



THE ATLANTIC COUNCIL
OF THE UNITED STATES

The Proliferation Security Initiative: Challenges and Perceptions

Commander Barry W. Coceano, U.S. Navy
Atlantic Council Senior Fellow

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Foreword

Since the ascendance of terrorism as one of the major threats to international peace and security, or at least the world's realization of terrorism as such, the potential proliferation of weapons of mass destruction (WMD) has acquired a new dimension of threat. The evident interest in WMD shown by terrorist groups such as Al Qaeda has underlined this danger and given heightened urgency to strengthening the international non-proliferation regime. As part of a new non-proliferation strategy, the George W. Bush administration proposed the creation of the Proliferation Security Initiative (PSI) in May 2003. This initiative has resulted in an agreement to interdict shipments of WMD in transit through international waters.

The potential significance of the PSI prompted Commander Barry W. Coceano, a Senior Fellow at the Atlantic Council from September 2003 to May 2004, to write this paper, which assesses the progress of the PSI to date, addresses some of the key challenges the initiative faces and offers some suggestions on what can be done to increase its scope and effectiveness.

The views presented in this document are those of the author and do not necessarily represent those of the Atlantic Council or the U.S. Navy. Nevertheless, Commander Coceano's work makes a valuable contribution to the ongoing debate over non-proliferation strategy. The Council is pleased to share it with a wider audience.

Christopher J. Makins
President
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The Proliferation Security Initiative: Challenges and Perceptions

Introduction

During the Cold War era, the primary threat to international peace and stability was clear – a potential nuclear showdown between the two world powers. During this bipolar period of history, most countries allied themselves with either the United States or the Soviet Union, with the opposing threat being clearly defined and imminent. Since 1989 and the end of the Cold War, the world has entered a time where the threat resonates from two primary sources: non-state actors, primarily terrorists, and the proliferation of weapons of mass destruction (WMD). It is the responsibility, and must continue to be one of the top priorities, of the international community to ensure that these two sources of danger are never allowed to merge and are eliminated as global threats. Any scenario that incorporates terrorists possessing WMD is too grim to be acceptable, and civilized societies must take all steps possible to ensure that it never becomes reality.

Radical terrorist organizations and their fanatical members have proven difficult to target. Since they own no territory, they cannot be defined by specific borders. They have minimal national affiliations, so they travel the path of least resistance, or in other words, they are at times nomadic and will reside where accepted, often living in anonymity under the shadow of governments which are more or less blind to their presence. Their groups are often well organized and substantially funded, with almost untraceable links to sponsors willing to provide them covertly either refuge and/or the resources needed to conduct their activities. In return, these terrorist organizations will provide collaborators and sponsor governments with an inexpensive unconventional warfare capability that targets an adversary's populace, governmental institutions, commercial assets, or infrastructure.

Two examples of countries with known links to terrorist organizations are Iran and North Korea. Iran is purportedly the safe haven for key leaders of the Al Qaeda terrorist organization who were temporarily trapped in the Tora Bora region of Afghanistan in 2001 before fleeing the country. Other terrorist organizations, including Hezbollah, Hamas, and Palestinian Islamic Jihad have received training inside Iran over the past 10 years.¹ North Korea has provided safe haven to members of the Japanese Communist League-Red Army Faction, who were responsible for hijacking a Japan Airlines flight in 1970. Additionally, the

¹ Dana Priest and Douglas Farah, "Iranian Force Has Long Ties to Al Qaeda", The Washington Post, October 14, 2003, p. A17.

Philippine government has implicated the North Korean government and accused it of conducting weapons sales to the Moro Islamic Liberation Front, a terrorist organization that operates in the Philippines and receives funding through Middle Eastern sources.²

The idea of terrorist organizations gaining access to weapons of mass destruction is not out of the realm of possibility. Potential for the proliferation of WMD, most notably nuclear weapons materials, resides in states that have secretly experimented in nuclear weapons development, as well as former Soviet states which at one time had nuclear weapons and materials on their territory. The issue of accountability by former Soviet states was recently brought to the forefront when it was reportedly discovered that 38 Soviet rockets built before the collapse of the Soviet Union were modified to carry radioactive material in order to be used as “dirty” surface-to-surface rockets. There is no record that the rockets were ever used, but more importantly, there is no record indicating where the rockets are presently located. The last known location of the rockets was in the Transdnister Moldovan Republic, an area that is a hotbed for black market weapons trafficking and a potential source for terrorist organizations desiring to attain weapons and materials.³

The countries noted earlier, Iran and North Korea, that have ties with terrorist organizations and have conducted clandestine nuclear weapons development programs and, at least in the case of North Korea, have actually developed a nuclear weapons capability, are currently two of the countries of greatest concern as potential proliferators. Iran is openly developing a nuclear capability, albeit in its own words, a capability for civilian nuclear energy, not nuclear weapons development. However, reports by the International Atomic Energy Agency, clearly indicate infractions of Iran’s obligations under the Nuclear Non-Proliferation Treaty, to which Iran is a party. “Reports issued in June [2003] and August [2003] by the Director General of the International Atomic Energy Agency (IAEA) clearly show that Iran ‘has failed in a number of important regards to meet its obligations’ under its Nuclear Non-Proliferation Treaty (NPT) Safeguards Agreement.”⁴ Iranian statements of compliance with international laws and treaties directly contradict a November 2003 report by the IAEA that found over the course of the past 20 years, Iran has repeatedly violated international obligations and has also experimented with plutonium production, a procedure associated with nuclear bomb making.⁵ If it left these violations unchecked, the international community would in essence afford Iran the opportunity to continue secretly masking research in nuclear weapons development under the guise of a nuclear energy production program.

North Korea, which in January 2003 withdrew from the Nuclear Non-Proliferation Treaty (NPT) stating that it does not intend to produce nuclear weapons, reversed its position in June 2003, openly stating that it is in the process of developing nuclear weapons to protect

² “Patterns of Global Terrorism-2000”, U.S. Department of State, April 30, 2001, available from <<http://www.state.gov/s/ct/rls/pgtrpt/2000/2441.htm>>.

³ Joby Warrick, “Dirty Bomb Warheads Disappear”, The Washington Post, December 7, 2003, p. A1 & A28.

⁴ “U.S. Says Iran Has Failed to Meet NPT Safeguard Obligations,” U.S. State Department, 9 September 2003, available from <<http://usinfo.state.gov/topical/pol/conflict/03090901.htm>>.

⁵ Ibid.

itself and deter possible preemptive attacks from the United States.⁶ These nuclear weapons development programs obviously did not commence in the six-month period of time between January and June 2003. They originated clearly while North Korea was a signatory member of the NPT, a violation of NPT Article II for non-nuclear-weapons states, further demonstrating a continued pattern of defiance of an internationally accepted treaty to which it was a party dating back over a decade.

Of additional concern, North Korea has historically relied upon the trade and export of arms as a primary source of hard currency. For example, in December 2002, at the request of the United States, Spanish Navy personnel boarded the North Korean motor vessel *MV So San* at sea, off the Arabian Peninsula. Having knowledge that the *So San* was transporting Scud missiles to Yemen, U.S. intelligence sources had tracked the ship from the time it left North Korea. However, after the Spanish had boarded the vessel and discovered 15 Scud missiles along with 24 tanks of rocket fuel additive buried deep within the cargo holds, the United States made the disheartening determination that under existing international law, it did not have the authority to detain either the ship or its cargo and that the purchase was legal.⁷ This encounter demonstrates both the North Korean resolve to export arms to nations with questionable intentions, and also the dilemma that is faced when trying to curtail such activities. The fear of the unknown, or seemingly in this case, the known, applies – if North Korea is willing to sell missiles to countries whose intent is in question, would they not sell WMD willingly to countries which would pay the asking price or to non-state actors who would use the weapons or materials against countries which North Korea views as threats?

Recent revelations about the activities of Dr. A.Q. Khan, the father of Pakistan's nuclear weapons program, further support urgent efforts by the international community to stop the proliferation of WMD-related technology and design information. Dr. Khan has admitted that he sold nuclear technology to Iran, Libya, and North Korea, although he insists that he did so without the approval or authorization of the Pakistani government. Whether or not the Pakistani government or military was either involved or informed – and it would seem on the face of it that at some level, government officials were almost certainly aware of his activities – Khan's admissions are evidence of the extent of the black market as a ready source for governments or groups desiring to acquire the hardware and/or information needed for the development of WMD.⁸ The question that must be answered is whether A.Q. Khan's activities are an isolated incident, or demonstrative of a more widespread problem than is currently believed to exist.

Weapons of mass destruction in the hands of governments such as Iran's and North Korea's, which have demonstrated records of supporting international instability and tension, and might be willing to use them, sell them, or possibly provide them to terrorist

⁶ "Timeline: North Korea's nuclear weapons development," CNN.com/World, July 17, 2003, available from <<http://edition.cnn.com/2003/WORLD/asiapcf/east/02/07/nkorea.timeline.nuclear/>>.

⁷ Rebecca Weiner, "Proliferation Security Initiative to Stem Flow of WMD Materiel," Monterey Institute of International Studies Center for Nonproliferation Studies, July 16, 2003, available from <<http://cns.miis.edu/pubs/week/030716.htm>>.

⁸ "A.Q. Khan," February 5, 2004, available from <<http://www.globalsecurity.org/wmd/world/pakistan/khan.htm>>.

organizations, pose a great danger to international peace and security. So how does the international community stop the proliferation of weapons of mass destruction when there are countries which do not comply with internationally accepted treaties to which they are parties, when countries which possess WMD also harbor and support terrorists, or when countries are willing to sell arms at any cost? The answer may reside within the construct of a new initiative – the Proliferation Security Initiative (PSI). However, there are a number of issues that must be resolved within this new initiative if it is to be globally accepted and become an effective non-proliferation mechanism.

A Threat to International Peace and Security

On 11 September 2001, terrorists struck at the heart of the United States with swift, well-orchestrated attacks on the Pentagon and the World Trade Center. This eye-opening experience demonstrated the will of radical terrorist organizations to strike anywhere, and at the time of their choosing. As heinous as these acts of mass murder were to the civilized world, the same terrorist organizations desire to magnify the resulting death and destruction ten-fold, and would have no reservations against doing so if given the opportunity and capability. For this reason, a weapon of mass destruction must never fall into their hands.

The threat posed to nations around the world by the proliferation of WMD is a clear and present danger, a front burner issue facing policy makers and strategists worldwide. The proliferation of WMD is not just a threat to domestic security, but also a threat to international security, as the ramifications of an attack utilizing WMD would affect not only the country attacked, but almost every region and nation throughout the world. Even if a country is not the target of the attack, it will still be affected one way or another, as was the case immediately following 9/11, when various global economic markets and industries were impacted.

As a new approach to countering this potential international threat from WMD and garnering worldwide support, President Bush, in a speech delivered in Krakow, Poland, on 31 May 2003, unveiled the Proliferation Security Initiative. In his speech, President Bush stated, “When weapons of mass destruction or their components are in transit, we must have the means and authority to seize them.”⁹ The intent of the initiative is to ensure that WMD transactions never occur.

Initially, eleven countries agreed to support the concept and facilitate a series of meetings and military/law enforcement exercises to refine and develop PSI. These eleven PSI countries are: Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom, and the United States.

In a statement released by the U.S. Department of State, PSI was described as follows: “The Proliferation Security Initiative is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related

⁹ President George W. Bush, Remarks by the President to the People of Poland, 31 May 2003, available from <http://www.usinfo.pl/bushvisit2003/wawel.htm>.

materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the UN Security Council Presidential Statement of January 1992, which states that the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation. The PSI is also consistent with recent statements of the G-8 and 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 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.”¹⁰

First, in order for PSI to work at the international level and become a global initiative, it must have the backing and support of all stakeholders – the international community – not just the support that currently exists from the “initial eleven” PSI countries. President Bush highlighted this fact in his 31 May 2003 speech in Poland, “Over time, we will extend this partnership as broadly as possible to keep the world’s most destructive weapons away from our shores and out of the hands of our common enemies.”¹¹

Secondly, PSI needs to have United Nations support in the form of a UN Security Council or General Assembly Resolution, and include partnership with multi-national security alliances, such as NATO, which are positioned, regionally, to enforce the initiative and which possess established and practiced tactics, techniques, and procedures that would serve as deterrents to those who may contemplate a WMD transaction.

Thirdly, PSI must work and grow within existing national laws and framework, and in concert with international law. If international law is loosely interpreted in order to attain PSI goals, especially when there is not a favorable consensus of opinion with respect to the interpretation or intent of the law, it will only weaken the cause and possibly result in fragmenting the collective membership.

Lastly, PSI must not be perceived internationally solely as an extension of U.S foreign policy – a tool that supports U.S. efforts at the expense of others. If viewed in this way it will surely meet resistance and ultimately fail to achieve desired goals, regardless of how noble the cause.

The Initial Steps to Success

The first meeting of the eleven PSI signatory countries was hosted by Spain and took place in Madrid in June 2003. During the meeting, the framework for the program was developed and consensus was reached by all parties to focus on supportable strategies for the

¹⁰ “Proliferation Security Initiative: Statement of Interdiction Principles.” The White House, Office of the Press Secretary, 4 September, 2003. Available from <<http://www.state.gov/t/np/rls/fs/23764.htm>>.

¹¹ President George W. Bush, Remarks by the President to the People of Poland, 31 May 2003, available from <<http://www.usinfo.pl/bushvisit2003/wawel.htm>>.

interdiction of cargo whether at sea, in the air, or over ground containing WMD, WMD-related components, and/or delivery systems (i.e. missile systems). Despite U.S. arguments to make the international waters and airspace the focal point for interdiction operations, based upon the events that transpired during the interdiction of the North Korean merchant vessel *MT So San* in international waters, it was the majority opinion that the foundation of the strategy should be the use of national laws that control territorial waters and airspace rather than international law which, with few exceptions, prohibits stopping vessels while they are transiting through international waters or airspace.¹² Some of the signatory countries expressed concern that when conducting interdiction operations in international waters or airspace there are many legal stipulations that must be overcome, and that, if not done precisely, could jeopardize both international acceptance and the success of the initiative. Most felt that changes to international law would be needed if PSI interdictions were to be conducted in the international domains, changes that are time consuming and tedious, if attainable at all. Final consensus was reached that the present focus would be on interdictions conducted in national territorial waters and airspace, with future focus on the international domains.

The second in the continuing series of PSI plenary meetings convened in Brisbane, Australia, on 9-10 July 2003, and built upon the initial framework constructed during the Madrid meeting. Collectively, the initial eleven agreed that the focus of this second meeting should be on the need for multinational information and intelligence sharing in support of interdiction operations. To that end, it was decided that a series of training exercises would be planned and conducted that would incorporate both military and civilian assets who would develop new, and refine existing, procedures for the exchange of intelligence, while also exercising interdiction tactics and techniques within a scenario that incorporates multinational assets. The determination was made that since all eleven countries have historically, at one time or another, been involved with military interdiction operations, an acceptable level of experience already exists within the military forces of the initial eleven countries that would enable them to commence formal exercises. Additionally, they continued the ongoing discussions that originated in Madrid about the importance of expanding the partnership in the future to include other nations that have the desire to take positive steps to stop the flow of WMD.¹³

The third meeting occurred in Paris, France, on 3-4 September 2003, at which time the initial eleven developed and agreed upon the "Statement of Interdiction Principles." Additionally, they decided to forward the Principles throughout the international community for comment. This move was a step taken to solicit the opinions and perceptions being discussed about the initiative within diplomatic circles outside those of the initial eleven PSI nations, to provide countries an avenue for feedback after they reviewed the Principles, and to determine if any international support and backing existed. Through the Statement of Interdiction Principles, the initial eleven PSI participants proclaimed that they are committed

¹² Rebecca Weiner, *op.cit.*

¹³ Paul O'Sullivan, "Chairman's Statement: From Proliferation Security Initiative (PSI) meeting in Brisbane on 9-10 July 2003," Policy Forum Online, available from <http://www.nautilus.org/fora/security/0336_Sullivan.html>.

to the initiative and formally called on all states concerned with the growing threat of the proliferation of WMD and its effect on international peace and security to join in similarly by committing to:

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

- e. At their own initiative or upon the request and good cause shown by another state, to (a) require aircraft that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and that are transiting their airspace to land for inspection and seize any such cargoes that are identified; and/or (b) deny aircraft reasonably suspected of carrying such cargoes transit rights through their airspace in advance of such flights.
- f. If their ports, airfields, or other facilities are used as transshipment points for shipment of such cargoes to or from states or non-state actors of proliferation concern, to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying such cargoes, and to seize such cargoes that are identified.”¹⁴

The fourth PSI plenary meeting took place in London, UK, on 9-10 October 2003. Based on a review of the positive feedback received from the international community concerning the Statement of Interdiction Principles, it was agreed that an outreach program would be needed to foster greater participation and further international support. A review of lessons learned from Exercise Pacific Protector, the first PSI interdiction exercise that took place in September 2003 in the Coral Sea east of Australia, was also conducted. Based on the success of the exercise, participants agreed to develop a schedule of PSI training exercises that would occur in 2003 and 2004. The goals of the exercises are to integrate civil, military, and law enforcement personnel and assets, and to develop decision-making processes leading to better operational coordination among participants.

International Participation

Although PSI is beginning to gather momentum globally, it is far from a mature activity and must be closely managed and monitored in order to continue building upon the progress that has been made. Keeping this in mind, there are a number of obstacles – known and unknown – which lie in wait and will prove challenging for strategists and policymakers.

The first challenge is to continue efforts to expand international support for and participation in the initiative. In order for PSI to be fully successful it must have the international community as its cast of participants, not just a select few, and there must be organizational processes inherent to the initiative. Feedback from the international community on the Statement of Interdiction Principles indicates that over 50 additional countries are in agreement with the Principles and are willing to contribute actively to the initiative. This, in and of itself, is a positive sign that the initiative is gaining diplomatic momentum and international support; however, the question of “participation vs. membership” in the PSI process is sure to be a challenging issue that may very well determine who is willing to support the initiative fully and become an active participant in it, and who will merely agree with and acknowledge its existence. This is especially true for the larger, more powerful countries that were not among the initial eleven, but will have to play major roles if the initiative is to prove successful both globally and over the long term.

¹⁴ “Proliferation Security Initiative: Statement of Interdiction Principles.” The White House, Office of the Press Secretary, 4 September, 2003, available from <<http://www.state.gov/t/np/rls/fs/23764.htm>>.

After the London meeting, the PSI Plenary Chair noted, “Participation in the PSI, which is an activity, not an organization, should be open to any state or international body that accepts the Paris Statement of [Interdiction] Principles and makes an effective contribution.”¹⁵ This raises the questions, if PSI is an activity not an organization, then who is in charge? Who makes the rules? Why are only 11 countries involved in the process of initiative development? Basic management principles dictate that in order to have an “activity,” there must be an organizational structure to supervise, manage, and regulate associated actions. Hence, PSI must possess a structured body to accomplish associated tasks, to supervise and administer requirements, and to develop and implement strategic policy. On the surface the above statement that PSI is “an activity not an organization” seems to indicate that the initial eleven nations are looking for the international community to accept a participatory role without having a representative voice in the policy making process. In other words, they are telling the international community, we desire your participation in the initiative, however, you will not have a direct voice in how the initiative will be directed and implemented. This will not sit well with many countries and may make it difficult for some of those countries to back contentious PSI issues fully, especially in situations – which are likely to occur – when they judge that their national interests are not directly affected. Such issues are sure to arise in the future when establishing PSI policies on interdiction operations that must be placed within the constraints of international law, or when developing policy on the listing or naming of rogue nations which could possibly be the target of PSI interdiction operations.

Many of the smaller countries throughout the world may not take issue with being active participants (role players) with a nominal voice, as they are more accustomed to following the lead of the larger, more powerful countries. This will remain true within PSI given that military and law enforcement capabilities of smaller countries are normally limited due to resource constraints and asset distribution. However, their limitations will not diminish the importance of their participation. In the case of some of the smaller countries, contribution and participation may be limited to having existing national laws that support detailed inspections of visiting vessels and an active customs inspection program. The international community should recognize these efforts as being a constructive component in the PSI process.

On the other hand, countries that possess a great deal of influence in the international domain and are distinct leaders within their geographic regions will be somewhat reluctant participants if they are not part and parcel of the process, with direct input into the decision and policy making mechanism.

Two such countries that are noticeably absent from the presently established PSI body (initial eleven) are Russia and China. These two countries must be viewed as key players since they both wield persuasive political clout, have historically influenced North Korean and Iranian political decision-making, and are two of the five permanent members of the United Nations Security Council. They surely will desire a greater role in the PSI process, and their participation will be needed if PSI is to be effective throughout all regions of the world.

¹⁵ “Proliferation Security Initiative: London, 9-10 October Chairman’s Conclusions,” Australian Department of Foreign Affairs and Trade, available from <<http://www.dfat.gov.au/globalissues/psi/>>.

Unfortunately, their historic track record is littered with incidents that seem to conflict with the goals of PSI, as both countries have been involved in the transfer of dual-use nuclear technology and weapons systems that can be altered to carry WMD as payload, to countries which either have, or have had, a desire to attain a nuclear capability. Dual-use technology, even though legitimately utilized in non-nuclear related fields, is also required in order to develop nuclear weapons. Consequently, unless factually proven that the technology was utilized for nuclear weapons development, as opposed to commercial applications, the question of utilization and intended use of dual-use technology will remain open to debate. This said, both Russia and China have seemingly demonstrated a post-9/11 resolve to curtail the proliferation of WMD, but must continue to do so if they are to be incorporated into the PSI lead body. Ultimately, their full participation is perhaps the key ingredient to a successful, internationally implemented and policed, PSI program. However, in order to ensure the international legitimization of the PSI program, Russia's and China's inclusion must come as a result of their continued actions to combat proliferation and not simply from the fact that they are major regional powers.

Additionally, Russia's and China's role in the diplomatic realm may ultimately be a major factor if a UN Security Council resolution supporting PSI efforts to interdict WMD is eventually sought as part of the process. If they are members of the PSI lead body, chances are the threat of a Russian or Chinese veto or even Russia or China abstaining as a signal of their discontent at being shunned from the lead body would be unlikely to occur. Such a resolution would further symbolize the collective resolve of the global community, especially the principal international leaders, to combat proliferation.

The current desire of the initial eleven to have "participants" instead of "members," also seems to indicate that there is concern, and legitimately so, that as the number of PSI participants grows, the initiative could quickly become an ineffective, bureaucratic quagmire if each participant is given a representative voice in policy and decision making processes. Including more participants might make it difficult or even impossible to reach consensus on issues. This is a valid concern; however, it is a concern with a rectifiable solution. One possible solution would be to establish a PSI Governing Committee that follows the UN Security Council model. In this case, the Governing Committee would be comprised of a certain number of countries that have permanent membership, and the remaining participating countries would have a rotating membership. A hypothetical example would be a PSI Governing Committee comprised of 20 members, 13 of which are permanent members, and 7 rotating members. The initial eleven PSI countries plus Russia and China may constitute the 13 permanent members, and the other participating countries would rotate annually into the 7 rotating membership seats. This would provide a situation where policy and decision making is effectively and responsively attained through manageable numbers, while at the same time affording all countries a representative voice, on a rotating basis, in the process. This is a model that has been effectively utilized within the United Nations and may be an acceptable solution that would eliminate feelings of disenfranchisement.

In sum, the inclusion of Russia and China into the PSI process would greatly bolster international support for PSI and further efforts to attain complete international cooperation for, participation in, and support of PSI objectives. Recently, China demonstrated its resolve in the proliferation arena and was recognized by U.S. Secretary of State, Colin Powell, during a November 2003 speech when he stated, “We are pleased with China’s recent cooperation with us to block the export of chemicals that could have been used in North Korea’s weapons program. The Chinese stopped it. And our very success in that particular case, however, has now set a much higher standard for cooperation. It is in China’s interest and the world’s interest for China to enforce vigorously its own export controls and to exercise the most stringent oversight of its companies who are involved in this kind of trade.”¹⁶ Hopefully, China’s actions will serve as a catalyst for continued and greater cooperation in the effort to stop proliferation as it sends a distinct message to proliferators that it is working in the same direction as the international community. Additionally, China’s political influence with respect to North Korea’s nuclear policy will unquestionably be felt as efforts move forward with six-nation talks aimed at resolving the crisis arising from North Korea’s nuclear ambitions. Unquestionably, China’s role and position will heavily influence the final outcome.

Securing both Chinese and Russian participation in PSI would be a defining moment in the evolution of the initiative, and could very well prove pivotal to its long-term success. Additionally, a PSI governing body must be established representing all participating countries. The governing body would be responsible for formulating PSI policy, while at the same time giving all participating countries a sense of representation in the decision making process. Having accomplished this, a strong signal will be sent to governments or non-state actors contemplating proliferation that the risks far outweigh the gains when the entire global community is waiting, organized and standing by, to enforce the initiative.

Framework for Success

The United Kingdom’s Secretary of State for Defense, Geoff Hoon, stated during the 2003 Atlantic Treaty Association General Assembly in Edinburgh, Scotland, “Defense against WMD is not only a military issue, but a diplomatic one as well.”¹⁷ In line with his statement, there are diplomatic tools that may be relevant for PSI to pursue. United Nations Security Council (UNSC) resolutions and/or General Assembly resolutions can be utilized to demonstrate world opinion on global issues. A resolution from either forum supporting an issue is analogous to global consensus or international opinion of moral authority. Security Council resolutions contribute to the maintenance of peace and security, whereas General Assembly resolutions, which can also cover issues of peace and security, range from disarmament and human rights to budget and membership. In order to demonstrate the resolve of the international community in its effort to combat and eliminate the threat posed by the proliferation of WMD, it would be favorable for PSI to have the United Nations

¹⁶ U.S. Secretary of State, Colin Powell, address to the Conference on China-U.S. Relations at Texas A&M University, 5 November 2003.

¹⁷ Rt. Hon. Geoff Hoon, MP, Secretary of State for Defense (United Kingdom), address to the Atlantic Treaty Association General Assembly, Edinburgh, Scotland, 5 November 2003.

support in the form of a Security Council resolution or General Assembly resolution. Additionally, the inclusion of a multinational security alliance, such as NATO, as an operational component of the PSI architecture capable of enforcing the principles of interdiction, would further signal to potential proliferators that an established, organized force that is both tried and tested is poised to take action if required.

An existing treaty that supports PSI objectives is the Nuclear Non-Proliferation Treaty (NPT), with a membership of 187 nations, which set ground rules aimed at deterring the sale, trade, or transfer of nuclear weapons, components or technology. “The Treaty on the Non-Proliferation of Nuclear Weapons, also referred to as the Nuclear Non-Proliferation Treaty (NPT), obligates the five acknowledged nuclear-weapon states (United States, Russian Federation, United Kingdom, France, and China) not to transfer nuclear weapons, other nuclear explosive devices, or their technology to any non-nuclear-weapon state. Non-nuclear-weapon States Parties undertake not to acquire or produce nuclear weapons or nuclear explosive devices. They are required also to accept safeguards to detect diversions of nuclear weapons or other nuclear explosive devices.”¹⁸

Unfortunately, the NPT is a deterrent that lacks adequate muscle to enforce its objectives fully. A void exists within the NPT that would legitimize actions by the global community to intercede and interdict weapons of mass destruction while in transit through international water or airspace. In accordance with Part II, Section 3 of the Law of the Sea Convention, each country has the right to interdict vessels transiting through its territorial waters provided the actions of the vessel prejudice the security of the state or violate state laws or customs. Consequently, the NPT can be enforced within territorial limits. The problem arises when interdicting vessels in the international domain. This is where PSI, with the support of a UN resolution, could provide the diplomatic means to further deter and disrupt proliferation wherever it occurs, even in the international domain.

A UNSC resolution would provide PSI the legitimacy and legal justification that it needs to ensure that WMD are not allowed the right of safe passage through international waters or airspace. It would also ensure that PSI participants have the backing of the international community to stop proliferation anytime, anywhere. The UNSC Presidential Statement of 1992 acknowledged proliferation as a threat to international peace and security; a UN resolution targeting the proliferation of WMD would provide the diplomatic and legal framework to stop proliferation wherever it occurs.

North Korea is a case in point. A recent study of the subject reached the following conclusion: “The easiest means to justify stopping North Korean ships is to get a UN Security Council resolution authorizing interdiction. Were the UN to declare North Korean weapons proliferation a threat to international peace and security and authorize the interdiction of these shipments, that authorization would trump existing treaty limitations on interdiction and allow the United States and its allies to stop North Korean ships on the high seas or in territorial waters, the challenge would then be getting the cooperation of those

¹⁸ “Nuclear Non-Proliferation Threat,” Federation of American Scientists, available at <<http://www.fas.org/nuke/control/npt/>>.

states through whose waters North Korean ships are likely to pass – China being perhaps the most critical. China is critical in another way; it would be the likeliest stumbling block for a Security Council resolution in the first place. China might veto the resolution.”¹⁹

The above North Korean scenario sheds light on the importance, as noted earlier in this paper, of incorporating China as a PSI participant, and also the relevance that a UNSC resolution plays when enforcing the PSI Principles of Interdiction in international water or airspace. In addition to the diplomatic ties that China has with North Korea that could help deter possible North Korean proliferation activities, if China were a PSI participant, the chances would be better that they would support a UNSC resolution. A UNSC resolution would also trump the Law of the Sea Convention, which provides for protection while transiting in international waters, enabling PSI participants to interdict suspect North Korean vessel in international waters legally.²⁰

Enforcing the Principles of Interdiction will involve the coordinated efforts of many nations, and include law enforcement agencies, intelligence organizations, and the military linked together to ensure that the dissemination of intelligence data and flow of operational information is efficiently and effectively conducted. The validation of intelligence data is a crucial element that provides credibility to the initiative. If interdiction operations are going to attain global support, the intelligence data supporting the interdiction of a vessel must be flawlessly validated and the sources deemed credible by all parties privy to the information. If not, the process will quickly become skewed and rife with controversy. In order to ensure that interdiction operations become an efficient and trusted tool of the policy, there will need to be interdiction exercises to practice the application of the procedures.

During the PSI Plenary meeting in London, the PSI Operational Experts identified and agreed upon a list of exercises that will provide multinational interdiction training to PSI participants in 2003-2004. These exercises will be the first steps in developing coordination among multinational partners participating in interdiction operations that enforce the Principles of Interdiction and support the procedural foundation upon which operational maneuvers will be conducted to stop proliferators. These exercises will focus on the flow of information, the validation process of intelligence data, and the procedures used when interdicting vessels on the high seas or in the air. Exercise Pacific Protector, conducted in September 2003, was the first in the series of PSI exercises designed to send a message to potential proliferators that the international community will not tolerate such activities and is poised to take action should such a transaction be attempted.

In order to maximize the effectiveness of enforcement operations, consideration should be given to incorporating all member states of the North Atlantic Alliance as PSI participants (currently, nine of the initial eleven PSI participants are NATO members) and call upon NATO to become an active participant in interdiction operations, if requested. A UNSC resolution supporting the interdiction of WMD would also pave the way for NATO participation, if

¹⁹ Benjamin Friedman, “The Proliferation Security Initiative Legal Challenge,” Bipartisan Security Group Policy Brief, September 2003.

²⁰ Ibid.

desired, based on the premise that “NATO’s essential purpose is to safeguard the freedom and security of all its members by political and military means in accordance with the principles of the United Nations Charter.”²¹ PSI interdiction operations could meld seamlessly into ongoing NATO operations, such as Operation Active Endeavor, described below.

On 26 October 2001, NATO forces including assets from Standing Naval Forces Mediterranean and Standing Naval Forces Atlantic commenced Operation Active Endeavor as a show of NATO’s resolve and solidarity after the invocation of Article 5 of the Washington Treaty on 12 September 2001. The NATO ships were initially deployed to the Eastern Mediterranean, and in February 2003 NATO expanded the operation to the Strait of Gibraltar, where both air and maritime assets began patrolling and escorting merchant vessels through the Strait. The role of the NATO forces was to monitor shipping in the Eastern Mediterranean and escort shipping through the Strait of Gibraltar, ensuring safe passage for over 36,000 merchant vessels since commencing the operation. On 29 April 2003, the force began compliant boarding operations in order to enhance the overall effectiveness of the operation.²²

NATO’s compliant boarding of vessels, done in accordance with terms of the Law of the Sea Convention, has established a precedent in the Mediterranean that serves as a deterrent to both terrorists and proliferators alike. The procedures being practiced by NATO forces are the same as those that would be required during PSI interdiction operations. The surveillance, tracking, and boarding capabilities within NATO’s Task Force Active Endeavor would provide PSI with an existing regional interdiction capability that if called upon could quickly respond and interdict suspect vessels transiting through two major maritime choke points – the Suez Canal and the Strait of Gibraltar.

Legal Challenges

Robert Hill, Senator for South Australia and Minister of Defense, recently stated, “There are a lot of complex legal issues and there is now a team engaged from across the 11 countries working on those legal issues. We’ve always said that what we are seeking to do is defeat an illegal transfer so the operation has got to be within the law, and reaching a consensus between the 11 countries on the principles of law is not an easy task. But it will be achieved because the 11 countries are so determined to effectively defeat this threat.”²³ Senator Hill’s words convey the concerns and desires of many to ensure that PSI operates in accordance with the parameters of international law. Doing so will provide credibility to successful PSI operations.

²¹ The NATO Handbook (Office of Information and Press, 1998), p. 13.

²² “Operation Active Endeavor,” Regional Headquarters Allied Forces Southern Europe, available at <<http://www.afsouth.nato.int/operations/Endeavour/Endeavour.htm>>.

²³ The Hon. Robert Hill, Senator for South Australia and Minister of Defense, Exercise Pacific Protector - Post-exercise Press Conference Transcript, available from <<http://www.minister.defence.gov.au/HillTranscripttpl.cfm?currentID=3120>>.

There are numerous debates concerning the legality of interdiction operations and the legal justification for the operations. Attaining a UN Security Council Resolution, which has been discussed throughout this paper, would be a recommended action to pursue as it would provide both justification and international support for the action. “Absent a UN Security Council resolution, or clear evidence that shipments are bound for terrorists, the legality of stopping shipments in territorial waters or on the high seas will be questionable. A Security Council resolution achieves the best of both worlds: unquestionable consistency with international law and interdiction of deadly weapons. A resolution based on North Korea’s abrogation of the NPT might succeed.... Without a UN Security Council resolution or evidence that the shipment is bound for terrorists, the PSI nations will have to march out more dubious arguments whose merits are debatable under international law. Eleven powerful states may be able to bend international law, but they cannot rewrite it. Bending international law is dangerous even for powerful states because other states might use the same arguments to justify their aggressive actions.”²⁴

Arguing to obtain a UN Security Council Resolution is an approach that PSI nations must consider as possibly the best course of action in an effort to justify the legality of interdiction operations. International law, as presently constituted, provides little to no basis for support of interdiction operations in the international domains. First, in accordance with Article 51 of the UN Charter, “nothing shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”²⁵ Most would argue that interdiction is a preemptive action and thus not justified under Article 51; that self-defense under Article 51 is reserved to protect oneself after an armed attack has commenced. However, it can also be argued that the right of self-defense should not be reserved solely for an after-the-fact event, but reasonably could be used in order to preempt actions that are the precursor to or may result in an attack. The latter position is more difficult to defend except in cases of truly imminent and evident attack. To do so, one must prove in this case that “the shipment” was either a precursor to, or constituted an imminent threat, a position that would garner very little international support.

The UN Law of the Seas Convention, Article 88 specifically states, “The high seas shall be reserved for peaceful purposes.”²⁶ Articles I and II of the NPT states that nuclear-weapon states and non-nuclear weapon states will not transfer or receive the transfer of nuclear weapons or other nuclear explosive devices. Here, one could argue that the shipment of nuclear weapons or nuclear explosive devices through the high seas for the purpose of transferring them from one country to another is a blatant breach of an international treaty, and thus constitutes a violation of Article 88 because it was not done for peaceful purposes. This argument, however, assumes that the ultimate motive for the transfer is what constitutes the violation, instead of the physical transit itself. Once again, this would be a contentious argument to defend and would not likely receive much international support.

²⁴ Benjamin Friedman, “The Proliferation Security Initiative Legal Challenge,” Bipartisan Security Group Policy Brief, September 2003

²⁵ Article 51 of the UN Charter, 26 June 1945

²⁶ U.N. Law of the Sea Convention, Article 88, 10 December 1982.

There would be tremendous debate over the validity of interdiction based on Article 51 of the UN Charter or Article 88 of the UN Law of the Seas Convention alone. However, there would be little debate if a UNSC resolution authorizing interdiction of WMD supported the articles. So, for the sake of credibility and to avoid the cumbersome and potentially controversial process of rewriting international law, a resolution by the United Nations may be the best course of action to rally global support behind the Principles of Interdiction and avoid potentially damaging legal battles with respect to interpretation of international law that could possibly fracture the coalition of willing PSI participants.

An Extension of U.S. Foreign Policy?

In order for the Proliferation Security Initiative to be accepted globally and become a viable non-proliferation mechanism possessing international political support backed by law enforcement and multinational military muscle, it must resonate as an international initiative, as opposed to an exclusively U.S.-driven one. If viewed as an extension of U.S. foreign policy, a tool that the United States has developed and pushed forward solely in an effort to enhance its own domestic security, it will fail to gain full global support and consequently be hard pressed to meet its stated goals. Over the past year, the United States has been accused of acting unilaterally, most notably in Iraq, by those critical of U.S. foreign policy. However, like the coalition of the willing that was assembled by the United States in order to liberate Iraq, a coalition of the willing has been assembled in support of PSI in order to deter the proliferation of WMD. This coalition of willing nations – the initial eleven PSI countries, including the United States – has worked diligently to ensure that PSI retains its global flavor, with each country possessing equal input and no country playing a dominating role. It is worth noting that the PSI coalition includes countries that were not willing to join in the invasion of Iraq, a fact which suggests a much higher degree of international endorsement of the PSI.

The United Nations set the stage over a decade ago by expressing the collective resolve of the international community to deter the proliferation of WMD in an effort to ensure that they never fall into the hands of non-state actors or nations that desire either to cause harm to other nations or to use them as leverage to attain their political objectives. The United Nations Security Council Presidential statement of January 1992 documented this position by stating, “the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation.”²⁷

Regardless of the fact that stopping the proliferation of weapons of mass destruction has been a goal of the United Nations for over four decades – as highlighted in the 1992 UN Security Council Presidential Statement – those of greatest concern as proliferators may attempt to paint PSI as an extension of U.S. foreign policy, an initiative that resulted from the aftermath of 9/11, in an attempt to present PSI as a multilateral tool serving a unilateral purpose. In their eyes, PSI serves as an example of the United States using its hegemonic power to steer international affairs in a direction that provides the greatest benefit to its own

²⁷ “Proliferation Security Initiative Statement of Interdiction Principles”, Fact Sheet, 4 September, 2003, The White House, available at <<http://www.whitehouse.gov/news/releases/2003/09/20030904-11.html>>.

national security. They could attempt to use as the basis of their argument the question why, all of a sudden, eleven years after the UN Security Council Presidential Statement, did the United States put forward a global initiative targeting acts of proliferation?

Those who would argue that PSI is an extension of U.S. foreign policy would probably base their opinions on two factors: (1) PSI was conceptualized by the government of the United States, and (2) it was introduced to the world by President Bush. Hence, PSI must be a tool of U.S. foreign policy that was designed to support U.S. national security interests, as opposed to those of the international community.

This is a weak foundation upon which to build an argument. Conveniently forgotten are the facts that there have been ten other countries fully involved in the evolution of the initiative, which have had equal representation in the development of PSI policies; that the initial four PSI plenary meetings were hosted and chaired by countries other than the United States; and that 50 additional countries support the idea and desire to participate in the initiative. If anything, the notion that France and Germany – two countries that have been openly critical of U.S. foreign policy and whose relationships with the United States have been cool since the war in Iraq – are two of the initial eleven should undermine any thought of U.S. dominance over the initiative.

To date, only one country – North Korea – has implied that PSI is being used in this way. However, since the DPRK is a known proliferator and has publicly announced its desire to develop nuclear weapons in order to protect itself from the United States, its argument is suspect at best and is unlikely to receive much favorable endorsement in international public opinion.

Conclusion

The Proliferation Security Initiative is a global security initiative with promising potential; however, future success will be dependant on acceptance and support by the international community of both the initiative's objectives and the associated Statement of Interdiction Principles. As terrorist organizations look for new ways either to raise fear in global populations or to target countries opposed to their ideology, they will undoubtedly desire to obtain and utilize WMD as part of their overarching strategy. The international community must work together to ensure that this is never allowed to happen. If countries that support terrorist organizations are not deterred politically or diplomatically from providing the means, the only alternative is for the global community to interdict the transactions forcibly whenever and wherever they occur.

If the interdiction of uranium enrichment components onboard a German-registered ship bound for Libya in October 2003, as part of PSI global operations, was ultimately a factor in Moammar Gadhafi's announcement in December 2003 that Libya would dismantle its secret nuclear and other WMD programs, then PSI is off to a good start. The fact that Libya, a country that had endured two decades of international isolation and U.S. sanctions, did a complete about-face and allowed inspectors from the United States and United Kingdom to

inspect its programs and a number of weapons sites, should be seen as a positive sign that PSI is producing tangible results. Subsequent to Libya's surprise announcement in December 2003, the United States has taken steps toward the resumption of diplomatic relations with Libya. This should be a signal to other countries, such as Iran and North Korea, that existing as a member of the international community is more beneficial than existing in isolation.

Several factors that would enhance the continued success of PSI have been discussed in-depth throughout this paper. The initial eleven participants must not overlook the importance of global buy-in: each participant being part of the process, to include having a representative voice. Many countries will be reluctant participants if they do not have a voice in the decision and policy making process. To think otherwise will only result in a shallow initiative – one that lacks global consensus.

In order to enforce the Interdiction Principles, the initiative must have the backing of military and law enforcement assets poised to interdict if necessary. The most effective means of enforcement should include existing security alliances that by nature are positioned to respond quickly, tried and tested, and familiar (operationally) with the other regional players. NATO is one such security alliance that would be a beneficial collective participant. Other regional security alliances could play a role also as global terrorism stretches to all corners of the world.

“According to United Nations estimates, up to 80 percent of the 6 billion metric tons of cargo traded each year is moved by ship. Of that, almost 75 percent passes at some point through one of the five main choke points in the seafaring economy – the Panama Canal, the Suez Canal, the Strait of Gibraltar, the Straits of Hormuz and the Straits of Malacca.”²⁸ As is evidenced by these statistics, there is a high likelihood that some, if not most, WMD transactions would be maritime events. Chances are they will transit through one of these regional chokepoints; consequently, one can see the active role that regional security alliances would play in supporting PSI. Also evident is that two of the choke points reside in the Mediterranean Sea where they are currently patrolled by NATO maritime assets that are positioned to respond quickly should the need arise. NATO participation would also help reduce the burden of over-stretching already constrained military assets in that region.

Last, but surely not least, is the important role that a United Nations Security Council Resolution plays in legitimizing and justifying the Principles of Interdiction. Not only would a Security Council resolution resonate globally, it would also unite the collective efforts of the global community. Most importantly, such a resolution will help clear legal hurdles that currently impede interdiction in international waters and airspace, paving the way for international agreement and consensus on such actions.

The global war on terrorism is not a battle fought solely by the United States. It is a battle being fought by the world community. The collective diplomatic, military, and law

²⁸ Mansoor Ijaz, “The Maritime Threat from Al Qaeda”, *Financial Times*, 19 October, 2003.

enforcement might that the world community must bring to bear to ensure that the proliferation of WMD never becomes a reality is insignificant when compared to the global effects of a WMD event. When John Bolton, U.S. Under Secretary of State for Arms Control and International Security was asked during the 34th IFPA-Fletcher Conference what his Measures of Performance were for PSI, he stated how many interdictions are conducted and how many WMD transactions are stopped.²⁹ This is a precise measurement that will accurately reflect performance. In the case of WMD, the world community cannot afford to have 20 successful interdictions conducted, but 21 WMD transactions attempted by proliferators – one missed transaction could spell disaster. For this reason the international community must work through the challenges posed by this new initiative and ensure that collective efforts result in 100 percent success.

²⁹ The Honorable John Bolton, U.S. Under Secretary for Arms Control and International Security, address to the 34th IFPA-Fletcher Conference on National Security Strategy and Policy, Washington, D.C., 2 December 2003.