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# The Proliferation Security Initiative: As an International Anti-Proliferaton Force

## Abstract

Nuclear Proliferation is one of the greatest challenges to international security. The Bush administration in 2003 launched the Proliferation Security Initiative (PSI), a US-led international anti-proliferation coalition formed to control the spread of nuclear weapons through interdiction. This study examines the creation of the Proliferation Security Initiative as an international antiproliferation force. It attempts to ascertain if the PSI as an international antiproliferation coalition will prove to be an effective means for managing the spread of nuclear weapons. This thesis discusses the background of the PSI, highlighting the steps taken in establishing such an international antiproliferation effort and giving it the kind of power it requires to function properly and achieve the desired result. It reviews the benefits and successes of the initiative since its creation, identifying the challenges facing the PSI while offering recommendations to overcome these challenges. A close examination of the PSI reveals that it is a positive move in the battle against weapons of mass destruction. The United Nations Security Council Resolution 1540 is useful in providing the legal backing the initiative needs to be effective. The PSI has recorded success in conducting actual interdictions as well as deterring the delivery of nuclear materials by sea. However it faces many legal and operational challenges which can hinder the ability of the initiative to achieve its ultimate goals. If these challenges are met with adequate improvements, the PSI will be very efficient in dealing with the threat posed by WMD. This project is a part of a growing body of research on anti proliferation measures and is intended to contribute positively to previously unsuccessful attempts in dealing with the menace of nuclear proliferation.

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**ST. JOHN FISHER COLLEGE**

**THE PROLIFERATION SECURITY INITIATIVE: AS AN  
INTERNATIONAL ANTI-PROLIFERATION FORCE**

**A MASTER'S THESIS SUBMITTED TO  
THE FACULTY OF THE MASTER OF SCIENCE IN INTERNATIONAL  
STUDIES PROGRAM**

**IN CANDIDACY FOR THE DEGREE OF  
MASTER OF SCIENCE IN INTERNATIONAL STUDIES**

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**ROCHESTER, NEW YORK, THE UNITED STATES OF AMERICA**

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## **Chapter One**

### **Introduction**

The Proliferation Security Initiative is an international anti-proliferation coalition created by the Bush administration in response to the growing challenge posed by weapons of mass destruction, their delivery systems and related materials all over the world. This thesis attempts to ascertain if the PSI as an international anti- proliferation coalition will prove to be an effective means for managing the spread of nuclear weapons. It discusses the background of the PSI, analyzing the steps taken in establishing such an international anti- proliferation effort to determine if it indeed has the kind of power it requires to function properly and achieve the desired result. It reviews the benefits and successes of the initiative since its creation, identifying the challenges facing the PSI while offering recommendations to overcome these challenges.

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Shortly after the devastating effects of Hiroshima and Nagasaki in 1945, Robert J. Oppenheimer, author of ‘International Control of Atomic Energy in the Nuclear Age’ envisaged the quest for nuclear power capabilities among the various nations of the world over the years. Oppenheimer foresaw an intense struggle among states to achieve and maintain superiority in the field of atomic weapons but advised however that this situation should not be allowed to be a source of war.<sup>1</sup> What may have been considered an author’s imagination more than half a century ago seems to have come true today as more and more states seek the knowledge to develop nuclear ability.

For more than three decades after Hiroshima and Nagasaki, there were only five legal nuclear powers namely; the United States, the Soviet Union , Britain, France and China. Israel was thought to have secretly obtained nuclear weapons in the late 1960s. India detonated a single nuclear device in 1974 but conducted no further tests until 1998 when Pakistan followed suit with similar tests. Records show that South Africa acquired nuclear materials in the mid 1970s. Other developing nations such as Argentina, Brazil, Iraq, and Libya may have taken huge steps at one time or the other to develop the capability to manufacture nuclear weapons. North Korea has been identified as one of the leading exporters of missile technology to Iran, Egypt, and other parts of the Middle East. The demise of the Soviet Union introduced four new members viz; Russia, Ukraine, Belarus, and Kazakhstan that inherited portions of the former Soviet nuclear arsenal.

The possibility of the use of nuclear weapons and of the damage that such weapons would cause calls for the need to devote extra effort in preventing their proliferation and use. At present, the United States in particular believes that there would

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<sup>1</sup> Hall, Gardner, “*American Global Strategy and the War on Terrorism*”. Hampshire, Burlington: (Ash gate Publishing Company), 2005. p. ix.

be reason enough to worry about nuclear accidents in new member states even if their safety difficulties were only as great as those experienced by old nuclear powers.<sup>2</sup> This is due to the fact that emergent nuclear powers cannot boast of the organization and financial resources to complement their efforts with adequate mechanical safety devices and safe weapons design features.

Nuclear materials in the hands of non-state actors constitute as much danger to the world community. The 2003 interception of nuclear materials bound for Libya exposed the illicit international nuclear black marketing network managed by the Pakistani scientist, Abdal -Qadeer Khan. The exposure of the Khan network has in turn increased the fear that WMD if unchecked could also fall into the hands of terrorist organizations such as Al Qaeda who will not hesitate to use them. There is reason to be apprehensive of the effects of nuclear proliferation given the fact that there is really no effective system in place to guard against theft of nuclear materials, illicit or non-peaceful use of them and illicit trafficking of nuclear and radioactive materials across international borders.

In recognition of the threat posed by WMD, President George W. Bush launched The Proliferation Security Initiative (PSI), an international anti-proliferation alliance to interdict weapons of mass destruction and related delivery systems via sea, air and land. The PSI represents both a multilateral approach and heightened effort to disrupt the proliferation of weapons of mass destruction and related materials.<sup>3</sup> The PSI served as a complement to United Nations Security Council Resolution 1540 which calls on member

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<sup>2</sup> Scott D. Sagan, and Kenneth N. Waltz, *'The Spread of Nuclear Weapons: A Debate Renewed'* (New York: W.W. Norton and Company Inc.), 2003. P. 77.

<sup>3</sup> Hwang Y . Balbina, "Curtailing North Korea's Illicit Activities", Backgrounder, The Heritage Foundation (August, 2003), p.1. Online: [www.heritage.org/research/asiaandthepacific/bg/1679.cfm](http://www.heritage.org/research/asiaandthepacific/bg/1679.cfm). Accessed Dec 6, 2008.

states of the UN to recognize that all WMD constitutes a threat to international peace and security and to join forces together to prevent proliferation.

Olivia Bosch and Peter Van Ham recognize nuclear proliferation and terrorism as “a threat of global significance instead of a country or region-specific menace”<sup>4</sup>. The authors described the UNSCR 1540 meant to address these threats as “an exceptional multilateral response to an exceptional multifaceted security challenge ...and undertook to fill important gaps in existing non-proliferation treaties and multilateral arrangements which do not currently capture the role of non-state actors in matters related to WMD”<sup>5</sup>. According to the authors, although Resolution 1540 gives the Security Council a more concrete mission and mandate in the area of non- and counter-proliferation it remains to be seen how the Resolution’s provisions will be made operational and enforced.<sup>6</sup> They concluded, therefore, that since “states have widely varying capacities for implementing and enforcing the Resolution, it is they, not the Security Council, that must take appropriate action in accordance with their national capabilities and legislative framework”<sup>7</sup> Bosch and Ham thus places the burden of implementing UNSCR 1540 on states in which case the US –led PSI becomes a step in the right direction.

James Doyle discusses the technologies and processes for the protection, control and accounting of nuclear material, detecting proliferation and verifying the elimination of nuclear weapons program. He argues that “many nations have nuclear materials security and export control systems that require significant improvement to effectively

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<sup>4</sup> Olivia, Bosch, and Peter Van Ham, “*Global Non-Proliferation and Counter Terrorism*” (London, Washington D.C: Brookings Institutions Press), 2007. p. ix

<sup>5</sup> Ibid, p. ix.

<sup>6</sup> Ibid, p.20

<sup>7</sup> Ibid, p.20

prevent illegal loss or trafficking of nuclear materials.”<sup>8</sup> He also believes in the need to create a comprehensive safeguards system to prevent nuclear terrorism and illicit nuclear trade. Like Bosch and Ham, Doyle agrees that “the IAEA has limited resources and political authority to address these shortcomings and so perceive the UN Security Council resolution 1540 and the Proliferation Security Initiative as encouraging international developments even though their full implementation is uncertain”.<sup>9</sup> Doyle infers that there is clearly a need for continuous, vigorous efforts to improve the technological and human capital that managing nuclear security will require.”<sup>10</sup>

James Russell assesses the problematic cases of proliferation in the Middle East analyzing current and potential problems in Libya, Syria, Iran and the potential for proliferation in Saudi Arabia. Russell also places the Israeli nuclear program within the context of regional dynamics identifying it as one of several factors driving regional proliferation. Russell proceeds to form counter-proliferation choices for the US by assessing lessons to be learnt from Libya and Iraq as well as the challenges facing the international community in Iran. In closing his argument, Russell contends that “in an age of new threats, revolutionary technologies... where earlier policies no longer retain their potency... we must devise new ways, new organizations including new force packages and new thinking to rebuff those threats”<sup>11</sup> Russell’s assertion supports Bosch and Ham and Doyle’s position on the need to adapt new approaches to counter proliferation

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<sup>8</sup> James, Doyle, “*Nuclear Safeguards, Security and Non- Proliferation: Achieving Security with Technology and Policy*”. (New York, San Francisco: Elsevier Inc, 2008), p.13.

<sup>9</sup> Ibid p.13.

<sup>10</sup> Ibid p.13.

<sup>11</sup> James, Russell, “*Proliferation of Weapons of Mass destruction in the Middle East: Directions and Policy Options in the New Century*”. (New York: Palgrave Macmillan, 2006), p.23.

especially in the Middle East where there exist many incentives to proliferate.

Mark R. Shulman explains the value of an important new security initiative with considerable implications for the use of force in operations other than war. He argues that the PSI is changing long held international norms about the conditions for the use of force to ensure strategic objectives. According to Shulman, the PSI will help to breakdown some of the obstacles that presently prevent the US and its allies from using targeted military missions to achieve critical security objectives without triggering a state of war. In conclusion, Shulman conceives that “the initiative can play an important role in helping staunch the dangerous proliferation of WMD, and the means to create and deliver them...through interdiction or raising the cost above what some terrorists can afford to pay. It can also help reform the international security system by making it more flexible and responsive to the challenges of the twenty –first century.”<sup>12</sup> While the previous authors cited, Bosch and Ham, Doyle and Russell mostly drew attention to the incompetence of the existing nonproliferation regimes and underscores the need to adapt a new approach to the proliferation problem, hence the endorsement of the PSI, Shulman takes the argument a step forward by looking at the implications for using interdiction without provoking war among nations.

Finally, Herbert Warden identifies several challenges the PSI is inclined to contend with. These he classifies into intelligence, legal and operational challenges. Warden lays emphasis on the importance of reliable intelligence, bringing “the PSI under

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<sup>12</sup> Mark, Shulman, “*The Proliferation Security Initiative as a New Paradigm for Peace and Security*”. Army War College, (April 2006), p.39.

the auspices of an internationally recognized justification, such as a PSI-specific UN Security Council resolution (UNSCR)”<sup>13</sup> and also cites problems with alliance or coalition operations, detection and use of force. He concludes that “when intelligence is reliable and legal justification available, PSI operations are expected to be successful”<sup>14</sup> Warden’s distinction between using the PSI as diplomacy on the one hand and as interdiction on the other hand is very interesting. Warden submits that by building international support, PSI is applying diplomacy to stop the flow of WMD to rogue - states and non-state actors while “the threat that a shipment may be seized in an interdiction process should act as a deterrent to potential proliferators.”<sup>15</sup>Warden’s analysis is similar to Shulman’s because the former attempted to explore the pros and cons of interdiction just like Shulman tried to weigh the implications for the use of force without evoking war.

The significant growth in nuclear proliferation over the years proves that determined proliferators exist. It also suggests that counter proliferation measures adopted so far will not contain the spread of WMD. Rogue states will continue to take undue advantage of the pitfalls existing in the nonproliferation regimes to evade international commitments. There is a pressing need to be more resolute in controlling WMD to avoid future nuclear disaster. The PSI is a bold and decisive approach to dealing with the trafficking of WMD but its success depends on its ability to balance important security interests with complex domestic and international legal considerations in a way that protects vital national interests.

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<sup>13</sup> Warden, Herbert, “*Overcoming Challenges to the Proliferation Security Initiative*,” Naval Post Graduate School, (Sept 2004), p.38.

<sup>14</sup> Ibid, p76.

<sup>15</sup> Ibid, p.13

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## Chapter Two

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### Background of the PSI

#### Overview of Nuclear Proliferation

The International Atomic Energy Agency (IAEA) was set up by a resolution of the United Nations in 1957. Since its foundation, the IAEA has promoted sometimes contradictory missions. The agency seeks to promote and spread the use of civilian energy while seeking to prevent or detect, the diversion of civilian energy to nuclear weapons, nuclear explosive devices and for other purposes that could not be verified. In order to carry out the above task, the IAEA introduced a safeguards arrangement incorporated into the Nuclear Non- Proliferation Treaty (NPT) of 1968. This treaty aims to ensure that civil stocks of uranium, plutonium, as well as facilities and technologies associated with these nuclear materials are used only for peaceful purposes and do not contribute in any way to proliferation or a nuclear weapons program.

The 1968 NPT officially recognized five states as possessing nuclear weapons. These states include the US (1945), Soviet Union (1949), the UK (1952), France (1960) and China (1964). Even though there has been no war between these five nuclear powers also tagged nuclear-weapon states, the nuclear future seems to be more uncertain and potentially more dangerous as fissile material, nuclear weapons technology and information, scientific experience and industrial capacity spread to nations which are not recognized as 'nuclear weapon states' by the NPT. The Non-Proliferation Treaty (NPT) which opened for signature in July 1968 became the most widely accepted arms control agreement but 40 years after its initiation, appeared to be inadequate in controlling the spread of nuclear weapons. A provision of the NPT allows all signatory states to develop

research, produce and use nuclear energy for peaceful purposes without discriminating. A critical mind might be inclined to think that by giving all states the right to develop their own nuclear power plants, the treaty in effect opens the way to proliferation since any nuclear reactor that has enough centrifuges can enrich uranium to weapons level

At present, the NPT has been ratified by 188 sovereign states including the original five nuclear weapon states earlier cited. However, there are three nations namely; India, Pakistan and Israel none of which signed or ratified the NPT but have acquired or are suspected to have acquired nuclear weapons. As such, they are being looked upon as defiant nuclear powers by the nuclear weapon states and their possession of nuclear weapons seen as illegitimate. Israel has not publicly conducted a nuclear test and does not necessarily admit or deny having nuclear weapons but is widely believed to possess nuclear arms. India claiming its nuclear program is for peaceful purposes first tested a nuclear explosive device in 1974. Both India and Pakistan demonstrated their nuclear weapons ability with a round of tests in May 1998 apparently to deter each other. The fact that these nations cannot be forced to sign the NPT on one hand and their noncompliance on the other hand suggest that their nuclear weapons programs cannot be brought under the scope of safeguards stipulated by the NPT. It is not hard to see, therefore, that these nations could easily transfer nuclear weapons technology at will without being dictated. Even when dictated, their non membership of the NPT emasculates the ability to enforce appropriate sanctions under the provisions of the NPT.

In the past two decades, North Korea, Iran and Iraq have received even greater attention from the US in terms of states alleged to or actually undertaking an active nuclear weapons program. North Korea is the only signatory that has resigned from the

NPT and after a series of futile negotiations announced in January of 2005 that it was in possession of nuclear weapons. North Korea is presumed to have exploded a nuclear device underground in 2006. In early 2007, North Korea agreed to halt its weapons program in exchange for shipments of fuel oil but that was a promise Pyongyang never kept. On May 25<sup>th</sup> of this year, North Korea insisted it has a right to nuclear weapons and “announced that it has staged a successful underground nuclear test...more powerful than the previous one in October 2006.”<sup>16</sup> This nuclear explosion was confirmed by geological agencies in South Korea, the US and Russia respectively. The tests conducted this year, the most recent of a series of repeated violations by Pyongyang defies the earlier agreement to halt its weapons program in exchange for shipments of fuel oil. The recent attempt to intercept a North Korean Ship, Kam Nam, suspected to be carrying nuclear material in violation of UN sanctions further sheds light on North Korea’s motives. There seems to be no peaceful solution yet to address North Korea’s nuclear ambition. As long as it maintains its status as a withdrawn NPT member, monitoring its nuclear activities appears quite improbable.

President Ahmadinejad of Iran has made statements about wiping Israel off from the map, a threat considered disturbing to the international community. He however, claims that Iran’s nuclear program is only for peaceful energy purposes and that Iran is just being falsely accused of trying to build a nuclear arsenal. Western suspicions of Iran’s intentions grew out of its secrecy, its determination to enrich uranium and its efforts to be a dominant force in the Middle East. UN inspections in Iraq after the Gulf

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<sup>16</sup> DPRK authorities on a state radio read out an official communiqué stating that another round of nuclear testing had been “successfully conducted...as part of measures to enhance the Republic’s self-defensive nuclear deterrent in all directions” See “North Korea Conducts Nuclear Tests” at <http://news.bbc.co.uk/2/hi/asia-pacific/8066615.stm>. Accessed, June 2, 2009.

War had revealed the scope of its clandestine weapons program. As an NPT signatory, Iraq agreed to place its nuclear material under UN safeguards but further inspections disclosed extensive secret uranium enrichment and a nuclear weapons design program at the time. Iraq's nuclear weapons program is one of the reasons adduced by the Bush administration for the recent US invasion of the Arab nation. Even after the invasion, the safety and control of nuclear related-material, dual-use equipment, nuclear sites and more appear to be worrisome. It is also important to mention cursorily in assessing the dimensions of nuclear proliferation and its attendant threat that tons of poorly guarded nuclear material stockpiled in the old Soviet Union makes the prospects of mischief with stolen nuclear materials as dangerous as a big nuclear bomb.

In October of 2003, the American, UK, German and Italian governments cooperated to arrange the diversion of a shipment of centrifuge components bound for Libya. These components have been secretly purchased in the international nuclear black market from the illicit Pakistani-based nuclear smuggling network headed by Abdal - Qadeer Khan. This incident exposed Libya's secret nuclear weapons program, and got a closer investigation of the Khan network which disclosed that the network had between 1989 and 2000 provided expertise to Iran, Libya and North Korea even as Khan himself attested to. Khan's network came to be described not only as the largest known international nuclear black marketing network but also as one of the greatest threats to international security. The 2003 interception of nuclear material bound for Libya eventually led to the termination of Libya's nuclear weapons program as well as the demise of the Khan network.

In further expounding the scope of nuclear proliferation and the threat that it

poses, the danger of a terrorist nuclear attack by a rogue group or non-state actor need not be understated. While it is possible to deter a state, it is quite hard to deter terrorist organizations if they lay their hands on nuclear weapons. States may be controlled by economic sanctions, IAEA provisions and other strict regulations to restrain them from seeking to misuse nuclear technology all of which are unenforceable towards a terrorist organization. Although nuclear proliferation seems to grow, experts state that a full-scale nuclear attack is less likely than a small scale “suitcase bomb” or similar device. Bunn asserts however, that even a one percent chance of nuclear terrorism over the next ten years would be enough to justify substantial action to reduce the risk, given the unimaginable consequences.<sup>17</sup>

The fact that Bin Laden may not have acquired nuclear weapons should not suggest that he and other terrorists are not trying to or that international preventive measures have successfully hindered their attempts. The US Department of Homeland Security as of April 2008 believes that Al Qaeda “is intent on attacking the United States with a nuclear weapon but has not developed a nuclear device.”<sup>18</sup> Presently, no one knows for sure what the current status of Al Qaeda’s nuclear effort is, so there are chances it could acquire the raw materials needed to produce a crude but deadly nuclear bomb.<sup>19</sup> It may not be too shocking to hear that Bin Laden surprised the US with a nuclear bomb attack having remained highly elusive since the 9/11 terrorist attacks

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<sup>17</sup> Stuart Gottlieb, “Debating terrorism and Counterterrorism: Conflicting Perspectives on Causes, Contexts & Responses”, (Washington D.C: CQ Press, 2009), p.179.

<sup>18</sup> Charles Allen, Chief intelligence officer for the Homeland Security Department and Roff Mowatt-Larssen, Director of the Office of Intelligence and Counterintelligence of the Energy Department based on a discussion of classified material testified before the Senate Homeland Security and Government Affairs Committee about Al Qaeda’s nuclear threat. They called on a global effort to get nuclear materials off the black market. See Michael Posner “Intelligence officers call Al Qaeda Nuclear Threat Real” at <http://www.govexec.com/dailyfed/0308/040208cdpml.htm>. Accessed June 4, 2009.

<sup>19</sup> See Gottlieb, “Debating terrorism and Counterterrorism”, p.175.

despite frantic efforts by the US to haunt him down or monitor his nefarious activities.

The ultimate goal of the NPT is to get the non-nuclear weapon states not to develop a weapons program and to get the nuclear weapon states to adopt effective measures to reduce their arsenals, terminate the nuclear arm race, and pursue complete disarmament under strict and effective international control. As with all rules however, implementation is the crux of the matter. Pitfalls that may hinder progress that otherwise could have been made towards checking the spread of nuclear weapons have been identified in the NPT. For instance, the treaty is not binding on Israel, Pakistan and India all of which possess nuclear weapons but have not signed the treaty. In other words, these three nations are not considered nuclear weapon states by the NPT in the sense that it recognized the five original nuclear weapon states while these nations actually possess nuclear weapons.

North Korea signed the treaty in 1985 but withdrew without any serious reprisal from the IAEA. There have been sanctions on North Korea but none of these sanctions could be directly associated with its withdrawal from the NPT. As a matter of fact, there is no provision in the NPT that explicitly outlined appropriate sanctions to be enforced against any member state that exits the treaty at will or in pursuit of selfish interests. According to Charles Ferguson, a specialist in disarmament and WMD, “the NPT regime is flawed in the sense that it calls for eventual disarmament on the part of the nuclear states without any time bound commitment given the indefinite extension of the treaty at the 1995 NPT review conference. He also pointed out the lack of adequate enforcement mechanism on the part of the IAEA to ensure compliance.”<sup>20</sup> For him, the power of the

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<sup>20</sup> CQ Global Researcher “Nuclear Proliferation: Is a New Nuclear Arms Race Beginning?” Vol.1 #1 (Jan 2007), p.7. Online: [www.globalresearcher.com](http://www.globalresearcher.com) Accessed June4, 2009.

IAEA is simply limited to more of making inspections.

The Model Additional Protocol is a program initiated in 1997 by the IAEA to strengthen and extend the classical safeguards system. It boosted the IAEA's ability to detect undeclared nuclear activities including those with no connection to the civil fuel cycle. As of October of 2008, while 127 countries have signed the Additional Protocol and 88 have brought it into force, many others have not. Egypt for instance refused to sign it until Israel accepts comprehensive IAEA safeguards. Brazil opposes making the protocol a requirement for international cooperation on enrichment and reprocessing but has not given a final word about its position. It is quite obvious that the problem of nuclear proliferation or eventual disarmament is far from being achieved. It is hard to convince some countries of the futility of WMD when it seems all holders insist on keeping them. Simply put, concrete steps ought to be taken to add impetus to the effort to check proliferation since it appears total disarmament at this point looks unrealistic.

### **The Proliferation Security Initiative**

In May 2003, President George W. Bush divulged America's intention to lead a new effort, the Proliferation Security Initiative (PSI) devised to create international agreements and partnerships that would allow the US and its allies search planes and ships suspected to be carrying weapons of missile technology and seizing such weapons. The Proliferation Security Initiative addresses the need for a more dynamic, active approach to the global proliferation problem. It is a partnership of states working together, using their national capabilities to develop a broad range of legal, economic, military and other tools to interdict shipments of WMD and other goods of such nature to

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terrorists and countries of proliferation concern. The PSI discourages the pursuit of nuclear weapons and makes it more costly and risky for proliferators to acquire the weapons or materials that will aid the production of nuclear weapons or get nations who do so to experience significant delays in the efforts to acquire nuclear capability.

The Bush administration linked the PSI to United Nations Security Council Resolution 1540. The UNSCR 1540 could be traced back to Sept 2003 when President Bush in a proposal to the UN General Assembly explained the new PSI briefly and requested that the "...Security Council adopt a new anti-proliferation resolution that should call on all members of the UN to criminalize the proliferation of WMD, to enact strict export controls consistent with international standards, and to secure any and all sensitive materials within their borders. The US stands ready to help any nation draft these new laws, and to assist their enforcement."<sup>21</sup>

The UN Security Council on April 28, 2004 unanimously passed Resolution 1540 basing its authority on Chapter VII of the 1945 Charter.<sup>22</sup> The UNSCR 1540 primarily requires all states to "refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use WMD and their means of delivery,...adopt and enforce appropriate effective laws which prohibits any non-state actor to ...use WMD in particular for terrorist purposes...and take and

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<sup>21</sup> Bosch, Olivia, and Peter Van Ham, "*Global Non-Proliferation and Counter Terrorism*" (London, Washington D.C: Brookings Institutions Press, 2007), p.6.

<sup>22</sup> Chapter VII of the UN Charter states that "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." See Charter of the United Nations, Chapter VII, Article 39, Online: [http://www.un.org/en/documents/charter/chapter\\_7.shtml](http://www.un.org/en/documents/charter/chapter_7.shtml). Accessed Aug,1, 2009.

enforce effective measures to establish domestic controls to prevent the proliferation of WMD...by developing security, physical protection, border and export controls<sup>23</sup>

Resolution 1540 tried to address the inadequacies of the existing measures and the particular challenge of WMD proliferation by non-state actors in its mandate. It imposed a baseline of extensive appropriate effective anti proliferation obligations and required all states to enact and enforce these measures promptly. In creating the PSI, the Bush administration thus took full advantage of the UNSCR 1540 as a foundation upon which to move toward an effective international nonproliferation strategy addressing all weapons of mass destruction

According to statistics from the Arms Control Association, 10 countries originally joined the United States to shape and promote the initiative. The association further claims that an additional 73 countries including Russia have publicly committed to the initiative while a nation like China has expressed reservations regarding the legality of interdictions. PSI participants in a press statement portrayed it as an activity and not an organization which may further account for the Chinese hesitation to join. Washington's move to assemble coalitions to address international problems seem more promising than embarking on building new multinational institutions when the existing ones tend to be ineffective

The PSI hence seems to be a logical response to the menace of nuclear proliferation. It has achieved reasonable success both in the operational and diplomatic fronts. At the operational level, interdiction has no doubt put pressure on all actors intent on transferring weapon related goods. PSI operations obviously increase the transaction costs of illicit transfers while simultaneously threatening to expose the parties involved

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<sup>23</sup> Ibid, p.4.

and by so doing serve as a deterrent to proliferation. In the diplomatic front, it has strengthened non-proliferation cooperation by securing the support and commitment of several nations to work together as well as developed legal instruments to control weapons traffic on land, in the air and at sea.

Despite these gains associated with the formation of the PSI, there are also potential obstacles to the success of the PSI. Notable among these impediments is the secret nature of PSI operations which obscures objective assessment of the initiative's performance. Associating the PSI directly with the United Nations Security Council Resolution (UNSCR 1540) has not completely erased questions regarding legitimacy of interdictions which in turn has negatively influenced full participation or resulted in non-participation of certain nations, for example, China. There are also operational challenges such as related to matters of intelligence i.e reliability of information, language barriers, availability of resources and more.

In order to be more effective the PSI needs to increase the number of the present participating countries. Its operations must conform to provisions of international law to address concerns regarding its legitimacy There is also need to overhaul its current framework, improve intelligence gathering capabilities and provide sufficient funding to carry out its goals. Taken together, the gains and challenges of the PSI clearly demonstrate the initiative represents both a high-level political and military effort to address the danger posed by proliferation of WMD. With appropriate reformation, the PSI will surely stand the test of time.

### **Legitimacy of the Proliferation Security Initiative**

The effectiveness of PSI as an international anti-proliferation coalition to a large extent depends on the support and cooperation of other states. This much needed non-proliferation cooperation can only be achieved if PSI is perceived as a legitimate collective response to the re-defined threat of weapons proliferation by those nations whose support is being solicited. It is important to note that in addition to America's primary goal to address the threat of WMD to international peace and security, the PSI evolved out of the Bush's administration frustration over a December 2002 incident with a North Korean cargo ship. Spanish forces, in cooperation with the US, stopped a North Korean shipment of short-range ballistic missiles but ended up letting the ship go because they lacked the legal rationale for confiscating the missiles. Besides, the Middle Eastern nation, Yemen, supposedly the missile buyer, that Washington sees as an important country in its war on terrorism complained persistently.

This scenario draws attention to the question of legitimacy as far as the creation of the PSI is concerned and which in turn either fosters or diminishes the much needed cooperation of other states. If other nations perceive the initiative as a legal non proliferation tool, the tendency for them to pledge their commitment and support but if they envision it as a move that implicitly grants the US unwarranted powers to act as a global police force, then there exists even a greater tendency to withhold their commitment and support. Some argue that Resolution 1540 establishes the base of a new system of universal approach towards addressing the nexus of WMD, proliferation, terrorism and illicit trafficking. Prior to the advent of Resolution 1540, UN member states

through protracted and fruitless debates and negotiations attempt to reach a consensus on common standards and norms to effectively control the spread of WMD. Hence Resolution 1540 was intended to affect all states domestic legal structures compelling each country to commit not only to criminalize WMD proliferation by non-state actors but also apply effective controls. Bosch and Ham presuppose that” the strategic imperative of the post 9/11 security environment has dictated a swifter and less consensual model. Which can be seen as among the outer-tiers of a layered non-proliferation defense and which is in line with the United States international security agenda’<sup>24</sup>

In the move to advance the resolution, the under-institutionalized structure of the UNSCR 1540 system supports America’s desire to avoid new bureaucracy thereby engendering swift and very likely, effective measures in a system that may allow it significant influence. In other words, the US hopes that the long process of unproductive debates and negotiations among states would be replaced by a quicker, more dynamic and practical system. UNSCR 1540 in the eyes of Washington represents effective multilateralism. The PSI and the Container Security Initiative refer to proactive steps towards this while at the same time seeking to reinforce the role of the Nuclear Suppliers Group in monitoring nuclear exports. The US thinks that there is limited time compared to the magnitude of threat that WMD especially in the wrong hands poses. As a result, creating a new system that is not devoid of a headquarters, a secretary general, talk-fests, endless legal seminars, may be French or Russian veto and other formal institutional features only serve to retard the capability of dealing with a dangerous situation.

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<sup>24</sup> Ibid, p.5

The British American Security Information Council (BASIC) believes that America's position vilifies international agreements and institutions. It contends that the US perceives these multilateral meetings as valueless and only serve to inhibit America's propensity to act decisively. The idea thus is to replace these international forums with more resourceful US methods and to shift focus from treaties to direct action that would eliminate regimes that had weapons. Washington therefore calls for a policy of multilateralism by inviting others to partner with the US, with implicit trust for its leadership and judgment. Thus such terms as the "the coalition of the willing" has been used to describe this new form of multilateralism. Shulman noted that "the PSI represents a prominent example of the administrations thinking about how to build transnational support to protect American interests. It envisions a new kind of multilateral security arrangement - one with considerable advantages over the heavily negotiated and thus cumbersome treaties to which lawyers and diplomats have grown accustomed".<sup>25</sup>

Given the provisions of the UNSCR 1540 from its formative stages to when it was eventually passed eight months later, there is no doubt that President Bush evidently tied the PSI to Resolution 1540. According to Shulman, "in the light of the importance of the issues addressed, the level of public scrutiny involved, the legal novelty of UN Security Council Resolution 1540, it seems fair enough to conclude that the Security Council was endorsing the PSI".<sup>26</sup> On this basis, the legitimacy of the PSI should, therefore, never be in question, nevertheless, critics of the initiative resiliently differ in their opinion They maintained that much of the PSI's innovativeness has been associated with its operational

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<sup>25</sup>Mark, Shulman, "*The Proliferation Security Initiative as a New Paradigm for Peace and Security*". Army War College, (April 2006), p.9.

<sup>26</sup> Ibid, p.32.

aim to intercept land, sea, and air-based WMD transfers, an approach in their opinion fraught with many legal hurdles. Some of the legal implications of interdictions will be discussed after assessing how the initiative has fared in the past few years especially in relation to the interdiction process.

Shortly after President George W. Bush first announced the initiative in Krakow, Poland, on May 31, 2003, the US along with 10 other states namely Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom signed a statement of Principles. The PSI became in December 2003, a 16-country coalition with the addition of Singapore, Denmark, Norway, Canada and Turkey who also agreed to a politically binding “Statement of Interdiction Principles”. According to the State Department, at least 90 countries support the PSI presently and about 81 have participated in PSI meetings or exercises.

This propensity indeed suggests a growing list of nations willing to associate themselves with different aspects of the PSI. Nonetheless, the concerns of those countries, for instance, China, that prefer to keep its distance from the initiative appear to be more worrisome than the professed support of 90 countries which cannot be convincingly substantiated. While China questions the legality of interdictions arguing that the United States should seek specific backing for the initiative under international law, PSI participants express that several measures already provide such a legal base alluding to “UN Security Council Resolutions 1540 and 1718, amendments to relevant international maritime convention, a series of ship boarding agreements and the right to self –defense under the UN Charter”.<sup>27</sup>

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<sup>27</sup> Ibid, p.3.

### **Countdown of PSI Successes and Benefits**

Although the Proliferation Security Initiative is only six years old, PSI participants believe that the Initiative has already reached several important milestones. The US Department of Defense asserts that it has enhanced international cooperation to impede and stop the trafficking of WMD thereby reducing the threat posed by proliferation. In terms of executing operations, the Defense Department also reaffirms that the PSI has conducted interdictions that have halted proliferation -related shipments. The US government has drawn attention to four instances where dangerous goods were stopped from arriving proliferation destination. Two of such cases involved missile and nuclear-related cargo destined for Iran, while Syria was the intended recipient of missile related goods in the other two examples.

The first instance took place in February of 2005 when “the US allegedly tipped off an European government that one of its national entities was at the verge of shipping coolers to Iran that may be used in the latter’s heavy- water reactor program. Heavy – water reactors have served as a key source of plutonium in the nuclear bomb efforts of India, Israel and Pakistan. The European government investigated the claim and denied an export license for the coolers in accordance with a national law controlling such exports to Iran”.<sup>28</sup> It has been adjudged that, “the heavy –water research reactor under construction...if combined with reprocessing capabilities, would provide Iran with....plutonium for a potential weapons program”.<sup>29</sup> In November of 2006 it was believed that “the transfer of chromium-nickel steel plates to Iran by an Asian company

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<sup>28</sup> Ibid. p.3

<sup>29</sup> See Doyle, “*Nuclear Safeguards, Security and Non- Proliferation: Achieving Security with Technology and Policy*”, p.414

was stopped in a third country. The steel plates which reportedly could be used in missile components were returned to the original supplier country. The interdicting state acted in accordance with UN Security Resolution 1696 that calls on all states to prevent transfers of items to Iran that may enhance its ballistic missile program”.<sup>30</sup>

In April of 2007, “a shipment of sodium perchlorate to Iran from an unspecified source was detoured to an Asian port whose government then sent the shipment back to the country of origin. The sodium perchlorate can be used in making solid rocket propellant for ballistic missiles and was intended for an Iranian entity barred from receiving missile technologies by UN Security Council Resolution 1737.”<sup>31</sup> In June of 2007, an unspecified country denied over-flight rights to a Syrian plane scheduled to make a round trip flight to North Korea. This denial was as a result of the US sharing suspicions that the intended cargo was connected to ballistic missiles. UNSCR 1718 requires all countries to cooperate in preventing transfers of ballistic missiles and related technologies from North Korea. The Syrian flight did not occur.”<sup>32</sup>

These specific incidents attest to increasing capabilities on the part of PSI. This claim is further substantiated by US officials who opine that the PSI has achieved even more. According to them, though successfully halting the transfer of these dangerous materials in the cases outlined above seems appealing, these operations may not be an accurate yardstick for measuring the value of the PSI. They submitted that the initiative’s worth is more evident in what they described as the growing individual and collective capabilities of participants to curb proliferation. They cited such examples as the eight bilateral ship boarding agreements that the US has negotiated with other governments.

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<sup>30</sup> See Boese, “*Interdiction Initiative Successes Assessed*”, p.3

<sup>31</sup> Ibid. p.3

<sup>32</sup> Ibid. p.3

The agreements establish timely methods to allow searches of suspicious ships under those states legal authority. The US claims that 35 interdiction exercises involving more than 70 countries lend credence to the presumed success of the initiative. It is essential to point out that exercises and other PSI operational aspects are determined by the Operational Experts Group (OEG) comprised of 20 states, including the capture of the BBC China supposedly carrying centrifuge parts to Libya in December of 2003 This group meets three to four times annually “to discuss relevant PSI implementation issues... and the latest meeting of the OEG was held in Paris, France, September 24-26, 2008.”<sup>33</sup>

In reviewing the performance of the initiative nearly six years after its launch, the proliferation situation appears to have changed albeit not explosively. Proponents of PSI argue that the menace of proliferation has reduced. There is intensified surveillance over countries of proliferation concern and non- state groups that are likely to engage in WMD proliferation. The first and probably the most celebrated of successful interdictions of the PSI is the capture of the BBC China supposedly carrying centrifuge parts to Libya in December of 2003. This incident was stated as seizure that had a major role in Libya’s decision to give up the pursuit of WMD. In May 2005, then Secretary of State Condoleezza Rice maintained that in the last 9 months, PSI partners have cooperated on 11 successful efforts. Erstwhile Under Secretary Robert Joseph averred that there were over 30 successful US operations citing one more recent example in February of 2007, when four nations worked together to interdict missile related equipment bound for Syria.

In June of this year, tension mounted as a US Navy Destroyer positioned itself

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<sup>33</sup> “Proliferation Security Initiative (PSI): Overview”, Defense Treaty Inspection Readiness Program (DTIRP), Online: <http://dtirp.dtra.mil/TIC/synopses/psi.cfm> . Accessed April 13,2009.

and awaited orders to intercept off the coast of China a North Korean ship, Kam Nam, perceived to be carrying weaponry, missile parts or nuclear materials. The Kam Nam is suspected of proliferating materials in violation of UN sanctions meant as a reprisal for nuclear tests North Korea conducted the month before. The UN resolution 1874 that put the sanctions in place does not allow the US to forcibly board the ship but request permission which North Korea is unlikely to grant. In fact, North Korea stated “that any attempt to board its ship would be considered an act of war and promised retaliation...”<sup>34</sup>

According to news sources “since the US does not expect to be granted permission, it expects to be asked to interdict that it will have to shadow the ship until it runs out of fuel. At that point, the ship would likely have to be towed into the port.”<sup>35</sup> However, North Korea decided to call back the Kam Nam, rather than risk inspection of its Cargo while refueling in Hong Kong or Singapore. North Korea was not willing to allow this search take place. North Korea’s decision to have the ship return home rather than be boarded and searched implicitly suggests that the Kam Nam could be truly loaded with nuclear materials. This implies that the PSI successfully deterred potential transfer of nuclear materials.

Given the record of claims of success, the PSI and other US driven supportive efforts have improved the awareness of the danger and urgency of the problem. The focus on interdiction has no doubt constrained some trade in WMD, their delivery systems or related materials, increased national capacities for coordinated detection and interdiction

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<sup>34</sup>See “Navy Positions Destroyer For Possible Intercept of Korean Ship” at <http://www.foxnews.com/politics/2009/06/19/military>. Accessed July 30, 2009  
See also “Suspected North Korean Weapons Ship Returns Home” at <http://agonist.org/20090619/us>. Accessed July 30,2009.

<sup>35</sup> Ibid

of suspect shipments and flag-state consent for boarding to search for weapons of mass destruction has become an expectation for and of many states who signed boarding agreements with the US.<sup>36</sup> The PSI has also shifted focus on interdiction at sea to inspection in ports, to carriage of WMD by aircraft, and for the US, to disruption of financial networks involved or supporting such trafficking<sup>37</sup> The PSI therefore, may be on target in terms of realizing its goals and objectives.

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<sup>36</sup> See Valencia, *“The Proliferation Security Initiative: A Glass Half-Full”*. p.2.

<sup>37</sup> Ibid, p.2.

## Chapter Three

### Challenges to the PSI

#### Credibility of PSI Operations

In spite of the apparent achievements of the PSI within a relatively short period after its inception, Vinod Kumar, an Associate Fellow at the Institute for Defense Studies and Analysis, New Delhi, argue that “one cannot credit this trend as a total success because the initiative has been mired in controversies and systematic issues that have hampered its proactive advancement.”<sup>38</sup> Mark Valencia, a maritime policy analyst and political commentator focused on Asia, asserts that “there is insufficient public information and no objective measure of PSI success or failure. Thus it is unclear how the much peddled 30 interdictions over the years compares to efforts prior to the initiative or if an increase in successful interdictions is due to an increase in proliferation activity.”<sup>39</sup> According to him, the overly publicized October 2003 interdiction of WMD - related materials bound for Libya was most likely not due to the PSI, but contrary to assertions by US officials, may have been the result of an unrelated effort to get Libya to abandon its ambition to possess weapons of mass destruction.”<sup>40</sup>

The debate here is that because the PSI interdictions are shrouded in secrecy, an objective evaluation of the PSI must rely on an examination of publicly available information regarding specific claims for the PSI made by the US government and PSI advocates because in many cases, the reality does not appear to match the rhetoric.

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<sup>38</sup> Vinod Kumar “The Proliferation Security Initiative: Five years Later, Losing its Sheen?” Institute for Defense Studies and Analyses (July 2008),

<sup>39</sup> See Valencia, “*The Proliferation Security Initiative: A Glass Half-Full*”. p.3.

<sup>40</sup> Ibid, p.3.

Kumar further affirms that “since its launch in 2003, there have been just a handful of declared cases of successful PSI interdictions. Instead, what has been seen in the past five to six years are numerous plenary meetings with platitudinous declarations and an umpteen number of military interdiction exercises among PSI participants”.<sup>41</sup> US officials outlined a number of successes for the initiative, including international exercises as well as increasing number of signatories during the fifth anniversary of the PSI but refused to go into details about how many actual interdictions have happened so far. Under secretary of State for Arms Control and International Security, John Rood, was quoted as saying “we have released some examples of successes but there are intelligence and other issues involved. There are reasons why, when information has been clandestinely acquired, are protected from public disclosure. Depending on the circumstances of the interdiction, various people will know, or may not know”<sup>42</sup>

While ambiguity on its success rate continues to weaken the PSI’s earlier approval, other issues such as those relating to the nature of membership and lack of clarity on who constitutes its actual participants exactly only serve to worsen its diminishing grandeur. During the fifth anniversary celebrations, the US affirmed that the number of participants rose from 86 to 91 between 2007 and 2008 and that 91 participating states have endorsed the Statement of Interdiction Principles.<sup>43</sup> Cynics of the initiative as usual contest these figures for many reasons. They noted that though participating states are required to demonstrate their commitment to the initiative by publicly endorsing the Principles through a public note accompanied by a public

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<sup>41</sup>See Kumar “The Proliferation Security Initiative: Five years Later, Loosing its Sheen?”

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

statement of support and also to sign the Ship Boarding Agreements, all the participants have not done so. In fact, they affirm that only the first group of around 20 members has and only a handful of countries are known to have signed the Ship Boarding Agreements with the United States.<sup>44</sup> A vast majority of other declared participants are said to have stated their support but their status on endorsing the Principles and signing Boarding Agreements are vague. The data according to critics provided by the State Department's website does not corroborate Washington's claim that 91 countries have endorsed the Interdiction Principles so it is still uncertain what level of support majority of other declared participants have given to the initiative.<sup>45</sup> In sum, it makes a lot of sense to propose that the successes and benefits of the initiative cannot be quantitatively assessed due to the secret nature of PSI operations.<sup>46</sup>

### **Non-Participation**

The question of participation is of utmost importance to the PSI. Russia on the occasion of the PSI's first anniversary expressed its willingness to participate in the PSI, a decision that U.S. officials had supported as an important step in augmenting the effectiveness of the initiative. However, Russia's participation will only occur, according to the Russian Foreign Ministry, as long as PSI activities do not violate national or international law. Russian officials have similarly expressed concerns that the PSI's land, sea, and air-based WMD interdiction activities could endanger international commerce. Russia's Ministry of Foreign Affairs had stated unequivocally in June 2004, "We presume that activity under this initiative should not and will not create any obstacles to

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<sup>44</sup> Ibid.

<sup>45</sup> See Valencia, *"The Proliferation Security Initiative: A Glass Half-Full"*.

<sup>46</sup> Ibid

lawful economic, scientific, and technological cooperation of states.”<sup>47</sup> Russia’s reservations are symptomatic of a much larger set of apprehensions and uncertainties that have rightfully stirred doubts that the PSI will indeed contribute to nonproliferation goals without undermining international peace and cooperation.

China in the same vein remains opposed to the initiative as a result of concerns that it may contravene international legal obligations or produce other undesirable outcomes. Zhang Qiyue, Chinese Foreign Ministry Spokeswoman in a Feb, 2004 press conference reiterates China’s position on the problem of proliferation being addressed “through political and diplomatic means within the framework of international laws, and all nonproliferation measures contributing to the peace, security and stability in the region and world at large.”<sup>48</sup>

Despite Beijing’s opposition towards the initiative, then Undersecretary of State John Bolton suggested at the time that China is more open to cooperation in weapons interdiction activities than it will publicly acknowledge. However, as of November 2008, the United States-China Economic and Security Review Commission (USSC) in its annual report to Congress contends that “China still has not joined the Proliferation Security Initiative (PSI) five years after its inception”.<sup>49</sup> Besides China, support for PSI in other parts of Asia, which are areas of proliferation concern is very weak. In spite of significant pressure on the part of the US to participate fully and publicly, other key

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<sup>47</sup> See Warden, “*Overcoming Challenges to the Proliferation Security Initiative*,” p.15.

<sup>48</sup> Ibid, p.15

<sup>49</sup> “Report to Congress of the U.S – CHINA Economic and Security Review Commission” (November, 2008), p.129.

countries such as India, Indonesia, Malaysia, Pakistan and South Korea remain outside the coalition of the willing<sup>50</sup>

There were in attendance at the fifth anniversary of PSI officials from 21 non-participants, including China, India and Pakistan who have questioned the legality of interdictions and the initiative itself despite assurances from participants that all activities are consistent with international law. It is not exactly clear why these non-participants attended the ceremony even though they have kept their distance from the initiative. China is of particular interest because not only has it evinced concerns about the legality of interdictions it is also worried that the PSI could be used as a tool by the US to build an international coalition it controls.

For Russell, “current US counter proliferation policy is not actually focused on regional security at all. Perhaps more accurately, it subsumes regional security under a grander global vision of spreading liberal democracy and preventing the rise of a strategic competitor, whether that competition is defined technologically, militarily, or ideologically.”<sup>51</sup> He further argues that “only WMD, and especially nuclear weapons can pose a traditional, cross-border, interstate strategic threat to the United States’ preeminent position within the global system. Implicitly, if not explicitly, it is this global preeminence (political/ideological as well as military terms) that the Bush administration is defending.”<sup>52</sup> So Chinese hesitation may not be only be due to the issues with legality

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<sup>50</sup> Mark Valencia, “The Proliferation Security Initiative: A Glass Half-Full” *Arms Control Today* (June 2007), pp 2-3.

<sup>51</sup> James, Russell, “Proliferation of Weapons of Mass destruction in the Middle East: Directions and Policy Options in the New Century”. (New York: Palgrave Macmillan, 2006), p. 209.

<sup>52</sup> *Ibid.* p. 210.

of interdictions but could stem from seeing the initiative as yet another unilateral move by the US to carry other nations along in pursuit of its interest.

The fact still remain that PSI managers are nevertheless still focusing their energies on roping in the two Asian giants - China and India into the initiative. Their absence no doubt has heavily impeded the initiative's cause in the Asian region. According to Kumar, China is believed to be "averse to any external policing in its neighborhood and littoral and is apprehensive about a US led counter proliferation initiative monitoring its nuclear activities in its backyard, especially given its history of supporting proliferation involving Pakistan and North Korea."<sup>53</sup> Russell again, tends to buy this because in his assessment of the 2002 National Security Strategy of the United States, he conceived that "one sees the cooperation between great powers that it posits is not based on straight forward multi-polarity involving a combined Chinese-European definition of the global order alongside the United States as equal partners, but rather on a presumed US leadership role in which both Europe and China are expected to agree with the US duty, obligation and responsibility to create global peace through spreading liberalization..."<sup>54</sup>

Russell proceeded to conclude that the strategy described above, "places the issue of competition with potential great powers such as China in 'China's court'"<sup>55</sup> and that the "question is not whether the United States will give up its superior military programs and doctrines-it most certainly will not-but rather whether China will stop competing with the

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<sup>53</sup> See Kumar "The Proliferation Security Initiative: Five years Later, Loosing its Sheen?", p.3

<sup>54</sup> See Russell, "Proliferation of Weapons of Mass destruction in the Middle East: Directions and Policy Options in the New Century.", P.210.

<sup>55</sup> Ibid, p. 210.

United States and accept the US definition of global order.”<sup>56</sup> This sounds like a plausible argument. This is because on close examination of the foundation, structure, and how the PSI is designed to operate, one wonders if the Chinese reluctance may be motivated by inclination to compete with the US rather than be a subordinate partner when it comes to global issues that call for international coalition. China obviously perceives the PSI as a US originated and controlled nonproliferation tool and is probably apprehensive of being subjected to the latter’s whims as a member of PSI. We are yet to know if the presence of China and the other two nations at the 2008 anniversary signify an inclination to reconsider their position on the PSI.

### **Legality of Interdictions**

Earlier in this study, the correlation that exists between the legality of interdictions and the question of participation especially on the part of China was cited. A crucial point raised by opponents of the PSI, led by China of course, is that the initiative is restrained by its weak legal basis for military interdiction even while its managers suggest participants would perform such actions within the domain of their individual national legal authorities and international legal frameworks. It is true that many legal hurdles exist which make it unlikely that PSI interdiction operations will approach the level of efficacy predicted by Bolton in curtailing illicit WMD transfers by states,

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<sup>56</sup> Ibid, p. 210.

terrorists and other non state actors.<sup>57</sup> For instance, in the context of the use of national military and law enforcement assets to stop, search, and seize seaborne shipments, experts and national officials alike have pointed out the limitations facing PSI countries. The legal situation is complex, but in general, whereas states wield significant powers under international law to stop and seize cargo within their own territory, including in internal waters, this authority diminishes in a state's territorial sea, and is virtually nonexistent on the high seas. The UN Convention on the Law of the Sea (UNCLOS) guarantees rights to free navigation and innocent passage which ensure vessels undisturbed free movement through the seas; foreign naval forces or coast guard authorities may only stop and search a flagged ship on the high seas in specific, narrowly defined circumstances.<sup>58</sup>

Prosser and Scoville primarily submit that “where a suspected WMD cargo is transported under the flag of a foreign state that does not wish to grant PSI member countries permission to board its ship, PSI participants will usually not have the authority to act. Similar legal obstacles exist for airborne cargo and shipments traveling through another state's land territory, which is inviolable as a matter of state sovereignty, a principle enshrined in customary law and in the UN Charter.”<sup>59</sup> This challenge is quite major taking into consideration the odds that every country with a potential proliferation channel may not be part of or keen in cooperating with the PSI.

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<sup>57</sup> Andrew, Prosser, and Herbert Scoville, “The Proliferation Security Initiative in Perspective” (June, 2004) Online: <http://www.cdi.org/pdf/psi.pdf>. Accessed March 11, 2009.

<sup>58</sup> Ibid

<sup>59</sup> Ibid

Yet one can dispute that Resolution 1540 requires all member states of the UN whether affiliated to the PSI or not to criminalize and enforce measures against the proliferation of WMD, even so, the mandate did not direct states to do so under the auspices of the PSI. Merely expecting states to abide by UNSCR 1540 is not enough since there is no effective system for monitoring both compliance and enforcement by member states on one hand or ensuring that PSI actions conform to the provisions of UNSCR 1540 on the other hand. There is the question of not only who should monitor implementation but also how to guarantee that the monitoring process is thorough and independent. The absence of this provision is a big lapse in UNSCR 1540. PSI declarations or its Statement of Interdiction Principles in the same vein leaves ambiguous its decision –making apparatus, in other words who decides when and how to act, what exactly the role of the US is or if the decision making process remains entirely ad hoc.

The PSI professes not to target any states in particular yet its Statement of Interdiction Principles directs attention to “states of concern”. This is a contradiction because the PSI claim not to target any specific nation while at the same time preventing proliferation to or from “states of concern”. This sort of ambiguity and the evident discretion it calls questions PSI’s conformity to the rule of law. It is also not clear how PSI participants would act if faced with information indicating that a shipment originated in a state that is neither a party to the NPT, nor a long-standing nuclear power. Israel, India, Pakistan and North Korea fall into this category. Speaking of Pakistan and North Korea as case studies, the US does not appear to be as worried about Pakistan’s inability to halt the export of WMD as it is worried about North Korea. This is not to suggest

necessarily that the US grants a free ride to Pakistan but nuclear nonproliferation expert Gary Milhollin is more assertive when he notes that “it seems bizarre that we are letting the Pakistani get away with nuclear smuggling because we think they’ll help fight terrorism.”<sup>60</sup> For now, the PSI does not have enough support to halt proliferation from all countries, including those that are powerful or that have special influence as allies in the global struggle against terrorism but granting free passes to oneself or ones friends runs contrary to the basic principles of the rule of law. It sets the grantor and the grantee above the law.

The law presently does not bar any state that is not obligated under the provisions of an international treaty such as the NPT from transporting weapons of mass destruction cargoes and North Korea understands this. Hence it “announced its withdrawal from the NPT on January 10, 2003, stating then that its withdrawal "will come into force automatically and immediately...”<sup>61</sup> North Korea regards its withdrawal as rationalization for its actions when it “kicked out IAEA inspectors, restarted a nuclear reactor that had been frozen under the 1994 Agreed Framework, and reportedly begun moving spent fuel rods to a reprocessing facility that can produce plutonium.”<sup>62</sup> It is not too difficult to decipher that North Korea does not want to be bound by the provisions of the NPT or any treaty that would restrict its motives regarding WMD both on land and in international waters. This is because seizing missile shipments which are not being

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<sup>60</sup> Meyer Josh, “Illegal Nuclear Deals Alleged,” *Los Angeles Times* March 26, 2005, p. A1 Online: <http://articles.latimes.com/2005/mar/26/world>.

<sup>61</sup> Jean du Preez and William Porter, “North Korea’s Withdrawal from the NPT: A Reality Check” (April 2003) Online <http://cns.miis.edu/stories/030409.htm>. Accessed April 10, 2009.

<sup>62</sup> Ibid

transported in violation of an international treaty would be highly contentious while boarding a foreign ship without permission in breach of international law would be conventionally considered an act of war. Both the UNSCR 1540 and PSI's Statement of Interdiction Principles failed to envisage and adequately address this possibility and North Korea was quick to exploit this anomaly.

Prosser and Scoville believe that "bilateral boarding agreements may help to increase the probability that PSI participants will be able to stop and search a given ship's cargo, but such agreements are currently the exception to the rule, and it remains unlikely that states of "concern" to PSI countries will allow their ships to be boarded."<sup>63</sup> However, the situation may not be absolutely hopeless because PSI participants and some supporters of the initiative have argued that in certain cases, interdictions that could otherwise be deemed illegal may be authorized legally. UNSCR 1540, for instance, as cited on page 13 of this thesis obliges all states to "...adopt and enforce appropriate effective laws which prohibits any non-state actor to ...use WMD in particular for terrorist purposes...and take and enforce effective measures to establish domestic controls to prevent the proliferation of WMD...by developing security, physical protection, border and export controls"<sup>64</sup> The above clause in UNSCR 1540 appears to legalize any interdiction of transfer of WMD perpetrated by terrorists or non-state actors but the burden of proof that such shipments are for purposes of terrorism lies on the PSI.

On the other hand, any interdiction of WMD under the operation of the PSI but not precisely authorized by United Nations Security Council would possess a weak or disputable legal foundation, and could jeopardize the much coveted harmony needed

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<sup>63</sup> See Prosser and Scoville, "The proliferation Security Initiative in Perspective"

<sup>64</sup> See Bosch and Van Ham, "Global Non-Proliferation and Counter Terrorism", P.6.

among PSI states to effectively execute an interdiction exercise. In concluding this discussion on the legality of interdictions, it is easy to observe that there is no guarantee that the PSI will utterly prevent the secret transfer of WMD by terrorists, non-state actors or other smugglers. Even if this is possible, it would require a lot more than within the capabilities of the initiative for the time being. There might be tremendous improvement in PSI operations eventually, but chances are that “states and non-state proliferators would simply devise new methods and patterns of operation to exploit the manifold legal gaps which restrict the PSI’s reach.”<sup>65</sup> As such, Prosser and Scoville advise that “such prospects lend themselves to the need for sensible augmentation of current national and international legal frameworks to criminalize WMD trafficking and enhancement of law enforcement capabilities.”<sup>66</sup>

### **Operational Challenges**

Besides legal challenges facing the PSI, other impediments the initiative may face relate to possible operational weaknesses that may hinder the success of an interdiction process. These limitations are prevalent, first, in matters of intelligence and information sharing among PSI participants, and second, in planning and executing coalition operations. Most of PSI decisions before interdiction are influenced by intelligence. Warden suggests that “accurate intelligence allows PSI participants to deter or defend against known proliferators and terrorist threats,... is the key to developing effective counter and non-proliferation policies and capabilities...emphasis on improving

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<sup>65</sup> Ibid

<sup>66</sup> Ibid

intelligence regarding WMD-related facilities and activities, proliferation markets, and means of transit is crucial to the mission of the PSI”.<sup>67</sup>

The participant of PSI especially the Operational Experts Group possesses the wherewithal militarily to defy proliferators but depends on reliable intelligence to supply the necessary information needed for an interdiction to be successful. The tendency to collect accurate and reliable intelligence may be hampered by problems associated with coordination and cooperation due to the fact that member nations of the PSI may possess different rules, objectives, different sources and methods, and different standards regarding the quality of information they collect. Again, there may be rules governing intelligence gathering, for example, intelligence gathering generally involves activity abroad that is illicit or undertaken with the host government’s covert cooperation. PSI nations sharing information among themselves may have different expectations with regard to the information they gather. This tendency in turn may likely affect swift and timely decisions that are vital to the success of an interdiction process.

The credibility of the PSI is also enhanced by reliable intelligence and eliminates misconceptions towards the PSI or its real intention on the part of its antagonists and the world community at large. When it comes to the integrity of intelligence, the PSI is exposed to inadequacies in data collection, sharing, trusting and the resultant decision and action. Acting on a flawed intelligence may lead to a colossal and regrettable outcome. The disastrous effects of flawed intelligence could not have been felt any more than in the Iraqi debacle. This resulted in the loss of credibility on the part of the US before the international community. Even the Bush administration publicly acknowledged at the time that the intelligence used in prosecuting the war was profoundly flawed. More

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<sup>67</sup> See Warden, *“Overcoming Challenges to the Proliferation Security Initiative”*. P.21.

blunders of this nature, perhaps from the US-led PSI would not improve America's standing before the world but only lead to even greater loss of integrity by the US.

The Iraqi problem should thus serve as an eye opener to US policy makers and even more importantly PSI decision-making apparatus that the significance of reliable intelligence in carrying out PSI interdiction exercises need not be over-emphasized.

Warden contends that "the PSI partners should expect a high level of information sharing within intelligence agencies of established core members. An initiative sold internationally as a multilateral approach to WMD trafficking, to include established information sharing guidelines, must include the best each member's intelligence assets have to offer. An intelligence assessment offered to PSI decision-makers should be expected to be a product of shared information between all parties involved in the planned interdiction. PSI interdiction failures due to lack of sharing cannot be tolerated".<sup>68</sup> The PSI's method of gathering, managing and using intelligence would enhance or jeopardize interdiction operations.

Language barrier is a possible hindrance to the ability of the various nations that constitute the PSI to efficiently communicate or carry out operations. Highly classified and tactical information, for instance, in the form of orders may be required to pass within and across national and language boundaries through operational and strategic levels of command including governmental and non-governmental organizations. Hence there is reasonable probability that interdicting partners may have to contend with anomalies prevalent in transmitting information through interpretation.

Even ardent supporters of the initiative have identified the complexity involved in planning coalition and alliance operations in circumstances not only difficult to foretell

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<sup>68</sup> Ibid, p.26.

but occur at short notice. This stems from international differences in tactics and procedure for stopping, searching and seizing weapons of mass destruction. Although the PSI may possess the ability to bring countries together into a cooperative interdiction operation, the endeavor to a large extent tends to be ad hoc. Countries participating in PSI do not have standing forces designated PSI forces but only make use of their regular military, naval, air forces not excluding customs officials who are supposed to have taken part in PSI training exercises. Since the parties involved in these training exercises are subject to change, there is no guarantee that the parties who may be drafted to undertake an ad hoc interdiction in a real life scenario might have been part of the training exercises.

Finally, aviation experts who have been closely observing PSI exercises have noted that the choices of a host nation that suspects a defiant aircraft of carrying WMD may either be to allow or refuse passage, escort through landing or shoot-down. A likely decision to shoot-down according to them even with accurate intelligence could lead to a perilous outcome. At Washington's request in August 2008, a North Korean plane suspected of transporting missile –related materials was blocked from flying over Indian airspace by India air-traffic controllers. According to the Wall Street Journal, “neither the White House nor the Indian prime minister's office would comment on the operation or describe the cargo believed to be aboard the plane. But officials familiar with the matter said the move was part of the Bush administration's Proliferation Security Initiative, which aims to block the spread of weapons of mass destruction”<sup>69</sup>

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<sup>69</sup> Jay Solomon” North Korean Plane Was Grounded at U.S. Request” The Wall Street Journal Nov 1, 2008. Online: <http://online.wsj.com/article/SB122549443144289535.html>. Accessed Sept,5 2009.

When it comes to air interception of WMD, refusing over-flight permission as in the case described above seems to be an effective option but chances are that North Korea could transport the dangerous materials to the intended destination through an alternate route i.e. through the air space of any country willing to allow it passage or reluctant to grant Washington's request to deny over-flight permission. Force might be used in a non-complaint maritime boarding or an intercept of a ground vehicle likely in a controlled environment such as naval blockades, ports or border crossings. This situation practically provides PSI participants the comfort of thoroughly searching for weapons of mass destruction while the vessel is stopped or while on-board as well as enough time to allocate resources to more worrisome areas. On the contrary, the capability of doing same with air-intercepts is substantially limited if not impracticable.. The PSI's training exercises so far, according to close observers lacks a plan to address this possibility.

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## Chapter Four

### Building an Effective PSI

#### Increased Participation

The challenges facing the PSI in the preceding chapter brings attention to what may be considered the heart of the issue, the possible ways to improve the effectiveness of the PSI and giving it the kind of power it requires to function properly and achieve the desired results. According to *The Monitor*, “the PSI is now becoming a new arms-control issue of widespread concern in the international community-including in China- for it would have a broad impact both on international and regional security and international relations writ large”<sup>70</sup>.

If executed properly, the PSI’s pursuit of operational capabilities to actively prevent illicit WMD shipments could help to fill an existing gap in current international efforts to stop proliferation. In order to do this, PSI participant countries should rapidly undertake outreach efforts to countries that do not currently participate in the initiative. The odds are that non participating countries may become a safe haven for proliferators. These countries may not be involved in direct proliferation but turning a blind eye to proliferation activity within their territory is nearly as dangerous as trafficking WMD itself.

On the other hand, expanding participation to accommodate non participators imposes on the latter the obligation to support PSI measures against the spread of WMD. Hence the PSI by so doing is indeed closing up the weak links that otherwise may work

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<sup>70</sup> Ye Ru’an and Zhao Qinghai, “The PSI: Chinese Thinking and Concern “” *The Monitor*, CITS-The University of Georgia Vol. 10 #1 (Spring 2004), p.22.

against it. In addition, broadening the coalition would only improve the initiative's efficacy as well as enhance the advancement of rules so vital for its future recognition as completely legitimate. Participation will naturally continue to expand as more states perceive the PSI as legitimate and this expansion would further tighten what would have been loose ends in the non-proliferation network. The more the loose ends are tightened, the narrower the operational horizon of proliferators becomes and the closer the initiative gets to achieving its goals.

While the United States has attempted to obtain China's support, Chinese nonparticipation raises serious doubts about PSI's efficacy. More so since China is rising in its ranks as not only a dominant force both political and economically in the Asian region but also in the global arena. Takehiko Yamamoto, a Japanese author and professor at Waseda University specifically pointed out that Japan as an Asian nation and a committed member of the PSI can do more to encourage Chinese participation. According to him, "the Japanese government will need to work hard to persuade China to formally join ...the PSI primarily because China has become one of the major suppliers of WMD-related dual use goods and technologies"<sup>71</sup>

China's participation would no doubt take the fight against proliferation especially in Asia to greater heights. Yamamoto, still referring to China further asserts that "if and when she became a formal member of the PSI, there would no longer be any question whether Chinese ships carrying WMD-related goods to North Korea could be boarded and searched in international waters. It seems to me that the time to urge China

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<sup>71</sup> Takehiko Yamamoto "Japanese Engagement in the PSI" *The Monitor*, CITS-The University of Georgia Vol. 10 #1 (Spring 2004), p.22.

to participate in the PSI is ripe.”<sup>72</sup> He concluded that “China’s desire to burnish its reputation as a responsible power in the Asia-Pacific region could ultimately translate into support for the Proliferation Security Initiative, Tokyo should exert itself to bring that about”<sup>73</sup>

The PSI should make its activities very transparent as this would not only increase the perceived legitimacy of the initiative, but likely to dismiss concerns among non-members, while encouraging countries that have already agreed to support PSI efforts to do so more reliably. One might be inclined to wonder why there is so much emphasis on increasing the participation in the PSI when it looks like it is struggling to effectively coordinate its activities among its current members. This implies that there is a chance increasing participation, may consequently increase the laxity the PSI has been accused of showing in executing its operations mainly when it comes to operational challenges. Yet, it could be argued that the likelihood of this happening is far-fetched if attempts are made to address these challenges successfully. It is better to err on the side of increasing participation while maximizing efforts to deal with impediments that may hinder the proficiency with which the PSI is expected to operate.

### **Unquestionable Legitimacy**

It is of utmost importance that PSI interdictions of sea, air, and land-based WMD shipments not emasculate the spirit of the law. Nikitin, analyst in WMD Nonproliferation, Foreign Affairs, Defense, and Trade Division affirms that the “United States should work more aggressively to expand international legal authority for

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<sup>72</sup> Ibid, P. 22.

<sup>73</sup> Ibid, P. 22.

interdictions on the high seas and in international airspace”<sup>74</sup> A likely step according to her “would be adoption of a UN Charter, which allows the Security Council to authorize sanctions or the use of force to compel states to comply with the resolutions”.<sup>75</sup>

Conversely, there are differing opinions on the above proposal but a school of thought specifically attempted to bring to light the intricacies surrounding the implementation of Nikitin’s proposal.

This school of thought argued that “ a generic UNSC resolution authorizing PSI actions would appear an improbable and imprudent option in light of the numerous uncertainties that still surround the PSI: On the basis of what intelligence would authorizations occur? Who would be charged with deciding, within a sufficiently short time frame, whether interdiction is warranted in a given case? What specific items would merit confiscation?”<sup>76</sup> It maintained that “such a resolution would give unprecedented powers to states to act under poorly represented circumstances. Instead, PSI states might conceive of a proposal to create a UN Security Council committee to rapidly assess the facts of specific cases for interdiction and offer recommendations to the Security Council regarding authorizations for individual interdictions.”<sup>77</sup> Another option according to this school is to create an additional UN international body to carry out a similar purpose, and to promote efficient procedures for timely authorization when needed. Furthermore, “boarding agreements which streamline procedures and permission-granting for boarding suspect foreign vessels should be concluded wherever possible among PSI countries, and

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<sup>74</sup> Mary Beth Nikitin “The Proliferation Security Initiative (PSI)”, CRS Report for Congress RL34327 (Feb, 2008), p.11.

<sup>75</sup> Ibid, P. 11.

<sup>76</sup> See Prosser and Scoville, “The Proliferation Security Initiative in Perspective”,

<sup>77</sup> Ibid

between PSI participants and supporting countries.”<sup>78</sup> The PSI is believed to have concluded several boarding agreements overtime.

The PSI must not completely displace other nonproliferation measures as it would not be wise to focus solely on interdiction efforts as the principal tool for eradicating the deadly trade in WMD. Interdiction works well at the tactical level but non-proliferation treaties tend to address the underlying causes of proliferation. Thus, strengthening of the nuclear Non-Proliferation Treaty (NPT), as well as the Chemical Weapons Convention (CWC) and Biological Weapons Convention (BWC) should be a priority. States should not be able to exit these treaties; independent verification and monitoring efforts should be redoubled.<sup>79</sup> If the PSI , for example, determines that a country is violating its obligations under the Non-proliferation Treaty, it could refer the issue to the United Nations to impose sanctions as necessary. This will improve the legitimacy of the PSI. All in all, regardless of how it is instituted, unambiguous proof that PSI operations will be consistent with the law would to a large extent diminish fear and skepticism on the part of critics and non participants alike regarding PSI’s real intentions.

### **Reliable Intelligence**

Accurate intelligence is fundamental to the success of an interdiction exercise. PSI members can only work as a team, achieve positive results and gain the approval of the international community when they can furnish unprejudiced and credible intelligence information regarding the facts of specific threats. According to Ru’an and Qinghai,

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<sup>78</sup> Ibid

<sup>79</sup> Ibid

“history tells us that intelligence- even from the world’s most powerful country, which boasts enormous intelligence capabilities – is not always reliable.”<sup>80</sup> A lot of effort need to be put in by PSI to ensure that intelligence is dependable because it is major in ascertaining what actors or materials represent threats as well as the means being used to transfer illicit WMD. A demonstration of this ability helps clear doubts on the part of reluctant PSI partners, may have exposed states clandestine weapon’s activities while at the same time providing the opportunity for the PSI to encourage them to give up or restructure their weapons program.

The issue, therefore, is how to improve intelligence and information –sharing in the PSI. Prosser and Scoville suggest that “the intelligence-sharing component of the PSI should be its focus. Participant countries should not merely rest upon existing national collection and analysis capacities, but would gain more credibility if efforts were pursued to create an independent intelligence capability. Such capabilities have been discussed for years in the perspective of the IAEA. Interagency expert meetings involving PSI, IAEA, the UN Office of Drugs and Crime, Interpol and non-governmental representatives could help create new ideas and develop synergy in this regard.”<sup>81</sup> Creating an independent intelligence capability would entail developing an intelligence sharing structure akin to an information network among PSI members, in other words adopting a decentralized approach to information sharing.

A trusted information network would enhance information gathering possibilities through a combination of available technical data and human intelligence from PSI collectors all over the world, encourage a high degree of intelligence sharing among PSI

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<sup>80</sup> See Ru’an and Qinghai, “The PSI: Chinese Thinking and Concern”, p.24 .

<sup>81</sup> Ibid

members and would spontaneously build trust in the intelligence shared through it. This network would also be a vital part of PSI exercises and training so as to allow PSI members have a consistent mechanism for sharing intelligence. For this information network to be effective, a governing body that would be responsible for the planning, resources and enforcement of information sharing guidelines should be instituted. There should be means to deal with violations of established information-sharing procedures strictly and in a timely manner, including removal from the network. This will further enhance trust in the network.

While working towards building a totally independent capability, the PSI can take full advantage of the already existing intelligence sharing structure of an organization like NATO. After the Sept 11 terrorist attacks,, NATO leaders in a bid to boost the Alliance's anti-terrorism efforts met and agreed to improve intelligence sharing and to develop new hi-tech defenses against terrorist attacks. NATO allies decided to create a permanent Terrorist Threat Intelligence Unit at NATO headquarters in Brussels to analyze general terrorist threats as well as those specifically aimed at NATO. According to a post Sept 11 Commission report, "The PSI can be more effective if it uses intelligence and planning resources of the NATO alliance"<sup>82</sup>. This is practicable, nevertheless, it is necessary to note that all PSI partners are not members of NATO. As a result, a NATO-structure for intelligence sharing with PSI partners that are non-members of NATO, for instance, Russia, would likely require acceptance into the network or additions to the NATO alliance.. .

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<sup>82</sup> The 9/11 Commission Report "Final Report of the National Commission on Terrorist Attacks Upon the United States", p.381. Online: <http://www.gpoaccess.gov/911/index.html>. Accessed August 19th, 2009.

Finally, it is necessary to point out that the value of intelligence is undermined by “assumptions used to gather it, preferences of people using it, and the complexity of the information itself. Taking these limitations into account, PSI participants should not expect actionable intelligence for every conceivable WMD shipment. What can be expected are improvements to the current system, reliable assessment of intelligence accuracy, and robust intelligence sharing among PSI core members.”<sup>83</sup> Assembling and providing specialized training to professionals drawn from different levels of law enforcement based on their background and broad experiences in intelligence issues and information technology will go a long way in improving the ability to gather, analyze, protect and share credible and timely information to prevent or at least deter proliferation of WMD. It will be difficult to augment intelligence sharing without having a common understanding of the goals of an intelligence process. This would take time and effort on the part of PSI but would produce better results.. Improved intelligence competence is indispensable to the PSI and beyond monitoring WMD, will also be helpful in fighting illicit trade in convention weapons, narcotics, human trafficking and other nefarious activities.

### **Revamped Framework**

For the PSI to accomplish its desired goals and gain international approval, it needs a more concrete institutional structure. A solid institutional structure would give the PSI decision-making capabilities that are distinguishable from national authorities and allow the PSI to approach the proliferation problem with a more unified and consistent

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<sup>83</sup> See Warden, “Overcoming *Challenges to the Proliferation Security Initiative*”. P.23.

strategy.<sup>84</sup> An immediate and effective approach would be to merge the PSI with the International Atomic Energy Agency (IAEA) and the Nuclear Non-Proliferation Treaty (NPT) regimes. This merger provides the PSI the institutional structure that is lacking in the PSI. In this case, the administrative structure of the IAEA which will be overhauled in itself as a result of this blend will govern the PSI. It will also serve as the channel through which actions undertaken under the umbrella of the PSI would be scrutinized by external players such as intergovernmental organizations, national parliaments and civil society.

The PSI puts teeth into the IAEA and NPT and also the required force that has been lacking, rendering these more traditional non-proliferation institutions redundant over the years. These agencies at the same time afford the PSI the collective legitimacy to use that force. This is consistent with the first paragraph of the Statement of Interdiction principles which suggests that the PSI is no more than a new enforcement mechanism to supplement existing nonproliferation regimes.<sup>85</sup> As more international participants are invited to join the PSI, it becomes imperative to establish in alliance with the IAEA, command and control systems that can ensure PSI and its allies can communicate and coordinate operations within agencies that are part of a central network. In this way, the initiative thus represents an opportunity to bring the use of force and international legitimacy under a new collective security framework.

A good number of the programs and activities of the IAEA are applicable to the objectives of UNSCR 1540 presumed to give the PSI its legal backing. Such programs and activities involve legislative assistance, training state officials, support to states in

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<sup>84</sup> See Prosser and Scoville, “The Proliferation Security Initiative in Perspective”

<sup>85</sup> See “Statement of Interdiction Principles”, paragraph 1 “The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes.”

securing nuclear facilities and upgrading border controls among others. These activities aimed at assisting states in preventing the transfer of nuclear material and related technologies to non-states actors not only contribute to the implementation of Resolution 1540 by member states of the United Nations but will also complement PSI's interdiction efforts which on its own cannot stop proliferation of WMD. Since the IAEA already has in place programs that would assist states fulfill the mandate under UNSCR 1540, it makes sense for the PSI not to override or duplicate the efforts of the IAEA or the NPT but harness and reinforce their non-proliferation goals.

Bringing the PSI closer to the UN framework enhances support as “a more formalized structure could solidify states’ commitments to actively support PSI goals over time and beyond future government changeovers”<sup>86</sup>. The UN may be imperfect but its structures are recognized as legitimate. So uniting PSI with these already existing nonproliferation agencies of the UN gives more states the opportunity to participate politically and practically since most of them are already members of the UN. Outside the UN some developing nations cannot contribute practically to PSI because their armed forces, coast guards and law enforcement agencies are often weak or in a state of flux. However under the auspices of the UN, Prosser and Scoville contend that “international resource-sharing and cooperative training will be stepped up by those countries with expertise that is desperately needed in countries with poor law enforcement, export and border controls”<sup>87</sup>.

Having established the need to tie the PSI to the IAEA, the next logical step would be for the entire international community to assume responsibility to implement this at the UN.

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<sup>86</sup> See Prosser and Scoville, “The Proliferation Security Initiative in Perspective”

<sup>87</sup> Ibid

The US president in his address at the 64<sup>th</sup> session of the UN General Assembly last month pledged to hold a summit in April 2010 that “reaffirms each nation’s responsibility to secure nuclear material on its territory, and to help those who can’t... and we will work to strengthen the institutions and initiatives that combat nuclear smuggling and theft.”<sup>88</sup> This Summit should discuss a comprehensive agreement on tightening and unifying the current counter proliferation regime with the PSI under a new framework. The challenge of nuclear proliferation is constantly changing and evolving as proliferators devise means to succeed in spreading WMD hence the need to constantly update counter proliferation measures. Re-structuring the framework of the PSI will bring greater results than letting the PSI continue to operate as a loose arrangement of a group of like-minded countries that share similar counter-proliferation goals.

### **Funding**

The issue of funding is indispensable in keeping the initiative active. If the PSI is to be genuinely relied upon as a tool to stem WMD proliferation, then it should be funded accordingly. America could set an example to other nations by ensuring one of its most highly celebrated nonproliferation efforts is adequately and constantly funded. Sources from Arms Control Association referring to the immediate past government alleged “the administration made the PSI a key foreign policy and defense goal in 2005 and Congress approved \$50 million to help states support the initiative”.<sup>89</sup> . This sum is insufficient

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<sup>88</sup> President Barack Obama, “Responsibility for Our Common Future,” The White House, Office of the Press Secretary (Sept 23,2009), Online: <http://www.un.org/ga/general> Accessed Oct 5<sup>th</sup>,2009.

<sup>89</sup> See Valencia, “*The Proliferation Security Initiative: A Glass Half-Full*”. p.1

compared to the enormity of the task required to effectively check the spread of nuclear weapons.

Alex Reed noted that, “for fiscal year 2008, the National Security Administrations budget request for traditional Material Protection, Control and Accounting (MPC&A) programs that secure nuclear material at its source is approximately \$250 million, a rather piddling amount considering its importance to national security. According to Congressional Research Service Estimates, \$250million would not be enough to fund even a single day of the Iraq War, which was initiated to stop the proliferation of weapons of mass destruction. If stemming the spread of WMDs is truly a high priority for the US Government, significantly greater funding is needed to secure materials at their source”.<sup>90</sup>

Reed is right about the issue of funding the PSI depending on the current administration’s stand on the PSI. Prior to his election, President Obama in a response to a presidential questionnaire by Arms Control Today on non-proliferation issues proposed an expansion of the Proliferation Security Initiative from its current focus on stopping illicit nuclear shipments to eradicating nuclear black market networks, like the remnants of the (notorious Pakistani scientist) Abdul Qadeer Khan organization.<sup>91</sup> In a speech delivered in the Czech Republic in April this year, he also reiterated his intension to “boost support for the nation's Proliferation Security Initiative and the Global Initiative to Combat Nuclear Terrorism to make them into durable international institutions”.<sup>92</sup> The

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<sup>90</sup> Alex Reed, “*The Proliferation Security Initiative, Too Much, Too Soon*” Stimson (April 2007),<http://www.stimson.org/pub.cfm?ID=533>. Accessed May 18, 2009.

<sup>91</sup> “Presidential Q&A (2008): President-elect Barack Obama”, Arms Control Today, Online: <http://www.armscontrolday.org/2008election>. Accessed Sept, 20th, 2009.

President's remarks underscores high-level support for the PSI, however what actually determines that the PSI is of high priority to the US is practically funding the initiative.

After adopting the PSI as a key foreign policy and defense goal, Congress should subsequently approve adequate funding for PSI to pursue its cause. The planning, coordination, and implementation of the objectives of the PSI should be consolidated into one office at the State Department with a budget that is commensurate with the threat posed by nuclear weapons. Each fiscal year in which activities are planned to be carried out under the PSI, the President shall include in the budget request for each participating United States Government agency or department for that fiscal year, a description of the funding and the activities for which the funding is requested for each such agency or department. Other nations that are participants of the PSI should also include in their budgets funds to support PSI as well. Doing this will increase coordination, cooperation, and compliance among PSI-participating countries and will enhance the initiative's global outlook.

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<sup>92</sup> Obama's Speech, Prague- Czech Republic (April 2009), Online: <http://www.expats.cz/prague/article/weekly>. Accessed Sept, 20th, 2009.

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## Chapter Five

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### The Future of the PSI

#### Conclusion

The Obama administration has publicly divulged its intention to support the PSI, but the US can and should do more in terms of consolidating the PSI and building on what the past administration achieved. The new administration should back up its statements with actions to increase the momentum with which the PSI first took off. If the Bush administration had not created the PSI, the Obama administration would still require to devise a global strategy that may be accompanied with a level of force analogous to that which the PSI is primarily designed to operate in order to effectively combat WMD. Since the PSI is already in place, launching an entirely new initiative would be a sheer waste of time, energy and resources both on the part of the US and other PSI participants that could have been invested in the present initiative to further consolidate its base.

A new initiative with a global view would require a totally new arrangement with solicitation of the support of the same nations who have already pledged their commitment to the PSI. A situation such as this, on the part of other nations, tend to provoke the feeling of being subjected to the whims and caprices of every new American government. This may even lead to further loss of credibility on the part of the US before the world community. On the other hand, the new administration embracing the PSI makes for consistency, will do a lot more to improve both the credibility of the initiative

and that of the US overall before the world community and will inspire more confidence in the current PSI participants.

Building on the foundation that is already in existence should begin with implementation of the recommendations discussed in chapter four above. Washington's inability to implement these or find alternative ways to fill up the gaps that are existing in the PSI would hinder the success of the PSI. As a matter of fact, a good number of Americans agree that the Obama administration is more popular than the defunct Bush administration. An integral part of the world community also assign more credibility to the latter compared to the former. The incumbent administration could exploit the popularity and credibility advantage to advance the goals of the PSI.

The PSI and the spate of proliferation and terrorism it plans to tackle affects all countries. So European nations are also faced with the challenge of developing a more comprehensive and proactive response to new counter proliferation measures. France, Germany, Italy, the United Kingdom and a host of others have traditionally put emphasis on multilateral means to fight weapons proliferation. So the PSI provides them with the opportunity to play a more active role in the definition of a new international security coalition and engage more actively with the US on how renewed multilateralism can provide an effective and legitimate framework to address global security issues such as weapons proliferation.

Europe in partnership with the US and within the UN is inclined to use the PSI to show responsibility on weapons proliferation and global security. The PSI can thus be described as bridging American and European views on international security. Aside of US, Japan and Australia, eight out of the initial eleven countries that constitute the PSI

are European nations and more have endorsed the PSI overtime. This trend underscores European commitment and resolve towards the aims of the PSI and needs to be sustained.

In the Asia-Pacific region, Japan, Singapore, and Australia are the countries that most actively participate in the PSI. Australia seeks to take a leading role in regional security by participating in PSI operations and cooperating with the United States. Japan and Singapore rely heavily on their numerous harbors for commerce and share the common interest in preventing dangerous materials from passing through their territorial seas. China, on the other hand, is not fully ready to take part in the initiative. Much of the materiel targeted for interdiction under the PSI departs from Chinese harbors. For Beijing to embrace the PSI, then, would have negative consequences for much of the nation's commercial shipping

Although China is reluctant to aggressively support an initiative that would require it to monitor and regulate commercial shipping along its lengthy eastern coastline, China is cooperating with the United States to prevent WMD-related materials from entering North Korea. In the summer of 2003, China stopped and confiscated a railroad cargo on its way to North Korea using information provided by the United States. The train contained a nuclear-related substance known as liquefied tributyl phosphate (TBP). Beijing understands the repercussions of a nuclear North Korea for Chinese security and cooperates with the United States on this matter of common interest. It is already a member of the Container Security Initiative (CSI), a program introduced by the U.S. Customs Service to help increase security for containerized cargo shipped to the United States from around the world. Chinese membership of the CSI further attests to its cooperative attitude. As a result, a formal acquiescence and support of the PSI in due

course on the part of China is very likely especially when its reservations about legitimacy is minimized by closely associating the PSI with the UN.

Allowing the PSI to die or merely letting it exist as yet another toothless bulldog in the ranks of the NPT and IAEA would be equally catastrophic. The IAEA is only designed to inspect facilities and submit reports that it lacks the power and authority to act on. It is the obligation of the broader international community to be more forceful in acting on these reports or vest the IAEA with the authority to act beyond inspections. Failure to make sweeping changes to the status quo implicitly suggests that a huge gap still exists between the imminent dangers posed by WMD juxtaposed with the measures adopted so far to address the problem. The initiative can indeed play an important role in helping to curb the hazardous proliferation of weapons of mass destruction as well as the means to produce and spread them and will eventually avoid unspeakable destruction, suffering and death.

Embracing dialogue and international law on the part of the initiative rather than ignoring it increases the likelihood of attracting wider participation, particularly the much coveted Chinese membership. The US allowing its friends and allies to circumvent laws guiding weapons of mass destruction erodes the legitimacy the PSI craves to be more proficient in fighting WMD. All in all, the PSI is a positive move towards checking the menace of nuclear proliferation. To do nothing vigorous may be as risky as the imminent danger posed by WMD. Michael Beck is certainly right that “the Proliferation Security Initiative is at once the most oversold and the most promising nonproliferation initiative to emerge in decades.”<sup>93</sup>

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<sup>93</sup> p. 16.



Non-State actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

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*Welcoming* efforts in this context by multilateral arrangements which contribute to non-proliferation,

*Affirming* that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

*Gravely concerned* by the threat of terrorism and the risk that non-State actors\* such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,

*Gravely concerned* by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials,\* which adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security,

*Recognizing* the need to enhance coordination of efforts on national, Sub regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security,

*Recognizing* that most States have undertaken binding legal obligations under treaties to which they are parties, or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials, such as those required by the Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources,

*Recognizing further* the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

*Encouraging* all Member States to implement fully the disarmament treaties and agreements to which they are party,

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

*Determined* to facilitate henceforth an effective response to global threats in the area of non-proliferation,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;
2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for

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terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

4. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;

5. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

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8. *Calls upon* all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *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;

11. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

12. *Decides* to remain seized of the matter.

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## Appendix 2

### Statement of Interdiction Principles.

*Adopted in Paris, 4 September 2003*

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 United Nations 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 U.N. 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 United Nations 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 laws 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 concerns, 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) 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.

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