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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**AN APPROACH TO IMPROVE
INTERNATIONAL MARITIME SECURITY
THROUGH THE COORDINATION BETWEEN
THE IMO INSTRUMENTS AND
THE PROLIFERATION SECURITY
INITIATIVE (PSI) REGIME**

By

YI, SONG YI
Republic of Korea

A dissertation submitted to the World Maritime University in partial
fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE

In

MARITIME AFFAIRS
(MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION)

2013

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **An Approach to Improve International Maritime Security through the Coordination between the IMO Instruments and the Proliferation Security Initiative (PSI) Regime**

Degree: **Master of Science in Maritime Affairs**
(Maritime Safety and Environmental Administration)

This dissertation is a study on the Proliferation Security Initiative (PSI) which is a global effort through which nations deliberately interdict carriage of illicit WMD-related substances commuting States and non-State actors. Given its flexibility as an “activity” rather than an organization, the initiative has gained supports from more than 102 countries since its interception in 2003.

Now, in its 10th year, and despite boasting over 100 participants, the PSI continues to face legal, political, and structural challenges. By looking into the realities of PSI activities, the paper attempts to explore some of the key challenges, with its practical means of operations.

Furthermore, the paper reviews how security-related instruments of the IMO have been involved in maritime transportation of WMD and related materials and provides recommendations that the IMO play an effective role in strengthening the PSI. The author concludes with sound recommendations for the IMO on ways to find an optimal point between maintaining the security of the ship and stopping the trafficking of WMD and related materials.

KEY WORDS: Proliferation Security Initiative (PSI), Interdiction, Operational Experts Group (OEG), Statement of Interdiction Principles (SIP), United Nations Convention on the Law of the Sea, 1982 (UNCLOS), United Nations Security Council Resolutions, Weapons of Mass Destruction (WMD)

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LIST OF ABBREVIATIONS

CBP	Customs and Border Protection
CCP	Critical Capabilities and Practices
CSI	Container Security Initiative
DOS	Declaration of Security
DPRK	Democratic People's Republic of Korea
EEZ	Exclusive Economic Zone
GICNT	Global Initiative to Combat Nuclear Terrorism
IAEA	International Atomic Energy Agency
IMDG	International Maritime Dangerous Goods Code
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security Code
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended
M/V	Motor Vessel
NPT	Non-Proliferation Treaty
OEG	Operational Experts Group
PSI	Proliferation Security Initiative
ROEG	Regional Operational Experts Groups
SIP	Statement of Interdiction Principles
SOLAS	International Convention for the Safety of Life at Sea, 1974, as amended
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988
UAE	United Arab Emirates
UN	United Nations

UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNSCR	United Nations Security Council Resolutions
US	United States
WMD	Weapons of Mass Destruction

CHAPTER 1. Introduction

The nuclear nonproliferation regime's complexity in handling noncompliance and preventing the unlawful use of dual-use materials is demonstrated by the contemporary nuclear crunch in and the Democratic People's Republic of Korea (DPRK) and Iran as well as the menace of terror organizations utilizing weapons of mass destruction (WMD). To cope with these shortcomings, the United States instituted "the US-led Proliferation Security Initiative (PSI) has focused international attention on the proliferation of WMD, including proliferation by maritime transport".¹

The PSI is a global effort through which nations deliberately interdict carriage of illicit WMD-related substances commuting nations. In May 2003, the PSI was instituted by U.S. president George W. Bush who nominated its foremost eleven endorsing countries including the United States.

The PSI has increased a need for interdiction because of "the growing number of states pursuing WMD and missile programs and the growing threat from the nexus between WMD and terrorism".² Interdiction was considered to be able to become a real complement by guaranteeing fulfilled responsibilities and by obstructing trades aiming at proliferation of WMD from one nation to another. At least, it would presumably stem back customers and suppliers and keep proliferation from being handy. Even though interdiction was a big part of the PSI, the essence of the initiative improved its implicational deliberation in ports and at sea.

Nonbinding agreements have been old stories in global governance. The development of the PSI, nevertheless, was unique. The rules of the route to

¹ Guilfoyle, D. (2007). Maritime Interdiction of Weapons of Mass Destruction. *Journal of Conflict and Security Law* Vol. 12, 13.

² Esper, M. T., & Allen, C. A. (2004, January 12). The PSI: Taking Action against WMD Proliferation. *The Monitor*, p. 5.

interdiction were not spelled out by Bush's announcement of the PSI. Instead, by immediately inhibiting prospective customers and suppliers of proliferation, he aimed at contending with an imperious matter. And then, he let U.S. public servants to bolster up his manifesto. Even though either the concept or the training of WMD interdiction was not brand-new, its emphasis was magnified by its definite mention.

At the beginning, a lot of observers such as autonomous experts and governments all around the world were doubtful about the PSI and its unenforced situation. Being a coalition of the willingness by nature, the PSI was criticized that it was a sample of striking carelessness on both lofty multilateralism and the United Nations (UN) from the Bush administration.

Washington proposed that activities such as inspection for North Korean freight and sanctions on weaponry trades would be practicable only if Russia and the People's Republic of China respond submissively. However, Russia and China especially "might be reluctant to sanction a de facto blockade, technically an act of war,"³ of the DPRK. It was natural that the DPRK did the same claiming that it could suppose all of PSI action against itself to be a conduct of war. Because the North Korean nuclear program posed a continuous security threat to Northeast Asia, the U.S. started urging the International Atomic Energy Agency (IAEA) to patronize the principles of PSI.

It is suggested by the performance of PSI that, in order to push forward with hasty global support for vital international maritime security troubles, a non-binding initiative may be functional. The initiative has been adopted to nourish recreated nonproliferation initiatives, led to international legal outgrowth, and mobilized cooperative nonproliferation activities. Approval among governments and autonomous analysts has replaced initial resistance to the PSI almost beyond recognition; informal and flexible nature of the PSI makes itself a valuable supplement to formal methods. Likewise, it has been powerful in forming novel

³ Bandow, D. (2006, October 10). Defang North Korea: Let Beijing Take the Lead. *The National Interest*.

global legitimate schemes—the sanctions-specific resolutions of Iran and DPRK, UN Resolution 1540, and the Suppression of Unauthorized Acts (SUA) Protocol of 2005 and the Beijing Convention; indeed, the PSI developed all of them.

There has been, however, depression since the PSI's early golden days. The PSI has been blamed for impeding legal trade, being politically fomenting, lack of transparency, and for all these reasons, having confined effectiveness.

The following analysis aims to review the current challenges facing the PSI in a variety of ways and to give sound recommendations for the IMO on ways to find an optimal point between maintaining the security of the ship and stopping the carriage of illicit WMD and associated substances. For these aims, the dissertation proceeds in five chapters. Chapter two provides an overview of the background and development of the PSI and an analysis of the principles of the initiative. In Chapter three, major activities of the PSI and its practical means of operations are provided. Chapter four examines legal, political, and structural challenges the PSI is facing. Chapter five reviews how security-related instruments of the IMO have been involved in maritime transportation of WMD and related materials and provides recommendations that the IMO play an effective role in strengthening the PSI. Lastly, the concluding Chapter six provides a conclusion of this dissertation with an expectation that the IMO, standing with the PSI, will be able to contribute toward international maritime security.

CHAPTER 2. An Overview of Proliferation Security Initiative

2.1 Purpose

The Proliferation Security Initiative is an instrument for promoting States' practical cooperation and assuring the political commitment of them, in order to contend with the transfer of WMD, their shipment networks, and related materials crossing over countries. The PSI Statement of Interdiction Principles (SIP) defines and guides the PSI's activity. As it says on the SIP (See Appendix A for the full text of SIP), the PSI has been developed to close a gap in the common non-proliferation system and as a method to defy the "increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade".⁴ The responsibility of the PSI fundamentally sits upon a shoulder of every State which endeavors to control the trade in wares related to WMD.

2.2 Background

Being a dependent initiative, the PSI builds on wide attempts by the international community using available conventions and regimes. The event happened on December 9, 2002 is extensively believed to have triggered the threshold of the PSI. The United States enlisted the Spanish Navy in stopping and boarding a North Korean vessel, the *So San*; this incident was "a very successful coalition interdiction effort that took place in the Arabian Sea ... We (the U.S.) became aware of the departure of a ship from North Korea that was carrying what we believed to be weapons of concern. This was a non-flagged vessel".⁵ The ship, therefore, was a target of being boarded and interdicted by naval vessels in open

⁴ Statement of Interdiction Principles (appendix A), preface (para. 1).

⁵ Ari Fleischer, Press Briefing, White House Office of the Press Secretary, December 11, 2002.

waters. Soon, however, it was verified that the missiles, warheads, and chemical propellant were part of a lawful sale from North Korea to Yemen and that there was not any legal basis for detaining the ship or taking over the consignment. In fact, if ascertaining the flag State of the ship was the legal basis for boarding, it is difficult to excuse a search of the ship's hold to support in verifying the flag State. The vessel was subsequently allowed to continue and deliver the consignment to Yemen.⁶

Although the *So San* case is considered the catalyst for the creation of the PSI, the PSI is not the basis for new legal grounds for interdiction, search or seizure. If the *So San* interdiction occurred today, and assuming the vessel were flying the Cambodian flag, the grounds for boarding, searching and seizing the cargo would not derive from the PSI. The UN Security Council Resolution 1718 and Resolution 1874 were adopted in 2006 and in 2009 respectively, which mentioned that "All Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories..."⁷ and "all Member States to inspect vessels, with the consent of the flag State, on the high seas, if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited".⁸ In fact, prior to the adoption by both Resolutions, which imposed sanctions on North Korea, the international legal basis for such actions did not exist. Even after their adoption, the legal grounds for boarding, searching and seizing the cargo would only exist if Cambodia had effectively incorporated the resolutions into Cambodian law.

If the resolutions had been incorporated, and if the interdiction of the *So San* were attempted today, it would probably begin with the Spanish Navy seeking and receiving permission from Cambodia to board and search the vessel. The Spanish Navy could then seize the cargo if there were reasonable grounds that it contravened

⁶ Goodman, A., Starr, B., King, J., Koppel, A., & Buckley, F. (2002). *U.S. lets Scud ship sail to Yemen*. Madrid: CNN, <<http://edition.cnn.com/2002/WORLD/asiapcf/east/12/11/us.missile.ship/index.html>>.

⁷ UN Security Council Resolution 1718, 14 Oct. 2006, para. 8(a).

⁸ UN Security Council Resolution 1874, 12 June 2009, para. 12.

Cambodian law.

The *So San* case is therefore indicative of the key challenge addressed by the PSI: the limitations or ‘deficiencies in the existing legal structures’.⁹ Although the PSI does not overcome these limitations, they were recognized and the SIP contains an explicit commitment to work together to strengthen national and international law in this area.¹⁰

2.3 Development

The PSI’s structure and the nature of participation have evolved significantly since its inception in 2003. Initially, eleven “like-minded States”—Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom and the USA—formed what was called the “core group”, which drafted the SIP and agreed to cooperate with the USA to develop the initiative.

In 2004, the core group expanded to include Canada, Norway, Russia and Singapore, reflecting the desire to enlarge the geographic scope of the group and incorporate States that would be able to make positive contributions. Participants inquired into key steps needed for the PSI’s expanding and novel role like identifying national contact information and processes elaborated on achieving the main aim of the PSI.

In parallel with this increased participation, the PSI evolved as the challenges, threats and practicalities of interdiction became better understood. By the first anniversary, it has been considerably pushed forward; “Common principles were defined and interdiction capabilities, consistent with international law and national regulations, have been developed”.¹¹

⁹ Klein, N. (2011). *Maritime Security and the Law of the Sea*. Oxford: Oxford University Press.

¹⁰ Statement of Interdiction Principles (appendix A), para. 3.

¹¹ 1st anniversary PSI meeting. (2004). Cracow: Polish Ministry of Foreign Affairs, <<http://www.psi.msz.gov.pl/resource/8e86df63-bde1-4bea-a778-ac6d777dbde9:JCR>>.

The core group disbanded in 2005, as the basic principles of interaction had been established, and formed what is now called the Operational Experts Group (OEG).¹² A chapter of expert gatherings were additionally held all the year round.

In 2006, the PSI participants paid attention to the significance of developing its regional proportion as well as maintaining its functional focus and essentiality. They discussed, in addition, the activities of many participating countries to break up the financial means which upheld proliferators. It was concluded that all participants had to consider how their own administrations and domestic laws would be operated or strengthened in order to chase, identify, and tighten the trades of WMD traders and their confederates. Moreover, the PSI-endorsing States upheld to look into the way they could work in cooperation with each other for the purpose of disrupting proliferation funds and promoting their liabilities under United Nations Security Council Resolutions (UNSCR) 1540 and 1673.

The type and tempo of PSI activities was established quickly: meetings, workshops, exercises and outreach. The focus of activity during the first few years was twofold: to explore the PSI's scope and test its capabilities; and to increase the number of States willing to support the PSI by publicly endorsing the SIP. In 2007, the OEG convened a meeting in Greece. In the same year, "seven States participated in "Pacific Shield '07" hosted by Japan. The nations participating in the exercise were Australia, France, Britain, New Zealand, Japan, Singapore, and the United States ... Senior officials from more than forty countries, including India and Oman, were also on hand to observe the exercises".¹³ Allegedly owing to concerns of setting against North Korea, China and South Korea withheld from joining the exercise. The objective of the exercise was to loosen up a practical interdiction of a vessel under suspicion of carrying WMD.

¹² Valencia, M. J. (2006). *The Proliferation Security Initiative: Making Waves in Asia*. London: Routledge.

¹³ Proliferation Security Initiative (PSI). (2013, February 22). *Inventory of International Nonproliferation Organizations and Regimes*, p. 4.

More recently, in a 2009 cornerstone speech outlining his nuclear policy, US President Barack Obama declared:

We must also build on our efforts to break up black markets, detect and intercept materials in transit, and use financial tools to disrupt this dangerous trade. Because this threat will be lasting, we should come together to turn efforts such as the Proliferation Security Initiative . . . into durable international institutions.¹⁴

The extent to which the PSI has become a more durable international institution since 2009 is not clear. In other words, it is unclear how his declaration has changed the PSI or whether the PSI has become a more “durable international institution” as a consequence.

At Abu Dhabi in 2010, U.S. set forth exercise “Leading Edge” which was the international training including thirty countries, three of which joined as observers. At the opening of the training, U.S. Ambassador Richard Olson stated that “there have been over thirty exercises of this type that send a message to proliferators that there is a global network of nations committed to stopping proliferation of WMD”.¹⁵ The objective of this exercise was to give countries a chance to pursue vital basics of the operation for interdicting WMD. The exercise enclosed three diverse phases: a feasible phase where the U.S. Coast Guard gave instruction to boarding squads, a functional phase which managed customs and legal enactment, and an argumentative phase which could be dealt by a strategic conference about customs and legal issues after interdiction.

In 2011, “the government of Mongolia hosted a PSI bilateral conference with the United States in 2011. The conference consisted of a workshop and Table Top

¹⁴ *Remarks by President Barack Obama*. Washington, D.C.: The White House, 2009, <http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered>.

¹⁵ *Remarks of Ambassador Richard Olson at US-UAE Proliferation Security Initiative Training*. Abu Dhabi: Embassy of the United States, 2010, <http://abudhabi.usembassy.gov/pr_01252010.html>.

Exercise on how to better combat the spread of WMD”.¹⁶ Furthermore, in order to interdict WMD in Hawaii, PSI participants were supposed to set up Critical Capabilities and Practices (CCP) which was “a cooperative and voluntary effort offer support to all PSI-endorsing States in strengthening their critical interdiction capabilities and practices”.¹⁷

In 2012, Poland hosted a regional PSI CCP workshop which was contemplated identifying concrete expedients and tools that could be functional and helpful in conducting and developing interdiction activities. Most recently, in 2013, “Leading Edge 13”, a multinational PSI exercise with OEG community and the other PSI professions, was co-hosted by the United Arab Emirates (UAE) and the U.S. As the core group or OEG expanded, so did the number of SIP-endorsing States that were not members. The result is a two-tier participation structure comprising 102 States (see Table 2.1).

2.4 Hybrid approach

Supports to the political pledge of PSI are legally enforceable bilateral ship-boarding agreements between open-registry States and the United States which have unrestricted national maritime laws as comfortable nests for illegal actions; the Bahamas, Liberia, Panama, and other seven countries are included in the open-registry States. The core group had considered if these bilateral agreements had to be made as parts of the PSI before the United States negotiated them. In the end, it decided that they had to be bilaterally arranged by the United States. Although the U.S. is the sole country which shall seize the ships with open registry, the American bilateral agreements can be asked for when necessary.

¹⁶ Proliferation Security Initiative (PSI). (See note 13 above).

¹⁷ *PSI-Endorsing States Undertake Effort to Build Critical Capabilities and Practices (CCP) for Interdicting WMD*. Washington, D.C.: The United States Department of State, 2011, <<http://www.state.gov/t/isn/166732.htm>>.

Table 2.1. States that have endorsed the Proliferation Security Initiative Statement of Interdiction Principles as of April 2013

Afghanistan	Germany	Paraguay
Albania	Greece	Philippines
Andorra	Holy See	Poland
Angola	Honduras	Portugal
Antigua and Barbuda	Hungary	Qatar
Argentina	Iceland	Romania
Armenia	Iraq	Russia
Australia	Ireland	Samoa
Austria	Israel	Saudi Arabia
Azerbaijan	Italy	San Marino
Bahamas, The	Japan	Serbia
Bahrain	Jordan	Singapore
Belarus	Kazakhstan	Slovakia
Belgium	Korea, Republic of	Slovenia
Belize	Kyrgyzstan	Spain
Bosnia	Kuwait	Sri Lanka
Brunei Darussalam	Latvia	St. Lucia
Bulgaria	Liberia	St. Vincent and the Grenadines
Cambodia	Libya	Sweden
Canada	Liechtenstein	Switzerland
Chile	Lithuania	Tajikistan
Colombia	Luxembourg	Thailand
Croatia	Macedonia	Tunisia
Cyprus	Malta	Turkey
Czech Republic	Marshall Islands	Turkmenistan
Denmark	Moldova	Ukraine
Djibouti	Mongolia	United Arab Emirates
Dominica	Montenegro	United Kingdom
Dominican Republic	Morocco	United States
El Salvador	The Netherlands	Uzbekistan
Estonia	New Zealand	Vanuatu
Fiji	Norway	Yemen
Finland	Oman	
France	Panama	
Georgia	Papua New Guinea	

Sources: US Department of State, 'Proliferation Security Initiative participants', 27 Sep. 2012, <<http://www.state.gov/t/isn/c27732.htm>>;
US Department of State, 'Thailand endorses the Proliferation Security Initiative', 19 Nov. 2012, <<http://www.state.gov/r/pa/prs/ps/2012/11/200849.htm>>.

Rested on the PSI's principles, these agreements were negotiated by the United States after it formed the PSI. The ship-boarding agreements are parallel with the PSI principles in terms of concept and vocabulary, but the wording delivers more precise points. Basically, "the bilateral agreements span an average of eleven pages, whereas the PSI's principles account for one-and-a-half pages".¹⁸ Shunning the potential destruction of evidence, the bilateral agreements provide contact points and procedures for urgent interdiction as well as help share information and settle disputes. The bilateral agreements also address a number of the sensitive details that the countries involved evade addressing particularly.

Meanwhile, these binding agreements were intended to inhibit the countries involved from shipping WMD freight. They were massively publicized to gesture to proliferators that the PSI were well aware of the problem, and that the trafficking routes that the proliferators would reckon were not clear of interdiction.

The United States drew on a hybrid regime by conjoining an overarching multiple pledge with legally enforceable bilateral agreements. Such a framework helped several countries begin to conform to the PSI and rise to the maritime security challenges. Soon, the United States determined the PSI's principles through initiating the PSI with countries which had little interest in compliance. Then the United States went slow for negotiating legally enforceable agreements with countries which valued compliance but did not guarantee it after the basic agreement settled in. In other words, PSI's presence played an important role in facilitating the formation of the bilateral agreements.

2.5 Container Security Initiative (CSI)

The Container Security Initiative (CSI) was initiated by the U.S. Customs and Border Protection (CBP) Agency in 2002. The CSI is to preliminarily screen

¹⁸ Belcher, E. (2011). *The Proliferation Security Initiative(Lessons for Using Nonbinding Agreements)*. New York: The Council on Foreign Relations.

cargo, which is made for the U.S., before that cargo arrives at U.S. ports or crosses borders. The CSI first focused on the leading twenty ports which dispatched vessels to the United States, like Bremerhaven, Hong Kong, and Singapore. Today, “CBP’s 58 operational CSI ports now prescreen over 80 percent of all maritime containerized cargo imported into the United States”.¹⁹

When the cargo arrives in the United States, it is surely filtered again. However, many crooked starts and misapprehensions may be unraveled before the cargo departs from its port of disembarkation through a preliminary screening overseas. Once the cargo gets to the United States, such a screening even speeds the stream of commerce.

The CSI is reciprocal with the PSI; the aim of both initiatives is to enhance international maritime security through an improvement in the ability to interdict or preclude shipments of WMD freight. On the other hand, it should be noted that there is a difference between the two initiatives. Whereas the CSI concentrates on maritime cargo toward the United States, the PSI manages cargo in transit, on ocean, on land, and in the air worldwide. Furthermore, PSI efforts entail proceeding against shipments not only when they get to a port but also over their transportation life.

At ports abroad, the CSI has efficiently used and is elaborating cargo screening strategies, including radiation detection technique and x-ray machines. What is more, it collects database information on the chronicle and performance of freighters all over the world. Significantly, PSI efforts would be easily connected to CSI stewardship.

¹⁹ *CSI In Brief*. Washington, D.C.: U.S. Customs and Border Protection, 2011.

CHAPTER 3. Operation of the PSI

Nowadays, nearly half the entire member States of the United Nations pertain to the PSI confederates all over the world. Nevertheless, the participants' active dedication is essential for operating the PSI. In order to establish the foundations of the PSI activities, the supporting countries are recommended to consider several practical means such as interdictions, exercises, signing boarding agreements, and attending Operational Experts Group (OEG) meetings.

3.1 Interdictions

At least in politics, actual interdictions possibly provide the most important standard of PSI's impact. A successful interdiction, for instance, "occurred in February 2007, when four nations worked together to interdict equipment bound for Syria—equipment that could have been used to test ballistic missile components".²⁰ To be specific, there were four parties from four different States involved: the producer of the equipment, the intercessor, the shipping company, and customs officials who unload and examined the equipment. Such interdictions "have been successful all over the world and have stopped many shipments of sensitive materials destined for Iran, North Korea, and Syria".²¹

3.1.1 Interdiction based on SIP

PSI participants notice the risks of proliferation and formulate in the SIP's

²⁰ *Remarks by National Security Advisor Stephen J. Hadley at the Proliferation Security Initiative Fifth Anniversary Senior Level Meeting.* Washington, D.C.: The White House, 2008, <<http://georgewbush-whitehouse.archives.gov/news/releases/2008/05/20080528-3.html>>.

²¹ *Ibid.*

preface that they are “committed to working together to stop the flow of these items to and from States and non-State actors of proliferation concern.”²² Based on the purposes of the SIP, participants are certainly allowed to determine whether circumstances qualify in consideration of the recipient or the sender as a player of “proliferation concern” at the moment of an interdiction.

Furthermore, some vocabularies in the SIP lead to politic opacity. But a few nations such as the U.S. have made less secret of listing countries which are deemed as “proliferation concern” nowadays. During a U.S. State Department press briefing in October 2004, John Bolton, U.S. Undersecretary of State for Arms Control and International Security, read a Libyan statement saying that “Libya has agreed to end all military trade with countries considered to be of serious ‘proliferation concern’—specifically Iran, North Korea and Syria”.²³

In addition, the statement in the SIP reflects flexibility for the sequence with time. Some ten years ago, for instance, most analysts might probably have deemed Libya to be one of the target countries of the PSI; but it is no longer regarded in the same way.

It is inferred from another vital passage of the SIP that the PSI-endorsing countries would operate in order to hinder and cut off WMD trades “consistent with national legal authorities and relevant international law and frameworks, including the U.N. Security Council.”²⁴ This passage permits “only a very brief and rudimentary breakdown of the legality of actions contemplated by the PSI”.²⁵ The most general concern was that, without the flag State’ warrant, PSI interdictions could be conducted particularly on the high seas with licit justification derived from vague claims of self-defense. Significantly, the PSI was discerned to operate within

²² Statement of Interdiction Principles (appendix A), preface (para. 1).

²³ Bolton, J. R. (2004). *Under Secretary for Arms Control and International Security, Stopping the Spread of Weapons of Mass Destruction in the Asian-Pacific Region: The Role of the Proliferation Security Initiative*. Washington, D.C.: The United States Department of State.

²⁴ Statement of Interdiction Principles (appendix A), para. 2.

²⁵ Joyner, D. H. (2004, January 12). The PSI and International Law. *The Monitor*, pp. 7-9.

existent legal frames even if exposition of international law quite varied. It seemed, moreover, that the PSI would highly rely on domestic legal authorities like conducting hunts either at ports or on the territorial waters and seizing cargo based on national export laws. In addition, PSI participants were devoted to “review and work to strengthen ... national legal authorities ... and to strengthen ... relevant international law and frameworks in appropriate ways to support these commitments.”²⁶

Last but not least, the duty mentioned in the SIP recites possible strategies in which PSI-endorsing nations could advocate interdiction attempts like blocking, embarking, and examining through ships in their ports or territorial waters. As a matter of fact, participants immediately started the first multinational exercise under the auspices of the PSI only three weeks later the principles were proclaimed.

3.1.2 Measuring impact of interdiction

For at least four different reasons, the issue of measuring impact of interdiction is controversial and unconvinced. Firstly, PSI-endorsing States hardly make any public comments on successes in interdiction operations, and even worse, they never convey their failures. A majority of member States are hesitant about publicizing their intelligence shortcomings and military capabilities. At least, some of them dislike resulting in political dispute in their domestic realms by participating in the initiative.

To be specific, incomplete and irregular information on interdictions only has been publicized. At a press center briefing in May 2008, John Rood, Acting Under Secretary of State for Arms Control and International Security Affairs of the United States of America, not only argued typically about insufficient official data but also described PSI interdictions vaguely: “We literally had dozens of successful interdictions of items and technologies bound for countries of concern. We

²⁶ Statement of Interdiction Principles (appendix A), para. 3.

necessarily keep most of these successes confidential. We're sharing intelligence information among parties. In some cases, it's easier for countries to take action if the results will not be publicized."²⁷

Secondly, it is doubtful about definite components of an interdiction. In May 2011, for instance, the *M/V (Motor Vessel) Light* was being tracked by a U.S. naval vessel; the North Korean *M/V Light* was a ship which was flagged in Belize and carried a suspicious freight heading to Burma. According to American officials, "Belize was a member of the PSI, and the authorities in Belize gave permission to the United States to inspect the ship".²⁸ But the North Koreans refused to being boarded, and then ultimately, chose to return to homeland instead of being caught up.

A few observers determine that such a case does not pertain to an interdiction because boarding or military face-off did not occur. Still, it fits a generic lexical depiction of "interdiction" which is similar to "deterrence"²⁹ because the suspicious freight practically was not able to reach Burma.

Thirdly, the distinctive challenge is that, in fact, it is hopeless to validate what would have been up in the air in terms of a novel discipline such as the PSI. As the *So San* case demonstrated,³⁰ in an endeavor to shut off the delivery of WMD or associated carriage sources, a lot of PSI-endorsing States collaborated on the PSI by joining in interdiction activities. The argument is whether the PSI empowered some that might have been workable owing to it, or facilitated such proceedings after its coinage.

Significantly, the interdiction of the *BBC China* is maybe the most

²⁷ Proliferation Security Initiative: John Rood, Acting Under Secretary of State for Arms Control and International Security. (2008). *Foreign Press Center Roundtable Briefing*. Washington, D.C.: The United States Department of State, <<http://2002-2009-fpc.state.gov/105206.htm>>.

²⁸ Sanger, D. E. (2011, June 12). U.S. Said to Turn Back North Korea Missile Shipment. *The New York Times*, <<http://www.nytimes.com/2011/06/13/world/asia/13missile.html>>.

²⁹ "Interdiction," *Webster's Online Dictionary*, <<http://www.websters-online-dictionary.org/definitions/interdiction>>. The point is reinforced by the extended definition given by the same source: "The purpose of interdiction is to delay, disrupt, or destroy enemy forces or supplies en route to the battle area."

³⁰ Goodman, A., Starr, B., King, J., Koppel, A., & Buckley, F. (See note 6 above).

recognized case which exemplifies the PSI's complexity. The need for multinational cooperation was demonstrated by the interdiction of a delivery of uranium enrichment centrifuge from Malaysia to Libya in October 2003. The Malaysian-produced equipment was transported on a German-owned ship, the *BBC China*, leaving Dubai, passing through the Suez Canal.³¹ Allegedly, the German shipping company was requested by the U.S. to redirect the vessel to the place where it was probed, the Italian port of Taranto. Authorities might have been provided with an opportunity to hold off a vessel and found a basis to board it while it was passing through the Suez Canal under an enormous oversight.

The *BBC China* instance is credited as a great achievement of the PSI by the PSI advocates. On the other hand, critics' criticism is that it was not a PSI interdiction but an interdiction which took place involving four States involved in the PSI. Department of State spokesperson Richard Boucher stated that "[t]here were other efforts being pursued than the PSI ... finding out and stopping this shipment. So in that case, we did not want to say it was solely a matter of the PSI because [it] was, if I remember, at an early stage back then."³²

Lastly, proliferation interdictions or thriving action to prevent shipments at the beginning shall be tough to duplicate. Advocators of the PSI run down to make over exercises for enhancing their chances of success. On the whole, the PSI has to continually adapt to block new proliferation approaches. Taking advantage of the CCP initiative might be one of the means to do so, if it secures its intention to develop the ability to prevent the widespread proliferation concern.

³¹ Nikitin, M. B. (2012). *Proliferation Security Initiative (PSI)*. Washington, DC: Congressional Research Service.

³² Boese, W. (2005). Key U.S. Interdiction Initiative Claim Misrepresented. *Arms Control Today*.

3.2 Exercises

Particularly, depression in PSI activity has been noticeable in the exercise domain until recently. There have been more or less fifty PSI exercises since 2003, including application of PSI scenarios in conventional regional exercises, command post exercises, and dedicated live exercises. While several have dealt with interdictions in the air, on the ground, and at ports, most have concentrated on maritime capabilities.

The number of PSI exercises had lowered considerably until 2011 (see Table 3.1). The first major cause for the significant decrease until 2011 must be “initiative fatigue” resulting from fading initial passion. The second cause must be budget harshness, particularly in consideration of global economic complexities and the fact that a low number of participants gave up to PSI spending. The final one must be the lack of incentives to exploits.

Meanwhile, it was never believed that the increase in 2012 represented the start of a new upward tendency. Rather, it was forecasted that the number of exercises would persist to remain volatile. The exercises in 2012 reflected at least one adoption to nonstop budget stringencies: planting PSI scripts in more anticipated, overall, and perceptual exercises.

The multinational exercises validate the two tactics that the PSI handles in contending with proliferation: control and restraint. The tactic of control involves difficult jobs of making interdictions functional in terms of laws, operations, and policies. The control consists of diverse efforts, including enhancing intelligence communion, looking into variable legitimate regimes applicable to reinforce seizure, and running over actual interdictions and detainers. When it comes to the tactic of restraint, even if hardened proliferators like North Korea don’t seem to be restrained by exercises or interdictions, mediators and less-hardened proliferators shall be. Compatible demonstration of escalated accord and capability may, at least, induce participants in proliferation communities to increase the costs of transactions.

In June 2011, OEG partners formalized a U.S. proposal to take over a CCP

Table 3.1. Proliferation Security Initiative (PSI) Exercises

2013	Exercise LEADING EDGE 2013 (Abu Dhabi, UAE)
2012	Exercise EASTERN ENDEAVOR 2012 (Busan, Korea) Exercise PANAMAX 2012 (Panama, Miami) Exercise PACIFIC SHIELD 2012 (Sapporo, Japan) Exercise PHOENIX EXPRESS 2012 (Mediterranean Sea) Exercise SAHARAN EXPRESS 2012 (Western Africa)
2010	Exercise EASTERN ENDEAVOR (Busan, Korea) Exercise PACIFIC PROTECTOR 10 (Cairns, Australia) Exercise PHOENIX EXPRESS 10 (Mediterranean Sea) Exercise LEADING EDGE (UAE)
2009	Exercise DEEP SABRE II (Singapore) Exercise PANAMAX 09 (Panama, Miami) Exercise PHOENIX EXPRESS 09 (Mediterranean Sea)
2008	Exercise MARU 07 (Auckland, NZ) Exercise PANAMAX 08 (Panama & Miami) Exercise ADRIATIC SHIELD 08 (Croatia) Exercise PHOENIX EXPRESS 08 (Mediterranean Sea) Exercise GUISTIR 08 (Djibouti)
2007	Exercise EASTERN SHIELD 07 (Ukraine) Exercise PACIFIC SHIELD 07 (Japan) Exercise PANAMAX 07 (Panama, Miami) PSI Gaming Exercise (Newport, U.S.) Exercise ADRIATIC GATE (Slovenia) Exercise SMART RAVEN (Lithuania)
2006	Exercise LEADING EDGE (Persian Gulf) Exercise AMBER SUNRISE (Poland) Exercise HADES '06 (France) Exercise PACIFIC PROTECTOR '06 (Australia) Exercise ANATOLIAN SUN (Turkey) Exercise PACIFIC PROTECTOR 06 (Australia) Exercise TOP PORT (Netherlands)
2005	Exercise EXPLORING THEMIS (UK) PSI Air Gaming Exercise (Bergen, Norway) Exercise DEEP SABRE (Singapore) Exercise BLUE ACTION 05 (Spain) Exercise BOHEMIAN GUARD 05 (Czech Republic) Exercise NINFA 05 (Portugal)
2004	Exercise CHOKEPOINT 04 (U.S.) Exercise TEAM SAMURAI 04 (Japan) PSI Gaming Exercise (Newport, U.S.) Exercise APSE '04 (France) Exercise SAFE BORDERS (Wroclaw, Poland) Exercise CLEVER SENTINEL (Mediterranean) Exercise HAWKEYE Frankfurt, Germany) Exercise AIR BRAKE 03 (Trapani, Italy) Exercise SEA SABER (Arabian Sea)
2003	Exercise BASILIC 03 (Western Mediterranean) Exercise SANSO 03 (Western Mediterranean) Exercise PACIFIC PROTECTOR (Coral Sea)

Source: US Department of State, 'Calendar of Events', <www.state.gov/t/isn/c27700.htm>.

initiative which is another, maybe less pricy, mean to help raise PSI interdiction capabilities. If the CCP promise is materialized, it would enhance interdiction capabilities of PSI partisans as well as revive their hub on the practical purposes of PSI. Allegedly, four areas mapped out for the CCP evaluate interdiction-related requirements in all directions: identification and inspection, rapid decision-making, and legal frameworks.

3.3 Boarding agreements

In October 2003, the United States and PSI partners “had an initial exchange of views on a possible boarding agreement which could facilitate practical implementation of the initiative”.³³ Eleven foremost flag States such as the Bahamas, Cyprus, and Marshall Islands have signed the agreements. Schemes to embark and examine vessels on suspicion of delivering WMD materials are listed on those agreements. For instance, the agreements even call for an official and prompt response to an inquiry from the other State to board the suspicious ship no longer than two hours. Especially, the agreements may be influential from that point because all the countries with whom the U.S. has filled boarding agreements are not OEG’s members.

Meanwhile, the mutual and legally binding agreement indicates that permission to board and search ships tend to be granted, although the mutual agreements do not insure that the flag State would collaborate with when it is asked. The U.S. Department of State recites that the ship-boarding agreements signed so far:

provide authority on a bilateral basis to board sea vessels suspected of carrying out illicit shipments of weapons of mass destruction, their delivery systems, or related materials. These agreements will facilitate

³³ Proliferation Security Initiative: Chairman's Conclusions at the Fourth Meeting. (2003). Washington, D.C.: The United States Department of State.

bilateral cooperation to prevent such shipments by establishing procedures to board and search such vessels in international waters. Under the agreements, if a vessel registered in the U.S. or the partner country is suspected of carrying proliferation-related cargo, either one of the Parties to this agreement can request of the other to confirm the nationality of the ship in question and, if needed, authorize the boarding, search, and possible detention of the vessel and its cargo. These agreements are important steps in further operationalizing the Proliferation Security Initiative and strengthening the mechanisms that we have at our disposal to interdict suspect weapons of mass destruction-related cargoes. They are modeled after similar arrangements that exist in the counter-narcotics arena.³⁴

3.4 Operational Experts Group (OEG)

Most planning for the initiative takes place during meetings of the PSI Operational Experts Group (OEG). As of early 2013, primarily from Europe and North America, the OEG comprises twenty-one States of the eighty States that have signed up to the principles of PSI.³⁵ The purpose of OEG is to develop policies, arrange the schedules of PSI exercise in various arenas all over the world, and provide a conference to share expertise and intelligence.

Generally, the OEG meets on a quarterly basis in varied locations globally. Deliberation at these gatherings carries a scope of subjects including exercise procedures and practical morals. The meetings are crucial to PSI considering that they offer a forum for interchanging information which is in regard to the consequence and effectiveness of the diverse PSI exercises operated across the world.

³⁴ *Ship Boarding Agreements*. Washington, D.C.: US Department of State, 2013, <<http://www.state.gov/t/isn/c27733.htm>>.

³⁵ Williams, I. (2013). U.S., Allies to Strengthen WMD Initiative. *Arms Control Today*.

OEG's framework and practice make the gatherings extraordinary in many points because the OEG does not have a secretariat, formal presidency, and an institutional mechanism. The role of supervising the meetings is normally played by the hosting State.

CHAPTER 4. Challenges of the PSI

Although the PSI is one of innovative and various means as a non-proliferation tool, in the meantime, it also faces legal, political, and structural challenges. Those challenges are related to the operational function of the PSI as well as its perceived lawfulness. It may seem doubtful whether the ongoing PSI can be convincing in precluding proliferation. In order to lessen such a concern, PSI participants need to try more to raise the capacity of the PSI, taking into account the primary challenges of it.

4.1 Legal challenges

4.1.1 Criminal jurisdiction in maritime zones

The U.S. and Turkey are only two countries which have not agreed and endorsed United Nations Convention on the Law of the Sea (UNCLOS), 1982³⁶ among 102 PSI participants. The stipulations held in the UNCLOS are extremely a collection of the customary international law concerning the law of the sea. Many of nations signed on the UNCLOS and “it had become part of customary international law even before its formal ratification”.³⁷ Although the United States is not a party to the UNCLOS, it has declared that customary law has included a majority of contents of the UNCLOS when it comes to coastal State jurisdiction of territorial sea, continental shelf, Exclusive Economic Zone (EEZ), and the rules regarding navigation and flight over straits and territorial sea.

³⁶ United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS).

³⁷ Anand, R. P. (2004). *Studies in International Law and History: An Asian Perspective*. Boston: Martinus Nijhoff Publishers.

In those diverse maritime areas, the criminal and civil jurisdiction of external ships can be skeptical for being applied to the PSI because each country holds criminal and civil jurisdiction over vessels which belong to its own State. If an interdiction is performed by the flag State of the objective vessel, the interdiction is considered legal. Therefore, most expected PSI operations on international waters tend to be illegal, because they are supposed to be taken up by other countries rather than the vessel's flag State. The United States, at the Operational Meeting of the PSI in 2003, brought out that "...we can find a variety of ways to interdict illegal shipments when the vessels carrying them come to port, given that sovereign power is at its greatest in national waters".³⁸

Based on the SIP, it is considered that "the PSI States will search and interdict vessels that are reasonably suspected of carrying WMD material while they are in transit through their internal waters, territorial sea or contiguous zone, thereby conferring national jurisdiction to PSI States for enforcement purposes".³⁹ It demonstrates that the expression "national waters" from the PSI participants can combine the respective maritime areas. The "national waters", however, actually compose the below respective categories of legal jurisdiction with the purpose of interdiction of ships which are under suspicion of transporting WMD materials.

i. Internal waters

Internal waters enable nations to enjoy utmost criminal jurisdiction over vessels delivering unlawful WMD or related carriage sources. The nations freely board and probe into those ships which are staying in the port area because part of internal waters of the coastal States are made up by the port. In addition, if the

³⁸ Bolton, J. R. (2003). *"Legitimacy" in International Affairs: The American Perspective in Theory and Operation*. Washington, D.C.: The United States Department of State, <<http://2001-2009.state.gov/t/us/rm/26143.htm>>.

³⁹ Thomas, T. V. (2009). *The Proliferation Security Initiative: Towards Relegation of Navigational Freedoms in UNCLOS?* Oxford: Oxford University Press.

delivery of the problematic goods is illegal under the national laws, the States can take over the cargo moved into the internal waters.

The *Ku Wol San* incident shows a case of such a seizure in internal waters. In June 1999, a cargo ship *M/V Ku Wol San* coming from North Korea casted anchor in the Kandla port in India and then it was allowed to unload its sugar. At the Kandla port, a few customs officials embarked the ship in order to check its North Korean cargo vessel *M/V Ku Wol San*, coming from Namp'o which is 50 km southwest of Pyongyang. Then it sought permission to unload its sugar. At the Kandla port, a small contingent of customs officials boarded the vessel to check its shipping invoice. They were confident that the vessel contained mountains of equipment in relation to a pneumatic press, hardware, missiles, and even toroidal air bottles employable for guiding missiles. It was the first and the largest interdiction by any country of such a vast quantity of missile parts.⁴⁰

Not only was the WMD-related cargo sequestered, but also were master and chief of the vessel seized and put in ward. And then they were released after more or less three months without any charges brought against them. Despite the consequence of the occasion, it is meaningful to notice that, North Korea was the only State which took issue with the handling of the occasion by Indian authorities; the rest of States regarded that the methodology was indeed admissible by international law.

ii. Territorial waters

“Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if [it navigates] in the territorial sea”⁴¹ under Article 19 of the UNCLOS. The delivery of WMD, their shipment networks, and associated substances are not particularly encompassed by the PSI’s potential items of interdiction targets, even though the UNCLOS specifies that a passage can

⁴⁰ Sudarshan, V. (2006, October 23). This Ship Is Loaded. *Outlook India*.

⁴¹ UNCLOS (See note 36 above), art. 19.

be condemned in case of certain affairs. Uniform clarification of regulations of international law controlling innocent passage is provided by the United States mentioning that the right of innocent passage shall be utilized regardless of the ship's freight and, thus, the inventory in Article 19 makes logical sense.

The UNCLOS states that “the coastal State shall notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew.”⁴² Criminal jurisdiction over foreign ships, accordingly, is not supposed to be exercised by coastal States excluding under concrete cases specified in Article 27(1).⁴³ To be specific, the UNCLOS says that “the criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea” except for the cases below:⁴⁴

- (a) if the consequences of the crime extend to the coastal State;
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State;
or
- (d) if such measures are necessary for the suppression of illegal traffic in narcotic drugs or psychotropic substances.

The overall rule for criminal jurisdiction of coastal States, therefore, is not meant to oppose the illicit dealing of WMD substances, even if illicit dealing of psychotropic and sedative materials is definitely cited. The supreme rule is that “a foreign ship passing through the territorial sea is not under the criminal jurisdiction

⁴² UNCLOS (See note 38 above), art. 27(3).

⁴³ UNCLOS (See note 38 above), art. 27(1).

⁴⁴ UNCLOS (See note 38 above), art. 27(1)(a)–(d).

of the coastal state ... There is uncertainty as to whether this principal rule is one of comity or of law”.⁴⁵

Ivan Shearer, Emeritus Professor of Law at the University of Sydney, has indicated that “the drafting history of Article 27 of the UNCLOS shows that the hortatory words ‘should not’ were deliberately chosen over the proposed words ‘may not’ in order to preserve the plenary jurisdiction of a coastal State over its territorial waters”.⁴⁶ Thus, PSI participants shall outlaw transportation of WMD and constitute rigorous regulations over exportation corresponding to transnational criterion by force of their integral jurisdiction. They might eventually be encouraged to justify a sea power for interdiction over foreign ships concerning the supposition that, in territorial waters, coastal States enjoy boundless criminal jurisdiction.

Based on the SIP 4(d), nevertheless, strongly prompts the PSI participants to work properly to “stop and/or search in their internal waters, territorial seas, or contiguous zones 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”.⁴⁷ Hence, three diverse maritime zones with comparably diverse legal regimes are tied together by this provision. It enlarges the geographical breadth of the PSI actions unlawfully and unreasonably. The SIP is consequently in conflict with not only the limits on governance of a coastal State in the contiguous zone but also the legitimate regime controlling “innocent passage” in the territorial sea.

iii. Contiguous zone

The strait nearby the territorial waters, according to the UNCLOS, is considered the contiguous zone, “which may not extend beyond twenty-four nautical

⁴⁵ Persbo, A., & Davis, I. (2004). *Sailing Into Uncharted Waters?* Washington, D.C.: British American Security Information Council, <<http://www.basicint.org/publications/andreas-persbo/2004/sailing-uncharted-waters-proliferation-security-initiative-and-law->>>.

⁴⁶ Thomas, T. V. (See note 39 above).

⁴⁷ See Appendix A for the full text of SIP.

miles from the baselines from which the breadth of the territorial sea is measured”.⁴⁸ Basically, the jurisdiction of the coastal State largely declines in such a contiguous zone. The State must have constituted laws on a violation of its customs laws in terms of an unauthorized cargo, so that it can interdict a vessel delivering WMD constituent in this zone.

The cargo, furthermore, should be derived from the mainland going towards international waters or needs to be going towards the mainland. For instance, the International Tribunal for the Law of the Sea ruled in the *MV Saiga* case that “the coastal State may presume that their removal from the contiguous zone without its approval would result in an infringement within its territory or territorial sea of the laws”.⁴⁹ There is naturally no authorization to control the ships navigating within the contiguous zone.

iv. Exclusive economic zone

Based on the UNCLOS, “the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured”.⁵⁰ The EEZ is fundamentally aimed to keep the economic advantages that a State can acquire from its bordering seas; specifically those involved in fishing and discovering minerals. In terms of confiscation of WMD and associated substances, “the EEZ can be regarded as international waters. Only with great difficulty could a State argue that an interdiction of a ship carrying WMD is necessary to protect and preserve the marine environment”.⁵¹

⁴⁸ UNCLOS (See note 36 above), art. 33(2).

⁴⁹ The *M/V “Saiga”* (No. 2) Case (Saint Vincent and the Grenadines v. Guinea). (1999). *Judgment*. Hamburg: International Tribunal for the Law of the Sea.

⁵⁰ UNCLOS (See note 36 above), art. 57.

⁵¹ Persbo, A., & Davis, I. (See note 45 above).

v. International waters

All oceans excluding the areas which belong to a certain State's internal waters, territorial waters, contiguous zones, and EEZ can be considered either international waters or high seas. The coastal State's discretion to apply its regulations in the high seas is severely restricted by the law of the sea. According to the UNCLOS, "ships shall be subject to its exclusive jurisdiction on the high seas".⁵²

The legal ground for interdicting vessels in the international waters is harshly held down and allowable simply in several instances. Therefore, in the context of the PSI, if a State esteems that WMD trafficking has a high probability of affecting its own water and the alleged descent is being carried out on a nonnative vessel in international waters, the country concerned is incompetent to block and condemn the WMD traders as long as the vessel hangs around the high seas.

The *So San* episode illustrates that interdiction of shipments is now and then functional in international waters. The major question of admissible siege from the embarked ship was raised by this incident which shows that the United States and other Western sea forces, in practice, may use the permissible seizure to break "legitimate" delivery by embarking ships such as the *So San*.

Two central principles of the UNCLOS, freedom of navigation and right of innocent passage, would be challenged by any act which impacts on legitimate shipping. These leading principles of the UNCLOS have gained the level of customary law. Consequently, the operative rules of the PSI should be necessarily put to the test on the criterion of the essential philosophy of international maritime law.

4.1.2 Right of innocent passage

Based on the fact that headway of a shipment of WMD or kindred material is not likely to be an innocent passage, the right of innocent passage ensured by the UNCLOS is often held down by the PSI. In addition, the PSI is against one of the

⁵² UNCLOS (See note 36 above), art. 92.

purposes of UN envisaged in the UN Charter—“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”⁵³ because it holds down the WMD delivery and kindred substances of the non-nuclear weapon countries by supporting nuclear weapon countries. The relations among alliances worldwide may get affected because the PSI agitates “the principles of international law concerning friendly relations and co-operation among States”.⁵⁴

4.1.3 Freedom of navigation

When it comes to the interdiction, the essential factor in the PSI is a menace to international law of the sea which guarantees freedom of navigation. In October 1946, one of the *Corfu Channel* incidents occurred; four British Navy ships were heading north over the Corfu Channel with the specific orders to try out Albanian response to their freedom of navigation. One of the ships hit a mine and got battered while passing into what was deemed a zone without a mine nearby the Albanian coast, then another ship also hit a mine while towing the damaged ship. The International Court of Justice declared that Albanian had to pay for the loss of British Navy. The *Corfu Channel* episode is well precedented that “maritime navigational freedoms cannot be interfered with, even to serve the security concerns of other nations, and that compensation must be paid when injuries to persons and property occur”.⁵⁵

The freedom of navigation is confined by the UNCLOS in many ways such as negotiating mutual settlements. In addition, if WMD and related materials are

⁵³ Charter of the United Nations, opened for signature 26 June 1945, entered into force 24 Oct. 1945, <<http://www.un.org/en/documents/charter/>>.

⁵⁴ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Annex to GA Res 2625(XXV) (24 October 1970).

⁵⁵ Thomas, T. V. (See note 39 above).

detected, countries could agree on specific actions which can be initiated by the interdicting country. Nevertheless, confiscation of cargo could be commonly allowed, only if the interdicting country and the flag State are at war. Another way is to call for the consent of either the government of the flag State or the master of the target ship itself. A successful illustration of such a method of operation is the case of *BBC China*.⁵⁶

4.1.4 UN Security Council Resolutions (UNSCR)

The current UNSCRs do not give sufficient latitude to States to deviate from international law to interdict vessels of concern. There are four sets of UNSCR currently relevant to stopping the illegal transport of WMDs. UNSCR 1540 (2004) calls on all States “to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.”⁵⁷ However, UNSCR 1540 limits any measure used to those “consistent with international law.”

The second set of UNSCR refers to Iran’s nuclear enrichment program. Of these, UNSCR 1803 (2008) is aimed at tightening restrictions on Iran’s nuclear activities, and calls on States to “inspect cargo to and from Iran ... , provided ‘reasonable grounds’ existed to believe that the aircraft or vessel was transporting prohibited goods.”⁵⁸ However, such action is again limited within the ranges of international law.

The third set of UNSCR focuses on North Korea’s nuclear program. Of these, UNSCR 1874 (2009) was enacted in response to North Korea’s 2009 nuclear test,

⁵⁶ Nikitin, M. B. (See note 31 above).

⁵⁷ Security Council Decides All States Shall Act to Prevent Proliferation of Mass Destruction Weapons. (2004). *Press Release SC/8076*. New York: United Nations, <<http://www.un.org/News/Press/docs/2004/sc8076.doc.htm>>.

⁵⁸ Security Council Tightens Restrictions on Iran’s Proliferation, Sensitive Nuclear Activities, Increases Vigilance Over Iranian Banks, Has States Inspect Cargo. (2008). *Press Release SC/9268*. New York: United Nations, <<http://www.un.org/News/Press/docs/2008/sc9268.doc.htm>>.

and called for the inspection of “all cargo to and from the DPRK” but also limits the inspections to that “consistent with international law.”⁵⁹ Given that UNSCR 1874 still maintains this restriction despite clear evidence of nuclear capability by North Korea, it seems the UN Security Council is unwilling to shut the proverbial barn door even after the horse has bolted.

The fourth set of UNSCR tightens sanctions even further and introduced a number of new measures. Of particular relevance to the PSI are the provisions of Resolution 1929 that require all States:

to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from Iran, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited.⁶⁰

Generally, the ultimate target of Security Council sanction resolutions is to put a strain on a country or entity to obey the aims held by the Security Council without turning to the use of saber. The UN Charter makes it clear that member States of the UN “invite[s] members to participate in the decisions of the Security Council”.⁶¹ However, it is important to note that the State is only bound in Security Council resolutions; they claim national implementation so that they are binding on personnel or other legal entities. Countries are, hence, faced with delicate problems of domestic implementation, in general, adaptation of internal law. A small number of States at present merely have the necessary empowering legislation to obviously

⁵⁹ Security Council, Acting Unanimously, Condemns in Strongest Terms Democratic People’s Republic of Korea Nuclear Test, Toughens Sanctions. (2009). *Press Release SC/9679*. New York: United Nations, <<http://www.un.org/News/Press/docs/2009/sc9679.doc.htm>>.

⁶⁰ UN Security Council Resolution 1929, 9 June 2010, <[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929(2010))>.

⁶¹ Charter of the United Nations (See note 53 above).

comply with UN Security Council determinations. The implementation of the measures contained in Security Council resolutions, and the establishment of offences and their subsequent enforcement, is therefore dependent on adopting effective national laws.

4.2 Political challenges

4.2.1 Absent partners

The PSI lacks the support of two primal countries in the PSI—China and Russia. Their non-participation creates holes in the WMD interdiction dragnet that can be exploited by a resolute trafficker and significantly limits the effectiveness of the PSI's interdiction efforts.

Firstly, even if China is a potentially significant country, it is a missing partner of the PSI. The Chinese foreign ministry spokesman has said that China "... can understand the worries by some countries over the proliferation of weapons of mass destruction ... [but it is also China's view that] ... some countries of the world have doubts over the legality and effectiveness of the measure. The best way to curb WMD proliferation is to safeguard and promote international security through consultations and dialogue".⁶² And the US Administration and other PSI participants seem to have been eager to consult with China on the PSI issue in the near term.⁶³

Secondly, the other potentially significant country is Russia which is the only non-participant of PSI among the Group of Eight (G8) members. The Russian Federation has been skeptical regarding the legitimacy of PSI: "We have questions

⁶² *Foreign Ministry Spokesperson's Press Conference on September 4, 2003*. Beijing: Ministry of Foreign Affairs, the People's Republic of China, <<http://www.fmprc.gov.cn/eng/xwfw/2510/2511/t25626.htm>>.

⁶³ *Proliferation Security Initiative: Next Experts Meeting, China's Role*. Washington, D.C.: The United States Department of State, <<http://2001-2009.state.gov/r/pa/prs/ps/2003/26867.htm>>.

about this initiative's compliance with international legal norms ... [but in] general, the idea of intercepting vehicles shipping dangerous substances meets Russia's interests. We share the direction of this initiative".⁶⁴

Yet, it is indefinite that what the Federation meant by saying "share the direction of the initiative". It can be inferred that the Federation supports PSI's practicality as well as shares its aim and objective. However, casting doubt on the initiative, Russia does not seem to be ready to sign up for it.

Their participation in the PSI or endorsement of its principles would add significant clout and momentum to the initiative. It is undoubtedly considered, for instance, that Russia's geopolitical locality, military forces, and perpetual membership in the UNSC could highly promote the PSI's success.

4.2.2 Sovereignty

In the meantime, it is meaningful to recollect the shifted political context after the UN Conferences on the Law of the Sea. Particularly in Asia and the Middle East, critical and strategic straits were typically in the grasp of the maritime superpowers interested in claiming three miles of defined territorial sea and keeping them unrestricted before the Second World War. In addition to the crash of colonialism, there were emerging new countries which were interested in their own safeguard and moneymaking activities. But they were not enamored by the "freedom of the seas" doctrine which had been a vehicle to disadvantage them for a long time. Indeed, they wanted to curb it, feeling that unlimited freedom of the seas was against their interests.⁶⁵ Many of the recently self-governing States are strait States which are currently capable of ruling the mighty waterways to keep their essential claims.

There were other reasons for expanded jurisdictional claims by coastal States

⁶⁴ US lobbies Russia to join campaign against illicit arms shipments. (2004, January 29). *SpaceWar Wire*, <<http://www.spacewar.com/2004/040129082721.dcagh536.html>>.

⁶⁵ Anand, R. P. (1973, July). Tyranny of the Freedom of the Seas Doctrine. *Interntional Studies*, pp. 416-429.

such as dumping on the high seas, the threat of oil spills, and other origins of water pollution. As more and more territorial waters were extended after 1960, most of these straits came to be included in the territorial seas subject to numerous controls and limitations occupied by the coastal States.

Indeed, some of these States went further and sought to make certain that important straits include their absolute sovereignty. Thus, Indonesia and the Philippines, two newly-independent archipelagic States, sought to employ the method of straight baselines joining the outermost points of the outermost islands of the archipelagoes for delimitation of their extended territorial waters, thereby enclosing some of the most important straits.⁶⁶ In particular, Indonesia holds a monopoly over all deep straits between the Asian continent and Australia which is linking up the Pacific and the Indian Oceans. The shutoff of those straits like Sunda, Lombok, Ombai-Wetar or Macassar would necessitate a diversion of traffic around Australia or through the Panama Canal resulting in higher consumer costs, time delays, and the reduced flexibility and maneuverability of naval forces.

4.3 Structural challenges

4.3.1 Distribution of bilateral agreements

While the possibility of reaching bilateral agreements is obvious, again this would create co-ordination problems as well. If a single agreement or a model agreement could be reached and then agreements struck with States of registry, this would be one way of handling the problem. Given the concentration in the distribution of flags, only a few such agreements would be needed to have considerable effect. However, the problem of the remaining thirty percent of shipping

⁶⁶ Anand, R. P. (1979, April). Mid-Ocean Archipelagoes in International Law: Theory and Practice. *Indian Journal of International Law*, pp. 238-242.

would remain. There would, inevitably, be some States that would refuse, and these hardest cases would have to be dealt with by some other means.

Available public reports suggest that PSI members are at present still examining their various legal authorities. No public information discovered in the course of this research indicated either the precise nature of the boarding agreements being sought, or the nature of any difficulties in reaching it. One might anticipate, however, variations among States in their interpretation of their legal rights, and variances in their national legislation and regulations might be sources of difficulty.

4.3.2 Transparency

A lack of transparency appears to be an institutional characteristic of the PSI, and this is detrimental to international perception of the PSI's impartiality. Intelligence is not shared equally among participants, nor is there any intent to make actionable intelligence available to all PSI States.⁶⁷ The issue of transparency relates to two different PSI arenas of activity: organizational—the workings and activities associated with the OEG, ROEGs (Regional Operational Experts Groups), exercises, and workshops; and operational—the activities associated with a specific interdiction.

At the organizational level there is actually a significant amount of information in the public domain. For OEG and ROEG meetings, the keynote speech and chairman's statement are usually released by the host State.⁶⁸ For exercises, press statements are usually issued that include the exercise scenarios and details of participants. Similarly, press statements and other information are released about workshops and capacity building.

The basis for the criticism may therefore relate to accessibility, rather than the quantity or quality, of information available. The US Department of State's PSI-

⁶⁷ Keeley, J. (2004). *International Maritime Law and the Interdiction of Movements of Weapons of Mass Destruction by Sea*. Ontario: Department of Foreign Affairs and International Trade.

⁶⁸ For a collection of the chairman's statements from 2003 to 2006 and 2013 see US Department of State, 'Chairman's statements', <<http://www.state.gov/t/isn/c27727.htm>>.

related web pages are the most comprehensive but do not contain, or link users to, material published after 2006—other than US-released press statements and fact sheets from 2009.⁶⁹ A recent development that seeks to overcome this problem is the establishment in early 2013 of a public PSI website by the German Federal Foreign Office.⁷⁰ The objective of the website is to inform the public about the PSI and it contains a wide range of information, publications, videos and links.

At the operational level, transparency is closely linked to the problem of attribution. Additionally, it is not the PSI that undertakes interdictions, but the States that have chosen to participate in it. Equally, the extent to which these States consider the interdictions to be “PSI interdictions” is unclear and inconsistent. In the majority of cases, knowledge of an interdiction is restricted to the States that are directly involved and is not shared among OEG members. Other than high-profile cases where publicizing an interdiction is intended to prevent a proliferation attempt or deter proliferation more generally, it is unlikely that PSI interdictions will be publicized more widely.

Even if the PSI is unable or unwilling to publicize interdictions, it could be more open about its internal workings, offer more clarity on the operational realities of the activities it promotes and make the information more accessible. The recent establishment of an official PSI website is a positive development, although the extent to which the OEG and its members are willing to be more open and actively contribute to the website is not yet clear.⁷¹

⁶⁹ US Department of State, Bureau of International Security and Nonproliferation, ‘Proliferation Security Initiative’, <<http://www.state.gov/t/isn/c10390.htm>>.

⁷⁰ For information and documents on the PSI see the newly created official website, [psi.info](http://www.psi-online.info/), <<http://www.psi-online.info/>>.

⁷¹ Ibid.

CHAPTER 5. The Coordination between the IMO and the PSI

The PSI has its supreme merits of enhancing operational competence and technical skills to run interdiction operations. A critical demerit of the initiative, on the contrary, lies in the perception that it is an action dominated by United States. Accordingly, accepting or joining in the PSI is very hard for nonparticipating nations. In fact, the PSI's operations are carried on through effective coordination among participating nations all around the world. At this point, it is necessary to examine the ways that the IMO can help achieve the PSI's further development.

5.1 Security-related IMO instruments

One way to close legal gaps of the PSI and rectify many of its shortcomings would be to seek a security-related IMO instrument authorizing military action for interdiction generally or specifically. The security-related IMO instrument, together with legislative and treaty efforts against the trafficking of WMD and related material, could generate momentum towards an international norm or customary law aimed at halting WMD trafficking.

5.1.1 SOLAS and ISPS Code

Maritime security is essential as one of IMO's imperatives. A thorough mandatory security regulation for transnational shipment, the 1974 Safety of Life at Sea Convention (SOLAS)⁷², entered into force on 1 July 2004 and included several amendments to it. Among them, the one which had the most massive influence was

⁷² The International Convention for the Safety of Life at Sea, 1974/1988 (hereinafter SOLAS).

the International Ship and Port Facility Security Code (ISPS Code).⁷³ The IMO states that “it contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B)”.⁷⁴ Under SOLAS Chapter XI-2 and the ISPS Code, ship security plans must address measures contemplated preventing shipment of weapons, unwarranted goods, and dangerous materials for the use of application against human beings, ports or ships.

So far, a lot of States have taken measures to inhibit the shipment of hazardous cargo on sea routes, on the basis of the safety deliberation applied to parts A and A-1 of Chapter VII of the 1974 SOLAS Convention, as amended. Ship security plans should have established procedures at all security levels to validate, maintain, and revise an abstract of any hazardous cargo or risky substances shipped, including their locations, and make provision for restricted areas and access, including to spaces containing dangerous goods or hazardous substances.

5.1.2 Declaration of Security (DOS)

The IMO maritime security measures also require Governments to determine when a Declaration of Security (DOS)—which is an agreement between a port or port facility and a ship or between a ship and another ship that confirms the security responsibilities of each party during a ship/port interface or a ship-to-ship activity—is required.⁷⁵ It is the responsibility of the respective security officers of the ship and port/port facility to assess whether those activities put human beings, environment, or possessions at risk. These circumstances are usually specified by the Designated

⁷³ The International Ship and Port Facility Security Code (hereinafter ISPS Code).

⁷⁴ Peverett, T. *Contribution from the International Maritime Organization (IMO): Maritime Security and international regulations in maritime transportation of CBRN materials*. London: International Maritime Organization (IMO).

⁷⁵ Ibid.

Authority or Administration for inclusion in port, port facility and ship security plans, which are then implemented in circumstances such as when the port facility/ship interface involves a cruise ship, a ship carrying hazardous cargo or the loading or transfer of them.

5.1.3 International Maritime Dangerous Goods (IMDG) Code

Launched in 1965, the International Maritime Dangerous Goods (IMDG) Code “amplifies the requirements of both conventions and has become the standard guide to all aspects of handling dangerous goods and marine pollutants in sea transport”.⁷⁶ Initially, the amended Code was suggested to governments as the ground for domestic supervisions; the influenced contents were the requirements of SOLAS 1974 and International Convention for the Prevention of Pollution from Ships (MARPOL) Annex III. But the amendments 32, 33, 34 and 35 are compulsory at present. There are basic principles enacted by the Code: elaborate recommendations for respective articles, materials, and substances, and several recommendations for sound operational practice, including guidance for emergency response action, labeling, packing, stowage, and buzzwords.

5.1.4 2005 Protocol to the SUA Convention

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) was amended by a 2005 protocol (2005 SUA Protocol)⁷⁷ which added a novel Article stating several charges concerning terror acts. Moreover, the 2005 protocol addresses the situation where a

⁷⁶ Ibid.

⁷⁷ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), opened for signature 10 Mar. 1988, entered into force on 1 Mar. 1992, *United Nations Treaty Series*, vol. 1678 (1999); and Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005 SUA Protocol), adopted 14 Oct. 2005, entered into force 28 July 2010, IMO document LEG/CONF.15/21, 1 Nov. 2005.

vessel in international waters is carrying WMD and obliges States that have ratified it to “cooperate to bring the responsible person to justice”.⁷⁸ These innovative charges relating to proliferation contain shipping “(a) explosive or radioactive materials, for the purpose of the intimidation or compulsion of a government or population, (b) biological, chemical and nuclear weapons (for any purpose), (c) special fissionable materials as defined by the Statute of the International Atomic Energy Agency [IAEA] with the knowledge that those materials are going to be used for any purpose not safeguarded by the IAEA, and (d) equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a [biological, chemical or nuclear] weapon, with the intention that it will be used for such purpose”.⁷⁹

In addition, the ship-boarding management has been developed by the 2005 protocol. The amended SUA Convention includes new regulations over agreed ship-boarding on high seas and claims States parties to “co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible”.⁸⁰

The precondition for ship-boarding is, of course, the cooperation and empowerment of the flag State. According to Tracy Peverett, head of maritime security section at the IMO, “A State party may notify the IMO Secretary-General that it would allow authorization to board and search a ship flying its flag, its cargo and persons on board if there is no response from the flag State within four hours; it can also notify that it authorizes a requesting party to board and search the ship, its cargo and persons on board, and to question the persons on board to determine if an offence has been, or is about to be, committed”.⁸¹ Every OEG member has not

⁷⁸ Conventions. (2010). *Britannia News*, 9.

⁷⁹ Amended SUA Convention (See note 77 above), Article 3bis.

⁸⁰ Amended SUA Convention (See note 77 above), Article 8bis.

⁸¹ Peverett, T. (See note 74 above); Zou, K. (2009). *New Developments in the International Law of*

registered or ratified the protocol, although the 2005 SUA Protocol is potentially useful at reaching the PSI's aims.

5.2 Recommendations for the IMO

There is no requirement for PSI activities to come under the scrutiny of international bodies like the IMO. In the current absence of any customary law against WMD trafficking, and short of the unlikely adoption of an explicit UNSCR authorizing maritime interdiction, PSI participants are trying to keep increasing their impacts on detecting and taking over WMD and associated substances in their internal waters or own ports. While imposing more restrictions on the PSI's interdictions might seem to be a step backward, the fact is that at this point, the PSI probably has more to gain from a broadened membership and international support than it does from executing interdictions that violate international norms guaranteeing the freedom of navigation.

It is compelling that the PSI's efficiency needs to be improved; for example, activating the PSI under the U.N. system can be one of the methods of improving its efficiency. Based on the outcome of the research, the IMO is encouraged to note following recommendations in order to achieve the coordination between its instruments and the PSI regime:

- i. There is a need for the IMO to offer the framework to facilitate sharing legal guidance among those nations that are seeking to strengthen their domestic legislation against proliferation. In addition, the IMO would be able to either make PSI activities operated in ranges of existent international law or perform as a ministry for amending it.
- ii. The WMD interdiction that supports the PSI can be advocated by the IMO.

As a neutral organization under U.N. auspices, the IMO could assess financing and judgment and give suggestions with regard to interdictions. To be specific, if the IMO can be recognized as fair, nonpartisan, objective, and transparent, it would be capable of answering key questions like what defines a maritime menace as well as what qualifies as “good cause” for interdiction.

- iii. It is recommended to offer the PSI a genuine framework with compatible strategies, methods of operation, and a budget to bridge gaps between intelligence collection endeavors and interdiction. For instance, if the IMO plays a role as a host of OEG meetings, it could promote a technology sharing where the PSI can engage in a win-win exchange with member States. The sharing of detection technology such as hand held radiation detectors, cargo scanners, and stand-off sensors can increase the effectiveness of PSI participants in screening port traffic. In that way, the IMO could advocate for and support developing, planning, and executing the PSI.
- iv. The PSI has elements where arranging conventions requires timely attention but doing so hastily is politically challenging and delicate. The IMO needs to aid the PSI in its efforts to fit in such specifically transnational issues. In addition, the IMO can help avoid disagreements and incorrect judgments which would delay action or hinder legitimate trades.

CHAPTER 6. Conclusion

For sure, the PSI and other confirming efforts driven by the United States has improved the consciousness of the hazard and imminence of the troubles with shipments of illicit WMD has been improved by the PSI and other confirming efforts driven by the United States. Moreover, the core of interdiction has undoubtedly restrained a few trades in WMD, their shipment networks, and kindred substances as well as coerced deceptive traders into changing their strategies. PSI exercises have built up national capabilities for conformed search and interdiction of problematic shipping. The United States has successfully arranged ship-boarding agreements with some of the nations which have vessels flying all around the world. Accordingly, many countries have hoped for flag-State authorization for embarking to hunt for WMD. All that matters is that the PSI has elaborated and transformed from a concern about interdiction of vessels on the voyage to actual seizure of WMD and inspection in ports; for the United States, such a range of transformation may come up to disruption of monetary networks engaged or support for the trafficking.

As the PSI demonstrates, cooperative maritime security efforts are easier to conceive and proselytize than to implement. Successful, effective, and efficient multilateral maritime security cooperation requires that key countries view their participation as both “legal” and in their direct national security interest. Another necessary condition is that the cooperation be led not by intimidation, but by reason and good example, and that it be as politically neutral as possible. This is why U.N. approval or, even better, U.N. facilitation and institutionalization of such efforts will enhance their chances for success.

Furthermore, the PSI model has pushed the envelope in nuclear interdiction. A similar model was taken up by the Global Initiative to Combat Nuclear Terrorism (GICNT). And, in April 2010, the Nuclear Security Summit informally worked on

developing unanimity about the goal of insuring all nuclear materials no later than 2014. These initiatives fill up the existing nonproliferation regime as well as create an elaborate nuclear governance framework. Likewise, strengthening the PSI and embracing its model might advance concerns about preventing proliferation and offer a functional system to rally international initiative on major across-the-board problems.

On the basis of the lessons learned over the past ten years, the recommendations for the IMO mentioned above are several examples of the kinds of steps that can be taken to enhance and reinvigorate the PSI. By achieving the coordination between the IMO instruments and the PSI regime, the PSI will become a more useful tool in the battle against proliferation for years to come and the effectiveness of the initiative will increase which will lead to attaining international maritime security.

BIBLIOGRAPHY

BOOKS and ARTICLES

- 1st anniversary PSI meeting. (2004). Cracow: Polish Ministry of Foreign Affairs.
- Anand, R. P. (1973, July). Tyranny of the Freedom of the Seas Doctrine. *Interntional Studies*, pp. 416-429.
- Anand, R. P. (1979, April). Mid-Ocean Archipelagoes in International Law: Theory and Practice. *Indian Journal of International Law*, pp. 238-242.
- Anand, R. P. (2004). *Studies in International Law and History: An Asian Perspective*. Boston: Martinus Nijhoff Publishers.
- Bandow, D. (2006, October 10). Defang North Korea: Let Beijing Take the Lead. *The National Interest*.
- Belcher, E. (2011). *The Proliferation Security Initiative(Lessons for Using Nonbinding Agreements)*. New York: The Council on Foreign Relations.
- Boese, W. (2005). Key U.S. Interdiction Initiative Claim Misrepresented. *Arms Control Today*.
- Bolton, J. R. (2003). *"Legitimacy" in International Affairs: The American Perspective in Theory and Operation*. Washington, D.C.: The United States Department of State.
- Bolton, J. R. (2008). Proliferation Security Initiative: Acting Under Secretary of State for Arms Control and International Security. *Foreign Press Center Roundtable Briefing*. Washington, D.C.: The United States Department of State.
- Bolton, J. R. (2004). *Under Secretary for Arms Control and International Security, Stopping the Spread of Weapons of Mass Destruction in the Asian-Pacific Region: The Role of the Proliferation Security Initiative*. Washington, D.C.: The United States Department of State.
- Bush, G. W. (2002). *Press Briefing by Ari Fleischer*.
- Conventions. (2010). *Britannia News*, 9.

- CSI In Brief*. Washington, D.C.: U.S. Customs and Border Protection, 2011.
- Esper, M. T., & Allen, C. A. (2004, January 12). The PSI: Taking Action against WMD Proliferation. *The Monitor*, p. 5.
- Foreign Ministry Spokesperson's Press Conference on September 4, 2003*. Beijing: Ministry of Foreign Affairs, the People's Republic of China.
- Goodman, A., Starr, B., King, J., Koppel, A., & Buckley, F. (2002). *U.S. lets Scud ship sail to Yemen*. Madrid: CNN.
- Guilfoyle, D. (2007). Maritime Interdiction of Weapons of Mass Destruction. *Journal of Conflict and Security Law* Vol. 12, 13.
- Joyner, D. H. (2004, January 12). The PSI and International Law. *The Monitor*, pp. 7-9.
- Keeley, J. (2004). *International Maritime Law and the Interdiction of Movements of Weapons of Mass Destruction by Sea*. Ontario: Department of Foreign Affairs and International Trade.
- Klein, N. (2011). *Maritime Security and the Law of the Sea*. Oxford: Oxford University Press.
- Nikitin, M. B. (2012). *Proliferation Security Initiative (PSI)*. Washington, D.C.: Congressional Research Service.
- Persbo, A., & Davis, I. (2004). *Sailing Into Uncharted Waters?* Washington, D.C.: British American Security Information Council.
- Peverett, T. (n.d.). *Contribution from the International Maritime Organization (IMO): Maritime Security and international regulations in maritime transportation of CBRN materials*. London: International Maritime Organization (IMO).
- Proliferation Security Initiative: Chairman's Conclusions at the Fourth Meeting. (2003). Washington, D.C.: The United States Department of State.
- Proliferation Security Initiative: Next Experts Meeting, China's Role*. Washington, D.C.: The United States Department of State.
- Proliferation Security Initiative Participants*. Washington, D.C.: US Department of State, 2012.
- Proliferation Security Initiative (PSI). (2013, February 22). *Inventory of*

- International Nonproliferation Organizations and Regimes*, p. 4.
- Proliferation Security Initiative: Statement of Interdiction Principles*. Washington, D.C.: The United States Department of State, 2003.
- PSI-Endorsing States Undertake Effort to Build Critical Capabilities and Practices (CCP) for Interdicting WMD*. Washington, D.C.: The United States Department of State, 2011.
- Remarks by National Security Advisor Stephen J. Hadley at the Proliferation Security Initiative Fifth Anniversary Senior Level Meeting*. Washington, D.C.: The White House, 2008.
- Remarks by President Barack Obama*. Washington, D.C.: The White House, 2009.
- Remarks of Ambassador Richard Olson at US-UAE Proliferation Security Initiative Training*. Abu Dhabi: Embassy of the United States, 2010.
- Sanger, D. E. (2011, June 12). U.S. Said to Turn Back North Korea Missile Shipment. *The New York Times*.
- Security Council, Acting Unanimously, Condemns in Strongest Terms Democratic People's Republic of Korea Nuclear Test, Toughens Sanctions. (2009). *Press Release SC/9679*. New York: United Nations.
- Security Council Decides All States Shall Act to Prevent Proliferation of Mass Destruction Weapons. (2004). *Press Release SC/8076*. New York: United Nations.
- Security Council Tightens Restrictions on Iran's Proliferation, Sensitive Nuclear Activities, Increases Vigilance Over Iranian Banks, Has States Inspect Cargo. (2008). *Press Release SC/9268*. New York: United Nations.
- Ship Boarding Agreements*. Washington, D.C.: US Department of State, 2013.
- Sudarshan, V. (2006, October 23). This Ship Is Loaded. *Outlook India*.
- Thailand Endorses the Proliferation Security Initiative*. Washington, D.C.: US Department of State, 2012.
- The M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea). (1999). *Judgment*. Hamburg: International Tribunal for the Law of the Sea.
- Thomas, T. V. (2009). *The Proliferation Security Initiative: Towards Relegation of*

Navigational Freedoms in UNCLOS? Oxford: Oxford University Press.

US lobbies Russia to join campaign against illicit arms shipments. (2004, January 29). *SpaceWar Wire*.

Valencia, M. J. (2006). *The Proliferation Security Initiative: Making Waves in Asia*. London: Routledge.

Williams, I. (2013). U.S., Allies to Strengthen WMD Initiative. *Arms Control Today*.

TREATY INSTRUMENTS

IMO Conventions and Instruments

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA Convention).

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

Other International Conventions and Instruments

Charter of the United Nations.

International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention), 1999.

United Nations Convention on the Law of the Sea, 1982. (UNCLOS).

TEXTS AND DOCUMENTS

UN General Assembly Resolution

A/RES/25/2625,

<<http://www.un-documents.net/a25r2625.htm>>.

UN Security Council Resolution

UN Security Council Resolution 1718, 14 Oct. 2006,

<[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718%20\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718%20(2006))>.

UN Security Council Resolution 1874, 12 June 2009,

<[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1874\(2009\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1874(2009))>.

UN Security Council Resolution 1929, 9 June 2010,

<[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929(2010))>.

APPENDIX

Appendix. The Statement of Interdiction Principles (SIP)

The Proliferation Security Initiative (PSI) is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the 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 G8 and the European Union, establishing that more coherent and concerted efforts are needed to prevent the proliferation of WMD, their delivery systems, and related materials. PSI participants are deeply concerned about this threat and of the danger that these items could fall into the hands of terrorists, and are committed to working together to stop the flow of these items to and from states and non-state actors of proliferation concern. The PSI seeks to involve in some capacity all states that have a stake in nonproliferation and the ability and willingness to take steps to stop the flow of such items at sea, in the air, or on land. The PSI also seeks cooperation from any state whose vessels, flags, ports, territorial waters, airspace, or land might be used for proliferation purposes by states and non-state actors of proliferation concern. The increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade, requires new and stronger actions by the international community. We look forward to working with all concerned states on measures they are able and willing to take in support of the PSI, as outlined in the following set of "Interdiction Principles."

PSI participants are committed to the following interdiction principles to

establish a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council. They call on all states concerned with this threat to, international peace and security to join in similarly committing to:

1. Undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. "States or non-state actors of proliferation concern" generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.

2. Adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity, protecting the confidential character of classified information provided by other states as part of this initiative, dedicate appropriate resources and efforts to interdiction operations and capabilities, and maximize coordination among participants in interdiction efforts.

3. Review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary relevant international 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 sea 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 trans-shipment 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.

Source: US Department of State, 'Proliferation Security Initiative: statement of interdiction principles', 4 Sep. 2003, <<http://www.state.gov/t/isn/c27726.htm>>.