

***The Dual-Use Conundrum and UNSC Resolution 1540: Prospects and Challenges for Regional Governance and Cooperation in Southeast Asia***

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**Abstract**

Southeast Asia is a significant player, potentially as both consumer and producer, in the development and trade of WMD materiel. The availability and accessibility of WMD materiel or CBRN weapons have lost its exclusivity to government official use and military authorities thus exposing Southeast Asia to grave threats and damages to regional peace and human security. The dual-benefit argument where nuclear energy is seen as a solution to the dwindling energy resources needed for continued growth and development exacerbate the illicit and political nature of WMD proliferation. The paper examines the interaction between the UN Security Council (UNSC) Resolution 1540 and its implementation or non-implementation by Southeast Asian countries by using history and theories of international relations and international law. It seeks to gather evidences for why some countries in the region are constrained in complying with the obligations while others have successfully incorporated these into their own state practices. It will also attempt to conceptualize the nature of regional cooperation and norms of consensus-building created by this particular case of harmonizing Southeast Asian state practices with Resolution 1540 and draw on lessons and policy implications on regional geopolitics, human security, international law and technology.

Keywords: proliferation-sensitive dual-use technologies, WMD materiel, Resolution 1540, regional governance and cooperation, Southeast Asia

## Introduction

Southeast Asia, is a potential supplier, transshipment/transit, assembly point and destination of dual use goods due to its porous borders and busy shipping lanes. With increased trade in the region, the risk of proliferation of sensitive dual-use technologies rises. Such can be used for the development of weapons of mass destruction and might fall into wrong hands due to lack of comprehensive strategic trade controls. The dual-use conundrum in Southeast Asia, does not just concern the dual end-use of sensitive items. It can hardly be separated from the context of its proliferation and the regional risk factors that makes the creation of effective governance and cooperative structures to regulate the flow as well as the unauthorized access of these powerful and destructive dual-use goods very challenging. The fact that the availability and accessibility of these dual-use items have lost its exclusivity from government and military official-use meant that the small states of Southeast Asia are increasingly exposed to grave threats and damages.

This conundrum of confusion in regard to dual-use goods having the potential to be used for both harmless and harmful ways create human security challenges that highlights the capability limits of a single state to comprehensively ameliorate its proliferation and constraining it not to fall into the hands of individuals or groups with terrorists or malicious intents. Imagined or realized threats of CBRN WMDs violate two key dimensions of human security, that is, freedom from fear and freedom from want and it can also threaten security in the interrelated areas of economic, food, health, environmental, personal, community. A threat to one of these dimensions of human security often spread to others, that these threats cross national borders and can profoundly contribute to underdevelopment if left unchecked (Tigerstrom, 2007, p.51). Addressing this common security challenge requires regional cooperation because in an increasingly integrated regional economy, trade in dual-use items cannot be regulated by one state alone. Understanding areas of vulnerability, identifying key manufacturing sectors, regulating the burgeoning online and underground markets where illicit trade of WMD materiel exists, and the direction of growth in dual-use commodities is seen to be key areas to drive regional efforts and initiatives (Lieggi, 2016, p.73).

This paper examines the implications of Resolution 1540 in the governance and cooperation of Southeast Asian states to address proliferation problems of sensitive dual-use technologies and items to non-state actors. It proceeds in seven parts. The first part discusses the political and security context of WMD proliferation and terrorism. The second part provides the brief overview and the normative agenda of Resolution 1540. The third part examines the implications of Resolution 1540 for regional governance and cooperation in Southeast Asia as well as it details the prospects and challenges of the resolution in terms of the political, economic and security contexts of the region. The fourth part explains the slow yet promising progress of Southeast Asian states in complying with Resolution 1540 using the IL-IR-human security nexus of constructivism. The fifth part assesses the consequences of Resolution 1540 in the broader dynamics of maritime interdiction of dual-use goods and UNCLOS 1982. Parts six and seven provide the analysis and conclusion.

## **I. The Political and Security Context of WMD Proliferation: Evolving Terrorism and Emerging Dual-Use Technologies**

The proliferation of weapons of mass destruction, hereinafter collectively referred to as CBRN or chemical, biological, radiological and nuclear WMDs, raw materials or *precursors* and its various delivery systems pose grave threats to international peace and security. Increasing availability through technological advancements as well as accessibility through illicit transactions, black-market trade and other clandestine operations coinciding with weak enforceability of international frameworks and mechanisms for controlling proliferation of WMDs escalate the likelihood of these materials falling into the hands of terrorist networks and other non-state actors with criminal intents. Failure to safeguard at-risk WMDs potentially unleashes its large-scale and indiscriminate destructive features resulting in unjust and unscalable damages to human and environmental security as well as far-reaching political and development consequences which amelioration is often beyond the capability of individual states. Accidents and unintentional dumping of CBRN WMDs on top of existing stockpiles, the expansion of research and development concerning potential civilian and commercial-uses of previously military-exclusive CBRN items or dual-use technologies and the increasing disposition of terrorist networks to acquire WMDs constitute risk factors that can be reasonably contained and prevented.

While the credibility of WMD terrorism has been challenged and claimed to be merely fabricated hype and imagination, the reality of massive devastation and catastrophic out-turn when terrorist and criminal groups get hold of WMDs is substantive and necessitates concerted vigilant attention from all states. Allison (cited by Intriligator and Toukan in Katona, 2004 p. 69) considers the threat posed by WMD terrorism as strikingly different from traditional deterrence such as when two states, say the U.S. and Soviet Union, lock it down in a mutually assured destruction type of security dilemma. With terrorists' taking abode in clandestine locations, their threats and/or actual consummation of terror becomes free from retribution and reprisals. Vigorous calculations and intelligence to establish whether WMD terrorism can be regarded as real and worthy enough to be a national security concern for all states is not as compelling as the definitive and massive devastation that will occur once lax and neglectful management of this security issue takes primacy over watchfulness and sensible vigilance. In this regard, not only the terrorists must be blamed but also the international community for failing to take seriously the legitimate threats posed by WMD terrorism and for losing sight of its responsibility to prioritize the prevention of terrorists groups from accessing and acquiring CBRN WMDs.

The nexus between WMDs and terrorism has been aggravated and made more complex by the emergence of dual-use technologies. These dual-use items and goods refer to tangible and intangible materials (knowledge, technical know-how, expertise) that have legitimate commercial and peaceful applications but can also be exploited for the illicit production of CBRN WMDs. Here, despite conventions in regard to defining and classifying dual-use goods and technologies, the problem of delineating between civilian/commercial and military/CBRN WMDs and the perplexity of distinguishing which dual-use technology will be used for constructive and destructive purposes add to the conundrum of confusion. Both legitimate and illicit trade in dual-use goods and items have contributed to the weakening of barriers making it more impossible to rule out that both state and non-state actors with terrorist

and nefarious intents will step up their game from using conventional weapons to CBRN WMDs. However, there is yet another angle, well-articulated by Finlay, Bergenas and Mufti (2006), that cautions us to refrain from approaching the dilemma as merely an assessment of supply and demand factors. Dual-use technologies not only pose proliferation risks because of the rapid growth of dual-tech industries that manufacture, produce and distribute proliferation sensitive items but they also impact national development as well as both traditional and non-traditional human security priorities especially when embedded in policies pertaining to strategic trade controls and management that though reckoned as indispensable to non-proliferation, are perceived to threaten legitimate trade and commerce as well as hamper economic growth.

## **II. United Nations Security Council Resolution 1540: Brief Overview and its Normative Agenda**

In recognizing the need to construct international and national governance and cooperative structures to control the spread of CBRN WMDs and dual-use technologies to state and non-state actors bent on acquiring WMDs for terrorism purposes, the United Nations Security Council (hereinafter referred to as UNSC) unanimously passed Resolution 1540 where compliance by all states is mandatory. The normative importance of Resolution 1540 is in the consciousness that the amelioration of WMD proliferation is often beyond the capability of a single state and that global cooperative governance have to start from a common ground aimed at integrating and harmonizing efforts required to build frameworks and regulatory mechanisms that uphold the rule of law and human security principles in addressing the problem. Resolution 1540 does not supersede existing non-proliferation international treaties and multilateral export control regimes that govern efforts to combat proliferation<sup>1</sup>; rather, it complements non-proliferation regimes by enhancing international and national non-proliferation and anti-WMD terrorism efforts through its legal effects. By honoring their obligations to Resolution 1540, states commit to an enabling and enforceable mechanism that allows for broader yet more focused efforts, that is the resolution covers all types of CBRN WMDs, it extends the mandate beyond the state and explicitly identifies unfriendly non-state actors and their activities, motives and intents to leverage the power of CBRN WMDs to advance their political and social objectives (Scheinman in Scheinman, 2008, pp. 2-4).

Wetter (2009, p.3) in a research report published by SIPRI argues that the “failures of non-proliferation have occurred partly because of weaknesses in the control of the trade in dual-use items.” Key to this is the establishment of enforceable national laws and procedures to prohibit proliferation of CBRN WMDs to sensitive destinations and non-state actors as well as to provide legal fangs to prosecute and punish offenders and violators. Along these lines, Resolution 1540 places at the core of its salient provisions obligations among all states to “enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery...” (UN Office for Disarmament Affairs, 2007). Thus, Resolution 1540 is a responsive tool to one of the requirements for

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<sup>1</sup> Examples are Non-Proliferation Treaty, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, and the Convention on the Prohibition of the Development, Production, Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. See Lawrence Scheinman.

comprehensive non-proliferation strategies and provides for the gap created by issues of non-compliance with international treaties and agreements. To avail of the legal force provided by Resolution 1540 through invocation of Chapter VII of the UN Charter<sup>2</sup>, states are obliged to penalize and bring export control violators to justice (Wetter, 2009, p.4). Concomitant to the enforceability of Resolution 1540, the 1540 Committee was created in order to assess the extent of compliance with the obligations set forth in the resolution (Early, Nance and Cottrell, 2017, p.96). States submit national reports to the 1540 Committee detailing the scope and level of their compliance.

It is to be noted however that the establishment of strategic trade controls is not unique to Resolution 1540. In fact, there are other multilateral export controls regimes such as the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) and the Wassenaar Arrangement on Export Controls. However, the implementation of Resolution 1540 through national laws provides states the necessary legal basis to strengthen institutional, regulatory and technical responses so that control in dual-use technologies and items becomes an effective measure for non-proliferation and at the same time does not hamper legitimate trade and commerce that is essential to economic development (Kassenova 2011). While the normative, legislative and practical bent of Resolution 1540 have been perceived to be logical and consistent with the objectives of existing non-proliferation and export regimes as well as the compatibility of the resolution's substance with national priorities, full and comprehensive implementation of member states have been met by both technical and political constraints. Evolving trade patterns that increasingly involve more state and non-state participants directly and indirectly interacting, i.e. middlemen, brokers, transshipment points (Acton in Harris, 2016, p.28), the intensification of globalization and trade interdependence coinciding with intractable illicit trade networks that facilitate the transfer and shipment of dual-use technologies shape and re-shape proliferation challenges. Combined with the perception that Resolution 1540 is an outright imposition of Western security priorities impinging on small and developing states' national agendas (Ogilvie-White, 2006, p.6), these challenges result in the lukewarm responses and variegated levels of reception demonstrated by states towards Resolution 1540.

### **III. The Dual-Use Conundrum: UNSC Resolution 1540 and its Implications for Regional Governance and Cooperation in Southeast Asia**

It is commonly argued that Southeast Asia plays an important role in the conundrum of WMD terrorism and in disrupting the malicious proliferation of dual-technologies and items to sensitive actors and destinations (Jones, 2004; Ogilvie-White, 2006; Scheinman, 2009; Kassenova, 2011; Lieggi, 2013). The regional geopolitical, economic and security backdrop as well as complex international developments drive the likelihood of Southeast Asia "becoming the next big provider of proliferation-sensitive dual-use goods and items" (Lieggi, 2013, p.73). While Southeast Asian states have not yet been actively pursuing WMD development, industrial expansion

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<sup>2</sup> By invoking Chapter VII of the UN Charter, Resolution 1540 becomes enforceable on all UN member states. Resolution 1540 is considered by the UNSC as a response to a threat to international peace and security requiring all states to comply lest Article 41 and Article 42 is invoked where economic and diplomatic sanctions for non-compliance with provisions passed under Chapter VII and to take such necessary actions by air, sea or land forces, respectively.

and technological progress consequently transform Southeast Asian states into both consumers and producers of proliferation-sensitive commodities and technologies (Liegg and Lee, 2015). Continuous growth of the already established trade interdependence and commercial inter-relations turned several states in the region as transshipment hubs and transit points. This development not only increased their vulnerability to possible smuggling, theft and sabotage of proliferation-sensitive commodities but it also signifies that WMD proliferation will coincide with the worsening challenges pertaining to maritime security, trans-border crimes and territorial disputes that have since been pervasive in the region.

The Abdul Qadeer Khan network<sup>3</sup> leveraged on the region's porous transshipment borders, rudimentary and mostly absent export control and strategic trade management systems, lax enforcement mechanisms to punish violators to manufacture, acquire and smuggle proliferation-sensitive items to states and non-state actors carrying out clandestine WMD programs. This often referred to case underscores two realities in Southeast Asia. First, industrialization and technological progress accompanying economic growth strengthen the capability of states to produce and consume sophisticated dual-use technologies is not matched by satisfactory regulatory frameworks and enforcement mechanisms to underpin regional and national governance of WMD proliferation threats. Second, regulating the unauthorized access of proliferation-sensitive materials to the extent that it does not negatively impact legitimate commerce and imperil economic development must go beyond simple pronouncement of acceptance and support for international agreements and treaties. It should be acknowledged that in the dual-use conundrum, trade and both traditional and non-traditional security are interwoven especially given the increasing regionalization and interpenetration of national economies in Southeast Asia. Taking this into account, legal considerations, specifically binding and enforceable statutes should underpin institutional capability and technical resources to establish comprehensive export control and strategic trade management systems that do not hinder economic growth and national development (Kassenova, 2011, p. 3).

### **III.A. Political, Economic and Security Implications: Prospects and Challenges of Resolution 1540 in Southeast Asia**

#### Political Implications

The dual-use conundrum in Southeast Asia does not just concern WMD terrorism and the proliferation of dual-use commodities to identified sensitive non-state actors and destinations. It can hardly be separated from the context of its proliferation and the regional risk factors that make the creation of effective governance and cooperative structures challenging. Ogilvie-White (2006) provides a comprehensive analysis in regard to the political nature of Southeast Asian states' misgivings and lack of satisfactory efforts to comprehensively implement Resolution 1540. Participation through full ratification/ accession in existing international treaties and agreements such as the NPT, Chemical Weapons Convention (CWC) and the Biological and Toxins Weapons Convention (BTWC) also showed little progress. The remarkable progress among Southeast Asian states in terms of non-proliferation and counter-

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<sup>3</sup> The A.Q. Khan network masterminded and operated the international nuclear smuggling operation that supplied Libya, Iran and North Korea with proliferation-sensitive dual-use technologies. It also played a critical role in Pakistan's WMD program.

terrorism efforts can be seen by their full commitment to the Southeast Asian Nuclear Weapon-Free Zone (SEANFWZ), a useful yet non-binding means of addressing state-to-state proliferation (p. 7). At the heart of the problem, Ogilvie-White considers, are the traditional suspicions accorded to extra-regional non-proliferation and export control regimes – 1) barriers to economic development; 2) heavy-handed imposition of Western security agendas; 3) cultural and social insensitivities of global forums and mechanisms (p.20). Resolution 1540 should be recognized by Southeast Asian states as a mechanism responsive to the political constraints occurring with the global governance of proliferation. The prospect of implementing Resolution 1540 obligations to achieve national governance of WMD terrorism and proliferation threats center on the recognition of sovereignty of each state in the region.

### Economic Implications

The rudimentary and weak strategic trade management and export control systems expose Southeast Asia to grave threats and damages posed by WMD terrorism and the proliferation of sensitive dual-use technologies. Lieggi (2013) listed the key sectors which growth raises the risks of proliferation: nuclear energy, oil and gas, chemicals, aerospace, electronics, automobile and manufacturing. Increasing trade and industrialization in Southeast Asia makes the region a proliferation hub thus a potential weak link in the global efforts to combat WMD terrorism and proliferation unless the states in the region translate the obligations in Resolution 1540 into opportunities (Kassenova, 2011, p.1). The argument raised is that establishing trade management and control mechanisms do not necessarily impinge on trade and therefore economic development. Instead, full implementation of Resolution 1540 obligations facilitates greater extra-regional trade and commerce particularly in high-technology commodities and items. The spread of non-proliferation norms impelled advanced industrial countries with strong strategic trade management and control systems to have legislations that prohibit trade with firms and countries identified to be engaged in WMD terrorism and proliferation and at the same time encourage trade with trustworthy actors (Kassenova, 2011, p.2).

An important area that has become a source of ideological and philosophical debate concerning WMD proliferation is the security and development divide. This is embedded in the dual benefit argument where nuclear energy is seen as a solution to the dwindling energy resources needed for continued growth and development of Southeast Asian national economies confound the political and security challenge posed by proliferation concerns. The continued economic and demographic growth of Southeast Asian countries necessitates additional sources of energy to satisfy growing demands. It has been estimated that energy demand will grow at an average of 4.4 percent relative to the 1.8 percent growth in world demand per annum until 2035 (Finlay, Bergen, Mufti, 2013). The problem of WMD proliferation is lodged in the dilemma of resource security where the question is not just a matter of prioritization but also of merit and practicality. While the possibility, intention and capability of pursuing or developing nuclear weapons for military and security purposes is limited in the foreseeable future, Southeast Asian national governments have been considering resorting to nuclear-based energy sources to address growing demands. The balancing of priorities for Southeast Asian states that is the decision-making pertaining to the implementation of binding obligations set by Resolution 1540 in the thick of financial, capability and technical constraints and in the perception that

allocating of scarce resources to security concerns of remote likelihood is senseless and inimical at the same time. However, Resolution 1540, through donors, offers opportunities for capability-building and security assistance that can assist Southeast Asian states to attain its most pressing and urgent development and human security priorities while observing international non-proliferation standards (*Ibid*, p.19).

### Security and Legal Implications

Proliferation challenges in Southeast Asia has been further heightened by North Korea's aggressiveness in acquiring, developing and manufacturing WMDs as well as the involvement of a Malaysian company in the smuggling operations of nuclear technology (Rodriguez, n.d., pp. 47-50). There is also the increasing concern that the proliferation of sensitive dual-use commodities has been enmeshed in the convergence between piracy and terrorism. This is premised on the disproportionately growing terrorism and piracy problems in the region. The convergence can take the form of terrorists contracting out pirates to intercept or hijack vessels carrying licit and/or illicit CBRN WMDs (Acharya in Guan and Skogan, 2007, p. 84). Becker (2005) argues that the persistence of maritime insecurity even in Southeast Asian waters is argued to be a function of 1) the 'critical gap' between tenets prescribed by international law and the political will and capacity for enforceability, and; 2) prescriptions on the violations committed at sea such as interception of WMD lack specificity, scope or adaptability to evolving contexts. Likewise, Treves (2009) provides a focused elaboration as for how and why ameliorating maritime and trans-border crimes could be made more difficult by the weaknesses and limitations on international legal regimes governing enforceability, capture and arrest of maritime offenders. In the case WMD proliferation and trafficking, the absence of a legal framework that effectively coordinates third-party enforcement approaches to the consent and sovereignty concerns of the coastal state likely hampers the merits of universal jurisdiction and action of all states. Resolution 1540's prospects in this regard is in the establishment of municipal laws that will help secure CBRN WMDs at sea away from the hands of violators exploiting Southeast Asia's busy shipping lanes as well as assist enforcement efforts to prevent illicit trafficking at sea.

### **IV. Analysis: Explaining the Slow yet Promising Progress of Southeast Asian States in Complying with Resolution 1540 Using the IL-IR-Human Security Nexus of Constructivism**

The initial responses of several Southeast Asian states towards Resolution 1540 and the obligations to establish strategic management and export controls were initially lukewarm and suspicious that the prospects for finding common ground in the dual-use conundrum were very thin and unsatisfactory relative to the assessment of critique and experts. The nature of dual-use dilemma tells that the amelioration of this type of human security threat requires collective efforts and insights, one that is impeded by the lack of individual enthusiasm and concerted suspicion that the resolution is intrusive and goes against the non-interference and informal/consultative nature that has been the norm for ASEAN states in conducting their political, economic and cooperative affairs (Ogilvie-White in Scheinman, 2008). The realists' parsimonious assumptions of anarchy will see these responses as a demonstration of Southeast Asian states adamant self-preservation. There is the belief that the provisions and

principles of Resolution 1540 can hamper legitimate trade and inimical to industrial growth and overall economy. The case in point is Singapore, its neutral stance towards Resolution 1540 despite increasing international pressure, was underpinned by its perception that establishing strategic trade and export controls is disadvantageous. Malaysia and the other Southeast Asian states also showed initial refusal for development, security and capability reasons. As a result, the manner in which the Southeast Asian states oversee the trade in sensitive dual-use is characterized in the literature as lax and toothless turning them into suppliers, transshipment/transit hubs and destination countries which consequently exposed them to greater vulnerability and regional risk factors (Jones, 2004).

Despite criticisms, the slow and inadequate accomplishments, the supportive stance of Southeast Asian states towards Resolution 1540, according to the Constructivist lens, actually holds a promise. It speaks of the tendencies of Southeast Asian states to become significant contributors to international peace and security as well as it underscores their orientation toward safeguarding and achieving human security by laying down national legislations ensuring that the values regarded to be important by its citizens are free from any forms of threats. An equally significant perspective is that compliance with Resolution 1540, given the political, economic and security situations that it aims to address, respond positively to the aspiration of the ASEAN Community that strives to be people-centered. Hernandez (2012) argues that it is “incumbent upon states to lay out rule-based mechanisms to contribute towards this aspiration.” Resolution 1540’s normative persuasion is to provide mechanisms for states to alter its relationship with its citizens by having national legislations that prevent non-state actors from acquiring, developing and dispensing WMDs and proliferation-sensitive dual-use technologies. I argue that the objectives of Resolution 1540 are compatible with the imperatives of human security in two fronts. First, there is the implicit yet very fundamental aim of coordinating efforts on national, regional and international levels to strengthen the global response against proliferation of WMD to non-state actors which engenders collective action among states. Second, this requirement for collective action or cooperation affirms the multifaceted and multidimensional nature of human security where the promotion of people-centered security cuts across different contextual and geographical factors, regardless whether the threat is just imagined or realized.

After a decade of international pressure, capability-building and outreach training provided by extra-regional and extra-governmental actors such as Japan, Australia, the US and the European Export Control Commission as well as years of observing how other countries benefitted from instituting domestic trade controls, three of Southeast Asian states have already established comprehensive strategic trade management and export control systems starting with Singapore (2004), Malaysia (2010) and the Philippines (2013). Other Southeast Asian states have also taken the steps in formulating similar domestic systems and initiatives such as Vietnam; Thailand has recently introduced a dual-use legislation and Indonesia. These changes in behavior attest to the claim that state preferences and identity is not fixed and can change through social interactions with other states (Wendt, 1995, p.73), a claim that is central to the assumptions of the IR paradigm of Constructivism which is also represented in the works of international legal scholars. Three convergence of assumptions between IL-IR and Human Security can be used in order to shed light as for why we should consider Resolution 1540 as a significant initiative and as for why

the emerging positive responses of Southeast Asian states matters especially seen from the perspective of securing the region from transnational threats as complex and difficult as dual-use proliferation. Engagements and interactions with other states shaped the region's approach to the issue of WMD terrorism and proliferation of sensitive dual-use technologies – creation of national governance structures that alter national security and trade policies (Early, Nance and Cottrell, 2017, p.98) and at the same time compliance with Resolution 1540 contributes to the diffusion of non-proliferation norms.

First, Southeast Asian states membership and exposure to various international and regional initiatives affirm their earlier progress in accepting their obligations and in observing their commitments to the global efforts of combatting WMD. Information as to how these states establish domestic strategic trade management and export control are indicators of their socialization and internalization of acceptable norms. Southeast Asian states, in the process of interacting with other states in the region and other extra-regional actors have been allowing the influences of international and regional initiatives over the issue of dual-use proliferation. The international system as an intersubjective domain accommodates this type of reality and produces a socially constructed form of cooperation based on collective perception and shared understanding that the proliferation of dual-use goods is in fact a threat to the values they consider as important. It is in this regard that human security, with its compatibility with the objectives and aims of Resolution 1540, is also underpinned by consensus and the collective interests of Southeast Asian states to safeguard their people and territory from threats posed by the spread of dual-use goods. The spread of international norms against proliferation and the reshaping and broadening of its definition to frame it as a human security concern and thus should be part of prioritized in the menu of national interests represents the “tipping point” in what Finnemore and Sikkink (1998) considers norm cascade. Southeast Asian states, learning and interacting with inter and extra-regional states compliant with Resolution 1540 will likely develop the habit and identity of honoring their commitments to non-proliferation norms by enshrining these in their national legislations.

Second, Constructivists argue that states can be socialized through norms that shape their identity and interests and consequently their behavior as expressed through their foreign policy and preferences for cooperation. It should be recognized that all Southeast Asian states are parties of several international, regional and multilateral initiatives to combat the proliferation of weapons of mass destruction – these states are members of the 1968 Non-Proliferation Treaty, 1996 Comprehensive Test Ban Treaty, 1997 Chemical Weapons Convention and the 1975 Biological Weapons Convention. They are also partners and participants to the PSI and IAEA from which they receive training and advice on almost all nuclear matters intended for peaceful use. All Southeast Asian states are also committed to the 1971 Zone of Peace, Freedom and Neutrality which was the first regional counter-proliferation initiative intended to create a weapon-free zone in Southeast Asia. The IR-IL nexus in this regard points to the logic of appropriateness found or regarded by states as compatible or consistent with their identity, interests and level of socialization. Furthermore, a state's action or behavior vis-à-vis other states is perceived to be consistent with norm- or rule following logic and the meaning they attached to a specific matter of engagement (Onuf, 2013, p. 4-5; March and Olsen, 1998, p.52). It is this logic that leads a state to view an international mandate to be legitimate and thus decide in favor

of it. The obligatory effect of Resolution 1540 is in its perceived legitimacy as an instrument for internalizing existing standards of values and morality and in directing positive outcomes towards responsible protection against the spread of dual-use goods.

Once perceived as inimical to the interests and is completely intrusive of sovereignty, Resolution 1540's merits have been slowly internalized by Southeast Asian states affirming the constructivists' assumptions that state interests, perceptions and identities are dynamic, are constituted by their interactions with other states and at the same time consistent with norm- or rule-following logic which meanings and legitimacy are attached on its attempt to solve a human security problem that does not necessarily require states to narrow down their understanding of self-interest. In this way, the anarchic state of affairs is constructed into something else and their cooperative behavior is guided by moral standards for which Resolution 1540 provides a heuristic process. The behavior of Southeast Asian states is contingent not only on their material interests but also on how they perceive themselves as responsible members of the international community. It affirms the notion that the norms of the international society influenced and guided the behavior of Southeast Asian states towards compliance. While there is the inherent difficulty in distinguishing between economic, security and normative motivations as well as in the empirical demonstration of how shared norms are internalized by states, we cannot set aside that interstate interaction produces learning effects that contribute to the collective/inter-subjective understanding of the levels of responsibilities and obligations commensurate to the dual-use dilemma.

Third, the Constructivists approach of co-constitution or structuration suggests that the actions of states contribute to the making of institutions and norms of international life (Hurd, 2008, p.303). These institutions and norms contribute to defining, socializing and influencing states. Both the international structure and individual states can be redefined in the process (Ibid, p.304). With this, the importance of ideational and discursive construction and naming in the identification of security and responses to threats cannot be set aside. Law provides a communicative and discursive framework to deliberate issues and to legitimize actions derived from mutual/collective recognition and respect for the validity of its ascendancy to solve a specific international dilemma. Jurgen Habermas' framing of decision-making in international politics as essentially both "communicative action" and "discourse ethics" underpins the logic of arguing where considerations for significant agency, intersubjective practices and discursive habits are purveyed by international legal frameworks and obligations that have come to be perceived as a resource for justice and equitability (Eckersley in Reus-Smit, 2004, p.106). This aligns with the proposition that state participation in solving and managing an international threat construct and preserve collective understanding for as long as legitimacy in compliance is accepted (Adler, 2005, p. 55). It is for this observation that compliance with Resolution 1540 gives states opportunities to reconstitute its future provisions in accordance to the evolving collective understanding of human security. Moreover, the regulative ideals of the resolution are essentially contractual since it requires the establishment of mutually binding norms and rules that are consensual in nature. However, compliance also provides Southeast Asian states the venue to exercise communicative justice in order for them to also shape rationality and the international conversation in regard to how human security is related to dual-use dilemma and how

Resolution 1540 can actually deliver intended outcomes. It is for this reason that we can consider compliance as constitutive such that its observance by states is fundamental to their continued recognition as members of the international society as well as it provides them enabling mechanisms to communicate, deliberate and construct their claims on what they think is appropriate or just given their intersubjective interests and identity. States acquire greater legitimacy in their decision-making when they obey rules therefore it follows that Southeast Asian states view compliance with Resolution 1540 as a fair and just means to ameliorate the proliferation of dual-use items.

## **VII. Conclusion**

Southeast Asia's efforts in establishing their comprehensive domestic controls and improving the strategic trade management of sensitive items are all indications that these states are seeking to establish favorable and reputable images among international audience and are aiming to integrate themselves in the prevailing norms of human security and non-proliferation of dual-use goods. Given these, I argue that the emergent practices not only inter-subjectively affirms the legitimacy of Resolution 1540 but also serves as indication of the positive outcomes of its socialization with international norms affecting their interests, identity and role-assumption in the international order. It adds evidence to Southeast Asian states' conformity to the logic of appropriate action and their internalization of human security as an analytical category or approach that broadens and widens the scope of their understanding of self-interest, sovereignty and a people-centered approach in managing international conflicts and issues.

The problem of WMD proliferation is closely linked to environmental and human security. Vessel or ship accidents involving cargoes of proliferation-sensitive dual-use technologies could cause irreparable damage to the marine environment and ecosystem as well as to the lives of affected communities. It is argued that poverty and the lack of capability to access economic and political opportunities are the underlying rational for why individuals or states resort to terrorist activities that compromise various forms of interests and securities. The damages and negative impact of WMD proliferation exacerbate the cycle of poverty, perpetuate the structures of inequitable distribution of public goods and create more terrorist and malicious intents and actions coinciding with the increasing availability and accessibility of dual-use WMD materiel. A better and solid argument has to be developed in order to establish the linkages of WMD proliferation with international law, environmental and human security but it must be underscored that research has to move forward towards this direction.

Tigerstrom (2007, p. 199) argued that international law is at definite odds with human security especially given the dichotomy of state-centric vs. people-centric approach. Individual interests are often sacrificed for state interests since the key concepts and core principles of interstate affairs and international law often frame the state as the primary actor. If we take it from the international governance and network of cooperation standpoint, we see that this argument no longer holds enough strength to contend with the reality of fading geographical boundaries. In Southeast Asia, the possibility that sovereignty is invoked first before human security concerns might be true and in some instances serve as barrier to state practices and cooperative behavior

necessary to safeguard human security. The threat of WMD proliferation at sea is a traditional, environmental and human security concern. The adamant upholding of sovereignty stands in the way of promoting people-centered initiatives and in providing a human face to the traditional security dimension of WMD proliferation. Southeast Asian maritime security cooperation, in general, should incorporate the imperatives of human security.

This paper touched on incorporating human security in the discourse and dynamics of international law, IR in order to demonstrate the practical implications of state compliance with Resolution 1540 in the traditional security issue of dual-use proliferation and its maritime dimension; policy, practice and future researchers will benefit from further exploring and strengthening the linkages of these concepts.

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