

Policy Forum 08-043: Put the Proliferation Security Initiative Under the UN

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By Mark J. Valencia

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I. Introduction

Mark J. Valencia, a Maritime Policy Analyst and a Nautilus Institute Senior Associate, writes, "If PSI effectiveness is not dramatically improved, WMD and related materials will continue to fall into the

'wrong' hands... It is time to move beyond the 'loose arrangement' dominated by the United States. Gains must be consolidated and legitimacy enhanced, thus attracting broader and more robust PSI participation. This could be achieved by providing PSI with a concrete structure under UN auspices."

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II. Article by Mark J. Valencia

- "Put the Proliferation Security Initiative Under the UN"

By Mark J. Valencia

May 31 is the fifth anniversary of President George W. Bush's launch of the Proliferation Security Initiative (PSI). PSI is an 'activity' designed to prevent the spread of 'weapons of mass destruction' (WMD), their delivery systems and related materials from entering or leaving 'states of proliferation concern'.

The activity has enhanced awareness of the danger and urgency of the problem. And the focus on interdiction has no doubt constrained some trade in WMD, their delivery systems and related materials, or at least forced rogue traders to change their tactics. PSI exercises have increased national capacities for co-ordinated 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, flag state consent for boarding to search for WMD has become an expectation for and of many states. Most important, PSI has evolved and metamorphosed from a focus on interdiction of ships at sea, to inspection in ports, to carriage of WMD by aircraft, to disruption of financial networks involved or supporting such trafficking.

However, much water has flowed under the stern since PSI's early heady days of full steam ahead. John Bolton and Robert Joseph, PSI's architects and principal proponents are no longer in the U.S. government. Moreover, PSI has come to be criticized for lack of transparency and public accountability, 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 - for all these reasons - having limited effectiveness.

PSI's Limited Effectiveness

Reflecting the Bush Administration's philosophical disdain for the UN, PSI was conceived, originated and implemented outside the UN system. In reality it remains a U.S.-initiated and driven *ad-hoc* activity designed primarily to deter trade in WMD components and 'related materials' to and from North Korea - and now Iran. It is far from clear that the publicly announced ' more than 30' interdictions in four years mean that PSI is effective. Indeed, it is unknown 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 the eight US-bilateral ship boarding agreements, State and non-state actors that want to avoid PSI interdictions can still transport WMD components on their own flag vessels or aircraft or on those of non-participating states.

The secretiveness surrounding PSI interdictions and the methods employed make it difficult to evaluate its effectiveness or its legitimacy, and more important, to garner support from countries suspicious of U.S.-driven endeavors. Although the US State Department claims some 70 nations participate in PSI, "participation" does not necessarily equate with "support" as defined by the State

Department. Indeed, apparently some participating states have not endorsed the PSI Principles. This reluctance in itself indicates less than stalwart support. Reasons given include not perceiving PSI as a top security priority and wanting to avoid possible reprisals as well as domestic criticism for co-operation with the United States.

Other concerns that have limited full PSI participation include a belief that the United States is applying double standards, the possibility that some actions under PSI may violate international law, the failure of the United States to ratify the UN Convention on the Law of the Sea, and a lack of clarity in PSI definitions such as what determines which states are "of proliferation concern" and what constitutes "good cause" for interdiction. 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 the high seas and innocent passage. Others are alarmed by the US argument that such interdictions are warranted by a right to pre-emptive self-defense.

Given the flexibility of co-operation under PSI, these 70 so-called supporters are not obligated to interdict vessels or aircraft at the behest of the United States and depending on the circumstances, many might well decline to do so. Moreover, countries that are key to an effective PSI--like China, India, Indonesia, Malaysia and South Korea--have not joined despite US pressure to do so, and Japan and Russia participation seems to be restrained by domestic politics.

Perhaps the greatest obstacle to PSI effectiveness is the fact that most of the ingredients for WMD are dual-use in nature, having both civilian and WMD application. 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, using dual-use technologies and machines. This means that it is very difficult to make decisions regarding 'good cause' for interdiction and that such decisions will inevitably be politically influenced and based on who is sending or receiving the shipment.

Finally, as is often proclaimed by its proponents, PSI is not an organization--only an activity--and thus it lacks an independent budget or co-ordinating 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.

Enhancing PSI Effectiveness

Most of PSI's shortcomings stem from its *ad-hoc*, extra-UN, U.S.-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 would rectify many of these shortcomings and in the long run improve its effectiveness. One way to do this would be to seek a UNSC Resolution authorizing the use of force for interdiction - on or over the high seas and in territorial waters--of WMD and related materials, either in specific cases, or in general. PSI's reach and effectiveness could also be improved by eliminating double-standards, increasing transparency and establishing a neutral organization to evaluate intelligence, co-ordinate and fund activities, and make recommendations or decisions regarding specific or generic interdictions.

This 'interdiction committee', perhaps based on the committee established to monitor compliance with UNSC 1540 -- if perceived to be neutral, transparent, fair and objective-- 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 that might result in interference with legitimate commerce. This committee would also give 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. Moreover 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 the 'loose arrangement' dominated by the United States. Gains must be consolidated and legitimacy enhanced, thus attracting broader and more robust PSI participation. This could be achieved by providing PSI with a concrete structure under UN auspices.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: napsnet-reply@nautilus.org . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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