

The Proliferation Security Initiative in Perspective

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Participant countries of the Proliferation Security Initiative (PSI), a U.S.-led effort to stem the illicit trafficking of weapons of mass destruction (WMD) and delivery systems, met on the first anniversary of the initiative, from May 31 to June 1 in Krakow, Poland. Russia announced on the first day of the meeting its decision to participate in the PSI, a move 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.¹ Russian officials have similarly expressed concerns that the PSI's land, sea, and air-based WMD interdiction activities could endanger international commerce, and give unwarranted powers to the U.S. Navy to act as a global police force.²

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. Fundamental legal, operational, and budgetary questions remain unanswered regarding the PSI, damaging its prospects for international support and effectiveness. PSI states remain secretive about the methods being employed and the number of actual interdictions being carried out. Under such conditions, it has been difficult to evaluate the success of the endeavor.

The PSI will not help curtail the spread of WMD or related technologies and delivery systems if it is made the centerpiece of international strategy to counteract proliferation. As an informal "non-organization" acting upon partial intelligence with limited national resources, and with no independent budget or coordinating mechanism, the PSI's capabilities are significantly constrained. U.S. Undersecretary of State John Bolton envisioned in Krakow on May 31 that the PSI would evolve to the point where it "will have shut down the ability of persons, companies, or other entities to engage in this deadly trade."³ Such high expectations are unrealistic, and could undercut potential attention to other essential nonproliferation measures.

The PSI could promote international security if its members recognize its limits, and emphasize its most promising elements, which include international intelligence sharing and building capacity where other nonproliferation structures have been unsuccessful. At the same time, careful agreement must be reached on a variety of questions that, if left unanswered, could lead to a PSI which destabilizes more than it helps curb weapons proliferation.

Background and Recent Developments⁴

The PSI is organized around a set of interdiction principles, agreed in September 2003, which call upon concerned countries to undertake measures for halting transfers of nuclear, biological or chemical (NBC) weapons, as well as delivery systems and related materials, to and from “states and non-state actors of proliferation concern.”⁵ States are also requested to adopt streamlined information-sharing procedures regarding suspected proliferation activity, and to strengthen national and international legal authorities to carry out their interdiction commitments. The interdiction principles also recommend that states take specific actions permitted under the law, including stopping and searching ships and denying air transit rights, to prevent WMD transfers by air, sea or land.⁶

The PSI currently boasts the backing of over 60 countries – including core members Australia, Canada, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Singapore, Spain, the United Kingdom and the United States – but notable transshipment and flag states such as China remain opposed to the initiative as a result of concerns that it may contravene international legal obligations or produce other undesirable outcomes.⁷

The initiative emphasizes building operational capabilities among its members to intercept WMD and delivery system transfers by state and non-state proliferators. The PSI does not empower states to conduct any activities that would not normally be permitted under relevant national and international legal authorities.⁸ While different legal bases have been cited by participants as potential justifications for interdiction, PSI members have noted that the initiative is consistent with political statements as the United Nations Security Council (UNSC) Presidential Statement of 1992,⁹ as well as the June 2003 G-8 Declaration on the Nonproliferation of Weapons of Mass Destruction and the European Union (EU)-U.S. Joint Statement on the Proliferation of Weapons of Mass Destruction of June 25, 2003.¹⁰

The PSI aims to make the illicit trade in WMD more costly for states, terrorist groups, and other non-state actors viewed as proliferation threats to the PSI’s members, with the hope that these actors will be delayed or deterred in such activities.¹¹ Libya’s decision in late 2003 to abandon its WMD ambitions and cooperate with international authorities has been attributed by PSI participants to the initiative’s effects.¹² While members have at various times cited the Democratic People’s Republic of Korea (DPRK), Iran and Syria¹³ as states of proliferation concern, Bolton has suggested that the PSI will not target states, such as Israel, India and Pakistan, which possess WMD “legitimately.”¹⁴

The George W. Bush administration has not requested any specific funding for the PSI, and members routinely refer to the initiative as an “activity” rather than an “organization.”¹⁵ Yet, no less than six major meetings of PSI participants have been held.¹⁶ The informal, unstructured constitution of the group is intended to permit participants the freedom to act as judged appropriate to uphold initiative objectives. PSI members stress the open nature of the initiative, which “relies on the widest possible co-operation between states from different parts of the world.”¹⁷

Aside from carrying out planned operational training exercises,¹⁸ PSI participant countries have recently been pursuing bilateral boarding agreements that expedite boarding procedures for PSI national authorities seeking to board vessels flying a given country's flag at sea. The United States has signed ship boarding agreements in February 2004 with Liberia,¹⁹ the world's second-leading flag state, and in May 2004 with Panama,²⁰ the state with the largest flag registry in the world. The PSI also added in February three new core participants: Canada, Norway and Singapore²¹; however, it remains unclear, due to the informal nature of the PSI, to what extent this status distinguishes states from other countries supporting the initiative.

Sailing in Uncertain Legal Waters

Much of the PSI's innovativeness has been associated with its operational aim to intercept land, sea, and air-based WMD transfers. However, 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, terrorists and other non-state actors.²²

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,²³ including in internal waters, this authority diminishes in a state's territorial sea, and is virtually nonexistent on the high seas. States do possess the right, however, to stop ships flying their own flag on the high seas, whilst unflagged ships may also be subject to boarding and searching.

The UN Convention on the Law of the Sea (UNCLOS), the main provisions of which are traditionally viewed as part of customary international law – and to which all PSI participants are party except Denmark, Turkey and the United States²⁴ – guarantees freedom of navigation on the high seas,²⁵ and protects the rights of transit passage and innocent passage, respectively, for other states' vessels in international straits²⁶ and territorial waters.²⁷ The rights to free navigation and innocent passage 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. Freedom of navigation on the high seas is limited in situations of slave trading, piracy, illicit narcotics trafficking and unauthorized broadcasting,²⁸ while innocent passage is inalienable “so long as it is not prejudicial to the peace, good order or security of the coastal state.”²⁹

In short, 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 in-

violable as a matter of state sovereignty, a principle enshrined in customary law and in the UN Charter. China's opposition to the PSI represents a glaring weakness of the PSI in this respect. It can be assumed that states or non-state actors wishing to circumvent any possible interdiction efforts would be clever enough to utilize transport routes to smuggle WMD through the territory of countries not likely to cooperate with PSI interdiction efforts.

As the law stands at present, states not bound by an international treaty prohibiting the transfer of WMD technologies – including the PSI's ostensible main target, the Democratic People's Republic of Korea (DPRK)³⁰ – are permitted to transport mass destruction weapons cargoes.³¹ Even more controversial would be any attempts to intercept missile shipments, the transfer of which is not subject to any formal international treaty prohibition.³² In the case of boarding a foreign ship without permission in contravention of international law, such conduct is traditionally associated with an act of war. 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.

PSI members and observers have suggested a number of possible legal justifications that would allow participants to undertake WMD interdictions that would normally be prohibited. In cases where terrorist activities are suspected, for instance, interception of WMD transfers at sea might be viewed as consistent with UNSC resolutions that have condemned terrorism, or as in line with UNSC resolution 1540, dealing with proliferation by non-state actors, passed on April 28, 2004. However, any WMD interdiction by national authorities absent explicit UNSC authorization would be of tenuous legitimacy, and would risk creating divisions among PSI states over the merits of a specific operation. Other legal bases short of a UNSC resolution that have been forwarded to justify interdictions that would otherwise not be permitted have included a possible UN General Assembly resolution, additional treaties, amendments to International Maritime Organization (IMO) agreements, or designation of specific trafficking activities (as those of North Korea) as a threat to peace. Whereas the threshold may be lower in cases of an imminent threat posed by terrorist WMD smuggling, these different reasons would generally not be adequate bases to justify interdiction operations that would normally be contrary to the law.

The prospect of the PSI deterring WMD traffickers from carrying out illicit transfers is an unlikely one, especially where terrorists would seek to smuggle these weapons. Instead, it would appear more likely that states and non-state proliferators would simply innovate new methods and patterns of operation to exploit the manifold legal gaps which restrict the PSI's reach. 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.

Practical Gaps in PSI Strategy

The legal constraints on PSI actions are far from the entire story. Among the foremost impediments to the PSI's goal of interdicting weapons shipments are an inadequacy of resources, intelligence information and geographical coverage among participants' armed forces and coast guards to stop most WMD and missile-related trafficking of proliferation concern. Optimistic observers have brazenly claimed that the U.S. wields the "ability to track anything going in or out of North Korean waters."³³ However, such an assessment is likely faulty; moreover, even if such an argument were true, the same could not be claimed for the entirety of the world's seas, airspace, and land territory. Terrorists could be expected to smuggle small amounts of radiological materials or extremely small nuclear devices whose reliable detection and interception would require an incredibly consistent and exceptional level of intelligence collection and analysis. Brookings expert Michael Levi has warned of the near impossibility of detecting a grapefruit-size amount of plutonium, the quantity necessary for a basic nuclear weapon.³⁴ Although PSI countries like Britain, France, Germany, Japan and Australia do possess some of the most extensive maritime and air surveillance and interdiction capabilities in the world, a significant proportion of illicit WMD traffickers can be expected to defeat any interdiction strategy.

Reservations about the PSI's potential to curb the illicit WMD trade are due, in no small part, to the fact that the PSI strategy requires global participation to achieve full effectiveness, whereas the PSI maintains a less-than-universal membership. Without active worldwide support, the PSI will find it difficult to achieve the effects to which Bolton has alluded. Currently, even a critical shipping "choke point" as the Malacca Strait, through which a considerable percentage of the world's sea-based cargo passes each year, remains inaccessible to PSI operations due to Malaysia's and Indonesia's opposition to the initiative. Meanwhile, the naval forces of the latter region, which is known to be rife with piracy and a hotbed of terrorist activity, lack the capability to monitor and patrol even those extensive Southeast Asian coastal waters adjacent to the strait.

An organization, that has shown an interest in WMD capabilities (such as al Qaeda), can be expected to employ methods of transport that have a low likelihood of being thwarted. Rather than being deterred by the threat of interdiction, terrorist operatives could simply pursue alternative transport routes that are essentially out of reach to the PSI. The South Caucasus is a particular region of concern, where borders are porous, and law enforcement is notoriously ineffective and corrupt at times. Smuggling routes traditionally used to smuggle conventional arms, drugs and humans, flow from Russia into the Caucasus, and then on to Iran, or to Turkey and then into Europe by way of the Balkans.³⁵ These routes should be expected to be targeted as easy thoroughfares for unconventional weapons smuggling as well.³⁶ Furthermore, if traffickers were to view the seas or land routes as a PSI interdiction risk, then WMD transfers could be conducted by airplane. In much of Africa, air traffic monitoring is poor to nonexistent; a situation that is frequently exploited by conventional arms traffickers.³⁷

It could be claimed that North Korea's attempts to acquire and proliferate WMD and delivery systems are the main concern, and that the PSI will be a success even if it can only keep that country's weapons related activities in check. The PSI would be unwise to adopt such a risky strategy. If operational capabilities are to be built, then other dangerous state and non-state proliferators, the most disconcerting of which might be found in Pakistan, India, China, Russia, Central Asia or the Middle East, should also be addressed by the PSI's counter-proliferation operations. PSI national authorities should not turn a blind eye to nuclear proliferation activities that may pose an equal or greater risk than those of North Korea. Nonproliferation objectives should not be forsaken by failing to verify that anti-terror allies like Pakistan are not allowing the proliferation of NBC technologies from their territory. To do so would send a message to illicit traffickers that their efforts may not be hindered.

As it stands now, the PSI will have trouble both convincing outsiders to support its activities and soliciting the cooperation of even its own participant countries. Part of this difficulty can be attributed to the PSI's secretive nature, which arouses suspicion of its intentions, and makes problematic any assessment of the degree to which the initiative is achieving its goals while abiding by international standards of conduct. But questions about PSI legitimacy and effectiveness may also be blamed upon the inexistence of a PSI coordinating mechanism to agree a common list of specific items or circumstances warranting participant action. Put simply, PSI effectiveness in any given situation depends upon each participant country's position regarding the relative threat posed by a specific illicit transfer.

However, as Michael Beck, executive director of the Center for International Trade and Security, writes, "[N]o countries are known to be exporting ready-made WMD. The problem is the export of components, technologies, and production materials associated with WMD – items which are far more elusive because they have civilian as well as military end-uses and their trade is not illegal ... 95 percent of the ingredients for WMD are dual-use in nature, having both civilian and WMD applications."³⁸ In this context, participants may find it difficult to make legitimate claims about the danger posed by specific cases of NBC trafficking, as such risk assessments will often be subjective, politically influenced decisions, centered around the question of whether a dual-use technology will be put to peaceful uses, as claimed, or will be used in a weapon.

If a shipment of nuclear technology destined for North Korea were intercepted, PSI members would probably agree that the potential danger associated with the shipment would warrant confiscation.³⁹ If criminal or terrorist groups were caught with radiological materials, the decision would also likely be unanimous. But beyond this point, PSI participants would probably have divergent perspectives about the threat involved. This disunity strains the PSI's ability to oppose proliferation in a consistent way, harming its chances of obtaining international support.

Furthermore, the fact that the PSI lacks machinery to ensure participant compliance with PSI operations suggests that PSI states such as Russia, which may possess relatively relaxed understandings of what constitutes a proliferation concern, will feel at liberty to

support PSI actions only marginally, offering its permission *à la carte* to use national territory for PSI interdictions, and mobilizing national law enforcement or military assets to combat weapons trafficking only when economic or other interests are not judged superior. The PSI's identification of Iran as one of two notable states of concern resonates strangely when one considers Russia's positive attitude towards defense sales to Iran, not to mention Russia's pursuit of construction of a nuclear energy facility at Bushehr despite ongoing proliferation concerns by the International Atomic Energy Agency (IAEA).⁴⁰

The nuclear programs of Iraq and North Korea, and arguably Iran, have demonstrated the lengths to which states seeking nuclear weapons capabilities will go to convince the international community that their nuclear activities are strictly peaceful. In such circumstances, unbiased, specific intelligence about illicit WMD efforts is key to acquiring international support for actively arresting these activities. The PSI's intelligence-sharing component is praiseworthy in this respect, but the lack of any organizational structure, apart from the individual state intelligence agencies, will not encourage outsiders to view PSI intelligence as anything but U.S.-sponsored propaganda being pushed upon other PSI countries. A more formal organizational structure and process for sharing and assessing the validity of intelligence claims might provide the PSI a better tool for identifying transfers of concern, as well as for achieving international acceptance of the need for interdiction when a situation deserves action.

Overall, the PSI's current status raises many questions about the extent to which the initiative will rein in illicit transfers of WMD, delivery systems and related materials. Separate funding requests to support PSI exercises have not generally been pursued by national governments. One wonders how an initiative that is so heavily marketed as an instrument of counter-proliferation will actually perform up to expectations absent any mention in participants' respective national budgets. It should also be considered whether, absent any codification in U.S. or other participant countries' national laws, the PSI will simply disintegrate as elections replace those governments and officials who most strongly back the initiative. In addition, it must be asked whether the PSI might contribute to an armed confrontation or diminish the international prohibition on the use of force, all the while misleading observers to believe that the PSI provides a comprehensive defense against the spread of weapons of mass destruction.

The PSI in Perspective: The Way Forward

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. But to do so, the initiative's participants should observe the following recommendations:

1. PSI participant countries should rapidly undertake outreach efforts to countries that do not currently participate in the initiative. While the United States has attempted to obtain China's support, Chinese nonparticipation raises serious doubts about PSI efficacy. Were the PSI to make its activities more transparent, this would likely increase the perceived

legitimacy of the initiative, and could dispel concerns among non-members, while encouraging countries that have already agreed to support PSI efforts to do so more reliably.

2. PSI interdictions of sea, air, and land-based WMD shipments must not undermine the spirit of the law. Imprudent application of the PSI, through illegitimate ship boarding or other provocative tactics, could stimulate an armed confrontation between participants' armed forces and target states.⁴¹ While some transfers might warrant actions that would otherwise violate the letter of the law in the name of preventing an immediate threat to international peace, it is critical to PSI acceptance and success that PSI operations conform to international and national legal standards. For example, the provisions of the Law of the Sea are essential to unobstructed international commerce. Reckless interdiction operations, in violation of the prohibition on the use of force contained in the UN Charter, would threaten an international order which PSI participants should strive to uphold. Clear evidence that PSI operations will abide by the law would go a long way in convincing outsiders and skeptical participants alike of PSI good faith.

A generic UNSC resolution authorizing PSI actions would appear an improbable and imprudent option in light of the myriad 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 timeframe, whether interdiction is warranted in a given case? What specific items would merit confiscation? Such a resolution would give unprecedented powers to states to act under poorly delineated 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. Alternatively, an extra-UN international body might be devised to perform a similar function, and to encourage streamlined procedures for expeditious authorization when needed. In addition, boarding agreements which streamline procedures and permission-granting for boarding suspect foreign vessels should be concluded wherever possible among PSI countries, and between PSI participants and supporting countries.

3. The PSI's participants will only be able to act together and in concert with the international community when it can present unbiased and convincing intelligence information concerning the details of specific threats. Objective and conclusive proof of the need to intercept a suspect shipment will be required for presentation to a state whose flag is used as a flag of convenience, to the United Nations, and to the international community. Objective intelligence would help avoid erroneous judgments and disagreements over weapons capabilities and intentions.

Hence, 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 context of the IAEA. Interagency expert meetings involving PSI, IAEA, the UN Office on Drugs and

Crime, Interpol and non-governmental representatives could help create new ideas and develop synergy in this regard.

Unbiased and complete intelligence is key to answering the basic proliferation questions: What actors/items represent threats? What routes are being used to transfer illicit WMD? Such capabilities also assuage doubts among hesitant partner countries, and can be used to expose states' illicit activities and encourage them to reform. Furthermore, as Michael Beck has pointed out, the PSI's intelligence capacity could allow much to be learned about the specific modalities and patterns of the illicit WMD trade.⁴² The PSI's intelligence and other capabilities should not only be limited to tracking WMD trafficking; PSI wherewithal should also be considered for use in combating the illicit trade in convention weapons, narcotic drugs and humans. This would appear a natural step, in light of the fact that illicit smuggling is often carried out by many of the same people, using the same trade routes and modalities, for a variety of illicit cargo.⁴³

4. In order for the PSI to achieve its desired effects and gain widespread acceptance in the international community, the initiative needs a more concrete institutional structure, which would give it decision-making capabilities that are distinguishable from national authorities and allow the PSI to approach the proliferation problem with a more unified and consistent strategy. A more formalized structure could solidify states' commitments to actively support PSI goals over time and beyond future government changeovers.

5. If the PSI is to be genuinely relied upon as a tool to stem WMD proliferation, then it should be funded accordingly. The Bush administration could set an example to other nations by amply funding one its most highly vaunted nonproliferation efforts, and consequently set a precedent for future administrations to follow.

6. PSI participants should view all proliferation activities with concern. Illicit WMD trade involving Pakistani entities should be just as much a target of PSI efforts as illicit WMD to and from Iran or North Korea.

7. The PSI must not be allowed to supplant other nonproliferation measures. Bolton's comments notwithstanding, it would be an unwise strategy to rely upon interdiction efforts as the principal tool for ending the deadly trade in weapons of mass destruction.

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. Furthermore, international resource-sharing and cooperative training should be stepped up by those countries with expertise that is desperately needed in countries with poor law enforcement, export and border controls. The sources of weapons-usable material around the globe should be more tightly secured.

Finally, the root causes of proliferation must not be ignored. Actions that may be perceived as contravening disarmament obligations – for example, those enshrined in Article VI of the NPT – can only serve to encourage other states to pursue new or increased nu-

clear weapons capabilities. In this respect, the U.S. pursuit of new low-yield nuclear weapons and the failure of the U.S. Senate to ratify the Comprehensive Test Ban Treaty (CTBT) are discouraging trends. Disarmament education may also hold promise. The end-result of inattention to these additional measures and root causes could be “self-destruction.”⁴⁴

Sources

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- ² "Russia joins WMD alliance," *Taipei Times*, June 2, 2004, p. 6; Oleg Shchedrov, "Russia Teams Up With Bush on WMDs"; "Russia joins alliance against banned arms," *The Straits Times* (online edition).
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- ⁶ "Proliferation Security Initiative: Statement of Interdiction Principles," White House Fact Sheet.
- ⁷ According to the Chinese government, "...the legality of some of the PSI measures have some negative aspects that could result in bad consequences and have raised a lot of concerns. PSI member states should earnestly consider this..."; quoted in "China voices concern over WMD non-proliferation plan's legality," *HiPakistan*, Dec. 9, 2003, as cited in Andreas Persbo, "The Proliferation Security Initiative: Dead in the water or steaming ahead?," BASIC Notes, Dec. 12, 2003, at: <http://www.basicint.org/pubs/Notes/BN031212.htm>.
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- ⁹ S/23500, Jan. 31, 1992.
- ¹⁰ "The New Proliferation Security Initiative: an interview with John Bolton," Arms Control Association, Nov. 4, 2003, at: <http://www.armscontrol.org/aca/midmonth/November/Bolton.asp>; "Chairman's Statement: Proliferation Security Initiative," PSI Brisbane Meeting, July 9-10, 2003, at: <http://www.acronym.org.uk/docs/0307/doc04.htm#01>; "Proliferation Security Initiative: Statement of Interdiction Principles," White House Fact Sheet.
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- ¹² For further information on the rationale behind Libya's decision, see Jofi Joseph, "The Proliferation Security Initiative: Can Interdiction Stop Proliferation?," endnote 2.
- ¹³ At the July 2003 PSI Meeting in Brisbane, Australia, participants cited the Democratic People's Republic of Korea (DPRK) and Iran as two states of particular proliferation concern; "Chairman's Statement: Proliferation Security Initiative," PSI Brisbane Meeting. See also, John Bolton, "Remarks to the First Anniversary Meeting of the Proliferation Security Initiative."
- ¹⁴ "The New Proliferation Security Initiative: an interview with John Bolton," Arms Control Association.
- ¹⁵ U.S. Department of State, Bureau of Nonproliferation, "Proliferation Security Initiative Frequently Asked Questions," Fact Sheet, May 24, 2004, at: <http://www.state.gov/t/np/rls/fs/32725.htm>; "Chairman's Conclusions," Proliferation Security Initiative, Lisbon, Portugal, March 4-5, 2004, available through Australian government web site, Department of Foreign Affairs and Trade, at: http://www.dfat.gov.au/globalissues/psi/psi_2004_chairman_conclusions.html. On the lack of budgetary support for PSI, see Victoria Samson and Andrew George, "Non-proliferation and the FY 2005 budget request," Center for Defense Information, Feb. 20, 2004, p. 4, available at: <http://www.cdi.org/news/nuclear/FY05-nonproliferation.pdf>; also, David McGlinchey, "Anti-proliferation effort will receive no separate funding, personnel," Daily Briefing, Government Executive, March 15, 2004, as accessed online on May 11, 2004, at: http://www.govexec.com/story_page.cfm?articleid=27970&printerfriendlyVers=1&.
- ¹⁶ In addition to the first anniversary meeting, five PSI plenary meetings have been held: in Madrid (June 12, 2003); Brisbane (July 9-10, 2003); Paris (Sept. 3-4, 2003); London (Oct. 9-10, 2003); and Lisbon (March 4-5, 2004).
- ¹⁷ "Chairman's Conclusions," Proliferation Security Initiative, Lisbon, Portugal.

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- ¹⁸ A list of PSI interdiction training exercises can be found in “Proliferation Security Initiative: Statement of Interdiction Principles,” Remarks by John R. Bolton to Proliferation Security Initiative Meeting, Paris, France, Sept. 4, 2003, at: <http://www.state.gov/t/us/rm/23801pf.htm>. Further details about selected PSI exercises are available from GlobalSecurity.org, at <http://www.globalsecurity.org/military/ops/psi.htm>.
- ¹⁹ U.S. Department of State, “Liberia,” at: <http://www.state.gov/t/np/c12387.htm>.
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- ²¹ “Remarks by the President on Weapons of Mass Destruction Proliferation,” National Defense University, Washington, DC, Feb. 11, 2004, at: <http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>.
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- ²³ The extent of this authority depends upon the specific country’s national laws.
- ²⁴ “Table recapitulating the status of the Convention, and of the related Agreements, as at 23 December 2003,” Division for Ocean Affairs and the Law of the Sea, Dec. 23, 2003, at: http://www.un.org/Depts/los/reference_files/status2003.pdf; also, Andreas Persbo and Ian Davis, “Sailing Into Uncharted Waters? The Proliferation Security Initiative and the Law of the Sea,” chap. 3, p. 43, and endnote 104.
- ²⁵ UNCLOS, Part VII, Section 1, Article 87.
- ²⁶ UNCLOS, Part III, Section 2, Articles 38-39. Innocent passage is permitted through international straits where the right of transit passage is not applicable; Part III, Section 3, Article 45.
- ²⁷ UNCLOS, Part II, Section 3, Articles 17-19.
- ²⁸ UNCLOS, Part VII, Section 1, Articles 99-109.
- ²⁹ UNCLOS, Part II, Section 3, Article 19. Article 19 provides a list of activities which may invalidate innocent passage in a given case; however, it is interesting to note that the transport of weapons of mass destruction is not listed, nor is any reference made to the presence on a vessel of suspected terrorists.
- ³⁰ The DPRK declared in January 2003 that it would exit the Nuclear Non-Proliferation Treaty (NPT); see Jean du Preez and William Potter, “North Korea’s Withdrawal From the NPT: A Reality Check,” Center for Nonproliferation Studies (CNS) Research Story of the Week, April 8, 2003, at: <http://cns.mii.edu/pubs/week/030409.htm>. The DPRK is a party to the Biological Weapons Convention (BWC); it is not a party to the Chemical Weapons Convention (CWC).
- ³¹ The UNCLOS refers to the right to innocent passage of ships carrying nuclear weapons; Part II, Section 3, Article 23.
- ³² U.S. and Spanish authorities were frustrated in this regard upon intercepting in December 2002 an unflagged ship, the *So San*, bound for Yemen loaded with North Korean missile components. The intervening American and Spanish forces eventually released the cargo because no legal basis existed for confiscating the missiles.
- ³³ Senior Pentagon adviser, *Daily Telegraph*, April 27, 2003, as cited in “Korea Crisis – Blockade,” at: <http://www.globalsecurity.org/military/ops/korea-blockade.htm>.
- ³⁴ Michael Levi, “Uncontainable: North Korea’s Loose Nukes,” *The New Republic*, May 26, 2003, at: <http://www.brookings.edu/views/articles/fellows/levi20030526.htm>.
- ³⁵ For a disturbing account of the recent rise in chemical, biological, radiological and nuclear (CBRN) smuggling in the South Caucasus, see Tamara Makarenko, “Smuggling operations degrade security in the Caucasus,” *Jane’s Intelligence Review*, November 2003, pp. 26-29. On the reported involvement of organized crime in nuclear smuggling, see “Dirty doings in the Balkans,” *Jane’s*, Foreign Report, May 21, 2003, at <http://www.janes.com>.
- ³⁶ In March 2004, Georgian authorities detained an Armenian citizen in possession of radioactive material on the Georgian-Armenian border. See Center for Nonproliferation Studies, NIS Nuclear Trafficking Database, “Radioactive Material Seized on Georgian-Armenian Border,” March 13, 2004, at: <http://www.nti.org/db/nistraff/2004/20040090.htm>. This database contains records of reported nuclear

smuggling from 1991 onwards. According to *Jane's Intelligence Review*, by 2001, an estimated 22 percent of all nuclear smuggling incidents occurred along the Central Asia-Turkey-Caucasus trade route, with the majority of registered cases occurring in Georgia. When law enforcement began to improve in Georgia's Pankisi Gorge following September 2001, illicit criminal and smuggling activities relocated to other, more lawless areas, as Abkhazia's Kodori Gorge; see Tamara Makarenko, "Smuggling operations degrade security in the Caucasus."

³⁷ The poor level of airspace monitoring in Africa is illustrated in Brian Wood and Johan Peleman, *The Arms Fixers – Controlling the Brokers and Shipping Agents*, Oslo: BASIC/PRIO/NISAT, 1999, Chapter 5, at: <http://www.nisat.org/publications/armsfixers/default.htm>.

³⁸ "The Promise and Limits of the PSI," *The Monitor* 10: 1 (Spring 2004), Center for International Trade and Security, pp. 16-17, at: http://www.uga.edu/cits/documents/pdf/monitor/monitor_sp_2004.pdf.

³⁹ However, as discussed above, the current legal framework would preclude most interceptions at sea, outside of a state's internal waters, without flag state permission for another state's agents to board the ship.

⁴⁰ On the IAEA's most recent statements regarding Iran, see Joe Fiorill, "IAEA Questions Iranian Centrifuge Program, Uranium Traces, More," *Global Security Newswire*, June 2, 2004, at: http://www.nti.org/d_newswire/issues/2004_6_2.html#F2971C01; also, Peter Slevin, "Watchdog Blasts Iran On Nuclear Program," *Washington Post*, June 2, 2004, p. A21.

⁴¹ DPRK authorities have sharply criticized the PSI, and the official North Korean newspaper *Rodong Sinmun* has stated that the initiative could lead to "such a serious development as an all-out war"; see Nicholas Kralev, "U.S. Seeks Asian Aid for Ship Searches," *The Washington Times*, June 17, 2003.

⁴² Michael Beck, "The Promise and Limits of the PSI."

⁴³ According to Dr. James Clay Moltz, Deputy Director of the Center for Nonproliferation Studies, PSI inspections have already proven useful in counteracting transfers of illicit drugs and counterfeit money from North Korea, as well as illicit dual-use technology making its way from Japan to North Korea; correspondence with author, June 14, 2004.

⁴⁴ For a blueprint by IAEA Director General Mohamed ElBaradei on the steps needed to curb nuclear proliferation, see ElBaradei, "Saving Ourselves From Self-Destruction," *New York Times*, Op-Ed Essay, Feb. 12, 2004, at: <http://www.iaea.org/PrinterFriendly/NewsCenter/Statements/2004/ebNYT20040212.html>.