timor) website: <http://www.cij.org> (accessed 25 Dec 2003). The hybrid international-East Timorese Special Panel, together with the other bodies within UNTAET’s judicial framework (the Serious Crimes Unit and the Legal Aid Service), constitute steps towards bringing about closure in Timor Leste. See also *infra* n. 163.

160 ‘East Timor court jails ex-army sergeant for crimes against humanity’, *Agence France Presse* (International News Section), 10 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003). Judges also convicted an ex-militiaman in a separate trial of crimes against humanity. The Panels have convicted 43 people and acquitted one.

161 ‘Most suspects in East Timor violence remain free in Indonesia’, *Washington Post*, 15 Oct 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

162 ‘Surprise at E Timor guilty verdict’, *supra* n. 155. Martin argues an international tribunal is unlikely to be established due to the Security Council’s pre-occupation with the Iraq conflict, though on the grounds of international justice principles, the UN should get involved now. See *ibid.* Furney however feels that the establishment of an international tribunal appears increasingly probable, given the desire of States and rights groups to see that justice is achieved. See William J Furney, ‘East Timor Atrocities: Submit to an International Tribunal’, *Straits Times* (Commentary/Analysis Section), 15 Aug 2003, at 23. Timor Leste President Xanana Gusmao is adamantly opposed to such tribunal, arguing that focus should instead be placed on reconciliation and social and economic justice issues. See Suzanne Katzenstein, ‘Hybrid Tribunals: Searching for Justice in East Timor’, (2003) 16 *Harvard Hum Rts J* 245, at 246, n. 6, available at <http://www.law.harvard.edu/students/orgs/hrj/current/katzenstein.pdf> (accessed 26 Dec 2003).

163 ‘Timor relives massacre horror’, *Associated Press*, 19 Nov 2003, available at <http://www.cnn.com/2003/WORLD/asiapcf/southeast/11/19/timor.massacres.ap> (accessed 17 Dec 2003). The Commission was inaugurated on 21 January 2002 in a move to heal the rifts in post-conflict Timor Leste. See ‘East Timor launches truth

family members of those who died to speak the truth, acknowledge past horrific brutalities and ensure against their repetition.¹⁶⁴ The Commission will report on its findings, and make recommendations for criminal prosecutions to the President's office, the Parliament, and the UN.¹⁶⁵

B. Indonesia

The Tanjung Priok trials are Indonesia's second major attempt to bring soldiers to account for human rights abuses—the Timor Leste trials being the first.¹⁶⁶ More than 30 Muslim protestors were massacred in Jakarta's Tanjung Priok port area in 1984, which was one of the worst tragedies during former president Suharto's rule. An Indonesian general presently leading the Kopassus special forces, two retired generals, an army captain, and 10 private soldiers have been indicted and are currently on trial.¹⁶⁷ Rights activists have questioned the government's commitment to meting out justice over Tanjung Priok as the then-armed forces commander and Jakarta military chief have not been charged.¹⁶⁸ Defence lawyers have argued that military troops were merely obeying orders.¹⁶⁹

C. Cambodia

In June 2003, Cambodia and the UN signed an agreement to establish a war crimes tribunal to try the Khmer Rouge leaders.¹⁷⁰ This provides

commission', *BBC News*, 21 January 2002, online at <http://www.news.bbc.co.uk> (accessed 26 Dec 2003).

164 *Ibid.* Apart from its truth-seeking function, the Commission also facilitates 'community reconciliation' by mediating between victims and perpetrators of lesser crimes and help them to agree upon a reconciliation act to be done by the perpetrator. See Commission for Reception, Truth and Reconciliation in East Timor website: <http://www.easttimor-reconciliation.org> (accessed 25 Dec 2003).

165 *Ibid.*

166 'Soldiers on trial for 1984 massacre', *Straits Times*, 16 Sept 2003, at A5; 'Lawyers say rights court not empowered to try Indonesian general', *Agence France Presse* (International News Section), 30 Oct 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

167 'Lawyers say rights court not empowered to try Indonesian general', *ibid.*

168 *Ibid.*

169 *Ibid.* The principle of criminal responsibility of subordinates is entrenched in international treaties such as the Rome Statute (Article 33) and the UN Convention against Torture (Article 2(3)). Orders from superiors or government, and the principle of due obedience cannot be invoked to escape criminal responsibility. See 'Amnesty Intl's Comments on the Law on Human Rights Courts (Law No. 26/2000)', 9 February 2001, online at <http://web.amnesty.org/library> (accessed 10 Dec 2003). Law No. 26/2000 establishes the ad hoc Indonesian human rights courts to try human rights abuses related to E Timor in 1999 and Tanjung Priok incident. It appears that the Indonesian legislation does not expressly provide for the abovementioned principle of international law.

170 'Cambodia-UN deal to create genocide trials', *Associated Press*, 7 June 2003, available at <http://www.ajc.com/news/content/news/0603/07cambodia.html> (accessed 8 Dec 2003).

that the majority of the judges will be Cambodians, but at least one foreign judge must support a tribunal decision to¹⁷¹ satisfy the twin aims of protecting Cambodian sovereignty and vindicating international justice standards.¹⁷² Human rights groups and observers have criticised the treaty, and doubt the Cambodian government's commitment to achieve justice.¹⁷³ The Tribunal's restricted jurisdiction, limited to senior leaders and those most responsible for the atrocities as well as to the "worst offences" during a four-year period, has been criticised as allowing low-ranking soldiers committing grave crimes to go scot-free. The counter-argument is that "symbolic justice" strikes the right balance between the somewhat conflicting aims of seeing that justice is done and national interests of peace and stability.¹⁷⁴ While not entirely satisfactory, the agreement represents a step towards national reconciliation.¹⁷⁵

In December, a UN team carried out a mission in Cambodia to provide technical and practical assistance to local officials in establishing and operating the tribunal.¹⁷⁶ The tribunal is expected to begin work in 2004, despite the political impasse after the inconclusive July elections.¹⁷⁷ The Cambodian-U.N. agreement requires the national legislature's ratification. The U.N. noted the urgency of starting the tribunal process, given the old age of surviving Khmer Rouge leaders.¹⁷⁸ At least 6 of them have been cited for trial.¹⁷⁹ The UN intends to appeal for funds in February 2004 to defray tribunal expenses.¹⁸⁰

VI. HUMAN RIGHTS ISSUES

A. Myanmar

The detention of Aung San Suu Kyi since the violent May 30 clashes between her supporters and opponents and the crackdown on her

171 *Ibid.*

172 *Ibid.*

173 Bill Myers, 'Justice Delayed', *In These Times*, 1 July 2003, online at <http://inthesetimes.com> (accessed 10 Dec 2003); 'Pol Pot's soldiers escape justice for genocide', *The Guardian*, 5 Aug 2003, online at <http://www.guardian.co.uk> (accessed 8 Dec 2003). Critics argue that Cambodia does not have the ability to get enough capable or even honest judges to sit on the tribunal; further, two prominent Cambodian judges were assassinated earlier this year.

174 'Pol Pot's soldiers escape justice for genocide', *ibid.*

175 Myers, *supra* n. 173.

176 'Cambodia: UN team to help set up war crimes court for Khmer Rouge leaders', *UN News*, 5 Dec 2003, online at <http://www.un.org/News/> (accessed 8 Dec 2003).

177 'UN says expects Cambodian Khmer Rouge tribunal to begin next year', *Agence France-Presse* (International News Section), 7 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

178 *Ibid.*

179 *Ibid.*

180 *Ibid.*

National League for Democracy (NLD) party continued to draw international condemnation. Though the junta claims Suu Kyi is placed under temporary “protective custody”, it has not indicated a specific time frame for her release.¹⁸¹ The US, Japan and the EU responded by exerting economic pressure on Myanmar for democratic change.¹⁸² The efficacy of imposing sanctions has however proved to be rather questionable.¹⁸³ Having departed from its policy of non-interference when ASEAN issued a statement calling for Suu Kyi’s release and resumption of political dialogue in June 2003, Malaysia, Indonesia and the Philippines¹⁸⁴ continued to urge Myanmar to release Suu Kyi before the October 2003 ASEAN summit, as this detention posed an embarrassment to ASEAN.¹⁸⁵ Then-Malaysian PM Mahathir

181 ‘Junta launches attack on Suu Kyi’, *Straits Times*, 6 July 2003, at A24. The junta verbally attacked Suu Kyi in the local press, accusing her of instigating the May 30 violence and blaming her for the collapse of the reconciliation talks, thus indicating that she is unlikely to be released any time soon. See also ‘Yangon junta blasts Suu Kyi’, *Straits Times*, 8 July 2003, at A6.

182 ‘US approves Burma sanctions’, *BBC News*, 16 July 2003, online at <http://www.news.bbc.co.uk> (accessed 29 Nov 2003); ‘US to use economic pressure on Yangon’, *Straits Times*, 13 July 2003, at 24; ‘Tokyo rejects Yangon’s envoy aid appeal’, *Straits Times*, 5 July 2003, at A14; Lee Kim Chew, ‘Myanmar on the boil’, *Straits Times* (Commentary/Analysis Section), 6 July 2003, at 34. The US sanctions include an import ban, asset freeze, ban on remittances to Myanmar, and blockage of Myanmar’s applications for soft loans from the IMF and World Bank. Japan, a major aid donor, has cut any new aid to Myanmar until Suu Kyi is released. The EU has expanded its embargo on Myanmar, and is being pressed by British PM Blair to tighten sanctions.

183 While the sanctions have somewhat dampened Myanmar’s already weak economy, the government has managed to reduce the impact by making policy changes, for example, turning to border trade with Thailand, China, India and Bangladesh. Traders have also adapted by, for example, using the euro to conduct foreign transactions. The ones hit hardest by sanctions appear to be the local citizens rather than the junta. See ‘Mixed feelings over Burma sanctions’, *BBC News*, 16 July 2003, online at <http://www.news.bbc.co.uk> (accessed 29 Nov 2003); Matthew Continetti, ‘The Burma Three’, *The Weekly Standard*, 18 July 2003, online at <http://www.theweeklystandard.com> (accessed 30 July 2003); Jeffrey Sachs, ‘Hit despots with “smart sanctions”’, *Straits Times* (Commentary/Analysis Section), 2 Aug 2003, at 24; Sunanda K Datta-Ray, ‘US sanctions against Myanmar won’t work’, *Straits Times* (Commentary/Analysis Section), 5 Aug 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003); ‘Myanmar textile trade hit by new US sanctions’, *Straits Times*, 30 Aug 2003, at A18. ‘Myanmar finds ways around US sanctions’, *Straits Times*, 22 Sept 2003, at A7; ‘Myanmar unmoved by US sanctions’, *Straits Times*, 8 Nov 2003, at A18; ‘US defends Myanmar sanctions despite sex trade implications’, *Agence France Presse* (International News Section), 30 Oct 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003); ‘Burma is winning more tourists’, *BBC News*, 11 Dec 2003, online at <http://www.news.bbc.co.uk> (accessed 15 Dec 2003). The Myanmar junta has slammed the sanctions as “unjust” and “contrary to the UN Charter”: ‘Sanctions unjust, says Myanmar’, *Straits Times*, 18 Aug 2003, at A6.

184 They are reportedly spearheading the ASEAN pressure on Myanmar. ‘Myanmar issue may be referred to UN Security Council for resolution’, *Agence France Presse* (International News Section), 22 July 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

185 ‘Jakarta urges Yangon to free Suu Kyi before ASEAN summit’, *Straits Times*, 9 Sept 2003, at A4; ‘Indonesian envoy Alatas holds talks with Myanmar leader’,

cautioned that a refusal to free Suu Kyi might eventuate in the expulsion of Myanmar from ASEAN as a last resort.¹⁸⁶ Asia and Europe also issued an unprecedented joint demand for Suu Kyi's immediate release.¹⁸⁷ The U.N. Secretary General indicated the possibility of referring the Myanmar issue to the Security Council unless the junta released Suu Kyi soon.¹⁸⁸ Thailand however preferred a "soft" and more accommodative approach,¹⁸⁹ proposing to Myanmar a "roadmap" to democracy and national reconciliation.¹⁹⁰ Further, Thailand threatened to deport Myanmar political exiles should they carry out political activities critical of the junta, forcing Myanmar exiles to relocate to refugee camps along the border to exercise greater control over them.¹⁹¹ ASEAN leaders appeared to revert to their policy of non-interference and constructive engagement at the ASEAN summit. They did not censure Myanmar, expressing instead their support for the roadmap to democracy as announced by the Myanmar government, and opposing the imposition of sanctions.¹⁹²

In August 2003, the junta's influential General Khin Nyut was ousted from Myanmar's third most powerful post to the largely ceremonial Prime Minister position.¹⁹³ This was viewed as representing a shift to more hardline regime elements.¹⁹⁴ Thailand however felt that the reshuffle demonstrated the gradual 'internationalisation' of

Agence France Presse (International News Section), 23 Sept 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

186 'ASEAN must give Myanmar more time to "prove themselves": Thai PM', *Agence France Presse* (International News Section), 21 July 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

187 'Asia and Europe criticise Myanmar, N. Korean Nukes', *Reuters*, 24 July 2003, available at <http://www.chinapost.com.tw> (accessed 17 Dec 2003).

188 'Myanmar issue may be referred to UN Security Council for resolution', *supra* n. 184.

189 However, Thai-Myanmar ties appeared to be somewhat strained by the verbal war over the junta's failure to wipe out the drug trade, which includes the supply of huge amounts of methamphetamines to Thailand and thus causing a serious addiction crisis there. 'Thai-Myanmar war of words over drugs', *Straits Times*, 23 Aug 2003, at A17.

190 'ASEAN must give Myanmar more time to "prove themselves": Thai PM', *supra* n. 186; 'Thailand stands by Yangon', *Asia Times*, 26 July 2003, online at <http://www.atimes.com> (accessed 8 Dec 2003); 'Thai-Myanmar: Twists in the roadmap', *Asia Times*, 5 Aug 2003, online at <http://www.atimes.com> (accessed 8 Dec 2003).

191 'Burmese exiles face Thai clampdown', *Financial Times* (US Edition), 3 July 2003, online at <http://www.lexis.com> (accessed 7 Dec 2003); 'Thailand stands by Yangon', *supra* n. 190. The U.S. and human rights groups have heavily criticised the Thai suppression of Myanmar pro-democracy activists. See Marcus Gee, 'Myanmar: A pariah should be treated like one', *The Globe and Mail*, 7 Aug 2003, online at <http://www.globeandmail.com> (accessed 17 Dec 2003).

192 'ASEAN leaders fail to censure Burma on human rights record', *Voice of America News*, 8 Oct 2003, online at <http://www.voanews.com> (accessed 8 Dec 2003); 'Support for Myanmar', *Straits Times*, 8 Oct 2003, at A6.

193 'Myanmar junta's no. 3 demoted to PM', *Straits Times*, 26 Aug 2003, at A4.

194 *Ibid.*

Myanmar, thus possibly enabling it to deal with the global community better.¹⁹⁵ Following this political move, Myanmar announced its democracy “roadmap”, and promised fresh negotiations with NLD on a new Constitution and free and fair elections.¹⁹⁶ Critics argue that the roadmap was merely a time-stalling ploy to deflect international pressure, there being no sincere commitment to resume talks with Suu Kyi as she was only mentioned in the announcement when the NLD was being criticised.¹⁹⁷ Shortly after Myanmar’s announcement, the US claimed Suu Kyi was on hunger strike, sparking a fresh international outcry.¹⁹⁸ The junta denied the US claim and slammed it as an “attempt to overshadow recent political developments in Myanmar”.¹⁹⁹ The International Committee of the Red Cross (ICRC), after visiting Suu Kyi, confirmed the junta’s statement that she was physically well and not on hunger strike.²⁰⁰

U.N. human rights envoy Paulo Sergio Pinheiro began a mission to Myanmar in November, though Myanmar pressure groups were skeptical about the prospects of success.²⁰¹ During Pinheiro’s visit with Suu Kyi, the latter indicated she would refuse the junta’s offer of freedom until everyone detained since May 30 was released.²⁰² She also demanded an inquiry into the May 30 violence, but expressed

195 ‘Thaksin hails Yangon for junta shake-up’, *Straits Times*, 27 Aug 2003, at A7.

196 ‘Myanmar’s “road map to democracy”’, *Straits Times*, 31 Aug 2003, at 20.

197 *Ibid.*; ‘Is Rangoon’s road map a path to democracy’, *Washington Post*, 29 Nov 2003, online at <http://www.washtimes.com> (accessed 8 Dec 2003); Robert H Taylor, ‘Will Yangon’s road map lead to reconciliation?’, *Straits Times* (Commentary/Analysis Section), 21 Oct 2003, at 16; ‘Myanmar’s seven-step peace process not inclusive, lacks timeline—Annan’, *UN News*, 10 Nov 2003, online at <http://www.un.org/News/> (accessed 8 Dec 2003). However, the Free Burma Coalition, a US-based dissident group, has tentatively welcomed the junta’s democracy “roadmap” as a “first step in the right direction”. See ‘Dissident group cautiously welcomes Myanmar “roadmap”’, *Agence France Presse* (International News Section), 10 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

198 ‘US claims Suu Kyi on hunger strike’, *Straits Times*, 2 Sept 2003, at 3.

199 *Ibid.*; ‘Myanmar’s junta denied US claim over Suu Kyi hunger strike’, *Agence France Presse* (International News Section), 1 Sept 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

200 ‘Myanmar’s Aung San Suu Kyi not on hunger strike: ICRC’, *Agence France Presse* (International News Section), 6 Sept 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003). The objective of the US claim may have been to help independent observers gain access to Suu Kyi to assess her physical well-being amid concerns over her health. The US pressure was argued to have directly resulted in the granting of ICRC access. See ‘US claims Suu Kyi on hunger strike’, *supra* n. 198.

201 ‘UN rights envoy begins difficult mission to Myanmar’, *Agence France Presse* (International News Section), 2 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

202 ‘Myanmar’s Suu Kyi refuses freedom, but political progress a priority’, *Agence France Presse* (International News Section), 9 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

her commitment to resuming political dialogue.²⁰³ Pinheiro noted Myanmar's rights situation had worsened since his last visit, and urged Asian countries, especially China and ASEAN, to press the junta to effect positive changes.²⁰⁴ Pinheiro concluded his Myanmar mission with a call for amnesty for all political prisoners, and lifting of official restrictions on political expression.²⁰⁵ Myanmar responded by releasing 58 elderly and female prisoners on humanitarian grounds,²⁰⁶ and subsequently 5 top elderly NLD leaders and 20 NLD members.²⁰⁷ The junta promised to release more prisoners in Myanmar's move to democracy.²⁰⁸

The UN Secretary General's report to the General Assembly on Myanmar's human rights urged the junta to engage in meaningful dialogue with NLD, and representatives of political parties and ethnic minorities, stating the roadmap process must involve all societal stakeholders.²⁰⁹ Despite the apparent political impasse with Suu Kyi, Myanmar apparently has embarked on introducing democratic reforms by 2006, albeit slowly and reluctantly.²¹⁰ During a landmark international conference, Myanmar unveiled its plans to hold a national convention and draft a constitution in 2004.²¹¹ Representatives from eight groups including political parties, minority groups

203 *Ibid.* Pinheiro forwarded the request to the junta and offered to conduct the inquiry, but the junta did not respond. 'UN envoy warns on Burma rights', *BBC News*, 10 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003).

204 'Myanmar's human rights situation has regressed: UN expert', *UN News*, 12 Nov 2003, online at <http://www.un.org/News/> (accessed 8 Dec 2003); 'UN's Myanmar rights envoy says Asian nations should press junta', *Agence France Presse* (International News Section), 12 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

205 'UN special rapporteur on human rights in Myanmar ends visit', *UN News*, 11 Nov 2003, <http://www.un.org/News/> (accessed 8 Dec 2003).

206 'Myanmar releases 58 elderly and female prisoners', *Agence France Presse* (International News Section), 18 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

207 'Burma frees opposition leaders', *BBC News*, 24 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003); 'Myanmar frees 20 opposition party members', *Straits Times*, 5 Dec 2003, at A15.

208 'Supporters of Suu Kyi mark National Day', *Straits Times*, 19 Nov 2003, at A7.

209 'Annan urges Myanmar dialogue', *Associated Press*, 10 Nov 2003, available at <http://www.edition.cnn.com> (accessed 17 Dec 2003).

210 'Myanmar reforms in the offing despite apparent impasse: analysts', *Agence France Presse* (International News Section), 3 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003); 'Dissident group cautiously welcomes Myanmar roadmap', *supra* n. 197. ASEAN is anxious that Myanmar's political situation will have some positive democratic changes when Myanmar assumes the revolving ASEAN presidency in 2006. UN Secretary-General Kofi Annan has also indicated 2006 as a deadline for reforms. See also 'Suu Kyi's party to help draft new constitution in 2004: Myanmar', *Agence France Presse* (International News Section), 15 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

211 'Suu Kyi's party to help draft new constitution in 2004: Myanmar', *ibid.* The conference, dubbed as the "Bangkok Process", was attended by representatives from Australia, Austria, Germany, France, India, Indonesia, Italy, Japan and Singapore. Thailand's decision to host the conference signals ASEAN's growing concern over

and the NLD were slated to participate, allaying concerns that participation in this convention would be unrepresentative.²¹² Myanmar also stated Prime Minister Khin Nyut and Suu Kyi were currently involved in a “confidence-building process”.²¹³

B. Vietnam

Amnesty International has charged Vietnam with misusing national security legislation to silence “cyber-dissidents” and stifle political expression on the Internet.²¹⁴ Vietnam is said to have arrested at least 10 people using the Internet to criticise government policies and express dissent since 2001.²¹⁵ Long prison sentences have been meted out to six of these cyber-dissidents.²¹⁶ While human rights groups welcomed the reduction of three cyber-dissidents’ prison sentences, they criticised Vietnam’s decision as a “cynical” move to conceal other human rights violations and deflect international pressure.²¹⁷ The sentence reductions came two days after the EU in annual EU-Vietnam human rights talks demanded “concrete steps and improvements on the ground”.²¹⁸

Vietnam’s renewed and intensified repression of the outlawed Unified Buddhist Church of Vietnam (UBCV) has attracted international concern. In October 2003, six senior UBCV monks were placed under house arrest for allegedly violating national security laws.²¹⁹ Following this spate of crackdowns, New Zealand Prime Minister Clark stated she would continue to pressure Vietnam to improve

Myanmar’s political stalemate, despite the grouping’s characteristic policy of constructive engagement. See ‘Thailand says Myanmar entering democracy talks with open mind’, *Agence France Presse* (International News Section), 15 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

212 *Ibid.* An earlier convention was charged by the NLD as unrepresentative, and collapsed in 1995 when the NLD withdrew from the process.

213 *Ibid.*

214 ‘Amnesty accuses Vietnam of silencing online dissident’, *Agence France Presse*, 26 Nov 2003, available at <http://sg.news.yahoo.com> (accessed 17 Dec 2003); ‘Vietnam internet policy criticised’, *BBC News*, 26 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003).

215 *Ibid.*

216 *Ibid.*

217 ‘Rights groups slam Vietnam dissident sentence cuts as cynical tactics’, *Agence France Presse* (International News Section), 28 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

218 ‘Vietnam dissidents win freedom’, *BBC News*, 28 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003).

219 ‘EU-Vietnam to hold human rights talks amid Buddhist crackdown’, *Agence France Presse* (International News Section), 25 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003); ‘Vietnam lashes out at rights resolution in US Congress’, *Agence France Presse* (International News Section), 6 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

human rights.²²⁰ The US House of Representatives and the European Parliament each passed a resolution, criticising Vietnam's actions and calling for greater religious freedom.²²¹ Vietnam furiously rejected both resolutions for allegedly distorting Vietnam's religious situation and as interference in its internal affairs.²²²

Despite these human rights concerns, Vietnam's aid donors have failed to heed Human Rights Watch's appeal to link aid programmes to human rights improvements.²²³

C. Thailand

The Thai government's massive cleanup of Bangkok in preparation for the Asia-Pacific Economic Cooperation (APEC) forum has been criticised as undermining human rights. 10,000 homeless people were forcibly relocated to army camps. About 600 Cambodian beggars—mostly women and children—were deported back home, and faced arrest if they attempted to return to Thailand.²²⁴ To deflect criticisms, Prime Minister Thaksin revealed plans to provide the homeless with skill training and psychological help.²²⁵ The National Human Rights Commission stated it would monitor the government's scheme to ensure homeless people were not de-humanised in the process.²²⁶ Poverty activists noted the week-long prohibition on street vendors from entering the central city caused immense economic hardship.²²⁷ More than 500 human rights activists were banned from entering Thailand and from holding demonstrations during the APEC forum, though the government backed down and allowed approved peaceful

220 'Vietnam pushed on rights issue', *Straits Times*, 18 Oct 2003, at A15.

221 'EU-Vietnam to hold human rights talks amid Buddhist crackdown', *supra* n. 219. Earlier in July 2003, the US House of Representatives passed the Vietnam Human Rights Amendment to address Vietnam's rights situation. See US-Vietnam Trade Council—Human Rights and Religious Freedom website: http://www.usvtc.org/HR_Religion/HR_and_Religion.htm (accessed 17 Dec 2003).

222 'US and EU resolutions on VN's religious situation rejected', *VN Agency*, 25 Nov 2003, online at <http://www.vnagency.com.vn/> (accessed 17 Dec 2003).

223 'Human rights concerns fail to discourage Vietnam's aid donors', *Agence France Presse* (International News Section), 7 Dec 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003). The US State Dept has also to date declined to recommend that President Bush designate Vietnam as a "country of particular concern". 'Vietnam lashes out at rights resolution in US Congress', *supra* n. 219.

224 'Bangkok evicts poor before economic summit', *Washington Post*, 20 Oct 2003, online at <http://www.lexis.com> (accessed 8 Dec 2003) 'Bangkok readies for economic summit', *The Boston Globe*, 19 Oct 2003, online at <http://www.lexis.com> (accessed 8 Dec 2003).

225 'Thaksin unveils plan to train homeless', *Straits Times*, 22 Sept 2003, online at <http://www.lexis.com> (accessed 8 Dec 2003).

226 *Ibid.*

227 'Bangkok evicts poor before economic summit', *supra* n. 224.

protests.²²⁸ Thaksin's tough measures, justified on security grounds, were perceived by some as a prelude to an extensive onslaught on Thailand's active civic groups.²²⁹

D. Cambodia

The July 2003 Cambodian elections were hailed as "free and fair" by independent poll observers.²³⁰ However, Human Rights Watch reported cases of vote-buying to elicit support for political parties.²³¹ Intimidatory threats of violence, expulsion from villages and denial of access to community resources were employed mainly by officials affiliated with Hun Sen's Cambodian People's Party (CPP).²³² There were also allegations of political killings.²³³

An approved draft U.N. resolution urged Cambodia to accelerate legal and judicial reforms, police and military reforms, and implementation of its demobilisation programme.²³⁴ Further, the government was asked to increase efforts to investigate and prosecute, within due process limits and human rights standards, perpetrators of serious crimes including human rights abuses.²³⁵ The draft also noted with "grave concern" continued human rights violations, such as torture, pre-trial detention, and political killings. Cambodia was urged to take all measures to prevent such violations, including establishing an inquiry board on the issue of mob killings.²³⁶

E. Malaysia

Malaysia's fundamentalist Islamic opposition party, Parti Islam SeMalaysia (PAS), has recently come under fire for its discriminatory

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Marwaan Macan-Markar, 'Politics-Cambodia: Election gets the approval of observers', *Inter-Press Service*, 29 July 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

²³¹ *Ibid.*; 'Don't Bite the Hand that Feeds You: Coercion, Threats and Vote-Buying in Cambodia's National Elections', Human Rights Watch, July 2003, at 2-3, online at Human Rights Watch website: <http://www.hrw.org> (accessed 17 Dec 2003) [hereinafter HRW Cambodia Elections Briefing Paper].

²³² HRW Cambodia Elections Briefing Paper, *ibid.*

²³³ These arose from the killing of a radio journalist identified closely with the royalist Fucinpec party, a murder attempt on pop singer well-known for her rendition of the royalist party song, and the murder of an opposition activist's teenage daughter. See 'Cambodia talks make progress', *BBC News*, 5 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 4 Dec 2003); 'Cambodia: Arrest Murderer of Political Activist's Daughter', Human Rights Watch, 20 Aug 2003, online at Human Rights Watch website: <http://www.hrw.org> (accessed 21 Dec 2003).

²³⁴ 'Concluding Current Session, Third Committee Approves Draft Resolutions on Cambodia, Myanmar and the Republic of Congo', Press Release GA/SHC/3775, 1 Dec 2003, online at <http://www.un.org/News/> (accessed 17 Dec 2003).

²³⁵ *Ibid.*

²³⁶ *Ibid.*

and hardline policies.²³⁷ A roadshow planned by the Kelantan state government to instruct Muslim women to dress in “proper Muslim attire” was criticised by the Women and Family Development Minister and Malaysian women groups as a waste of money.²³⁸ Critics argued funds would be better utilized to improve education, create employment opportunities for women, or combat domestic violence. The Women’s Aid Organisation stated the roadshow would unnecessarily pressure women who should have the freedom to choose how to dress.²³⁹ The PAS also banned all advertisements with women in Kelantan.²⁴⁰ The state opposition Umno party described this prohibition as “rubbish”, and questioned if the Kelantan government intended to transform the state into a Taleban-like regime.²⁴¹ PAS revealed a blueprint for a Malaysian Islamic state, which stipulates strict Shariah laws including penalties like amputation and stoning and precluding non-Muslims from serving as premier.²⁴² This announcement attracted criticism from religious groups and professionals. They argued that the blueprint undermined religious freedom and democracy and would cause gender discrimination, particularly against non-Muslim women.²⁴³ Mahathir Mohamad accused the PAS blueprint as a mere ploy to deceive voters, and assured non-Muslims the ruling coalition Barisan Nasional (BN) would not sideline them.²⁴⁴

Prime Minister Abdullah Ahmad Badawi, who succeeded Mahathir in October 2003, has indicated his commitment to strengthening democracy and respecting the separation of powers.²⁴⁵ It remains to be seen what measures the Badawi administration may adopt which will allow a human rights culture to take root in Malaysia.²⁴⁶ Opposition parties have urged PM Abdullah to carry out judicial, police

237 ‘PAS to field female election candidates’, *Straits Times*, 16 Aug 2003, at A5.

238 ‘PAS state govt’s ‘how to dress’ roadshow draws women’s scorn’, *Straits Times*, 28 Oct 2003, at A5.

239 *Ibid.*

240 ‘First: No women in unIslamic dress. Soon: No women at all in Kelantan ads’, *Straits Times*, 24 Sept 2003, at A1.

241 *Ibid.*

242 ‘Commission rules out Dec polls’, *Straits Times*, 17 Nov 2003, at A10. PAS intends to introduce Islamic law in the states it controls, namely Trengganu and Kelantan. See *supra* n. 240.

243 ‘Other faiths oppose PAS blueprint for Islamic state’, *Straits Times*, 15 Nov 2003, at A29.

244 *Supra* n. 238. ‘No race will be sidelined, says Mahathir’, *Straits Times*, 24 Aug 2003, at 21.

245 ‘Malaysia’s new PM has signalled his support for a more open and tolerant style of government’, *BBC News*, 3 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003).

246 *Ibid.*

and media law reforms,²⁴⁷ and to re-try incarcerated former deputy premier Anwar Ibrahim, who claimed he was a victim of political conspiracy.²⁴⁸ Human Rights Watch has also urged Abdullah to prove his commitment to democracy and human rights by allowing convicted activist Irene Fernandez to travel abroad.²⁴⁹ Fernandez's conviction for false claims about abuses at an immigration camp was condemned as undermining free speech and human rights generally.²⁵⁰

F. Timor Leste

Timor-Leste became the 177th and newest member of the International Labour Organization (ILO), on 19 August 2003.²⁵¹ The ILO has been providing Timor-Leste with technical support and training in areas such as labour market information systems, entrepreneurship, vocational skills development and labour administration. The ILO also provided support in the development of the country's labour code and the establishment of its labour relations system.²⁵²

VII. TRADE

The proliferation of bilateral Free Trade Agreements (FTAs) are less severely criticised than before as undermining the implementation of ASEAN Free Trade Area (AFTA) and opening a back door to allow non-ASEAN goods to enter ASEAN region, to the unfair advantage of the countries which have concluded bilateral FTAs with non-ASEAN countries.²⁵³ This may be accounted for by the gains made by ASEAN with the EU, China, Japan and India during this period, which to some extent supports the argument that bilateral FTAs could catalyse regional trade pacts.²⁵⁴ In fact, the new "2+X" principle proposed

247 'Malaysian PM urged to reform', *BBC News*, 2 Nov 2003, online at <http://www.news.bbc.co.uk> (accessed 8 Dec 2003).

248 'Opposition presses Abdullah to re-try Anwar', *Straits Times*, 15 Nov 2003, at A32.

249 'Malaysia's new PM faces freedoms test, rights group say', *Agence France Presse* (International News Section), 6 Nov 2003, online at <http://www.lexis.com> (accessed 17 Dec 2003).

250 'Rights activist jailed for false claims about abuses', *Straits Times*, 17 Oct 2003, at A5. See also Nisha Varia, 'Human Rights: Abdullah's greatest challenge', *South China Morning Post*, 8 Nov 2003, available at Human Rights Watch website: <http://www.hrw.org> (accessed 19 Dec 2003).

251 ILO Regional Office for Asia and the Pacific, "ILO welcomes Timor-Leste, Vanuatu into the fold", 6 Oct 2003, available online at <http://www.ilo.org/public/english/region/asro/bangkok/newsroom/pr0318.htm> (accessed 9 Dec 2003).

252 *Ibid.*

253 Amin *et al.*, *supra* n. 106, at 16.

254 'Singapore's Free Trade Pact Project', *Straits Times*, 1 Nov 2003 at H16. For instance, Singapore already has an FTA in force with EU and Japan, has concluded her sixth round of talks with India, and recently indicated her interest to negotiate one with China.

by Thailand and Singapore seemed to have gained acceptance,²⁵⁵ allowing any two or more ASEAN countries that are ready to open specific sectors of their economies to each other to press ahead and act as pioneers, rather than being held back by the slowest ASEAN member.²⁵⁶ The revival of interest in ASEAN as a regional body to facilitate trade may also be the result of the failure of World Trade Organization (WTO) talks in Cancun and frustration experienced at APEC where security issues diverted attention away from trade.²⁵⁷

A. *Asia-Pacific Economic Co-operation (APEC) Summit*

Seven of the 10 ASEAN countries are APEC members²⁵⁸ and participated in the two-day APEC Bali summit in October 2003. Consonant with APEC's goal to "enhance economic growth and prosperity",²⁵⁹ the meeting attempted to maintain its focus on trade issues, particularly on ways of restarting WTO talks that failed the month before in Cancun;²⁶⁰ security issues featured in the APEC agenda only to the extent where they were perceived to threaten economic development. Thus, the 21 leaders tackled the issue of terrorism and the need to contain the proliferation of weapons of mass destruction,²⁶¹ whilst ignoring the issue of curbing North Korea's nuclear ambitions raised by US President Bush as being a distraction.²⁶² Still, APEC was criticized by the business community as being "out of touch" and not doing enough to address the gap between rich and poor nations, which was the crux of Cancun's failure.²⁶³ The politicians however stressed that the pre-condition for trade is security.²⁶⁴

255 On this basis an agreement reached between five ASEAN countries (Singapore, Thailand, Philippines, Brunei and Vietnam) and India to liberalize their air cargo sectors as soon as possible: 'ASEAN now geared to act', *Straits Times*, 9 Oct 2003 at 3.

256 'ASEAN "slow waltz" needs to speed up', *Straits Times*, 7 Oct 2003 at 1; 'ASEAN now geared to act', *Straits Times*, 9 Oct 2003 at 3; 'Singapore no stranger to the free-trade tango', *Straits Times*, 10 Oct 2003 at A1.

257 'It's security, stupid', *The Economist*, 20 Oct 2003; 'APEC wants trade talks to get going', *Straits Times*, 21 Oct 2003 at 1.

258 Leaving out Myanmar, Laos and Cambodia.

259 'About APEC: Purpose and Goals' available at http://www.apecsec.org.sg/content/apec/about_apec.html

260 'Bush pushes North Korea issue at APEC', *Associated Press*, 20 Oct 2003, at <http://www.msnbc.com/news/981572.asp>

261 APEC 2003 Leaders' Declaration: Bangkok Declaration on Partnership for the Future, 21 Oct 2003 (hereinafter 'APEC Declaration'), para 2 Enhancing Human Security, full text available at http://www.apecsec.org.sg/content/apec/leaders_declarations/2003.html (assessed 12 Dec 2003).

262 'Bush pushes North Korea issue at APEC', *Associated Press*, 20 Oct 2003, at <http://www.msnbc.com/news/981572.asp> (assessed 12 Dec 2003).

263 'APEC out of touch, say businessman', *Straits Times*, 22 Oct 2003 at A2.

264 'Security or Trade? A new world order for grouping', *Straits Times*, 22 Oct 2003 at A2.

The final declaration called for the revival of stalled WTO talks in a manner consistent with WTO principles to advance free and open trade, WTO membership for Russia and Vietnam, better co-ordination in the fight against terrorism and the empowerment and integration of people and societies into the global economy so that they may benefit from it.²⁶⁵

B. ASEAN Developments

(i) Declaration of ASEAN Concord II (Bali Concord II)

ASEAN met with leaders of China, Japan, Korea and India and made a joint declaration on 8 Oct 2003 in Bali²⁶⁶ providing for, *inter alia*, the establishment of the ASEAN Economic Community with ASEAN as a single market and production base, accomplished by instituting new mechanism and measures to strengthen implementation of existing economic initiatives like ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS) and ASEAN Investment Area (AIA).²⁶⁷

China signed the Treaty of Amity and Co-operation in Southeast Asia (TAC)²⁶⁸ and the Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China, with the view of the eventual conclusion of an ASEAN-China Free Trade Agreement (FTA)²⁶⁹ by 2010.²⁷⁰ The Protocol provides specific benefits for ASEAN countries pending the adoption of the actual tariff-reduction agreement for the FTA, thus allowing ASEAN countries to reap benefits to be had under the FTA even before the agreement is finalized.²⁷¹

ASEAN-India relations has also taken a positive step forward with India signing the TAC, the key code of conduct governing relations between states,²⁷² at the end of the summit.²⁷³ Both parties look forward to the setting up a free-trade zone by 2015²⁷⁴ with the India-Singapore bilateral FTA as a template to catalyze the ASEAN-India FTA process.²⁷⁵

265 APEC Declaration, *supra* n. 278.

266 Declaration of ASEAN Concord II (hereinafter 'Bali Concord II'), full-text available at <http://www.aseansec.org/15160.htm> (accessed 12 Dec 2003).

267 Section B, para 3, Bali Concord II, *ibid*.

268 Para. 6, Press Statement of the Bali Concord II (hereinafter 'Press Statement'), available at <http://www.aseansec.org/15287.htm> (accessed 12 Dec 2003).

269 Para. 11, Press Statement, *supra* n. 285.

270 'ASEAN inks key pacts with Asian giants', *Straits Times*, 9 Oct 2003 at A5.

271 'ASEAN, China kick-start FTA by trimming tariffs', *Straits Times*, 7 Oct 2003 at A4.

272 Para. 5, Bali Concord II, *supra* n. 283.

273 Para. 22, Press Statement, *supra* n. 282.

274 'ASEAN inks key pacts with Asian giants', *Straits Times*, 9 Oct 2003 at A5.

275 'ASEAN and India to sign pact on free trade talks', *Straits Times*, 3 Oct 2003 at A16.

The Declaration also endorsed an expansion of existing ASEAN Dispute Settlement Mechanism (DSM) to ensure expeditious and legally binding resolution of possible trade disputes,²⁷⁶ as proposed by the High Level Task Force on ASEAN Economic Integration.²⁷⁷ Key features include: firstly, the establishment of the ASEAN Consultation to solve Trade and Investment Issues (ACT), modeled upon the EU SOLVIT mechanism²⁷⁸ which allows private business entities access to the appropriate government agencies with a guaranteed reply in 30 days;²⁷⁹ secondly, enhancing existing ASEAN DSM by modeling it against the WTO DSM to de-politicize disputes and ensure a legally binding outcome.²⁸⁰

(ii) *ASEAN-Japan FTA*

What began for ASEAN-Japan relations in Bali will be sealed in the ASEAN-Japan Commemorative Summit held in Tokyo from 11–12 December 2003, where Japan is expected to sign the TAC²⁸¹ as well as issue a joint declaration pledging Japan's continued commitment to ASEAN and an action plan on measures to deepen their relationship,²⁸² with an eye to concluding an eventual ASEAN-Japan FTA.²⁸³

(iii) *ASEAN-EU FTA*

The European Union (EU) also expressed interest in negotiating a FTA with ASEAN by proposing a regional trade action plan, the Trans-regional EU-ASEAN Trade Initiative (Treati), which if implemented could mature into an FTA.²⁸⁴ The EU External Relations Commission recognized Asia as Europe's third-largest trading partner and the fourth-largest destination for European foreign investment and sees a need to translate that economic reality into stronger political

276 'ASEAN plans tribunal to settle trade rows', *Straits Times*, 14 July 2003 at A7; 'ASEAN sets up panel to settle disputes', *Straits Times*, 7 Oct 2003 at A4; Section B, para 3, Bali Concord II, *supra* n. 280.

277 Full-text of proposal available at <http://www.aseansec.org/hltf.htm> (accessed 21 Dec 2003).

278 Annex 1: Mechanism of Dispute Settlement System, ASEAN Consultation to Solve Trade and Investment Issues (ACT), para (i), *ibid.*

279 *Ibid.*, para (ii) & (iii); 'Business: New agency will help companies to cut through red tape within 30 days', *Straits Times*, 8 Oct 2003 at A7.

280 'ASEAN sets up panel to settle disputes', *Straits Times*, 7 Oct 2003 at A4; Annex 1: Mechanism of Dispute Settlement System, Enhanced ASEAN Dispute Settlement Mechanism, para (i) & (ii), *supra* n. 292.

281 'PM sees Japan gaining from economic links with ASEAN', *Straits Times*, 12 Dec 2003 at 3.

282 *Ibid.*; 'Leaders pledge to boost trade and security ties', *Straits Times*, 12 Dec 2003 at A10.

283 'FTA with ASEAN: Japan must beat China to trade pact', *Straits Times*, 26 July 2003 at A9.

284 'Partnership plan: EU reaches out to SE Asia', *Straits Times*, 9 July 2003 at 11.

ties, and perhaps a formal trade agreement.²⁸⁵ Meanwhile, Singapore has suggested that an EU-Singapore FTA can be negotiated first and function as a stepping stone towards concluding a subsequent ASEAN-EU FTA.²⁸⁶

(iv) *ASEAN-Australia FTA*

Australia would like to inch one step up from its current facilitative Closer Economic partnership with ASEAN deal to an FTA with ASEAN as a whole, in a bid to lower trade tariffs, thereby increasing the exchange of goods and services. At the moment, Australia has an FTA with Singapore and hopes to make similar bilateral arrangements with Thailand as well.²⁸⁷

C. *Bilateral FTAs*

Within ASEAN, Singapore and Thailand are the most ardent pursuers of bilateral FTAs.

FTA talks are ongoing between Singapore and India,²⁸⁸ China,²⁸⁹ Bahrain,²⁹⁰ Jordan²⁹¹ and South Korea,²⁹² whilst recently effected

²⁸⁵ *Ibid.*

²⁸⁶ 'Singapore signals Free Trade Agreement with EU is a priority', *AFP*, available at <http://www.aseansec.org/afp/3p.htm> (accessed 21 Dec 2003).

²⁸⁷ 'Canberra seeks FTA with ASEAN as a whole', *Straits Times*, 29 July 2003 at A5.

²⁸⁸ The sixth round of Singapore-India trade talks wraps up closer to the conclusion of an FTA, with the final agreement in view possibly as early as April 2004. Other than the usual trade in goods and services, this FTA will extend to cover investments, air services, tourism, media and telecommunications. See 'Sixth round of S'pore-India talks ends', *Straits Times*, 1 Dec 2003 at A17.

²⁸⁹ Singapore Prime Minister Goh Chok Tong raised the issue of a bilateral FTA with Chinese Premier Wen Jiabao during his visit to Beijing in Nov. However, Singapore's priority is to work for the early completion of the ASEAN-China FTA which is expected to end in mid-2004 before beginning talks on the bilateral front. See 'PM sees future benefits in close links with China firms', *Straits Times*, 20 Nov 2003 at 3; 'S'pore to focus on winding up of ASEAN-China FTA talks', *Straits Times*, 21 Nov 2003 at A2.

²⁹⁰ During a three-day visit to Singapore by His Highness Shiekh Khalifa bin Salman Al Khalifa, an agreement was struck between Bahrain and Singapore to start negotiating an FTA between the two. An investment guarantee agreement to promote and protect investments from one country to another was signed, and a joint committee to promote economic relations and eliminate double taxation would be revived. See 'S'pore, Bahrain agree to FTA talks', *Straits Times*, 28 Oct 2003 at 5; 'S'pore and Bahrain to ink investment pact', *Straits Times*, 24 Oct 2003 at H6.

²⁹¹ Singapore's proposal for an FTA with Jordan in June this year was accepted at the World Economic Forum East Asia Summit. The proposed pact seeks to be comprehensive in scope, removing trade barriers, promoting trade and includes an investment framework agreement. It will be the first trade pact Jordan has with an Asian state and is expected to be signed by July 2004. See 'Jordan plans to sign FTA with S'pore by next July', *Straits Times*, 14 Oct 2003 at A13.

²⁹² Singapore will embark on a fast track FTA negotiation with South Korea after a joint six-month feasibility study found a free trade deal mutually beneficial. The idea was

FTAs with Japan²⁹³ and Australia²⁹⁴ are examined for the fulfilment of their promised benefits. In addition, the highly publicized US-Singapore FTA was approved by the US House of Representatives and US Senate in July and August 2003 respectively and is expected to take effect in January 2004.²⁹⁵

Thailand on the other hand is enjoying the fruits of its FTA with China²⁹⁶ and expecting to sign another with Australia in early 2004.²⁹⁷

VIII. SOUTH EAST ASIA AND THE ENVIRONMENT

A. ASEAN Agreement on Transboundary Haze Pollution

The ASEAN Agreement on Transboundary Haze Pollution entered into force on 25 November 2003, following the deposit of the sixth instrument of ratification by Thailand with the ASEAN Secretary General on 26 September, 2003.²⁹⁸

first raised in Nov 2000, since then there had been three rounds of informal talks. With the launch of formal talks beginning 2004, both countries look forward to the conclusion of an FTA by the end of 2004 with it coming into force in 2005. The pact is expected to allow greater market access for services and intellectual property. See 'S'pore, S. Korea aim for fast FTA', *Straits Times*, 8 Oct 2003 at A15; 'Gains from an FTA with S. Korea: Services likely to get a big boast', *Straits Times*, 24 Oct 2003 at 1; 'Roh expects free trade pact with Singapore in 2005', *Straits Times*, 23 Oct 2003 at 7.

293 The Japan-Singapore Economic Partnership Agreement (JSEPA) effected on 30 Nov 2002 was appraised to be bringing benefits to businesses in both countries. Enhanced co-operation in future was agreed between the two states, including areas like mutual recognition of professional qualifications, co-operating and sharing or information on securities and securities derivatives markets, and an expedited customs clearance procedure. See 'Singapore's FTA with Japan pays off', *Straits Times*, 28 Nov 2003 at A27; 'First year review of Free Trade Pact: S'pore-Japan tariff-free trade grows despite slowdown', *Straits Times*, 12 Dec 2003 at 11.

294 Singapore-Australia FTA (SAFTA) came into force on 28 July 2003. The pact drops all tariffs on traded goods, opens new markets for service businesses, recognizes law degrees from an additional four Australian universities and will make customs procedures transparent. See 'Singapore's free trade pact with Australia takes effect', *Straits Times*, 29 July 2003 at 1.

295 'US Congress set to pass FTA with Singapore', *Straits Times*, 25 July 2003 at 5.

296 The Thailand-China FTA on agricultural produce came into effect in Oct this year, effectively making Thai exports of fruits and vegetables into China tariff-free. This FTA is the first of its kind concluded between China and an ASEAN country, and is expected to form a template for similar deals with other ASEAN countries next year. See 'Farm produce FTA: Sino-Thai trade pact set to bear fruit', *Straits Times*, 29 Oct 2003 at A3.

297 The FTA is expected to take effect by 2015. Details of the FTA have not been divulged although Thai government spokesman said that tariffs on some 3000 items would be abolished immediately, and more items to be added until an effective free trade area is established by 2015 between the two countries. See 'Thailand and Australia agree on free trade deal', *Straits Times*, 20 Oct 2003 at A2.

298 ASEAN Secretariat, "ASEAN Haze Agreement Enters into Force" (Press Release), 25 Nov 2003, available online at <http://www.aseansec.org/15300-haze.htm> (accessed 6 Dec 2003). Brunei Darussalam, Malaysia, Myanmar, Singapore, and Viet Nam had earlier deposited their instruments of ratification.

The Haze Agreement is one of ASEAN's most significant agreements and a milestone in the regional effort to address transboundary haze pollution. The United Nations Environment Programme (UNEP) has recognized the Agreement as a potential global role model for tackling transboundary issues.²⁹⁹ It is the first regional arrangement binding a group of contiguous states to tackle transboundary haze pollution resulting from land and forest fires.³⁰⁰ The Haze Agreement resulted from the collaborative efforts of the ASEAN Secretariat and the UNEP, and was originally signed by the ten member countries of ASEAN on 10 June 2002 in Kuala Lumpur during the World Conference and Exhibition on Land and Forest Fire Hazards.³⁰¹

Its objective is to prevent and monitor transboundary haze pollution as a result of land and forest fires through concerted national efforts and intensified international cooperation.³⁰² It provides for the establishment of an ASEAN Coordinating Centre for Transboundary Haze Pollution Control to undertake the various activities required under the Agreement.³⁰³ Parties to the Haze Agreement are required to cooperate in developing and implementing measures to prevent and monitor transboundary haze pollution, and control sources of fires by developing early warning systems, exchange information and technology, and provide mutual assistance.³⁰⁴

B. ASEAN Regional Environmentally Sustainable Cities Programme (RESCP)

ASEAN Environment Ministers endorsed the "Regional Environmentally Sustainable Cities Programme" (RESCP) initiative on 4 March 2003 in Siem Reap and set up an ASEAN Working Group to drive this initiative,³⁰⁵ pursuant to a framework for reducing pollution emissions from vehicles and factories and to promote greater environmental

299 ASEAN HazeOnline-News, "UNEP Praises ASEAN Agreement as Role-Model for the World", 28 Nov 2003, at <http://www.haze-online.or.id/news.php/ID=20031201133530> (accessed 10 Dec 2003).

300 Azlan Othman, "Asean haze pact comes into force", 26 Nov 2003, *BruneiDirect.com* at <http://www.brudirect.com/DailyInfo/News/Archive/Nov03/261103/bb01.htm> (accessed 6 Dec 2003).

301 *Ibid.*

302 ASEAN Agreement on Transboundary Haze Pollution, Art. 2. ('Haze Agreement').

303 *Ibid.* Art. 5.

304 *Ibid.* Art. 4. Parties are required to respond promptly to requests for relevant information sought by states affected by transboundary haze pollution, when the transboundary haze pollution originates from within their territories.

305 The National Environment Agency (NEA) Workshop On Environmentally Sustainable Cities In ASEAN (Information Paper), available online at <http://app.nea.gov.sg/cms/htdocs/article.asp?pid=2264> (accessed 10 Dec 2003).

sustainability in member countries. A three-day workshop was conducted in Singapore from 2–4 December 2003.³⁰⁶ The ASEAN +3 countries, China, Japan and South Korea, and international organizations such as United Nations Environment Programme (UNEP), United Nations University (UNU), United National Development Programme (UNDP) and Hanns-Seidel Foundation supported the Workshop.³⁰⁷

ASEAN city managers and government officials have developed a proposed Framework for Environmentally Sustainable Cities in ASEAN. The Framework will initially focus on the brown issues that are the basic building blocks to achieving a quality living environment in any city—Clean Air, Clean Water and Clean Land.³⁰⁸ The AWGESC will seek ASEAN Environment Ministers' endorsement of the proposed Framework at the ASEAN Ministerial Meeting on the Environment (AMME) to be held in Yangon in December 2003.³⁰⁹

IX. PUBLIC HEALTH

A. *The Threat of SARS*

In the aftermath of the SARS (Severe Acute Respiratory Syndrome) crisis in the first-half of 2003,³¹⁰ the countries in the region remain on alert for a possible recurrence of the virus.³¹¹ First recognized as a global threat in mid-March 2003, SARS was successfully contained in less than four months.³¹² In the post-outbreak period, the WHO has called on all countries to remain vigilant for the possible recurrence of SARS and maintain their capacity to detect and respond to the re-emergence of SARS should it occur.³¹³

306 "ASEAN plan to tackle pollution", The *Straits Times*, 12 Dec 2003 at H7.

307 National Environment Agency (NEA) (Information Paper), *ibid.*

308 Framework for Environmentally Sustainable Cities in ASEAN—A Summary, available online at http://www.nea.gov.sg/cms/ccird/env_sustain_asean/annex.pdf

309 "ASEAN plan to tackle pollution", The *Straits Times*, *ibid.*

310 Amin *et al.*, *supra* n. 106, at 27.

311 Jason Szep, "Tropical Singapore Fears a SARS Winter Return", *Reuters*, 12 Dec 2003, available online at <http://www.alertnet.org/thenews/newsdesk/SIN132681.htm> (accessed 12 Dec 2003); also see Narendra Aggarwal, "A Sars attack could take 2 points off GDP next year", The *Straits Times*, 12 Dec 2003 at A46.

312 World Health Organization, "Alert, verification and public health management of SARS in the post-outbreak period", 14 Aug 2003, available online at <http://www.who.int/csr/sars/postoutbreak/en/>. On 5 July 2003, the World Health Organization (WHO) reported that the last human chain of transmission of SARS had been broken.

313 *Ibid.* The WHO has called for risk-assessment, public-health management and international reporting of laboratory-confirmed cases by member states.

B. *The AIDS Epidemic*

(i) *Public Health Threat to South East Asia*

The World Health Organisation (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) have warned that there are increasing warning signals that serious HIV outbreaks will threaten several countries in South East Asia, because "intravenous drug use and sex work are so pervasive in some areas that even countries with currently low infection levels could see epidemics surge suddenly".³¹⁴

(ii) *MOU between Red Cross, Red Crescent and WHO*

On 10 September 2003, the International Federation of Red Cross and Red Crescent Societies formally signed a Memorandum of Understanding with the World Health Organization to step up collaboration on the prevention and control of communicable diseases including HIV/AIDS in eleven countries of South-East Asia.³¹⁵ This memorandum was signed in the presence of Health Ministers from most of the South-East Asian Region countries.³¹⁶

(iii) *South East Asian Countries Co-operate with International Bodies to Fight HIV/AIDS.*

On 1 December 2003, the WHO unveiled its plan to provide antiretroviral treatment (ART) to 3 million people living with HIV/AIDS in developing countries by the end of 2005.³¹⁷ Through this initiative, the WHO will collaborate with countries in the region to reach 400,000 affected individuals with ART.³¹⁸

The Thai government has set the ambitious goal of supplying modern, anti-retroviral (ARV) medicines to everyone who needs them within the next two years.³¹⁹ The overall aim of this WHO initiative is to remove the "death sentence" from HIV infection and AIDS. With

314 "AIDS epidemic spreading in China, India and Indonesia" *The Straits Times*, 26 Nov 2003 at A4.

315 "Red Cross, Red Crescent and WHO step up cooperation in South and South-East Asia in response to health emergencies and HIV/AIDS", *World Health Organization SEARO Press Release*, 10 Sept 2003, available online at http://w3.whosea.org/prsrles/press_release7.htm (accessed 10 Dec 2003).

316 *Ibid.*

317 "A new initiative to treat three million AIDS patients in developing countries, by the end of 2005", *World Health Organization SEARO SEA/PR/163*, 1 Dec 2003, available online at <http://w3.whosea.org/prsrles/index.htm> (accessed 10 Dec 2003).

318 *Ibid.* This number is estimated to be half the number of those who need the drugs by 2005.

319 "Thailand's AIDS struggle", *The Straits Times*, 29 Nov 2003 at A23.

antiretroviral drugs, HIV/AIDS is reduced to a treatable and manageable chronic disease, like other diseases, and HIV infected persons can continue to lead productive, useful lives.³²⁰

In a similar vein, the Cambodian government and the International Labour Organization (ILO) have signed a memorandum of understanding to improve implementation of the Cambodian HIV/AIDS Law, as well as the Ministry's Strategic Plan on HIV/AIDS, in accordance with the internationally-recognized ILO Code of Practice on HIV/AIDS and the World of Work.³²¹

X. CONCLUSION

These latest developments reaffirm the need for concerted, determined action by South East Asian states, at the regional and domestic level, to address challenges common to ASEAN. The regional grouping has seen some successes in recent initiatives relating to cooperation over terrorism, trade and the environment. In contrast, conflicts over self-determination and issues relating to human rights generally remain excluded from any collective regional agenda. The question remains whether such divisions can be sustained indefinitely in an increasingly interdependent ASEAN regional grouping, and especially in an ASEAN that is increasingly engaged with international institutions and the rest of the world.

320 "A new initiative to treat three million AIDS patients in developing countries, by the end of 2005", *ibid.*

321 ILO Regional Office for Asia and the Pacific, "ILO and Cambodia forge agreement to raise HIV/AIDS awareness in the workplace", 9 Oct 2003, available online at <http://www.ilo.org/public/english/region/asro/bangkok/newsroom/pr0323.htm> (accessed 9 Dec 2003). The ILO Code of Practice covers key areas of prevention, protection of workers' rights, and care and support, calling for policies to counter stigma and discrimination related to HIV/AIDS in the workplace.