

Interdiction Under the Proliferation Security Initiative: Counter-Proliferation or Counter-Productive?

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Introduction

President Bush launched the Proliferation Security Initiative (PSI) in a speech in Poland on 31 May 2003, just prior to the G8 Summit in Krakow. While it had been in the planning stage for some time, it seems as if the frustrated efforts to seize a shipment of missiles en route to the Yemen from the DPRK in December 2002 provided the impetus for its launch.

The US State Department describes PSI as a “response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide” and “builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes.”[1]

In addition to the United States, 10 other countries[2] have so far signed up to the initiative, and there have been three meetings involving government officials from the respective countries.

These meetings took place in:

- Madrid (June 2003)
- Brisbane (July 2003)
- Paris (September 2003)

At the meeting in Paris, PSI participants committed themselves to four ‘Interdiction Principles for the Proliferation Security Initiative’:

...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.

In summary, the four principles commit the PSI participants to:

- undertake effective measures to interdict the suspected transfer or transport of WMD from “states or non-state actors of proliferation concern”;
- streamline procedures for rapid exchange of relevant information and maximize coordination for interdiction efforts;
- review and strengthen national legal authorities and work to strengthen international law to support interdiction efforts; and
- take specific actions to prevent WMD proliferation by intercepting suspected cargos at transit points within, or without, national jurisdictions.[3]

A fourth meeting of the PSI is due to take place at Lancaster House in London this week, in the form of a three-day conference consisting of a table-top exercise on Wednesday, a meeting of officials on Thursday and a plenary session on Friday, according to the FCO Press Office. Apparently, a number of additional countries, as yet undisclosed, have been invited to participate in the London meeting.

This briefing paper considers three factors:

- What are the origins of the PSI?
- What is Britain’s role?
- Is it in accordance with international law?

What are the origins of the PSI?

The PSI clearly has its origins in current US national security thinking. In its ‘National Strategy to Combat Weapons of Mass Destruction’, the Bush Administration outlined the pressing need for the international community to undertake every effort to prevent states and terrorists from acquiring WMD and missiles. The Strategy document declared that traditional non-proliferation methods (diplomacy, arms control, multilateral agreements, threat reduction assistance and export controls) would be buttressed by more aggressive counterproliferation methods. To this end, ‘interdiction’ is described in the document as:

...a critical part of the U.S. strategy to combat WMD and their delivery means. We must enhance the capabilities of our military, intelligence, technical, and law enforcement communities to

prevent the movement of WMD materials, technology, and expertise to hostile states and terrorist organisations.[4]

The Strategy document goes on to argue that as WMD represent a threat to the “friends and allies and the broader international community,” ...“it is vital that we work closely with like-minded countries on all elements of our comprehensive proliferation strategy.”[5]

What is Britain’s role?

A month after the publication of the US National Strategy document, Prime Minister Blair stated his general support for the strategy (without specifically mentioning interdiction):

In February 2001, at my first meeting with President Bush I said this [WMD] was the key issue facing the world community. I believe that even more today. ...There will be different ways of dealing with different countries. But no one can doubt the salience of WMD as an issue and the importance of countering it.[6]

Soon afterwards the Foreign and Commonwealth Office’s Non-Proliferation Department was renamed the Counter-Proliferation Department.

In response to a parliamentary question from Alice Mahon MP, Foreign Office Minister Bill Rammell said that the UK did not table any specific proposals during the Brisbane meeting but that there were discussions “on defining actions necessary for effective interdiction at sea and the modalities for sharing relevant information.”[7]

The outcome of the Paris meeting was warmly welcomed by Baroness Symons from New Delhi while on an official visit to India: “Over the next few weeks and months we shall be discussing the Statement [of Interdiction Principles] with key partners, and encouraging them to co-operate with the Initiative.”[8]

Although the Foreign & Commonwealth Office web site confirms that “the UK strongly supports the aims of the Initiative [PSI], and will work to help ensure its implementation,” there is no mention of where the meeting in London is to be held or any indication of what might be on the agenda at the time of writing (Monday 6 October).[9]

Is it in accordance with international law?

The US State Department believes that PSI 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.[10]

US Under Secretary of State John Bolton appears to believe that PSI participants are agreed that they have the authority to interdict suspicious cargoes on the high seas and in international airspace. Bolton told The Australian after the PSI Brisbane meeting in July 2003, that authorisation to interdict follows when ships do not display a national flag and effectively become pirates, when ships fly ‘flags of convenience’, when permission is granted by home nations or when self-defence can be employed against a vessel suspected of carrying WMD material.[11]

These assertions are challenged by the Bipartisan Security Group[12] in its publication ‘The Proliferation Security Initiative. The Legal Challenge’ published soon after the PSI meeting in Paris in September 2003.[13] In their introductory letter, Ambassador Thomas Graham, Jr. (Ret.) and Jonathan Granoff pose a number of important questions:

- Is the 1992 UNSC Presidential Statement all that is needed to exercise the use of force to interdict ships on the high seas?
- Is it the intention of PSI participants to bring suitable cases for interdiction before the UNSC?
- How are ‘states of concern’ to be determined and is it a legal definition?
- What mechanism will be adopted in support of interdiction?
- What is to prevent any nation adopting the same criteria and boarding any ship it declares to be ‘of concern’?

The paper considers, in some detail, the implications of PSI for the Law of the Sea, jurisdiction in territorial waters and on the high seas and the potential legal justifications for interdiction. The author, Benjamin Friedman, concludes that without a “UN Security Council resolution, or clear evidence that shipments are bound for terrorists, the legality of stopping shipments in territorial waters or on the high seas will be questionable.” He also points out that interdiction may be deemed an act of war under international law. In effect, the PSI may provoke the very actions it is intended to prevent.

These themes are taken up by Devon Chaffee in her article, to be published shortly in BASIC Reports. She points out that:

The Law of the Seas (LOS) is one of the most comprehensive and well-established bodies of international regulatory norms in existence. It is buttressed by longstanding international norms, and formal legal agreements, critical to creating a more secure international environment.

and ...

There is nothing in the LOS that explicitly prohibits transit of WMD or gives states rights to interdict such transit. On the contrary, a number of states, including the United States, have actively opposed the development of such prohibitive norms or interpretations of international law that would prohibit the transit of WMD by the seas or air, and cite the rights and privileges established in the LOS to affirm their unhindered military use of the oceans.[14]

Conclusion

It is clearly the case, as Prime Minister Blair states, that the proliferation of nuclear, biological and chemical weapons is a major concern today and that stricter adherence to international norms and agreements is imperative. Nor should it be controversial to argue that stricter adherence can, in part, be achieved by more intrusive inspection methods aimed at early prevention of acquisition or diversion of materials that may be used to produce WMD.

As the [then] United Nations Under-Secretary-General for Disarmament Affairs pointed out in January 2002:

Certain dangerous weapons materials – like plutonium, highly-enriched uranium, and many strains of deadly bacteria and toxins – are hazardous whoever possess them, ... They are not dangerous simply when located inside so-called ‘rogue states’. They are dangerous everywhere and always.

and ...

For this reason, multilateral treaty regimes ... serve a triple security purpose – they serve to prevent the proliferation of such weapons to states; they make it much more difficult for terrorists to acquire significant WMD capabilities; and they promote an equitable, fair, and global public good called disarmament.[15]

The UK Government is committed by international treaties to support multilateral approaches to counter and prevent proliferation of WMD. It also now appears to be committed to participation in the Proliferation Security Initiative, which is a ‘coalition of the willing’, not an internationally recognised treaty. While there may be positive outcomes from the PSI, the UK Government needs to be more forthcoming about its participation and engage more widely in parliamentary and public debate before becoming even more integrated in the planning of, and active participation in, potentially illegal, ‘interdiction’ exercises.

Devon Chaffee concludes that restricting the transit of WMD could further arms control and stem proliferation, “if such norms were carefully developed by the international community and applied uniformly.” If applied whimsically or discriminately, “it is unclear how international law can be maintained.”

Notes

[1] ‘Proliferation Security Initiative: Statement of Interdiction Principles’, U.S. Department of State

Fact Sheet, 4 September 2003.

[2] Australia, Britain, France, Germany, Italy, Japan, The Netherlands, Poland, Portugal and Spain.

[3] Op cit 'Proliferation Security Initiative'.

[4] 'National Strategy to Combat Weapons of Mass Destruction,' December 2002, p2.

[5] Ibid, p6.

[6] Prime Minister's speech at the Foreign Office conference, 7 January 2003.

[7] Hansard, 1 September 2003, Column 813W.

[8] 'UK welcomes outcome of the Proliferation Security Initiative meeting in Paris', 5 September 2003 (www.ukinindia.org/press/general/gen_904.asp).

[9] Foreign and Commonwealth Office web site (www.fco.gov.uk).

[10] Op cit 'Proliferation Security Initiative'.

[11] 'US 'free to tackle N Korea,' by Greg Sheridan, The Australian, 9 July 2003.

[12] The Bipartisan Security Group is a programme of the Global Security Institute a Washington DC.-based 'think-tank'.

[13] 'The Proliferation Security Initiative. The Legal Challenge', A Policy Brief by the Bipartisan Security Group, September 2003.

[14] 'Freedom or Force on the High Seas? Arms Interdiction and International Law' by Devon Chaffee, Washington D.C. Representative of the Nuclear Age Peace Foundation (forthcoming).

[15] 'Multilateral Approaches to WMD Threats After September 11' by Jayantha Dhanapala, talk given at the Annual Luncheon of the Arms Control Association, Washington D.C., 22 January 2002.