

Who Should Control the Proliferation Security Initiative?

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Mark Valencia

Following the attacks of 9/11, the Bush administration placed high hopes on its Proliferation Security Initiative (PSI). Maritime policy analyst Mark Valencia believes PSI has chalked up a mixed record, and lacks the kind of widespread support it needs. It's time, he says, to move beyond a loose arrangement dominated by the United States and entrust PSI to the United Nations.

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Lee Yong-joon

Despite concerns held by some observers that the Proliferation Security Initiative (PSI) violates the international law of the sea, or that it is susceptible to possible flaws or biases in US intelligence, the United Nations is not the most appropriate place to implement PSI, argues South Korean Deputy Foreign Minister Yong-joon Lee. This would expose PSI to political complications in a world of compromised multilateralism.

Put the PSI Under the UN*

By Mark Valencia

The Debate: Valencia

AS WE APPROACH the fifth anniversary of President George W. Bush's May 31, 2003 launch of the Proliferation Security Initiative (PSI), it is appropriate and fair to assess the effort's effectiveness and to attempt to divine the way forward.

The initiative was announced with considerable fanfare in Krakow, Poland as an "activity" designed to prevent the spread of weapons of mass destruction, their delivery systems and related materials from entering or leaving "states of proliferation concern." The focus was to be on interdiction because of the fear of rapid growth in states and groups pursuing WMD programs, worries of an expanding nexus between WMD and terrorism and gaps in the existing non-proliferation architecture.¹ It was thought that interdiction could help ensure that commitments are kept and stop proliferation-related exports from states whose activities fall outside existing source-based nonproliferation regimes. At the least, it was assumed that it would deter suppliers and customers and make proliferation more costly and difficult. Although interdiction was not a new idea, the focus on this tool elevated consideration of its use at borders, in ports, in the air and at sea.

The Bush administration clearly had high hopes and expectations for its effort. On the first anniversary, John Bolton, then undersecretary of state for arms control and international security, proclaimed 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."² He claimed that the effort was "succeeding because it is based on practical actions that make maximum use of each country's strengths to counter proliferation. The partnerships being forged, the contacts being established, the operational readiness being enhanced through PSI are all helping to create a lasting basis for co-operative

**For a thorough review and analysis of PSI see Mark J. Valencia, *The Proliferation Security Initiative: Making Waves in Asia*, Adelphi Paper 376, The International Institute for Strategic Studies, London, 2005, and 'The Proliferation Security Initiative: A Glass Half-Full', *Arms Control Today*, http://www.amscontrol.org/act/2007_06/Valencia.asp?print, from which most of this article is derived.*

1 Mark T. Esper and Charles A. Allen, "The PSI: taking action against WMD proliferation," *The Monitor*, v. 10, no. 1, Spring 2004, p.4.

2 John Bolton, Under Secretary for Arms Control and International Security, "Remarks to the First Anniversary Meeting of the Proliferation Security Initiative," Krakow, Poland, May 31, 2004.

3 "US sets new defense strategy," *www.defensenews.com*, 21 March 2005; 'US wants greater co-operation in WMD interdiction', Middle East Newline, March 9, 2005.

4 "Proliferation Security Initiative marks second anniversary," *www.i-Newswire.com*, 1 June 2005; "US intercepts two deliveries of nuclear material for North Korea," *The Korea Herald*, June 2, 2005.

5 State's Joseph urges "Diplomacy of action against WMD threat," <http://usinfo.state.gov/evr/Archive/2005/Aug/17-206543.html>

6 "High level political meeting," Warsaw, 23 June 2006, <http://www.psi.ms.gov.pl/>

action against proliferation." The administration made PSI a key foreign policy and defense goal in 2005 and Congress approved \$50 million to help states support the initiative.³

On its second anniversary, in May 2005, Secretary of State Condoleezza Rice claimed that the United States and its PSI partners had undertaken 11 successful intercepts by that time, including the prevention of two WMD-related deliveries to North Korea as well as blocking the transfer of ballistic missile-related and nuclear program-related materials to Iran.⁴ A 12th

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successful PSI interdiction was subsequently announced. However, the details of these interdictions were left vague. These claims of success were repeated by Robert Joseph, Bolton's replacement, who subsequently increased the figure to "more than 30."⁵

A few weeks after PSI's third anniversary, representatives of 65 states met secretly in Krakow to discuss political, policy and legal issues. The chairman of the conference, Polish Ambassador Tadeusz Chomicki, reiterated the claims of success, noting that the initiative had provided a "platform" for impeding traffic in WMD and related materials, enhanced numerical and

geographic support, and improved national capacities to interdict shipments of proliferation concern.⁶ However, detailed information to support these claims, or even a list of countries attending the meeting, were not made available.

To be sure, the PSI and other US-driven efforts have improved awareness of the danger and urgency of the problem while the focus on interdiction has no doubt constrained some trade in WMD or at least forced rogue traders to change their tactics. Exercises under the initiative have increased cooperation by states aimed at the detection and interdiction of suspect shipments. And with the United States having successfully negotiated ship-boarding agreements with the countries whose flags fly on the bulk of the world's ships, consent for boarding to search for WMD has become an expectation—but not a legal obligation—for and of many states. Most important, the PSI has evolved from its earlier focus on interdiction of ships at sea, to inspection in ports, transport of WMD by aircraft and—for the United States—disruption of financial networks supporting such trafficking.

However, a lot has happened since the initiative's heady early days. Bolton and Joseph, its architects and principal champions, are no longer in the US government. Moreover, the initiative has been criticized for lack of transparency and public accountability, and for stretching if not violating the principles of international law, impeding legal trade, weakening the UN system, being politically divisive, diluting other non-proliferation efforts and having limited effectiveness.

PSI'S LIMITATIONS

Reflecting the Bush Administration's philosophical disdain for the UN, the initiative was conceived, originated and implemented outside the UN system. In reality it remains a US-driven ad-hoc activity designed primarily to

7 The Caltrade Report, “Container ships: the next WMDs?” quoting Thomas Lehrman, Director of the US State Department’s Office of Weapons of Mass Destruction Terrorism, Sept. 30, 2006. This statement is unverified.

8 The United States apparently exempts suspect shipments to and from India, Pakistan and Israel for political reasons.

9 Ye Ru’an and Zhao Qinghai, “The PSI: Chinese thinking and concern,” *The Monitor* v. 10, no. 1, Spring 2004, p. 23.

deter trade in WMD components and “related materials” to and from North Korea—and now Iran. It is far from clear that 12 successful interdictions in two years or even 30 in four years⁷ mean that the program is effective. Indeed, it is unclear how these successful interdictions compare to efforts prior to PSI, or if an increase in successful interdictions is due to an increase in proliferation activity. And despite seven US-bilateral ship-boarding agreements, states (and aligned non-state actors) that want to avoid interdictions can still transport WMD components on their own flag vessels or aircraft or on those of non-participating states. This is particularly applicable to warships and government ships operated for non-commercial purposes that according to the 1982 UN Convention on the Law of the Sea, Article 32, have immunity from any other state’s jurisdiction.

Although the US State Department has posted a list of some 81 nations that have participated in PSI meetings or exercises, “participation” does not necessarily equate with “support” as defined by the State Department. Indeed, apparently some participating states have not publicly (or even privately) endorsed the PSI Principles. Reasons given include not perceiving PSI as a top security priority and wanting to avoid possible reprisals or domestic criticism for co-operation with the United States. This reluctance in itself indicates less than stalwart support. And given the flexibility of co-operation, many, if not most, of these 81 so-called supporters would not be obligated to interdict vessels or aircraft at the behest of the United States and might well decline to do so. Moreover, countries that are crucial to success—like China, India, Indonesia and South Korea—have not publicly joined the activity despite US pressure to do so; Japan and Russia also seem to be rather reluctant participants. Concerns that limit participation include a belief

that the United States is applying double standards⁸ and a lack of clarity in terms—what determines which states are “of proliferation concern” and what constitutes “good cause” for interdiction? The obligations linked to these vague and subjective definitions are also murky.

The secretiveness surrounding interdictions and the methods employed make it difficult to evaluate the effectiveness or legitimacy of the initiative, and, more importantly, to garner support from countries suspicious of US-driven endeavors. Some fear that the United States would like to change existing international law to allow PSI interdictions on or over the high seas, or erode the regimes of freedom of shipping and innocent passage. Others are alarmed by the US argument that such interdictions are warranted by a right to pre-emptive self-defense. Indeed, they do not want to see PSI lead to instability or the weakening of the international prohibition against the unilateral extra-UN use of force outside the constraints of the UN charter. Moreover, public support for PSI by some countries would be a domestic public liability as it would make the government appear to be a handmaiden of the United States and reliant on US intelligence.

Because finding and interdicting suspected WMD-related cargo is so difficult, PSI relies heavily on intelligence sharing. Unfortunately, US intelligence failures in the “war on terror” have been all too common and are not new. The 1993 detention of the Chinese vessel *Yinhe*, which was suspected of carrying chemical warfare components to Iran, is a specific example of faulty intelligence resulting in an unjustified interdiction.⁹

Intelligence sharing has constraints for both the provider and the receiver. For the provider, there has to be a careful trade-off between providing sufficient intelligence to show “good cause” and protecting intelligence methods and sources. For the receiver, a decision must

10 Based on UNCLOS, Article 106, "Liability for seizure without adequate grounds."

11 *Ibid.*

12 110th Congress 1st Session, A Bill to provide for the implementation of the recommendations of the National Commission of Terrorist Attacks Upon the United States, subtitle B-Proliferation Security Initiative, Sec. 1221. Proliferation Security Initiative Improvements and Authorities, para. 2: "It is the sense of Congress... that the President should strive to expand and strengthen the Proliferation Security Initiative (PSI)... with a particular emphasis on... working with the United Nations Security Council to develop a resolution to authorize the PSI under international law."

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be made to determine if the WMD material in the hands of the intended recipient constitutes a significant enough threat to warrant action.¹⁰ It would also want to know if the intended recipient has a legitimate civilian use for the material. Further, the intelligence will probably have to pass different thresholds before a decision is made to support interdiction.¹¹ These thresholds will likely vary between and even within nations, and with the action intended, e.g., interdiction, boarding, inspection, diversion or seizure.

In sum, the United States is unlikely to trust all participant nations equally with its intelligence, and, given past US intelligence failures, some nations may not be willing to act on skimpy or suspect intelligence.

As is often stated by its proponents, the PSI is not an organization—it is only an activity—and thus it lacks an independent budget or coordinating mechanism. Although these features may enhance its flexibility, as well as the speed of decision-making and resultant action, they also constrain its capacity. Moreover, placing such emphasis on interdictions may undermine other nonproliferation efforts.

Perhaps the greatest obstacle to effectiveness is the fact that most of the ingredients for WMD are dual-use in nature, having both civilian and

weapons applications. Few, if any, countries export "turn-key" WMD. The harsh reality is that countries and non-state actors can build their own WMD from dual-use components, technologies and machines. This makes decisions regarding "good cause" for interdiction difficult and subject to political influences based on who is sending or receiving the shipment. Moreover, a proliferation of interdictions of dual-use materials may hamper legitimate commerce and thus engender opposition, even from allies.

ENHANCING EFFECTIVENESS

If PSI effectiveness is dramatically enhanced, it could become a tremendous addition to the arsenal of anti-proliferation and disarmament regimes. But if its implementation is perceived to be overly zealous, discriminatory, ineffective or illegal, it could be counterproductive

Most of PSI's shortcomings stem from its ad-hoc, extra-UN, US-driven nature. Bringing it into the UN system and providing a budget for it, as advocated by a recent US House of Representatives-approved bill,¹² would rectify many of these shortcomings and in the long run improve its effectiveness. One way to do this would be to seek a UN Security Council Resolution authorizing the use of force for interdiction of WMD and related ma-

13 Neither UNSCR 1540 nor UNSCR 1718 authorize interdiction on the high seas or the use of force to do so. Even then US Secretary of Defense Donald Rumsfeld conceded in 2006 that the PSI “has holes in it,” including the lack of a legal basis for interdiction of vessels and aircraft and confiscation of their cargo on the high seas. Burt Herman, “Searches of N. Korean ships sticky issue,” *Associated Press*, October 19, 2006.

14 Andreas Persbo and Ian Davis, “Sailing into uncharted waters? The Proliferation Security Initiative and the Law of the Sea,” British American Security Information Council. May 2, 2004, <http://www.basicint.org/pubs/research/04PSI.htm>

15 Michael E. Beck, “The Promise and limits of the PSI,” *The Monitor*, v.10, no.1, Spring 2004, pp. 16-17.

terials, either in specific cases, or in general.¹³ PSI’s reach and effectiveness could also be improved by eliminating double-standards, increasing transparency and establishing a neutral organization to assess intelligence, co-ordinate and fund activities and make recommendations or decisions regarding specific or generic interdictions.

Eliminate double standards. Treatment as sovereign equals is a crucially important principle for smaller nations. To enhance and expand support for the PSI, it is imperative that this principle be applied uniformly and equally. To exempt US “friends” of the moment while targeting unilaterally declared “rogue” states makes the task of persuading would-be participants that much harder.

Moreover, the United States should reconsider its own pursuit of tactical nuclear weapons and its failure to ratify the Comprehensive Test Ban Treaty. If the United States truly wants to limit proliferation of WMD, then it needs to lead by example. Finally, it should be remembered that, historically, companies in the developed world have knowingly or unknowingly been the principal sources of WMD components, thus investigations, interdictions and, if necessary, sanctions should be applied equally.

Increase transparency. Presumably, increased transparency would alleviate the growing concern regarding the legitimacy of PSI interdictions and the intent of the United States, and thus enhance support.

Establish a neutral organization under UN auspices. Perhaps an “interdiction committee”¹⁴ is needed to assess intelligence, coordinate and fund activities, including cooperation through other non-proliferation instruments and efforts, and to make decisions regarding interdictions. Such an organization, perhaps based on the committee established to monitor compliance with UN Security Council Resolution 1540 on proliferation of nuclear, chemical and biological weap-

ons, could answer key questions such as what combinations of actors and materials represent threats and what is “good cause?” It would also help avoid erroneous judgments and disagreements that might prevent legitimate commerce or delay action. The organization might also have an independent intelligence capability.¹⁵ It would also give the PSI a concrete structure with a consistent strategy and *modus operandi*, as well as a budget to fill gaps in interdiction and intelligence collection efforts. It would not supplant or undermine other non-proliferation efforts but instead cooperate with and complement them.

If PSI effectiveness is not dramatically improved, WMD and related materials will continue to fall into the “wrong” hands. And it may take only one coincidence of will, means and opportunity to create a catastrophe. It is time to move beyond a loose arrangement dominated by the United States. Gains must be consolidated and legitimacy enhanced, thus attracting broader and more robust participation. This could be achieved most effectively by eliminating double standards, increasing transparency and providing a concrete structure under UN auspices.

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