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THE PROLIFERATION SECURITY INITIATIVE:  
WHAT COMES NEXT?

By

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## *Preface*

The Proliferation Security Initiative is an uncommon animal in the world of US policy – highly praised by conservatives as the greatest achievement of the State Department during the Bush administration and commended by liberals as a necessary instrument in our attempt to halt the spread of weapons of mass destruction. Within the US military establishment, PSI has been viewed as the Navy’s domain, nothing more than maritime interdiction with the added impetus of a presidential initiative behind it.

Both of these basic ‘facts’ contributed significantly in my decision to delve deeper into the Proliferation Security Initiative. As a foreign policy advisor (POLAD) at Air Combat Command, I read with great interest the State Department cable announcing PSI and outlining its basic structure and objectives. Upon first read, I was impressed with PSI in that it appeared to be a major multilateral initiative by the US right after Operation Iraqi Freedom that could go a long way towards mending the growing rift between the US and Europe. On a lower level, as an Air Force officer, I thought that if PSI were fully realized, it could significantly impact US Air Force operations world wide.

PSI has seen phenomenal growth in it’s two years of existence as it has focused on the almost universally acknowledged problem of WMD. Starting with a small group of nations with the requisite capabilities, PSI has built momentum to the point where over 60 nations support PSI and participate in multinational exercises aimed at interdicting WMD-related shipments. However, some senior DoD officials think PSI will atrophy

unless it moves to the next phase as envisioned originally – the interdiction of WMD-related shipments in the air.

In the following pages – explaining PSI’s rationale, history, organization, and way forward – I hope to accomplish two things primarily. First is to provide a rather detailed explanation of PSI to the uninitiated, and second, to hopefully provide a starting point for Air Force planners who must make the air interdiction aspects of the Proliferation Security Initiative a reality.

I would like to thank those individuals within the Departments of State and Defense who corresponded and kindly consented to interviews..

*Abstract*

This Air University research paper is an examination of the Proliferation Security Initiative. Through extensive research and review of academic journals, governmental sources, and press reporting, combined with interviews of relevant personnel in the Departments of Defense and State, the Proliferation Security Initiative is chronicled from its inception in early 2002 through the latest multinational exercises. Special attention is given to the guidelines governing participation in PSI and the key issues – legal authorities and intelligence sharing – relevant to PSI operations. PSI’s real-world success in the interdiction of BBC China and the subsequent decision by Libya to surrender its WMD program is covered as well.

Most importantly for an Air Force audience, the progression of PSI to the arena of air interdiction is described along with a brief description of how an air interdiction might play out and what complications it might bring. Finally, PSI is recognized as a small part in the overall US effort to counter WMD but an important part in rebuilding bilateral and multinational relationships.

## Chapter 1

### What Is The Proliferation Security Initiative?

*The most successful and meaningful multilateral effort undertaken by this Administration—or the previous one*

—The Wall Street Journal<sup>1</sup>

What exactly is the Proliferation Security Initiative (PSI)? How did it start? What has happened to date and what is in store for the future? Does PSI provide a new model for international cooperation? These are a few of the questions this paper hopes to answer through a presentation of the Proliferation Security Initiative in four parts. The first section will examine PSI from its conception in the winter of 2002-2003 to its announcement by President Bush as a presidential initiative in May at the NATO Summit in Krakow. The next section will address PSI activities to date, how the initiative is organized, and a couple of key issues governing its operation. Third is a look at PSI's only public real-world success and its continued applicability in a new world "order" characterized by both the proliferation of terrorism and WMD. Finally, PSI will be examined with an eye toward the future – first as to the expansion of PSI itself into the air domain and PSI's part in the larger strategy of countering WMD proliferation.

The Proliferation Security Initiative (PSI) has been called the greatest achievement of the State Department during Colin Powell's tenure<sup>2</sup>. In her first town hall meeting at State Department, Condoleeza Rice singled out PSI as an outstanding example of



transformational diplomacy—crossing disciplines, regional lines and expertise to solve problems. Secretary Rice also described it as an organization without an address or a building, but which is working to interdict suspicious cargoes that may be WMD-related based on current national and international laws.<sup>3</sup> While PSI has been in existence for little more than two years, it has already achieved a significant success in the interdiction of the BBC China. An event which played a large part in the decision by Libya to end its weapons of mass destruction (WMD) program.<sup>4</sup>

### **Mix & Match Multilateralism**

It is easier to say what the Proliferation Security Initiative is not. The Wall Street Journal cautions its readers to not “mistake PSI for a multilateral institution in the conventional sense...no headquarters, no secretary-general, no talkfests—and, perhaps most important of all, no French or Russian veto.”<sup>5</sup> In positive terms, PSI is described as a “better way than traditional arms control to enforce global norms in the age of proliferating WMD through its “mix-and-match multilateralism” in which dozens of countries participate in dozens of different ways, depending upon the need at hand and on individual nation’s capabilities. The only commonality is US leadership<sup>6</sup>. The closest thing to an official definition came from a senior DoD official responsible for PSI who defined it as “a multilateral framework for national action and to facilitate international cooperation”<sup>7</sup>. What is most certain is that PSI reflects the need for a more dynamic and active approach to the global proliferation problem...reflecting the reality that proliferators are actively and aggressively seeking WMD using techniques that thwart traditional export controls and enforcement measures.

## **WMD Strategy Sets Stage**

PSI owes its existence to the National Strategy for WMD published in December of 2002. This document laid out a three pillar strategy to combat weapons of mass destruction: counterproliferation to combat WMD use, strengthened nonproliferation to combat WMD proliferation, and consequence management to respond to WMD use. More specifically, and in the first of the stated operational requirements, the national WMD strategy asserted “effective interdiction as a critical part of the US strategy...[The US] must enhance the capabilities of our military, intelligence, technical, and law enforcement communities to prevent the movement of WMD materials, technology, and expertise to hostile states and terrorist organizations”,<sup>8</sup> and, that “WMD represent a threat not just to the United States, but also to our friends and allies and the broader international community. For this reason, it is vital that we work closely with like-minded countries...”<sup>9</sup>

## **Missiles for Yemen**

Ironically, two days prior to the publication of the National Strategy for WMD on December 11, two Spanish naval vessels interdicted an unflagged vessel, the So San, in the Arabian Sea. The So San had been tracked by US intelligence since its departure from North Korea on November 13, 2002 and was suspected of carrying SCUD missiles and related support materiel destined for Yemen. While the So San left North Korea under the North Korean flag with the name of its homeport, Nam Po, clearly stenciled on the stern, it anchored in the vicinity of Singapore and reflagged under Cambodian colors and changed its homeport via a placard reading Phnom Penh. At this point, the US considered the vessel stateless and began consideration of interdicting the vessel before it

could offload its cargo. As the So San continued toward Yemen, it came within range of Combined Task Force 150, a multinational task group tasked with responsibility for maritime interdiction operations in support of UN Security Council Resolutions 661 and 665 which imposed sanctions on Iraq. On December 9, Spanish naval vessels, the Navarra and Patino fired warning shots as the So San attempted to avoid initial boarding attempts.<sup>10</sup> After the vessel stopped and upon boarding, Spanish personnel discovered a concealed shipment of 15 complete SCUD missiles, 15 warheads and fuel underneath a cargo of concrete mix. However, to the discomfort of the US, Yemen came forward and declared the missiles were theirs, purchased under a contract with North Korea made several years prior. Further, Yemen declared the SCUDs a legitimate requirement for Yemen's self-defense. In response, after a number of phone calls between Yemeni President Saleh and Vice President Cheney as well as Secretary of State Powell and Yemeni Foreign Minister Abu Bakr al-Qurbi (receiving assurances from the Yemeni that this was the last shipment), the US declared that it lacked the necessary legal authority to seize the cargo and allowed the shipment to be delivered. US White House spokesman Ari Fleischer also suggested that Yemen's status as an ally in anti-terrorism efforts was an important factor in the decision and that Yemen did not pose a threat to the US. And while the shipment to Yemen was a worry as Sana'a had stated it would stop purchasing missiles from North Korea, the incident was far more troubling as it underscored continuing US concern about Pyongyang's continued penchant to sell missiles and related components to anyone who could afford them.<sup>11</sup> As Professor Graham Allison of the Kennedy School of Government has put it, North Korea has a well-earned reputation as "Missiles 'R Us."

## **Crafting a Pro-Active Approach**

Soon after the So San incident, State Department was directed to craft a proactive diplomatic approach to strengthening the US ability to interdict WMD. Vann Van Diepen, the Director of the Office of Chemical, Biological and Missile Nonproliferation (PM/CBM) crafted a paper outlining such a plan of action. Of note, but only significant to those familiar with the arcane ways of interagency policy formulation, the paper was offered at the Principal Deputies meeting as is routine. However, the paper was never presented to the principals as is the standard course of action. Instead, the paper made its way directly to the Oval Office and the Proliferation Security Initiative became quickly a presidential initiative.<sup>12</sup>

At first, John Wolfe, the Assistant Secretary for Nonproliferation was made the lead for PSI, but soon John Bolton, the Under Secretary for Arms Control and International Security, took the lead and provided PSI the political initiative and momentum it needed. In interviews with State Department officials, they've indicated that career foreign service officers have never seen anything move this fast within the department.<sup>13</sup>

In the spring of 2003, State Department issued a cable to affected US embassies asking them to approach respective capitals about their willingness to participate. This initial list included Australia, Britain, Italy, Japan, the Netherlands, Poland, Portugal and Spain, -- all countries which had provided some degree of cooperation with the US in the war in Iraq and could contribute significant capabilities to an effort to stop the spread of WMD-related materials. France and Germany were soon added to the list -- personally approved by the White House, and as was readily apparent in statements by Secretary Rumsfeld at the time, over the objections of the Department of Defense. In retrospect,

the addition of France and Germany to the core group was significant for two reasons – for one it showed the importance many nations place on the need to stop WMD proliferation; and secondly, it showed a willingness on the part of the leadership of the US, France, and Germany to begin rebuilding bridges with each other so soon after the rancorous debate leading up to the invasion of Iraq.

Despite initial missteps in determining the original core group, the basic criteria cited by State Department, is that all eleven founding states “have demonstrated strong support for nonproliferation; have been involved in efforts to prevent proliferation, including active interdiction efforts; and are located in geographically important locations in relation to proliferation pathways...[and] in order to commence the initiative, *meeting with a small group of states proved efficient and productive.* [emphasis added]” This last point is particularly important in explaining the success of PSI. Instead of trying to assemble a larger group of nations that included all that might have some part to play, the US government decided to keep the original group small. A larger group could have easily bogged down in trying to reach agreements on broad issues. This small group was able to reach common understandings quicker and build momentum for the initiative.

### **Presidential Initiative Unveiled**

At the end of May 2003, in Krakow at the NATO summit, President Bush announced the Proliferation Security Initiative, saying "The United States and a number of our close allies...have begun working on new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies. Over time, we will extend this partnership as broadly as possible to keep the world's most destructive weapons away from our shores and out of the hands of our common enemies."<sup>14</sup>

## Notes

- <sup>1</sup> "Tough Love for the UN," *The Wall Street Journal* 2005.
- <sup>2</sup> James K. Glassman, "Urge Fed Agencies to Clean House Goss-Style," (2004).
- <sup>3</sup> Rice, "Rice's first meeting," 2005.
- <sup>4</sup> George W. Bush, "President Announces New Measures to Counter the Threat of WMD," ed. Office of the Press Secretary (2004).
- <sup>5</sup> "The New Multilateralism," *The Wall Street Journal* 2004.
- <sup>6</sup> Ibid.
- <sup>7</sup> David A. Simon, "Interview Notes with OSD Official," (2004).
- <sup>8</sup> "National Strategy to Combat Weapons of Mass Destruction," ed. The White House (2002), 2.
- <sup>9</sup> Ibid., 6.
- <sup>10</sup> "Joint Doctrine for Combating Weapons of Mass Destruction," ed. Department of Defense (2004).
- <sup>11</sup> Paul Kerr, "US Stops Then Releases Shipment of N. Korean Missiles," in *Arms Control Today* (Washington DC: 2003).
- <sup>12</sup> David A. Simon, "Interview Notes with State Department," (2004).
- <sup>13</sup> Ibid.
- <sup>14</sup> "Bush Urges NATO Unity in Fight Against Terrorism, Spread of WMD," ed. State Department (2003).

## **Chapter 2**

### **How the Proliferation Security Initiative Works**

Within three months of President Bush's announcement, after extensive meetings of the core policy group and initial meetings of operational experts for intelligence and law, the PSI core group released a set of interdiction principles guiding PSI at the summit in Paris. "The principles called on PSI participants, as well as other countries, to not engage in WMD-related trade with countries of proliferation concern and to permit their own vessels and aircraft to be searched if suspected of transporting such goods. The principles further urged that information on suspicious activities be shared quickly to enable possible interdictions and that all vessels "reasonably suspected" of carrying dangerous cargo be inspected when passing through national airports, ports, and other transshipment points." (See Appendix 1). Since that summit in Paris, Canada, Norway, Russia and Singapore have joined the PSI core group while Denmark, Greece and Turkey currently send representatives to the operational intelligence and law working groups.

### **Exercise Play**

Within four months of the initial announcement, in mid-September of 2003, the first PSI exercise, Pacific Protector, took place in the Coral Sea off Australia's coast. Over three days, ships and aircraft of the US, Australia, France and Japan practiced operations aimed at tracking and boarding ships suspected of carrying WMD cargoes.<sup>1</sup>

To date, thirteen multinational exercises involving participating nations have been conducted in the last eighteen months. The exercises have not been run-of-the-mill military-to-military exercises, but have also involved law enforcement and other relevant civilian agencies. Maritime interdiction exercises have been hosted by Australia, France, Spain, Italy and the United States; air interdiction exercises by Britain and Italy; and ground interdiction exercises by Germany and Poland. The latest exercise in late November again involved maritime interdiction and took place off the coast of northeast Australia.

Upcoming exercise play includes a maritime interdiction exercise hosted by Portugal in April 2005, a regional ground interdiction by Poland and the Czech Republic in June, and a Singapore hosted combined maritime-ground interdiction exercise in August. On the air side, Spain will host an air interdiction exercise in June; the US will host an air freight workshop in the August-September time frame; and Norway will host an air interdiction gaming exercise in October.<sup>2</sup>

Concurrent to the exercises that have been conducted on an average of about one every two months, operational intelligence and law working groups have also met. At these meetings, the groups review exercise results and work out problems as they arise. Consequently, as exercises have been conducted and working group meetings held, PSI's mission and authorizations have become more sharply defined. But from the beginning, PSI's primary focus remained the same – "to stop shipments of biological, chemical, and nuclear weapons, as well as missiles and goods that could be used to deliver or produce such weapons, to terrorists and countries suspected of trying to acquire WMD." PSI members continue to plan to interdict WMD-related cargo at sea, in the air, or on land.



For some nations, the US and Great Britain come readily to mind, this is not a new practice but an enshrinement and expansion of current operations. The US and others have long records of intercepting illegal trade and smuggling activities, including illicit weapons. What PSI exercises allow on a practical level is a routinized mechanism to allow nations not normally accustomed to carrying out interdictions to become more comfortable with the notion and train their military, police, customs, et. al. to work with other PSI nations and to work together.

### **Who Can Join**

A unique aspect of PSI is the criteria for membership and its emphasis on activities rather than the acceptance of principles alone. According to State Department, anyone who accepts the Statement of Interdiction Principles and has the necessary legal authority to implement the Principles is encouraged to join. For any state that does not have any or all of the requisite legal authorities, it is encouraged to create the necessary legal authorities. States that have operational and informational capabilities are also encouraged to join. In the end the US “wants countries to establish the *practical* [emphasis added] basis to cooperate on interdiction efforts.”<sup>3</sup>

Specifically, State Department outlines the following steps for countries desiring to join PSI:

- Formally commit to and publicly endorse, if possible, the PSI and its Statement of Interdiction Principles and indicate willingness to take all steps available to support PSI efforts.
- Undertake a review and provide information on current national legal authorities to undertake interdictions at sea, in the air or on land. Indicate willingness to strengthen authorities where appropriate.

- Identify specific national assets that might contribute to PSI efforts (e.g. information sharing, military and/or law enforcement assets).
- Provide points of contact for PSI interdiction requests and other operational activities. Establish appropriate internal government processes to coordinate PSI response efforts.
- Be willing to actively participate in PSI interdiction training exercises and actual operations as opportunities arise.
- Be willing to consider signing relevant agreements (e.g., boarding agreements) or to otherwise establish a concrete basis for cooperation with PSI efforts (e.g., MOU on overflight denial)<sup>4</sup>

Another distinctive characteristic is that no funds are provided – each nation is to pay for its own efforts. However, the US states that it wants to ensure that all participants are able to take effective action if called on and is not averse to offering assistance – training, grants, aid, etc. – in developing needed capabilities to select countries.<sup>5</sup>

### **Legal Authority**

Much of the Proliferation Security Initiative is little more than “the consistent and rigorous application of existing rights under national and international law. Concurrently, the initiative promotes the development of new legal authorities by way for bilateral and multilateral treaties, Finally, and less obviously, PSI may lead to new rights under customary international law.”<sup>6</sup>

When PSI first originated, the perception was that PSI was a pro-active departure from control regimes already in place. Part of the reason for this perception originated in President Bush’s speech announcing the initiative in which he said PSI would give member nations the capability to search suspect vessels and aircraft and seize illegal weapons or missile technologies on board.<sup>7</sup> The perception was further compounded by statements of senior US government officials who indicated that PSI would create a

precedent for the seizure of WMD-related materials in international waters which would eventually be accepted in international law just as the British seizure of slave ships in the 1800s set a precedent later incorporated into international law.<sup>8</sup> However, US officials have backed off on that approach and are now focused strictly on keeping PSI within the bounds of international law and the national laws of involved states.

With regards to legal authority,

The initiative does not empower countries to do anything that they previously couldn't. Most importantly, PSI does not grant governments any new legal authority to conduct interdictions in international waters or airspace. Such interdictions may take place, but they must be confined to what is currently permissible or properly registered. It cannot be stopped simply because it is suspected of transporting WMD or related goods. PSI is primarily intended to encourage participating countries to take greater advantage of their own existing national laws to intercept threatening trade passing through their territories and where they have jurisdiction to act. In situations where the legal authority to act may be ambiguous, PSI core group participants have discussed going to the UN Security Council for authorization. PSI participants are also working to expand their legal authority to interdict shipments by signing bilateral boarding agreements with select countries to secure expedited processes or pre-approval for stopping and searching their ships at sea. The US has concluded such agreements with Liberia and Panama, the two countries with the largest fleets of registered ocean-going vessels in the world.<sup>9</sup>

The boarding agreements signed with Liberia, Panama and the Marshall Islands provide the US and other PSI participants with significant authority. In the case of Liberia, the agreement allows PSI nations to board a suspect vessel flying the Liberian flag and if evidence of WMD proliferation is found, to detain the vessel, as well as items and persons on board.<sup>10</sup>

### **Legal Limitations**

While the boarding agreements signed by nations with large fleets of registered vessels provides the US with significant legal authority, there are some limitations.

Because of the decision to stay within bounds of international law, PSI finds itself restricted in some ways. First, it is highly unlikely that ships flagged under North Korea or Iran in international waters would consent to boarding by a PSI participant. Second, and more importantly, if a vessel is boarded in international waters and WMD material found on board, there is no clear legal authority under international law to seize the material.<sup>11</sup>

In territorial waters, the same limitations apply with one exception. For a PSI state to stop a suspect vessel in its territorial waters (and not impede the vessel's right of innocent passage), it must do so under its national legal authority and consistent with its obligations under international law.<sup>12</sup>

A much larger potential problem looming on the horizon for PSI is the possibility that the long, dormant Law of the Sea Treaty (LOST) may take away PSI's international legal foundation. China, India and Russia have all made clear their opinions that the Proliferation Security Initiative would be in violation of LOST if it is brought into force. Specifically, China has stated that Article 110 which specifies that ships can be intercepted at sea for suspected slavery, piracy, narcotics trafficking or unauthorized broadcasting (but not for suspected engagement in terrorism or shipping of weapons of mass destruction) renders PSI impermissible.<sup>13</sup> In an effort to prevent US Senate ratification of LOST until that question can be answered, conservative US Senator Jim Inhofe (R-OK) is requesting the GAO first study the treaty and determine whether LOST would undermine PSI.<sup>14</sup>

## **Blurred Boundaries – New Paradigm Needed?**

Because of the nearly universal recognition of the threat posed by WMD, one could argue PSI activities require authorities beyond those provided by international laws in times of peace. As Jennifer Alsea, a legislative attorney with the Congressional Research Service notes, “some commentators argue that a new paradigm is necessary for the protection of State’ interests in light of...changes in the character of international conflict, the greater destructive power of modern weapons, and the emergence of non-state actors capable of mounting attacks against States.”<sup>15</sup> Possible rationales for using military force short of war include the right of self defense, pacific blockade, the self-help paradigm, and collective action under UN Security Council mandate.<sup>16</sup>

At present, the ability of PSI participants to *completely* halt shipments is uncertain under current international law. To solve this problem, the US might consider whether to amend treaties regarding freedom of navigation to “explicitly...include WMD and missile trade with prohibitions that may be universally enforced...[or] amending the proliferation treaties to enhance compliance...[but] the firmest legal basis for interdicting WMD materials would be provided by explicit authorization by the U.N. Security Council.”<sup>17</sup>

Michael Byers, writing in the American Journal of International Law agrees that because the problem of nonconsenting states remains, three options remain to make PSI as effective as possible: a UN Security Council resolution that authorizes interdiction, claiming that a suspect vessel interdiction falls within the bounds of pre-emptive self-defense, or violating international law.<sup>18</sup> Of these, of course, a UNSC resolution is preferable.

And to this point, PSI remains an informal arrangement among nations. To date, there is still no list of criteria by which interdictions are to be made (except that the cargo is destined for a recipient that might use it to harm the US or other country). There is also no secretariat or formal organization that serves as a coordinating body. Instead, participants aim to readily share information among one another as appropriate and to act when necessary to help seize or thwart dangerous trade.

There is also no obligation to act by any of the PSI participants. In every case the SOP calls upon participating states to act when “good cause” is shown. In responding to a request, “each state will need to decide for itself whether the information provided by the requesting state warrants acceding to the request.”<sup>19</sup>

### **Intelligence Sharing**

Another unique aspect of PSI that differentiates it from other international regimes is its approach to intelligence sharing. The Bush administration also considers it one of the strengths of PSI. Unlike the intelligence sharing mechanism of the Non-Proliferation Treaty (NPT) which allows for the sharing of all intelligence by every signatory, PSI provides intelligence on a case-by-case basis. In PSI, sensitive information on specific interdiction activities is shared only among those nations involved in a possible interdiction.<sup>20</sup>

While from a multilateralist viewpoint this might be considered a weakness, it must be considered a strength by the US and other significant contributors of WMD-related intelligence. In the case of the NPT where over one hundred and eighty nations have joined (to include troublesome nations like Iran and Pakistan), all intelligence is shared by all nations. This results in two undesirable outcomes: intelligence meant to prevent

further proliferation of WMD could be used by potential proliferators to assist in the further spread of WMD, and consequently, intelligence contributing states like the US are likely to provide only generic, watered-down intelligence of little value. Both of these factors were at the base of the International Atomic Energy Agency's Director General Mohamed ElBaradei's complaint prior to the Iraq war that the US was not providing the IAEA with all possible intelligence it had to the IAEA as it searched for WMD in Iraq.

As PSI handles intelligence on a case-by-case basis, it provides the US with a broader margin of reassurance which is related directly to the very nature of PSI operations. As the US will require the contribution of PSI member nations to successfully carry out interdictions, the US by necessity must provide specific, actionable intelligence to gain multilateral cooperation. And, by its very nature, specific, actionable intelligence has a short shelf life. For example, when a suspect vessel has completed its transit through a strait where an interdiction could take place, intelligence related to the vessel and its passage loses relevance and value.

### **International Score Card**

On the whole, international reaction to the Proliferation Security Initiative has been positive. Since its inception, the United States states that over sixty nations have signed on. Exactly who belongs is unclear as many nations have not made their participation known, although the US encourages public disclosure. As one might expect, the core group (consisting of Australia, Britain, Canada, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Russia, Spain and Singapore) is the most active in exercise and planning activity. But of these, the nations of the Far East and Western Pacific region are the most visible. This is no accident as it seems this area has a

monopoly on proliferation activity with North Korea and Pakistan of greatest concern as proliferators and Iran, an incipient nuclear power. Given this situation, Japan and Australia could be considered the lead nations of PSI. On the flip side, North Korea has been the most vocal critic of PSI. Of the regional hegemons, both China and India remain on the sidelines with neither having signed on.

Japan has been most active in PSI, serving as an advocate in the Far East. Soon after PSI was initiated, Japan invited all the countries of southeast Asia – Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam – and South Korea to explain the initiative to them. In October 2004, Japan joined the US, Australia, China, Hong Kong, Singapore, South Korea and Thailand in an agreement to develop more effective trade rules for WMD-related materials.<sup>21</sup>

Australia is also a strong advocate, citing PSI as an example of Australia's taking on a leading role in the "world police force" and crediting PSI as helping to further develop international anti-terrorism plans.<sup>22</sup> Quite controversially, Australia has announced a new maritime security zone which extends 1,000 nautical miles from the Australian coastline. According to Prime Minister John Howard, any vessel entering the zone will be required to report to Australian authorities and "provide details of cargo, destination, crew, port of call, likely arrival at port and so forth." Both New Zealand and Indonesia have expressed concern as the 1,000 nautical mile zone impinges on New Zealand and Indonesian territory.<sup>23</sup>

Predictably, North Korea has labeled PSI nothing but a provocation since the first exercise.<sup>24</sup> Because of Pyongyang's vehement objections to PSI, China and South Korea have been reluctant to participate.<sup>25</sup> Most recently, in visits to India by Secretary of



Defense Rumsfeld and Secretary of State Rice, the US has courted New Delhi to become a participant. To date, however, the Indian government has not committed.

Perhaps the strongest endorsement of the Proliferation Security Initiative has come from the United Nations

### Notes

<sup>1</sup> "Practising to Provoke," *The Economist*, September 20 2003.

<sup>2</sup> State Department Bureau of Nonproliferation, "Calendar of Events," (2005).

<sup>3</sup> "Proliferation Security Initiative Frequently Asked Questions (FAQ)," ed. State Department Bureau of Nonproliferation (2005).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Michael Byers, "Policing the High Seas: The Proliferation Security Initiative," *The American Journal of International Law* 98, no. 3 (2004): 528.

<sup>7</sup> Jennifer K. Elsea, "Weapons of Mass Destruction Proliferation: Legal Issues for Ships and Aircraft," ed. Congressional Research Service (2003).

<sup>8</sup> Simon, "Interview Notes with OSD Official."

<sup>9</sup> "The Proliferation Security Initiative (PSI) At a Glance," in *Arms Control Association* (2004).

<sup>10</sup> "'Proliferation Security Initiative' for Searching Potential WMD Vessels," *The American Journal of International Law* 98, no. 2 (2004).

<sup>11</sup> Elsea, "Weapons of Mass Destruction Proliferation: Legal Issues for Ships and Aircraft," 22.

<sup>12</sup> Ibid., 23.

<sup>13</sup> Oliver North, "Trojan Horse Sea Law," *The Washington Times*, April 3 2005.

<sup>14</sup> Paul M. Weyrich, *Sovereignty Under Siege by International Sea Treaty* (2005 [cited]); available from [www.freecongress.org/commentaries/2005/050112.asp](http://www.freecongress.org/commentaries/2005/050112.asp).

<sup>15</sup> Elsea, "Weapons of Mass Destruction Proliferation: Legal Issues for Ships and Aircraft," 25.

<sup>16</sup> Ibid., 25-33.

<sup>17</sup> Ibid., 33-34.

<sup>18</sup> Byers, "Policing the High Seas: The Proliferation Security Initiative," 528.

<sup>19</sup> "Proliferation Security Initiative Frequently Asked Questions (FAQ)."

<sup>20</sup> Ibid.

<sup>21</sup> "No Place to Hide, Maybe," *The Economist*, October 30 2004.

<sup>22</sup> "Australian Ambassador Discusses Burgeoning Bilateral Ties," *Digital Chosun Ilbo*, December 28 2004.

<sup>23</sup> Patrick Goodenough, *Australia Plans Maritime Zone to Flush Out Terrorists, Criminals* (December 17 2004 [cited]); available from [www.cnsnews.com/foreignbureaus/archive/200412/for20041217a.htm](http://www.cnsnews.com/foreignbureaus/archive/200412/for20041217a.htm).

<sup>24</sup> "Practising to Provoke."

<sup>25</sup> "No Place to Hide, Maybe."

## **Chapter 3**

### **PSI & the Real World**

#### **A Success Story**

To date, one cannot know how many real-world interdictions have taken place, primarily because of the fact that sensitive intelligence may be used and sources could be compromised if made public. However, one case has been made public and contributed significantly to the decision by Libya to surrender its WMD program. This was the interdiction, under PSI auspices, of the BBC China in October 2003.

In an 11 February 2004 address by President Bush to National Defense University, he revealed the circumstances behind the interdiction of BBC China. “As a result of penetration of the [AQ Khan] network, American and British intelligence identified a shipment of advanced centrifuge parts manufactured at a Malaysian facility. The shipment of these parts was tracked to Dubai, and monitored as they were transferred to the BBC China, a German-owned ship. After the ship passed through the Suez Canal, bound for Libya, it was stopped by German and Italian authorities. They found several containers, each forty feet in length, listed on the ship’s manifest as full of “used machine parts.” In fact, these containers were filled with parts of sophisticated centrifuges. The interception of the BBC China came as Libyan and British and American officials were discussing the possibility of Libya ending its WMD programs. The US and Britain

confronted Libyan officials with the evidence of an active and illegal nuclear program which the PSI interdiction provided. Soon after, Mu'amar Qadafi voluntarily agreed to end his WMD programs.”

The interception of BBC China likely would not have taken place without the existence of PSI. Because PSI participating nations had been meeting to discuss operational aspects of law enforcement and intelligence and especially due to the fact that several scenarios had been exercised – BBC China was interdicted before it could offload its WMD cargo. This “speed of response signals one of the core strengths of PSI – the demonstrated ability to bring to bear existing assets and capabilities of member states without the exhausting and time consuming effort of building a large international bureaucracy”. Specifically, as BBC China made its way from Dubai to Tripoli, no legal justification to stop the ship was as yet known. Upon further investigation, it was then discovered that the ship was German-owned, and the German company – once contacted – declared itself willing to assist but had no idea how. Only after discussions and research by PSI operational experts was it discovered that existing German law provided the needed legal umbrella. Consequently, US naval vessels intercepted and escorted BBC China to an Italian port and Italian customs with only one day’s notice to Italian authorities.<sup>1</sup>

### **The A. Q. Khan Network**

A second order consequence of the interception of BBC China and the subsequent opening of the Libyan WMD program was the discovery of blueprints for a 10 kiloton nuclear warhead courtesy of AQ Khan of Pakistan. This provided further evidence of the

extent of AQ Khan's proliferation network and underscores further the need for measures like PSI to slow the proliferation of WMD.

AQ Khan was the chief architect of Pakistan's nuclear weapons program and the creator of a very extensive network in the trafficking of machinery for enriching uranium for weaponization. AQ Khan is known to have contacts in more than 30 countries – suspected nations include Afghanistan, Egypt, Iran, Ivory Coast, Kazakhstan, Kenya, Mali, Mauritania, Morocco, Niger, Nigeria, North Korea, Saudi Arabia, Senegal, Sudan, Syria, Tunisia and the United Arab Emirates. While the US has hoped to question AQ Khan since his arrest by the Pakistani government over a year ago, the Pakistani government has not allowed access. And because Pakistan is a key ally in the war on terrorism and President Musharaf is in a precarious position, the US is not willing to push too hard.<sup>2</sup>

### **A New Security Landscape**

With the recognition of the preponderance of PSI in the Asia-Pacific region and the identification of North Korea as the primary nation-state proliferator and AQ Khan of Pakistan the infamous example of a subnational proliferators, it becomes apparent that a new global security landscape is emerging – one that has changed considerably since the end of the Cold War. Francois Heisbourg, the chairman of the council of the International Institute of Strategic Studies in London, provides an excellent summation of the new security landscape. He first identifies two basic elements which are changing. First is the threat proffered by non-state actors to inflict significant damage – what was once an acceptable risk became a clear and present danger after September 11. Second is the fact that the basic relationship between the US and its European and Asian allies are

undergoing a transformation which brings into question the institutions and rationales which have supported them for the last sixty years.<sup>3</sup>

Francois Heisbourg continues by describing the major risks posed by state and non-state actors. In terms of nation-state threats, the biggest threat continues to come from the “arc of crisis” that extends from Morocco in north Africa, through Egypt and the Levant, and continues through the Arabian peninsula to Pakistan. The entire area can be characterized by runaway demographics and unstable regimes, the weakening of broad-based political Islam and concomitant rise of virulent Islamist ideologies, and the pursuit of WMD by a number of nations as an asymmetric response to the military dominance of the United States.<sup>4</sup>

Another arc of crisis of a more troubling nature is the Asian nuclear arc extending from Israel to Northeast Asia. It contains two of the five original nuclear states – China and Russia, three relative newcomers to the nuclear club – Israel, Pakistan and India, and two nascent powers – North Korea and Iran (not to mention Iraq which had pursued nuclear weapons up until the first Gulf War at least).<sup>5</sup>

With the emergence of hyper-terrorism made explicit by Al Qaeda’s September 11 attacks, a number of policy tools, namely military deterrence, military containment, and balance-of-power politics, have become irrelevant. In their absence, detection, prevention, pre-emption, interception, damage limitation, and consequence management are the only available policy options.

When the two are combined – overlapping crescents of nation-states characterized by instability and/or with a penchant for WMD and hyper-terrorists seeking the ultimate bomb – it becomes clear that traditional security frameworks require modification.

According to Mr. Heisbourg, what must happen is a merging of the traditional divide between internal and external security “since in practice and perception, the two are merging “since the non-state antagonist works from within the targeted society while also operation across borders. This new paradigm carries with it three basic and closely related international implications:

- Although the tools of military force projection will continue to be materially distinct from those of internal police action, the basic facets of counter-terrorism...will have to be considered in an integrated. Furthermore, domestic security and external defense machinery will have to be tightly coordinated since counter-terrorism involves a broad array of fields...economic, financial, diplomatic, political, judicial, police, intelligence, and defense...which often cut across the external/internal divide...;
- Cross-border terrorism can only be met through cross-border counteraction;
- Cross-border non-state violence cannot be effectively countered without the cooperation of other cross-border non-state actors, such as the banking community and the transportation sector.”<sup>6</sup>

In combating the proliferation of WMD, no approaches can be ignored. As former Secretary of Defense William Perry said in testimony before the Senate Committee on Foreign Relations in March 2004,

...there is no silver bullet of policy to stop proliferation of WMD – neither preemption, nor arms control, nor export controls, nor diplomacy, nor missile defense, nor deterrence, nor any other single tool. The point so often missed in debate over this central security problem is that we need, in one way or another, all of these approaches. The problems of WMD spread to state and non-state actors are different in different places, and the variety of the problems must be matched with a variety of approaches. The magnitude of the problem requires that we leave no option out of our consideration. We need to be strengthening each and every one of our counterproliferation tools. Some of our approaches date back decades and...are in need of fundamental overhaul.<sup>7</sup>

The overall US response to WMD proliferation is encapsulated in a term called layered defense. Layered defense aims to thwart terrorists as many ways as possible in

their efforts to build and smuggle a WMD weapon into the US. The underlying philosophy is that the chances for success in countering WMD will be higher the more layers are used. “Layers include threat reduction programs in the former Soviet Union, efforts to secure HEU worldwide, control of former Soviet and other borders, the Container Security Initiative and Proliferation Security Initiative, and US border security. Several approaches underlie multiple layers, such as technology, intelligence, and forensics.”<sup>8</sup>

### Notes

<sup>1</sup> Simon, "Interview Notes with OSD Official."

<sup>2</sup> William J. Broad and David E. Sanger, "As Nuclear Secrets Emerge, More Are Suspected," *New York Times*, December 26 2004.

<sup>3</sup> Francois Heisbourg, "A New Security Landscape: the End of the Post-Cold War Era," *Asia-Pacific Review* 10, no. 1 (2003): 52.

<sup>4</sup> *Ibid.*: 53.

<sup>5</sup> *Ibid.*: 53-54.

<sup>6</sup> *Ibid.*: 58.

<sup>7</sup> The Committee on Foreign Relations, *Policy Frameworks for Countering Weapons of Mass Destruction*, March 10 2004.

<sup>8</sup> Jonathan Medalia, "Nuclear Terrorism: A Brief Review of Threats and Responses," ed. Congressional Research Service (2004), 2.

## **Chapter 4**

### **Next Steps**

In its relatively short existence, the Proliferations Security Initiative has grown considerably. However, there are three dimensions to PSI which call for further development. First, much more is expected of PSI as it was originally designed. While PSI calls for the interdiction of WMD-related materials on sea, air or land, exercises to date have primarily focused on the maritime component. The Department of Defense is now hoping to develop the air interdiction aspect. Second, PSI addresses only a small part of the proliferation problem, and the Bush administration hopes to expand PSI to include additional measures. Third, as Secretary Rice's example of transformational diplomacy, PSI deserves examination as a potential paradigm shift in the way the US and the international community approaches transnational issues.

### **Air Interdiction**

Now, the US hopes to move PSI itself into the development of air interdiction capabilities—a capability in which operational issues are much more challenging and intelligence will require much better definition. Legal issues may be simpler – countries may just deny the use of their airspace to an aircraft assessed to be carrying WMD-related cargo. However, air interdiction is time-compressed considerably. Instead of a window of days or even weeks in which one might stop a vessel on the high seas, the



time to act is shortened to hours in the case of an aircraft. Consequently, a much higher premium will be placed on advance, detailed intelligence that can identify when and from where an air shipment is to take place and to where it is likely headed. Only in this case could PSI participants ensure their respective military, law enforcement, and air traffic control establishments are aware, and be reasonably sure that needed air assets are in place to track the suspect flight, to possibly intercept it, and divert the aircraft if required.

### **An Air Interdiction Scenario**

The complexities of an air interdiction may be better understood through the following hypothetical scenario involving North Korean delivery of WMD-related materials to Iran. Since the inception of PSI two years ago, Pyongyang has witnessed four PSI maritime interdiction exercises off of the coasts of Japan, the South China Sea, and the Moluccan Straits north of the Australia, and noted the successful interception of the BBC China as it attempted to deliver centrifuge parts to Libya. Most recently, as a result of Pyongyang's recalcitrance and withdrawal from the six party talks, the US, Japan, South Korea, Russia and China have indicated they will step up naval exercises off of the North Korean coasts. Consequently, North Korea has decided it is no longer feasible to ship WMD-related items on the high seas.

Within weeks, North Korea has readied the shipment for air transport and arranged for a wide-body transport aircraft to carry the material. Taking off from Pyongyang, the aircraft makes its way across China, enters Indian airspace, and lands at Delhi for refueling following a six hour flight. After takeoff, the aircraft requests permission to enter Pakistani airspace, but is denied by Pakistani civil air authorities. At this point, the aircraft travels south-southwest within Indian airspace and enters international airspace

over the Arabian Sea for the remaining two hours of flight before reaching Iranian airspace.

Fortunately for the United States, US intelligence had been aware of North Korean preparations for over a week. Well aware of the very short window of opportunity for a successful air interdiction, the US had developed two scenarios for possible air routes – one overland across Chinese airspace and the other remaining primarily in international airspace over the western Pacific and Indian Oceans. In consultation with PSI core group members Australia, Japan, France, Singapore and Great Britain, the US and other nations contacted and began coordination with military, customs, civil air, and law enforcement authorities of PSI member nations in a position to assist. The air forces of Singapore and Pakistan were moved to a higher state of alert, US Forces Japan aviation assets were brought to a higher state of readiness, a US carrier repositioned in the South China Sea, and US AWACS deployed to Diego Garcia.

As the North Korean aircraft entered the Arabian Sea, it skirted (and violated) Pakistani airspace. This prompted an interception by Pakistani F-16s on combat air patrol directed by US AWACs flying an orbit 100 nautical miles off of the Pakistani coast.. The Pakistani fighters then diverted the transport to Karachi for inspection. There, the WMD cargo was found not to be on the flight manifest and the WMD-related material was impounded.

### **From Hypothetical to Practical**

When PSI started, one of its first operational tasks was to understand the complete range of authorities, both international and domestic, available to participating nations in the interdiction of WMD materials. This was accomplished by regular meetings of

operational law experts from participating nations who sifted through their respective national laws and statutes to find legal authorities that might be useful to PSI. To date, the focus has been on maritime law as it was thought to be the easiest to do. As PSI enters its third year of existence, DoD is now turning to accomplishing the same task for air interdiction.

The legal issues for air interdiction and maritime interdiction have similarities and differences. They are similar in that airspace is divided into national and international airspace just as there are territorial waters and international waters under the Law of the Sea Conventions. With regards to airspace, national airspace includes that above the territorial sea. What is most strikingly different is that there is no right of innocent passage for overflight of a territorial sea. However, aircraft are allowed passage over straits and archipelagic waters even though the airspace is considered national.<sup>1</sup> On the other hand, international law still calls for the due regard to the safety of civil aircraft and measures involving the use of force to deny airspace or force a landing for inspection could result in protests from the affected country.<sup>2</sup>

After sorting out the legal aspects, PSI must then tackle the operational aspects. First is the issue of knowledge of an impending air shipment. While the above scenario states the US knew of North Korean plans to transport the material by air, this advanced knowledge is by no means a given. In maritime interdiction, PSI nations have the luxury of around one week to identify, track, and make preparations and agreements to interdict a ship. In an air interdiction, PSI nations will have only hours to attempt an interdiction. Consequently, identification of an impending shipment, and the necessary preparations and agreements must come before hand. The kind of advanced warning which an air

interdiction requires necessitates substantially stronger intelligence capabilities if US authorities want to be assured of a relatively high level of success in stopping the proliferation of WMD materials. A number of areas to strengthen intelligence capabilities which should be considered have been identified by the Preventive Defense Project, a collaboration between Harvard and Stanford co-chaired by Ashton Carter and William Perry. They include the use of emerging technologies – “close-in” forensic technologies to take samples from the air or ground, unattended ground sensors, miniaturized tags and information technologies to allow sifting through databases, identifying and tracking all individuals involved in WMD-related activities, and improving the quality of scientific and technologic expertise available to the intelligence community.<sup>3</sup>

Once the issue of advanced warning is solved, the next substantial matter is the movement of aviation assets to positions where an air interdiction may be accomplished successfully. Fortunately for the US Air Force, the air expeditionary concept has been in development for almost ten years. Tailoring aviation packages to meet potential PSI requirements should not be an issue.

On the other hand, establishing points of contact, working relationships, and base access with the air forces of potential PSI participants may require more effort. Yet, the establishment of these relationships is in consonance with the current thinking at the Department of Defense and the on-going Global Force Posture Review and defense transformation. As the US looks to decrease the amount of forces permanently stationed overseas, PSI activities – which are of immediately practical use against a threat almost universally recognized – provide an additional impetus for the establishment of logistic

support and base access agreements, as well as the conduct of exercises and training exchanges.

In the Department of Defense's "Joint Doctrine for Combating Weapons of Mass Destruction (JP 3-40)", PSI is mentioned prominently as an activity which expands the range of interdiction options and contains proactive measures found in both nonproliferation and counterproliferation activities.<sup>4</sup> JP 3-40 also provides a much more comprehensive list of US Air Force potential contributions with an extensive delineation of tasks which could be tailored to the Proliferation Security Initiative. These tasks include the detection and monitoring of acquisition and development through the conduct of surveillance and tracking of suspected WMD threats, and the emplacement and recovery of tags, sensors and monitors. In the conduct of nonproliferation operations, US forces may be required to maintain forward presence, conduct joint and multinational exercises, carry out information operations, and train US forces and those of allies to fulfill WMD-related missions.<sup>5</sup>

As mentioned above and addressed specifically in JP 3-40, PSI can also serve as a vehicle for fully realizing the potential of security cooperation programs with PSI member nations. Areas of focus described include multinational exercises, security assistance, multinational training, education & experimentation, and defense and military contacts).<sup>6</sup> To further underscore the importance of expanding PSI into the air and ground domains, JP 3-40 states that "most notably, the PSI adds air and ground interdiction options to the long-standing maritime interdiction capability. The scope of PSI will all but mandate that conventional forces participate in interdiction operations alongside national assets."<sup>7</sup>

## **PSI's Part to Play**

Given the Proliferation Security Initiative's limited focus on the interdiction of WMD-related materials while in transit and in congruence with international law, it should be obvious that PSI plays a small part in the overall effort to stop the spread of WMD. Within the Department of Defense and codified in the just released National Defense Strategy, PSI fits into the concept of an Active, Layered Defense which says:

The United States will seize the strategic initiative in all areas of defense activity—assuring, dissuading, deterring, and defeating. Our first priority is the defeat of direct threats to the United States. Terrorists have demonstrated that they can conduct devastating surprise attacks. Allowing opponents to strike first—particularly in an era of proliferation—is unacceptable. Therefore the United States must defeat the most dangerous challenges early and at a safe distance, before they are allowed to mature.<sup>8</sup>

In building an active, layered defense, the concept of prevention is considered a critical component. Possible preventive activities include “security cooperation, forward deterrence, humanitarian assistance, peace operations, and non-proliferation initiatives—including international cooperation to interdict illicit WMD transiting the commons.”<sup>9</sup> Preventive actions may also go much further to include prevention of an outbreak of hostilities or to defend or restore a friendly government. And “under the most dangerous and compelling circumstances, prevention might require the use of force to disable or destroy WMD in the possession of terrorists or others or to strike targets (e.g. terrorists) that directly threaten the United States or others or US friends or other interests.”<sup>10</sup>

## **Expanding PSI Capabilities**

Hoping to capitalize on the success of PSI in its short existence and to build upon its relatively limited scope, President Bush has proposed an expansion of WMD countermeasures. In a February 11 speech last year at the National Defense University,

President Bush used the revelations of the extent of AQ Khan's network to announce additional proposals to strengthen efforts to stop the spread of WMD. For what the discovery of the AQ Khan network had made clear was the extent of a black market in WMD materiel and expertise, which when linked to nation-states with WMD programs, further compounded and intensified the proliferation problem.<sup>11</sup> As a result, the President made seven proposals to counter the threat of WMD.

First was an expansion of PSI to go beyond interdictions and transfers and include direct action against proliferation networks. As President Bush said in his speech, "We need greater cooperation not just among intelligence and military services, but in law enforcement, as well. PSI participants and other willing nations should use the Interpol and all other means to bring to justice those who traffic in deadly weapons, to shut down their labs, to seize their materials, to freeze their assets. We must act on every lead. We will find the middlemen, the suppliers and the buyers".<sup>12</sup>

The second of his proposals was the passage of a UN "Security Council Resolution requiring all states to criminalize proliferation, enact strict export controls, and secure all sensitive materials within their borders." This proposal has since been accomplished with the passage of UNSCR 1540 which "*calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials."<sup>13</sup>

The five other proposals, again underscore the limited nature of PSI as a nonproliferation tool. These proposals included the expansion of efforts to secure weapons from the Cold War to include the reinvigoration of Nunn and a promise to

provide \$10 billion over ten years (with the rest coming from the other nations of the G-8); the closure of a loophole in the Nuclear Non-Proliferation Treaty that allows non-nuclear states to build the nuclear infrastructure for bomb-making under the guise of peaceful energy production; the restriction of importation of equipment for civilian nuclear programs to states that have signed the Additional Protocol (which requires states to declare a broad range of nuclear activities and facilities and allows IAEA inspection); the creation of a special committee of the IAEA Board that will focus specifically on safeguards and verification; and a prohibition on countries under investigation for violating nuclear non-proliferation obligations from serving on the IAEA Board of Governors. Of these proposals, none have been implemented with the exception of the passage of the UN Security Council Resolution 1540.

### **A New Paradigm?**

One last area concerning PSI merits attention, and that is the ‘transformational’ label given by Secretary of State Rice. Her description of PSI as an outstanding example of transformational diplomacy that crosses disciplines, regional lines and expertise to solve problems – an organization without an address or a building, points out the ‘structural’ traits which make PSI unique. Another unstated but no less unique characteristic is the speed in which PSI took form and the multiplication of members in its two years of existence.

In both structural and time dimensions, it appears the Proliferation Security Initiative is not so much transformational but is instead a unique product of a very unique set of circumstances. First and foremost is a global consensus that the proliferation of WMD represents a clear and present danger and demands the cooperation of like-minded



nations. Secondly, as PSI originated in the immediate aftermath of the war in Iraq, it offered some nations the opportunity to rebuild relations with the US in an endeavor whose goals few can argue against. It does not appear to be a model for future cooperation. If it were, one would expect PSI's imitation in other areas. However, no examples have been cited by the US government nor do any similar activities come readily to mind.

## **Conclusion**

At its most basic level, the Proliferation Security Initiative is intended to make it more costly and risky for proliferators to acquire the weapons or materials they seek. By doing so, PSI members hope that other countries will be dissuaded from pursuing weapons in the first place or experience significant delays in their acquisition efforts

The Proliferation Security Initiative is but one instrument to prevent proliferation. When coupled with nonproliferation treaties, multilateral export control regimes, national export controls and enforcement measures, PSI goes a long way towards closing the door on proliferators. Its greatest strength may be its practical approach to the issue – building momentum by gathering a community of nations, building a network of national experts across disciplines, and using national and international law and regulations already on the books. While less than ideal, PSI represents a practical, appropriate response to a difficult problem.<sup>14</sup>

The Proliferation Security Initiative has been labeled a success by the Bush Administration and commended by the administration's critics – no small feat in an era characterized by partisan politics. In a time when all measures to fight terrorism and WMD proliferation have received intense scrutiny, PSI passed muster with the 9/11

Commission which recommended PSI be expanded.<sup>15</sup> PSI has even earned the imprimatur of the UN, commended by the UN Secretary General Kofi Annan and recommended by the secretary general's high-level Panel on Threats, Challenges and Change which recommended all nations be encouraged to join PSI.<sup>16</sup>

While PSI may have limited effects and may be a small part in the fight against WMD, it offers more general benefits in terms of interaction between nations and agencies which might otherwise have no reason to stay in contact. The Proliferation Security Initiative offers a vehicle for the military, law enforcement, and customs authorities of many nations to interact and establish regularized communication channels which can come in to play in all kinds of situations. And in a post 9-11 world in which the unconventional threats posed by terrorists and WMD are exponentially higher, increased communications between the world's nations must be considered a good thing.

### Notes

<sup>1</sup> Elsea, "Weapons of Mass Destruction Proliferation: Legal Issues for Ships and Aircraft," 15.

<sup>2</sup> Ibid., 23.

<sup>3</sup> Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Overhauling Counterproliferation Intelligence*, October 4 2004.

<sup>4</sup> "Joint Doctrine for Combating Weapons of Mass Destruction."

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., V-2.

<sup>8</sup> "The National Defense Strategy of the United States of America," ed. Department of Defense (2005), 9.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Bush, "President Announces New Measures to Counter the Threat of WMD."

<sup>12</sup> Ibid.

<sup>13</sup> "UNSC Resolution 1540," ed. United Nations Security Council (2004).

<sup>14</sup> Byers, "Policing the High Seas: The Proliferation Security Initiative."

## Notes

- <sup>15</sup> "9/11 Commission Report," (New York City: Barnes & Nobles Books, 2004).
- <sup>16</sup> *Ibid.*, 381.

## **Appendix A**

### **PSI Interdiction Principles**

#### **Proliferation Security Initiative: Statement of Interdiction Principles**

The Proliferation Security Initiative (PSI) is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the UN Security Council Presidential Statement of January 1992, which states that the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation. The PSI is also consistent with recent statements of the G8 and the European Union, establishing that more coherent and concerted efforts are needed to prevent the proliferation of WMD, their delivery systems, and related materials. PSI participants are deeply concerned about this threat and of the danger that these items could fall into the hands of terrorists, and are committed to working together to stop the flow of these items to and from states and non-state actors of proliferation concern.

The PSI seeks to involve in some capacity all states that have a stake in nonproliferation and the ability and willingness to take steps to stop the flow of such items at sea, in the air, or on land. The PSI also seeks cooperation from any state whose vessels, flags, ports, territorial waters, airspace, or land might be used for proliferation purposes by states and non-state actors of proliferation concern. The increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade, requires new and stronger actions by the international community. We look forward to working with all concerned states on measures they are able and willing to take in support of the PSI, as outlined in the following set of "Interdiction Principles."

#### **Interdiction Principles for the Proliferation Security Initiative**

PSI participants are committed to the following interdiction principles to establish a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international

law and frameworks, including the UN Security Council. They call on all states concerned with this threat to international peace and security to join in similarly committing to:

1. Undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. "States or non-state actors of proliferation concern" generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.
2. Adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity, protecting the confidential character of classified information provided by other states as part of this initiative, dedicate appropriate resources and efforts to interdiction operations and capabilities, and maximize coordination among participants in interdiction efforts.
3. Review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary relevant international law and frameworks in appropriate ways to support these commitments.
4. Take specific actions in support of interdiction efforts regarding cargoes of WMD, their delivery systems, or related materials, to the extent their national legal authorities permit and consistent with their obligations under international law and frameworks, to include:
  - a. Not to transport or assist in the transport of any such cargoes to or from states or non-state actors of proliferation concern, and not to allow any persons subject to their jurisdiction to do so.
  - b. At their own initiative, or at the request and good cause shown by another state, to take action to board and search any vessel flying their flag in their internal waters or territorial seas, or areas beyond the territorial seas of any other state, that is reasonably suspected of transporting such cargoes to or from states or non-state actors of proliferation concern, and to seize such cargoes that are identified.
  - c. To seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states, and to the seizure of such WMD-related cargoes in such vessels that may be identified by such states.
  - d. To take appropriate actions to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry.

- e. At their own initiative or upon the request and good cause shown by another state, to (a) require aircraft that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and that are transiting their airspace to land for inspection and seize any such cargoes that are identified; and/or (b) deny aircraft reasonably suspected of carrying such cargoes transit rights through their airspace in advance of such flights.
- f. If their ports, airfields, or other facilities are used as transshipment points for shipment of such cargoes to or from states or non-state actors of proliferation concern, to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying such cargoes, and to seize such cargoes that are identified.<sup>1</sup>

### **Notes**

<sup>1</sup> "Proliferation Security Initiative: Statement of Interdiction Principles," ed. The White House Office of the Press Secretary (2003).

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