



RESOLVING PRESENT LEGAL ISSUES UNDER THE ASEAN CHARTER

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CHAPTER I
OVERVIEW

The Association of South-East Asian Nations (“ASEAN”) nowadays plays a pivotal role as part of the international community. Not only does it function as a solid economic block of South-East Asia, but it has also widened the cooperation between the 10 Member States to encompass non-economic aspects as well, such as culture, politics, education, technology, human development, and even security. After the promulgation of the ASEAN Charter in 2007 as a response to the growing needs of the Member States in the new millennium, which was subsequently ratified by all of the Member States in 2008, ASEAN is no longer a mere association of nations. It is now an international organization equipped with international legal personality, consequently rendering it vested with international legal rights and obligations. This signifies that ASEAN is now standing equal to other international organizations such as the United Nations, European Communities, Organization of American States, and World Trade Organization.

This is indeed an admirable reality, since ASEAN can now emphasize its existence in the international community and at the same time, contribute to the development and betterment of the international legal order as a whole. With a stronger cooperation and intensified interaction between the Member States in so many aspects nowadays, justice and rule of law are evidently elements that are much sought by the people of ASEAN. This is particularly because the ASEAN Charter itself, in numerous provisions which it contains, has mandated that rule of law, justice, democracy, good governance, and human rights must be upheld and enforced at all times.

In its 42 years of establishment, ASEAN is now looking at contemporary legal issues which challenge its continuation and sustainability as an international organization. Those issues range from labors, terrorism, and traffic in drugs and human to claim of sovereignty and alleged violations of human rights. Many of those issues most of the times occur between the Member States themselves, and therefore, the potential for them to resort to open conflicts is likely to be high. If these matters continue without an effective monitoring and control by the ASEAN itself, they will be likely to emerge into military conflicts and will persist with no feasible solution. We surely still remember the armed clash between Thai and Cambodian troops in both countries’ border in October 2008. Such conflict arose from each State’s claim of sovereignty over the land surrounding the Temple of Preah Vihear.



Evidently ASEAN plays a significant role in taking all the preventive measures possible to ensure that States will refrain forever from resorting to the same armed conflict, particularly because one of the foundations on which ASEAN is established and for which ASEAN Member States have vowed to uphold at all times is the principle of the non-use of force. In realizing its goals and purposes as enshrined under the Charter and other related documents, ASEAN should be able to effectuate its role as a dispute settlement forum and thereby taking any measure necessary to maintain peace and security in the region.

The matter described above is only one of the challenges that ASEAN is facing nowadays. Other issues also exist and serve as a learning tool for ASEAN: how can the organization stand the test of time and still prove its existence and qualities to the international community, despite all the problems impeding its road? For the purpose of framing this paper into a clear scope of discussion, I will only limit the scope of this paper into 3 (three) legal issues that I perceive as currently being the most vital legal issues in ASEAN and may endanger the legal order of ASEAN should they go unresolved: issues concerning labors and migrants, terrorism, and human rights. This paper will describe to what extent they have affected the Member States of ASEAN nowadays and what solution may be offered to put an end to those problems.

CHAPTER II

ISSUES REGARDING LABORS AND MIGRANTS IN ASEAN

Issues on the rights and duties of labors and migrants have arisen in several ASEAN Member States. These issues are mostly obvious in Member States with high per capita income employing nationals of Member States with lower per capita income. On one hand, with the growing need of industries to produce a significant load of work in a limited period of time, labors are indispensable to the survival of industrialized and capital-based States. It is often the case that, since such States have a limited number of population, particularly those who are willing to be employed as heavy workers, they start receiving and employing migrant workers from other States. However, on the other hand, the large amount of foreign labors in those States has given birth to new socio-economic problems: labors who do not possess adequate skills of work are eventually abandoned, unemployed, and they become either illegal immigrants or involved in crimes; whereas those who are well-skilled are often overworked, underpaid, and deprived of several



fundamental basic labor rights. This is not to mention physical and mental abuse which some employers are proven to have committed against their employees. We can take examples of the following States to demonstrate those issues:

1. Malaysia

According to the Minister for Manpower and Transmigration of Indonesia, Erman Suparno, up to 2006 there were 1,75 million Indonesian labors working in Malaysia. This number does not include Indonesian illegal labors who can account for twice as much as the said amount.¹ Indonesians are the most numerous foreign workers in Malaysia, who represent 60% of the total amount of foreign workers in that State. They work as, among other things, baby sitters, house maids, drivers, and workers in plantations. With this significant amount, Indonesian labors are prone to social, economic, and legal problems in Malaysia.

Throughout the history of both countries, Indonesia and Malaysia have witnessed various violations of the fundamental rights of Indonesian labors. Ill-treatment by employers, rape, deprivation of freedom, murder, confiscation of administrative and immigration documents by employers, and employers not paying the labors' salary are among the problems which cast a shadow upon the bilateral relations of both States.

One of the major cases which did not only shock both States, but also drew the attention of the international community occurred in May 2004. Nirmala Bonat, an Indonesian worker from East Nusa Tenggara was known to have suffered severe physical abuse committed by her Malaysian employer for 5 (five) months. Nirmala suffered severe bruises and burns all over her body.² During the abuse, she was kept inside her employer's house with firmly locked doors and windows so that her neighbors could not know of the abuse. During her period of work, Nirmala was also never given a room; she was always sleeping on the floor.

Previously in 2002, Malaysia's policy to expel foreign illegal migrant workers had resulted in nearly 25,000 Indonesian workers being stranded on the frontier island of Nunukan, where they were waiting until further notice concerning their status was delivered by the government of Malaysia. As they were lacking food, water, and hygiene, some of them died from hypertension, asthma, diarrhea, and fever.³

¹ <http://www.tempointeraktif.com/hg/ekbis/2006/01/12/brk,20060112-72167.id.html>

² <http://news.bbc.co.uk/2/hi/asia-pacific/3732241.stm>

³ <http://www.thejakartapost.com/news/2002/08/15/more-migrant-workers-die-nunukan-camps.html>



Indonesia is not the only State which has uneasy relationship with Malaysia in respect of Malaysia's policy concerning foreign labors and migrants. Upon expelling foreign migrant workers from its territory in August 2002, Malaysia received a formal complaint by the government of the Philippines citing that the treatment of Malaysia against Filipino labors was "unduly harsh".⁴ Officials also confirmed that three Filipino children have died while in the process of being deported, one at a Malaysian detention centre on Saturday, one on board a navy ship prior to departing Malaysia, and a third on Monday after returning to the Philippines.⁵

In response to these issues, the Malaysian government has of course taken measures to accord a better protection of labor rights to foreign migrant workers residing in its territory. On May 13, 2006 in Nusa Dua, Bali, the Minister of Manpower and Transmigration of Indonesia, Erman Suparno and the Minister of Internal Affairs of Malaysia, Radzi Sheikh Ahmad signed a Memorandum of Understanding ("MoU") on Indonesian migrant workers in Malaysia. The MoU in essence covers 4 (four) issues: placement of informal Indonesian labors in Malaysia, misuse of visa for social visit purpose by Indonesians when they undertake employment in Malaysia, education for the children of Indonesian labors, and training on Malaysian culture for Indonesian labors. Similar MoU has also been concluded with Thailand,⁶ Vietnam,⁷ India,⁸ and Nepal.⁹

2. Thailand

From January to February 2009, Thailand was placed under international spotlight and scrutiny when allegations that its government had mistreated thousands of Burmese and Bangladeshi migrants were made public. These migrants were said to have sailed all the way from their countries to Thailand in search of work, and were lacking food, water, and sanitation.¹⁰ Instead of welcoming them, Thailand was reported to have pushed them out to the sea and left them to death.¹¹ Others claimed to have been detained and beaten by Thai authorities.¹² They were refused entry into Thailand for not possessing legal

⁴ <http://news.bbc.co.uk/2/hi/asia-pacific/2219016.stm>

⁵ *ibid.*

⁶ http://nntworld.prd.go.th/previewnews.php?news_id=254610100023&news_headline=Thailand%20and%20Malaysia%20Sign%20Labor%20MoU&return=ok

⁷ http://www.jil.go.jp/foreign/event_r/event/documents/2006sopemi/keynotereport1.pdf

⁸ <http://www.aseanaffairs.com/page/ties/employment%20india,%20malaysia%20to%20sign%20mo%20on%20labour%20protection>

⁹ <http://www.kantipuronline.com/kolnews.php?&nid=114931>

¹⁰ http://news.bbc.co.uk/2/hi/south_asia/7830710.stm

¹¹ <http://www.telegraph.co.uk/news/worldnews/asia/thailand/4269504/Thai-military-accused-of-pushing-Burmese-boat-people-out-to-sea-to-die.html>

¹² <http://english.aljazeera.net/news/asia-pacific/2009/01/20091244723199894.html>



documents required, and they were eventually stranded in the neighboring territories of Thailand, including in Idi, Province of Nangroe Aceh Darussalam, Indonesia. Among these migrants were Ronghiya Moslems refugees, an ethnic minority from Myanmar whom many perceive to often face persecution in their country.¹³

Although Thai authorities previously denied these allegations,¹⁴ Prime Minister Abhisit Vejjajiva eventually admitted that those practices had taken place, and at the same time stressed that the government was working on rectifying the problem and that if evidence has pointed to those who did it, they will certainly be brought to account.¹⁵

The precedent shown above once again reaffirms that labors and migrants are very vulnerable to be subjected to abuse and other violations of their fundamental rights. The fact that this issue has arisen within ASEAN should draw the attention of all the Member States to focus on taking effective measures to resolve it and ensure that it will never repeat anymore.

3. Myanmar

Labor issues within ASEAN may not only occur between interstate boundaries, but they may also happen domestically, as it is the case with Myanmar. Myanmar has been subject to international community's attention over the past 13 years for its policies which many believe to be in breach of international labor rights. In 1996, Burmese military began forced relocation upon 200,000 to 300,000 members of Karenni ethnic minority in the State of Kayah of Eastern Myanmar. They were relocated from their villages to certain locations where there was no sufficient food, water, medicine, and sanitary facilities to fulfill their basic daily needs. Those who managed to escape to Thailand in 1998 and 1999 mentioned in an interview with Amnesty International that the military had ordered them to perform forced labor. The military was said to have also committed arbitrary detention, torture, and murder of the civilians who were forced to become labors.¹⁶

¹³ <http://www.telegraph.co.uk/news/worldnews/asia/thailand/4269504/Thai-military-accused-of-pushing-Burmese-boat-people-out-to-sea-to-die.html>

¹⁴ <http://www.voanews.com/english/archive/2009-01/2009-01-28-voa11.cfm?CFID=215561270&CFTOKEN=60187407&jsessionid=003032567c18fb3de0ff705141671015484a>

¹⁵ <http://edition.cnn.com/2009/WORLD/asiapcf/02/12/thailand.refugees.admission/index.html>

¹⁶ <http://myanmarnews.wordpress.com/2006/11/16/tenaga-kerja-paksa-di-burma-didiskusikan-ilo/>; <http://www.un.org/apps/news/story.asp?NewsID=12613&Cr=myanmar&Cr1=>; <http://www.reuters.com/article/asiaCrisis/idUSL14863912>; <http://news.bbc.co.uk/2/hi/asia-pacific/4224720.stm>; http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=11979; <http://www.amnesty.org/en/library/asset/ASA16/009/1999/en/dom-ASA160091999en.pdf>; <http://www.amnesty.org/en/library/asset/ASA16/014/1999/en/dom-ASA160141999en.pdf>



This policy of forced labor was imposed by Myanmar not only on the Karenni ethnic group, but also on other ethnic minorities residing in Myanmar's eastern parts, such as Shan, Karen, and Southern Kachin. The forced labor which they performed include: plantation of forests, paving roads, constructing military barracks, and transporting heavy ammunitions and other supplies for the Burmese military. All this was instructed by the military to help them win the war against insurgency initiated by members of the said ethnic groups. In performing the forced labor, civilians were not given adequate food, water, shelter, and salary, or they might not get paid at all. Children were also reported to have been involved in the forced labor.¹⁷

The issue of forced labor in Myanmar has been brought to serious attention of the International Labor Organization ("ILO"), particularly because Myanmar is bound by *ILO Convention No. 29 Concerning Forced or Compulsory Labor* which it ratified on March 4, 1955.¹⁸ At its 291st Session in November 2004 in Geneva, ILO decided to dispatch a high level mission to Myanmar to investigate the allegations of forced labor. In November 2007, ILO also specifically asked Myanmar to make a statement that any form of forced labor should be abolished. ILO has also threatened Myanmar that it would request for an Advisory Opinion by the International Court of Justice in the Hague, the Netherlands to ban Myanmar from continuing its forced labor policy.¹⁹ However, it was only in the beginning of 2007 that Myanmar began cooperating with ILO. On February 26, 2007, Myanmar signed a Supplementary Understanding with ILO to establish a mechanism where individuals claiming to be victims of forced labor may seek compensation. At the 298th Session of ILO in March 2007, Myanmar also consented to open its territory for scrutiny by ILO delegation to investigate the alleged forced labor.²⁰

Finally at the 301st Session of ILO in March 2008, ILO adopted the Conclusion of the Governing Body No. GB. 301/6 which covered the issues concerning labors in Myanmar, the essence of which can be described as follows:²¹

¹⁷ *Ibid.*

¹⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>

¹⁹ http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=11979

²⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_085128.pdf

²¹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_091579.pdf



- 1) Governing Body welcomes the extension of probation period of 12 (twelve) months for the application of the Supplementary Understanding (“SU”) by Myanmar;
- 2) Governing Body strongly calls upon Myanmar once again to make public statements, disseminated clearly in local languages, to reconfirm the prohibition of all forms of forced labor and Myanmar’s commitment to implement such policy, including through the application of the SU;
- 3) Governing Body regrets the continuing reports of harassment against individuals who are in support of the SU;
- 4) Governing Body underlines the Conclusion of the Committee on Freedom of Association in the Case No. 2591 on freedom of association and the rights of all trade unions; and
- 5) Governing Body calls upon the government of Myanmar to strengthen its cooperation with ILO to ensure the effective application of the SU and effectuate its compliance with ILO Convention No. 29 which prohibits forced labor and recruitment of children into the military.

The subsequent policies of Myanmar regarding its labors in responding to the measures laid down by ILO remains to be seen in the future.

CHAPTER III

TERRORISM IN ASEAN

South-East Asia is a new focus of the world war against terrorism post-the attack against World Trade Center of the United States in September 11, 2001. A series of terrorist attacks in several ASEAN Member States have not only drawn the attention of the affected States, but also the international community which expressed its condemnations through *inter alia*, various resolutions of the United Nations General Assembly and Security Council. The impact of terrorism in ASEAN Member States can be described as follows:

1. Indonesia

Indonesia is mostly affected by terrorism compared to the other ASEAN Member States. On October 12, 2002 a series of terrorist bombings occurred in night clubs in Bali,



killing 202 and injuring more than 300 people, many of whom were foreign tourists.²² On August 5, 2003 a high explosive bomb was blasted outside of J.W. Marriott Hotel, Jakarta, killing 12 and injuring nearly 150.²³ In September 9, 2004 a car containing bomb exploded in front of the Australian Embassy in Jakarta, killing 9 and severely injuring more than 180.²⁴ Another series of explosions took place again in different locations in Bali on October 1, 2005, in which 19 people were murdered and 132 were wounded.²⁵

The gravity of terrorism in Indonesia has been brought to the attention of the United Nations Security Council which adopted Resolution 1438 in 2002 in which the Council expressed its strongest condemnation to the terrorist attacks in Bali and called upon all States to cooperate and give support and assistance to the government of Indonesia in trying the perpetrators, planners, and sponsors of those terrorist attacks.²⁶ Other Resolutions were also adopted to expressly oblige States, including Indonesia, to take measures required to combat terrorism.²⁷

2. Philippines

The Philippines is a strong political, economic and military ally of the United States and a close partner in the global war on terrorism. With the spread of Al Qaeda across the globe and the growth of the Al Qaeda-linked South East Asian terrorist network Jemaah Islamiyah, the stability and security of the Philippines and U.S.-Philippines counterterrorism efforts take on a new urgency.²⁸

There are four major terrorist groups active in the Philippines today: The Moro National Liberation Front, the Moro Islamic Liberation Front, Abu Sayyaf, and the New People's Army. The first three are Islamic groups that operate primarily in the south of the nation, where most of the country's Muslim minority live. The Communist New People's Army operates in the northern Philippines.²⁹ The impact of terrorism in the Philippines has

²² "Bali Bombings: Horror in Paradise," <<http://edition.cnn.com/SPECIALS/2002/bali/>>.

²³ "Marriott Blast Suspects Named", <<http://edition.cnn.com/2003/WORLD/asiapcf/southeast/08/19/indonesia.arrests.names/>>.

²⁴ "Text Warned of Jakarta Bomb," <<http://edition.cnn.com/2004/WORLD/asiapcf/09/10/indonesia.blast/index.html?iref=newssearch>>.

²⁵ "Security Tightened after Bali Suicide Bombings," <<http://edition.cnn.com/2005/WORLD/asiapcf/10/02/bali.blasts/>>.

²⁶ United Nations Security Council Resolution 1438 (2002), S/Res/1438, adopted by the Security Council at its 4624th meeting, on 14 October 2002, par. 1 & 3.

²⁷ Security Council Resolution 1373 (2001), S/Res/1373, 28 September 2001; Security Council Resolution 1535 (2004), S/Res/1535, 26 March 2004; Security Council Resolution 1624 (2005), S/Res/1624, 14 September 2005.

²⁸ http://www.adl.org/Terror/tu/tu_0404_philippines.asp

²⁹ *Ibid.*

made the government pass a new legislation against terrorism which provides improved measures to combat terrorism in the country.³⁰

3. Thailand

Thailand is also one of the victims of terrorism in South-East Asia. In the 2007 New Year's Eve celebration, a series of 8 (eight) bombing exploded all over Bangkok, killing 3 and injuring 38.³¹ This occurrence only shows that terrorism is indeed a grave problem in ASEAN, bearing in mind that terrorists operate on the basis of "*dépersonnalisation de la victime*": terrorists do not target their victims based on any particular link of nationality, asset, gender, social status, sex, age, etc.³² Terrorists commit their attacks indiscriminately and hence, making it possible for anyone to be a victim of terrorism whenever and wherever. This is what makes terrorism so heinous by nature and thus, its prevention and suppression in ASEAN requires a strong cooperation between all of the Member States.

CHAPTER IV

HUMAN RIGHTS IN ASEAN

Kishore Mahbubani, a well-known Singaporean diplomat once stated that: "culture haunts the search for a system of human rights that can truly be universal".³³ This citation is indeed true bearing in mind that the principles of human rights have now not only been acknowledged and protected under the national legal system of each State, but also under international legal system. This is proven by the inception of numerous international legal instruments governing human rights, such as: the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), American Convention on Human Rights (1969) and European Convention on Human Rights (1950).

However, one can always ask whether, with the increasing awareness of human rights everywhere around the globe, have human rights in the ASEAN region been sufficiently protected? This question may be answered by looking at various violations of human rights in the ASEAN Member States which can be described below.

³⁰ [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-224693](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-224693)

³¹ "Thai Blast Tourist Undeterred,"

<http://news.bbc.co.uk/2/hi/uk_news/england/southern_counties/6222545.stm>.

³² M. Delmas-Marty, "Les Crimes Internationaux Peuvent-ils Contribuer au Débat entre Universalisme et Relativisme des Valeurs?" in Cassese and Delmas-Marty (eds), *Crimes Internationaux*, at 67.

³³ Kishore Mahbubani, "Can Asians Think?" in the *National Interest*, 52 Summer 1998, p. 35.

1. Indonesia

Human rights in Indonesia are rather problematic. Members of international organizations, non-governmental organizations, and governmental institutions have expressed their concern on Indonesia's ability to protect human rights in its territory. Many have also questioned Indonesia's policy which may have been contradictory to international human rights standards.

We can take a look at several issues related to the protection of human rights in Indonesia:

a) Freedom of Expression

Broadly-worded laws limiting freedom of expression are still used by authorities to target outspoken critics. In October 2006 an Indonesian student was convicted of insulting President Susilo Bambang Yudhoyono during a protest and sentenced to three months and 23 days in prison by the South Jakarta district court.³⁴

Journalists and editors who publish controversial material face intimidation. A prominent case in 2006 concerned Playboy Indonesia, the first edition of which went on sale in early April without any nude photos. The new magazine was greeted by protests and violent attacks on its Jakarta editorial offices. In a welcome decision in September 2006 judges at the South Jakarta Court dismissed blasphemy charges against an editor of the online edition of Rakyat Merdeka for re-publishing the offensive Danish cartoons of the Prophet Muhammad.³⁵

Recently, the Tangerang District Court began a trial against Prita Mulyasari, a housewife indicted for writing a complaint about the service of a public hospital which maltreated her, which she sent to her relatives by e-mail. This e-mail was later forwarded by those who had received it to various internet blog providers. The hospital, upset about the e-mail reported Prita to the police for a defamation and tort. The civil lawsuit has been decided where Prita was found to be guilty for tort and was obliged to pay nearly US\$ 25,000 to compensate the hospital. The criminal case is still ongoing and the Prosecutor has indicted her by invoking Bill No. 11 (2008) on Information and Electronic Transactions to establish her criminal liability.

This case occurred because the Bill itself opens loopholes for someone to be held accountable for a crime even when he/she merely exercises his/her freedom of

³⁴ <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>

³⁵ *Ibid.*



expression, whereas such freedom has been guaranteed under the Constitution. This demonstrates how Indonesian legal products may be contradictory and may overlap with each other, which may stem from the lack of competent and skilled legislators in the Parliament.

b) Freedom of Religion

Instances of religious intolerance appeared to be on the rise in 2006 with attacks on Ahmadiyah places of worship and Christian churches. Joint Decree No. 1/2006 on the establishment of places of worship, issued by the Religious Affairs Ministry and the Home Ministry in March 2006, requires a 90-member minimum congregation prior to the issuance of permits for a place of worship. The decree provoked a string of protests from minority religious groups, and prompted the forcible and sometimes violent closure of several Christian churches across Indonesia by vigilante groups. In June 2006 the Central Jakarta District Court convicted Lia Aminuddin, the leader of a minority religious sect, the Kingdom of Eden, for blasphemy against Islam and sentenced her to two years imprisonment.³⁶

The Ahmadiyah religious minority continued to face discrimination, intimidation and violence. At an interfaith rally in June 2008, Ahmadiyah demonstrators were attacked by sections of the Front Pembela Islam (FPI). Police who were monitoring the rally did not intervene. In response, the Indonesian government announced a joint ministerial decree “freezing” the activities of Ahmadiyah, effectively outlawing its followers. In October 2008, Munarman, a commander of the Islamic Defender Squad, and Rizieq Shihab, leader of the Islamic Defenders’ Front, were jailed for 18 months for inciting violence at the rally.³⁷

Attacks on Christian leaders and the closure of church buildings in Papua have also continued. In August 2008, three unknown assailants beat unconscious Catholic priest and human rights defender Father Benny Susetyo in South Jakarta.³⁸

c) Forced Evictions

Disputes over land and forced evictions continue to be a frequent source of conflict. Security forces often demolish homes and destroy personal property without notice, due process, or compensation, and residents often are ill-treated. Women, children, and rural migrants typically suffer particularly severe long-term consequences, including impairment

³⁶ <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>

³⁷ <http://thereport.amnesty.org/en/regions/asia-pacific/indonesia>

³⁸ *Ibid.*



of their ability to earn a livelihood or to attend school.³⁹ The eviction usually happens when powerful business enterprises, upon approval by the government, set up a seat of business in the area which happens to have been illegally resided by beggars, street vendors, and other individuals from a low economic class. In such a case, the poor residents are unlikely to succeed in the dispute against the enterprises.

2. Myanmar

Myanmar has been under international scrutiny due to its national policies which do not appear to be compatible with the governing international human rights laws. In February 2009, the government of Myanmar announced to suspend a referendum that would be held later in the year on a draft constitution, followed by elections in 2010. In May 2008, only a week before the scheduled day for the referendum, Cyclone Nargis devastated parts of southern Myanmar, affecting approximately 2.4 million people. More than 84,500 people died and more than 19,000 were injured, while nearly 54,000 remained unaccounted for. In its aftermath the government delayed or placed conditions on aid delivery, and refused international donors permission to provide humanitarian assistance. Following a visit by the UN Secretary-General in late May, access improved, but the government continued to obstruct aid and forcibly evict survivors from shelters.⁴⁰

Also in May 2009 the government extended the house arrest of Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD), the main opposition party, who has been under detention since 1989. By the end of the year there were more than 2,100 other political prisoners. Many were given sentences relating to the 2007 mass demonstrations after unfair trials. In eastern Myanmar, a military offensive targeting ethnic Karen civilians, amounting to crimes against humanity, continued into its fourth year. The government's development of oil, natural gas and hydropower projects in partnership with private and state-owned firms led to a range of human rights abuses.⁴¹

CHAPTER V

ILLEGAL FISHING

Illegal fishing has been a major threat to ASEAN's maritime industries and has been impeding the economic growth of its Member States for many years.⁴² In Indonesia,

³⁹ <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>

⁴⁰ <http://thereport.amnesty.org/en/regions/asia-pacific/myanmar>

⁴¹ *Ibid.*

⁴² Lukita Grahadyarini, "Ruwetnya Menangani Penangkapan Ikan Ilegal", *Kompas*, March 5, 2008, available at: <<http://cetak.kompas.com/read/xml/2008/03/05/01585680>>.

the Director-General of Supervision and Control of Maritime Resources and Fishing (P2SDKP), Aji Sularso cited that although the country is the biggest in South-East Asia, Indonesia is mostly affected by illegal fishing compared to the other neighboring countries. Some areas which are prone to illegal fishing are: Arafura Sea, Natuna Sea, and South Sulawesi Sea, whereas most of the offenders belonged to Chinese, Thai, Vietnamese, and Filipino vessels.⁴³

In 2007, 184 out of 2,207 vessels in Indonesia were found to be illegal, 89 of which sailed with foreign countries' flags flown.⁴⁴ The Ministry of Marine Affairs and Fisheries in 2003 stated that 85% of modern fishing vessels weighing over 50 gross tons which operated in Indonesia were falsified; they had Indonesian flags on, but they actually belonged to foreign shipping companies.⁴⁵ It is further estimated that every year, approximately 1,000 vessels commit illegal fishing in Indonesia,⁴⁶ with a total economic loss from which Indonesia annually suffers amounts to \$ 2 billion.⁴⁷

The Manager of Northern International Fisheries Department of Agriculture, Fisheries, and Forestry of Australia, Peter Cassells stated that one of the major troubles faced by Indonesia in combating illegal fishing is the fact that most of the offenders operate big vessels with modern equipments, rather than employing traditional methods.⁴⁸

This is the reason why member states of ASEAN have cooperated with Australia, Papua New Guinea, and Timor Leste to adopt a Regional Plan of Action (RPOA) to eradicate illegal fishing on a regional level and promote a responsible fishing. RPOA authorizes a collective action to monitor waters and prevent illegal fishing, which is put under the clause of "monitoring control and surveillance" (MSC).⁴⁹

Through RPOA, the countries involved have also consented to contribute in implementing the MSC by way of exchanging: information on illegal ships, data, and technological support among them. Additionally, MSC on the regional level is further enhanced through bilateral and sub-regional cooperation. Nonetheless, critics started to convey their concerns on the program.⁵⁰

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ "Atasi Penangkapan Ikan Ilegal di KTI, Libatkan Tiga Negara", *Kompas*, June 9, 2003, available at: <<http://www2.kompas.com/kompas-cetak/0306/09/iptek/358940.htm>>.

⁴⁶ Grahadyarini, *loc. cit.*

⁴⁷ David Weber, "Illegal fishing costs Indonesia \$2-billion a year: expert", *The World Today*, May 12, 2006, available at: <<http://www.abc.net.au/worldtoday/content/2006/s1637120.htm>>.

⁴⁸ Grahadyarini, *loc. cit.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*



At the 4th Meeting on the implementation of RPOA in Nusa Dua, Bali on March 4, 2008, several countries admitted the difficulties they had in implementing the MSC. The Cambodian Representative for Fisheries Administration, Pich Sereywath stated that his government still found it difficult to better the administration of fisheries because people have not come to realize the importance of having a better management of fisheries. They also found it difficult to conduct internal monitoring upon illegal fishing because it requires a high cost. Additionally, bureaucracy and lack of access to data from other countries were also cited as other reasons why Sereywath viewed that the full implementation of RPOA remains unforeseeable at the time being.⁵¹ Nowadays, illegal fishing has not only significantly affected Indonesia's marine resources, but it has also passed inter-state boundaries and affected transnational interests, particularly those of Asia-Pacific countries.

CHAPTER VI

LEGAL ANALYSIS

With regards to the issues provided in the previous chapters, below is the legal analysis upon those issues based on international legal context.

1. In Respect of the Issues concerning Labors and Migrants

States which are mentioned in Chapter II, if proven that they have committed the practice described therein, can be held accountable for breaching international law. Malaysia can be held accountable for breaching the prohibition of torture embodied under customary international law. This is because the prohibition of torture has arisen into a *jus cogens* norm, a norm from which no derogation is permitted at any time.⁵² In a 1980 case, a United States Court has pronounced that:

*"...the torturer has become, like the pirate or slave trader before him, hostis humani generis, an enemy of all mankind".*⁵³

⁵¹ *Ibid.*

⁵² Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: Clarendon Press, 1997), p. 110; see *Siderman de Blake v. Argentina*, 965 F.2d 699, 714-718 (9th Cir. 1992).

⁵³ *Filartiga v. Peña-Irala*, United States Court of Appeals, Second Circuit (June 30, 1980), at 980.

Thailand may also be held accountable if proven to have committed the practice described under Chapter II. Thailand has then breached various provisions under the International Covenant on Civil and Political Rights (1966) which it has adhered to in January 29, 1997,⁵⁴ namely: Article 7 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment; Article 9 par. (1) on the prohibition of arbitrary arrest or detention; and Article 10 par. (1) on the obligation to treat every detainee with humanity and respect for dignity.

Myanmar can be held accountable for violating ILO Convention No. 29 concerning Forced Labor (1930) which it has ratified.⁵⁵ However, the legal issue arising is that Myanmar may argue that the form of “forced labor” instructed by the military does not fall within the definition “forced labor” stipulated under ILO Convention No. 29. According to Article 2 (b) of the Convention, forced labor does not include:

“any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country.”

Myanmar may argue that since the labor ordered by the government is part of the war against rebel groups, it falls within “normal civic obligation of the citizens of a fully self-governing country”, which is therefore excluded from the definition of forced labor.

This raises a concern that there might be loopholes open for abuse of law because the term “normal civic obligations” are not properly defined or elaborated under the Convention. It is understandable that the drafters of the Convention did not wish to define or elaborate the term for the purpose of not limiting the discretion of a State to determine what is best for its own government and its own people. This problem can still be resolved by having recourse to the principle of interpretation.

Under Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties which have now been crystallized as part of the general principles of law, there exist several means of interpreting a treaty when a provision under a treaty, by its natural and ordinary meaning does not shed a light upon the substance it aims to govern. The parties to the treaty can observe the *travaux préparatoires* of the Convention: the discussions and drafted documents made prior to the conclusion of the treaty. This aims to find what was originally intended by the parties to the treaty upon including a provision under the treaty. The parties can also observe the object and purpose of the treaty. Object and purpose are

⁵⁴ <http://www.unhchr.ch/pdf/report.pdf>

⁵⁵ <http://www.ilo.org/ilolex/english/convdisp1.htm>

some of the trickiest parts under the principles of interpretation, as it is not easy to find the genuine object and purpose of a treaty. They can be found under the Preamble of the treaty, under any other provision in the treaty which relates to or elucidates the provision whose meaning needs to be interpreted, and one may as well believe that the object and purpose of the treaty can be found after he/she reads all of the provisions under the Convention as a whole and try to fetch the holistic essence of what a certain provision aims to govern.

Moreover, the allegation of forced labor in Myanmar, if proven to be true, also constitutes a violation of Article 11 of ILO Convention No. 29, since this Article only permits adults to be labors, and therefore, recruitment of children to perform heavy works is illegal. This Article governs that:

“Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:

(a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;

(b) exemption of school teachers and pupils and officials of the administration in general;

(c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;

(d) respect for conjugal and family ties.

2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their



own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.”

In the context of ASEAN, forced labor, forced labor employing children, torture or ill-treatment against labors, and arbitrary arrest against migrants are strictly prohibited. This is because every ASEAN Member State has consented to uphold the rule of law at all times upon ratifying the ASEAN Charter. The provisions on the rule of law under the Charter are governed as follows:

Preamble, Paragraph 8:

*“ADHERING to the principles of **democracy, the rule of law and good governance**, respect for and protection of human rights and fundamental freedoms”.*

Article 1, Paragraph 7:

*“To strengthen **democracy, enhance good governance and the rule of law**, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN”.*

Article 2, Paragraph 2, Subparagraph (h):

*“Adherence to **the rule of law, good governance, the principles of democracy and constitutional government**”.*

2. In Respect of Terrorism

Terrorism is indeed a crime which must be prohibited, criminalized, prevented and suppressed in the ASEAN region. This is because most of the Member States have adhered to the two most prominent international conventions on terrorism today, namely the International Convention for the Suppression of Terrorist Bombings (1997) and International Convention for the Suppression of the Financing of Terrorism (1999). Various resolutions of the United Nations General Assembly and Security Council were also adopted to address that terrorism is one of the most atrocious crimes and that all measures necessary must be taken by the international community.⁵⁶

ASEAN Leaders, at their 7th Summit on 5 November 2001 in Brunei Darussalam, adopted the 2001 ASEAN Declaration on Joint Action to Counter Terrorism. The ASEAN

⁵⁶ Security Council Resolution 1373 (2001), S/Res/1373, 28 September 2001; Security Council Resolution 1535 (2004), S/Res/1535, 26 March 2004; Security Council Resolution 1624 (2005), S/Res/1624, 14 September 2005.



Leaders viewed terrorism as a profound threat to international peace and security and "a direct challenge to the attainment of peace, progress and prosperity of ASEAN and the realization of ASEAN Vision 2020". They expressed commitment to combat terrorism in accordance with the Charter of the United Nations, other international laws and relevant UN resolutions. They also underlined that "cooperative efforts in this regard should consider joint practical counter-terrorism measures in line with specific circumstances in the region and in each member country".⁵⁷

They also identified specific measures for ASEAN to implement the Declaration, namely:⁵⁸

- Review and strengthen national mechanisms to combat terrorism;
- Call for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism;
- Deepen cooperation among ASEAN's front-line law enforcement agencies in combating terrorism and sharing "best practices";
- Study relevant international conventions on terrorism with the view to integrating them with ASEAN mechanisms on combating international terrorism;
- Enhance information/intelligence exchange to facilitate the flow of information, in particular, on terrorists and terrorist organisations, their movement and funding, and any other information needed to protect lives, property and the security of all modes of travel;
- Strengthen existing cooperation and coordination between the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and other relevant ASEAN bodies in countering, preventing and suppressing all forms of terrorist acts. Particular attention would be paid to finding ways to combat terrorist organisations, support infrastructure and funding and bringing the perpetrators to justice;
- Develop regional capacity building programmes to enhance existing capabilities of ASEAN member countries to investigate, detect, monitor and report on terrorist acts;

⁵⁷ <http://www.aseansec.org/14396.htm>

⁵⁸ *Ibid.*



- Discuss and explore practical ideas and initiatives to increase ASEAN's role in and involvement with the international community including extra-regional partners within existing frameworks such as the ASEAN + 3, the ASEAN Dialogue Partners and the ASEAN Regional Forum (ARF), to make the fight against terrorism a truly regional and global endeavour;
- Strengthen cooperation at the bilateral, regional and international levels in combating terrorism in a comprehensive manner and affirm that at the international level the United Nations should play a major role in this regard.
- The specific measures outlined in the Declaration have been incorporated in the Terrorism component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime adopted in May 2002. The Work Programme is based along 6 strategic thrust namely: information exchange; cooperation in legal matters; cooperation in law enforcement matters; institutional capacity building; training; and extra-regional cooperation.

In addition, ASEAN has also produced the ASEAN Convention on Counter Terrorism in 2007 which remains to enter into force after the 30th day following the deposit of the 6th instrument ratification by Member States. All these facts show ASEAN's commitment to stress the importance of abolishing all forms of terrorism from the region.

3. In Respect of Human Rights

Human rights are of a paramount importance under the ASEAN Charter. This can be shown by various provisions on human rights under the Charter as well as the establishment of ASEAN Human Rights Body. The provisions on human rights under the Charter can be found as follows:

1. Preamble paragraph 8:

“ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.

2. Article 1 paragraph (7):

“To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN”.



3. Article 2 paragraph (2) (h):

*“Adherence to **the rule of law**, good governance, **the principles of democracy and constitutional government**”.*

4. Article 2 paragraph (2) (i):

*“Respect for **fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice**”.*

5. Article 14:

*“1. In conformity with the purposes and principles of the ASEAN Charter relating to **the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.***

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.”

With the increasing global awareness of human rights, mechanisms of complaint for human rights violations are now provided significantly on international plane. Nationals of States which adhere to the International Covenant on Civil and Political Rights (1966) can file complaints on human rights violations that they suffer to the Human Rights Council against their States. Human Rights Council then will act as a *quasi-judicial* body which will render its decision on whether or not a violation occurs. The similar mechanism for individual complaint claiming that there are human rights violations is also provided under the European Convention on Human Rights for EU citizens and American Convention on Human Rights for nationals of the Organization of American States (“OAS”). However, ASEAN has not acquired the privilege of having such mechanism as there currently exists no regional human rights convention in ASEAN. It is hoped that this is a gap where ASEAN Human Rights Body can fit in, and therefore the discussions to lay down precise measures to render the role of the Body effective must be intensified by all the Member States, for there to arise a new ASEAN with better human rights protection.

4. In Respect of Illegal Fishing

Illegal fishing is often considered as involving professionally organized criminal activity to ‘launder’ its illegal catch. The conduct of illegal fishing is induced by the solid fact that illegal fish would always have a demand and protection in the market.

The incumbent Minister of Marine Affairs and Fisheries of Indonesia, Freddy Numberi opines that illegal fishing is no different from money laundering: the illegal fish



caught in Indonesian waters can become legal when entering, exported to, or sold in neighboring countries. This is a worrying reality, bearing in mind that money laundering itself has been a serious crime under Article 6 of the UN Transnational Organized Crime Convention. This Article defines money laundering as:

“1. (a) (i)...The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property...

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing that such property is the proceeds of crime...”

Fish “laundering” like this must not happen within ASEAN, as all of the ASEAN Member States have consented to uphold the principles of the rule of law, democracy, and good governance, as enumerated under Preamble paragraph (8), Article 1 paragraph (7), and Article 2 paragraph (2) sub-paragraph (h) of the ASEAN Charter.

CHAPTER VII

PROPOSED SOLUTIONS

In resolving the current legal issues in ASEAN, Author recommends the following solutions to be taken into consideration:

1. ASEAN should stress and enhance its existence and functions as an international organization. Mechanism for dispute settlement should not be merely in form of issuing non-binding recommendations and it should not act merely as a “mediator” between the disputing States; it should be able to render binding decisions which must be enforced and executed by all parties in good faith;
2. If ASEAN is concerned that this measure may infringe States’ sovereignty in breach of the ASEAN Charter and the principle of non-intervention under the United Nations Charter, then such concern is not based upon adequate legal grounds. Many international organizations provide for an establishment of a judicial body whose decisions are final and binding, such as: the International Court of Justice established by the United Nations, the Dispute Settlement

Body of the World Trade Organization, and the establishment of the International Criminal Tribunal for the Former Yugoslavia and for Rwanda. The establishment of arbitration forums by States as it was the case with Iran-U.S. Claims Tribunal in various cases involving expropriation and nationalization shows that it is possible to render binding decisions under international law. Such binding power of a judicial forum is always possible under international law insofar as a clause providing for such is put under the constituent instrument of the international organization and must be agreed upon by the Member States. As such, Member States are deemed to have rendered part of their sovereignty to the international organization and are therefore bound by the decisions of the judicial forum established by the organization;

3. Member States of ASEAN must intensify the existing negotiations and consultations in order to produce better legal framework to respond to the issues mentioned above. These negotiations are particularly important to address: (i) terrorism, since there can arise so many issues concerning a terrorist suspect who may have committed his crime in the territory of one State but is found to be within the territory of another State, and for that reason Member States should conclude treaties between them on extradition and mutual legal assistance to detain and prosecute terrorist suspects; and (ii) the issues of human rights, bearing in mind that Asia-Pacific is the only region which does not possess a regional human rights convention, left behind America which has produced the American Convention on Human Rights (1969), Europe which produced the European Convention on Human Rights (1950), and Africa which has the African Charter on Human and Peoples' Rights (1981). Human rights have today become a universal value which must be well-safeguarded in ASEAN, and therefore, the measures to effectuate the ASEAN Human Rights Body, including by equipping it with a constituent treaty are therefore vital to be taken by the Member States, in order to create a better ASEAN with improved human rights record.

REFERENCES

1. <http://www.thejakartapost.com/news/2002/08/15/more-migrant-workers-die-nunukan-camps.html>
2. <http://news.bbc.co.uk/2/hi/asia-pacific/2219016.stm>



3. [http://nntworld.prd.go.th/previewnews.php?news_id=254610100023&news_headline=Thailand and%20and%20Malaysia%20Sign%20Labor%20MoU&return=ok](http://nntworld.prd.go.th/previewnews.php?news_id=254610100023&news_headline=Thailand%20and%20Malaysia%20Sign%20Labor%20MoU&return=ok)
4. http://www.jil.go.jp/foreign/event_r/event/documents/2006sopemi/keynotereport1.pdf
5. <http://www.aseanaffairs.com/page/ties/employment%20india,%20malaysia%20to%20sign%20mou%20on%20labour%20protection>
6. <http://www.kantipuronline.com/kolnews.php?&nid=114931>
7. http://news.bbc.co.uk/2/hi/south_asia/7830710.stm
8. <http://www.telegraph.co.uk/news/worldnews/asia/thailand/4269504/Thai-military-accused-of-pushing-Burmese-boat-people-out-to-sea-to-die.html>
9. <http://english.aljazeera.net/news/asia-pacific/2009/01/20091244723199894.html>
10. <http://www.telegraph.co.uk/news/worldnews/asia/thailand/4269504/Thai-military-accused-of-pushing-Burmese-boat-people-out-to-sea-to-die.html>
11. <http://www.voanews.com/english/archive/2009-01/2009-01-28-voa11.cfm?CFID=215561270&CFTOKEN=60187407&jsessionid=003032567c18fb3de0ff705141671015484a>
12. <http://edition.cnn.com/2009/WORLD/asiapcf/02/12/thailand.refugees.admission/index.html>
13. <http://myanmarnews.wordpress.com/2006/11/16/tenaga-kerja-paksa-di-burma-didiskusikan-ilo/>; <http://www.un.org/apps/news/story.asp?NewsID=12613&Cr=myanmar&Cr1=>
14. <http://www.reuters.com/article/asiaCrisis/idUSL14863912>
15. <http://news.bbc.co.uk/2/hi/asia-pacific/4224720.stm>
16. http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=11979
17. <http://www.amnesty.org/en/library/asset/ASA16/009/1999/en/dom-ASA160091999en.pdf>
18. <http://www.amnesty.org/en/library/asset/ASA16/014/1999/en/dom-ASA160141999en.pdf>
19. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>
20. http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=11979
21. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_085128.pdf
22. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_091579.pdf
23. "Bali Bombings: Horror in Paradise," <<http://edition.cnn.com/SPECIALS/2002/bali/>>.
24. "Marriott Blast Suspects Named", <<http://edition.cnn.com/2003/WORLD/asiapcf/southeast/08/19/indonesia.arrests.names/>>.



25. "Text Warned of Jakarta Bomb,"
<<http://edition.cnn.com/2004/WORLD/asiapcf/09/10/indonesia.blast/index.html?iref=newssearch>>.
26. "Security Tightened after Bali Suicide Bombings,"
<<http://edition.cnn.com/2005/WORLD/asiapcf/10/02/bali.blasts/>>.
27. United Nations Security Council Resolution 1438 (2002), S/Res/1438, adopted by the Security Council at its 4624th meeting, on 14 October 2002, par. 1 & 3.
28. Security Council Resolution 1373 (2001), S/Res/1373, 28 September 2001;
29. Security Council Resolution 1535 (2004), S/Res/1535, 26 March 2004;
30. Security Council Resolution 1624 (2005), S/Res/1624, 14 September 2005.
31. http://www.adl.org/Terror/tu/tu_0404_philippines.asp
32. [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-224693](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-224693)
33. "Thai Blast Tourist Undeterred,"
<http://news.bbc.co.uk/2/hi/uk_news/england/southern_counties/6222545.stm>.
34. Kishore Mahbubani, "Can Asians Think?" in the *National Interest*, 52 Summer 1998, p. 35.
35. <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>
36. <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>
37. <http://thereport.amnesty.org/en/regions/asia-pacific/indonesia>
38. <http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/indone14869.htm>
39. <http://thereport.amnesty.org/en/regions/asia-pacific/myanmar>
40. <http://www.ilo.org/ilolex/english/convdisp1.htm>
41. <http://www.aseansec.org/14396.htm>
42. <http://www.tempointeraktif.com/hg/ekbis/2006/01/12/brk,20060112-72167,id.html>
43. <http://news.bbc.co.uk/2/hi/asia-pacific/3732241.stm>
44. M. Delmas-Marty, "Les Crimes Internationaux Peuvent-ils Contribuer au Débat entre Universalisme et Relativisme des Valeurs?" in Cassese and Delmas-Marty (eds), *Crimes Internationaux*.
45. Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: Clarendon Press, 1997)
46. *Siderman de Blake v. Argentina*, 965 F.2d 699, 714-718 (9th Cir. 1992).
47. *Filartiga v. Peña-Irala*, United States Court of Appeals, Second Circuit (June 30, 1980).
48. <http://www.unhchr.ch/pdf/report.pdf>



49. Lukita Grahadyarini, "Ruwetnya Menangani Penangkapan Ikan Ilegal", *Kompas*, March 5, 2008, available at: <<http://cetak.kompas.com/read/xml/2008/03/05/01585680>>.
50. "Atasi Penangkapan Ikan Ilegal di KTI, Libatkan Tiga Negara", *Kompas*, June 9, 2003, available at: <<http://www2.kompas.com/kompas-cetak/0306/09/iptek/358940.htm>>.
51. David Weber, "Illegal fishing costs Indonesia \$2-billion a year: expert", *The World Today*, May 12, 2006, available at: <<http://www.abc.net.au/worldtoday/content/2006/s1637120.htm>>.
52. United Nations Convention against Transnational Organized Crime adopted in Palermo, Italy on November 15, 2000.