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## Origin, Developments and Prospects for the Proliferation Security Initiative

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### INTRODUCTION

The Proliferation Security Initiative (PSI) is a U.S.-led coalition of the willing that “aims to enhance and expand our efforts to prevent the flow of weapons of mass destruction (WMD)<sup>2</sup>, their delivery systems, and related materials on the ground, in the air, and at sea, to and from states and non-state actors of proliferation concern.”<sup>3</sup> The main activity involves the interdiction of ship/plane/cargo suspected of transporting WMD by participating states that officially commit to the Statement of Interdiction Principles. Although there has been some criticism of the PSI regarding its lack of legal basis, ambiguity of achievements and failure to involve key countries, PSI has gained a reputation of being one of the most successful nonproliferation policies of the Bush Administration. As about three years have passed<sup>4</sup> since PSI was launched, it is timely to evaluate what PSI has and has not achieved, how it has impacted global nonproliferation regimes and where it is headed. This paper examines these questions based on interviews in the U.S., Japan and China and literature written about PSI.

The paper first describes what PSI is, focusing on why it was initiated by this particular administration. The Bush Administration maintains some reservations about multilateralism. The administration also values measures that can ‘counter’

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1. The author is a recent graduate of the Master of Science in Foreign Service program of Georgetown University. The author greatly appreciates the Institute for the Study of Diplomacy (ISD) of Georgetown University for its generous financial and substantial support, especially Josef Ruth, Dean and Virginia Rusk Associate at ISD, for his guidance and advice. The author also would like to thank Jonathan Tow for his helpful assistance, and numerous government officials in Japan, U.S. and China, who remain anonymous in this paper, for their constructive comments.

2. It has been widely discussed that the word “weapons of mass destruction” should not be used as it puts four totally different weapons, chemical, biological, nuclear and radioactive weapons in the same box. Although the author is aware of the argument, this article uses WMD for the convenience.

3. The website of the U.S. Department of State. See <http://www.state.gov/t/isn/rls/fs/46839.htm>.

4. President Bush released a remark to note the third anniversary of PSI on June 23, 2006, when delegations from seventy countries gathered for a PSI High Level Political Meeting held in Warsaw, Poland.

proliferation such as interdictions and missile defense, as it sees traditional nonproliferation regimes being unable to completely prevent states and non-state actors from developing and proliferating WMD. PSI, originally advocated by Bush's close aide, former Under Secretary for Arms Control and International Security John Bolton, fits quite perfectly into these preferences of the administration. The paper also addresses the wide-range of PSI-related activities other than interdictions, e.g., joint exercises, intelligence sharing and activities by non-participant countries.

The paper then evaluates where PSI is today, using seven indicators to measure success: 1) the number of actual interdictions, 2) PSI's global reach, 3) the level and frequency of PSI exercises and meetings, 4) the degree of implementation in the governments of PSI participants, 5) the progress of intelligence sharing 6) the degree of public-private partnership and 7) an international legal foundation. While it is fair to conclude that PSI has achieved "much more than originally expected,"<sup>5</sup> as an official at the Department of State told the author, there are some challenges that PSI still needs to overcome. The paper argues that PSI needs to gain more engagement from key countries such as China, remove ambiguity regarding its success, strengthen its international legal basis further and figure out ways to promote implementation of the initiative.

Furthermore, the paper analyzes PSI's by-products. PSI has played a part in helping other governments overcome hurdles that they otherwise could not have done. In the case of Japan, PSI made it possible for the Japanese government to deploy the Japanese Self Defense Forces to overseas training outside the frameworks of the Peace Keeping Operation, the Japan-U.S. Security Cooperation or emergency responses, which had been regarded as rather "taboo."<sup>6</sup> While PSI has promoted interagency coordination in Japan, it also unintentionally created interagency "confrontation" as well. For the U.S., PSI has also helped improve some relationships with countries which had become more confrontational such as Germany and France.

Regarding the impact of PSI on global nonproliferation regimes, the paper argues that PSI has overall contributed to strengthening global nonproliferation efforts by supplementing existing nonproliferation regimes including the Nuclear Non-Proliferation Treaty (NPT), the Missile Technology Control Regime and the Nuclear Suppliers Group, reinforcing diplomatic efforts toward and enhancing global awareness in WMD proliferation.

However, it should be noted that the Bush administration's other nonproliferation policies apart from PSI and the general attitude toward global nonproliferation have actually undermined nonproliferation regimes. The administration waited too long before starting negotiations with North Korea and Iran to seize the initiative and has been reluctant to cooperate with the international community on the Comprehensive Nuclear Test Ban Treaty and the Fissile Material Cut-off Treaty, which turned the NPT Review Conference in 2005 into a disaster. The paper argues that the administration should not try to justify what it has done about global nonproliferation based solely on claims that the PSI has been a tremendous success.

Finally, the paper proposes the four recommendations for the U.S. government to consider in order to make the initiative more effective and sustainable:

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5. The author's interview with an official at the International Security and Nonproliferation Bureau, the State Department on October 19, 2005.

6. The author's interviews with Japanese officials at the Japan Coast Guard in Tokyo on December 21, 2005.

- Make successes more transparent;
- Continue to strengthen the legal basis of PSI;
- Introduce more “organization”; and
- Sustain diplomatic efforts to engage key countries.

## WHAT IS PSI?

PSI is one of the most important nonproliferation efforts launched by the Bush Administration. Though the main activity is to interdict ships suspected of carrying WMD in the territorial waters of PSI participants, PSI involves more activities than interdictions and has expanded its activities as the initiative has grown. This section explains types of PSI activities, three key concepts of PSI and how PSI started as a major nonproliferation policy of the Bush Administration.

### PSI Activities

The core activity of PSI is an actual interdiction operation against a ship, plane or cargo suspected of carrying WMD. Beyond that, PSI is a whole set of activities taken by countries which voluntarily agree to commit to its principles, the Statement of Interdiction Principles, to create an international cooperation platform for possible interdiction operations.

Once a country joins PSI, there are various activities it may participate in. Joint exercises are a major focus of PSI. They include maritime/ground/air interdiction exercises, command post exercises (CPX) and gaming exercises. Through these exercises and Operational Expert Groups (OEG) meetings, countries figure out what they need to improve and discuss what each country should do.

Besides these exercises and meetings, PSI includes participants' routine efforts to review whether their national authorities and assets are sufficient to conduct interdiction operations if necessary. Interdiction operations are not achieved in a day. Countries have to figure out which agencies are responsible, how to coordinate them and which assets should be deployed in the case of interdiction. Countries also have to understand to what degree their domestic legal system can support PSI operations. As a military unit without proper training cannot perform in the actual battlefield, interdiction operations will fail without these reviews and preparation by each participant.

Intelligence is also a critical pillar of PSI activities as an accurate and effective interdiction can be conducted only when PSI participants acquire and share specific intelligence on a suspected ship, plane and cargo. Furthermore, “Ship Boarding Agreements” which the U.S. signed bilaterally with six countries, e.g., Belize, Cyprus, Croatia, Liberia, Marshall Islands and Panama, are what strengthens PSI. Under the agreements, the U.S. can board, search and possibly detain ships with these parties' national flags.<sup>7</sup>

PSI has expanded its activities to the area of law enforcement including the finances of WMD proliferators. In the U.S., Executive Order on June 29, 2005, *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters*

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7. The website of the Department of State. See <http://www.state.gov/t/np/c12386.htm>.

was issued in order to establish the presidential authorization to freeze the entities which may finance WMD proliferators.<sup>8</sup>

Finally, it is important to note that PSI activities are actually not limited to PSI participants. For example, a country which does not want to fully commit to the Statement of Interdiction Principles can still join PSI exercises. A non-PSI country can even play a role in actual interdiction. For example, on a request from the U.S. government, the Chinese government once agreed to interdict a cargo plane which was suspected of transporting missile parts from Iran to North Korea.<sup>9</sup>

### **Central Concepts of PSI**

PSI is a non-traditional way to counter WMD proliferation threats. There are three essential concepts which make PSI a unique effort compared to conventional non-proliferation measures, e.g., the Nuclear Nonproliferation Treaty (NPT), the Biological and Toxin Weapons Convention (BWC) and the Chemical Weapons Convention (CWC).

First, PSI is not an organization but a set of activities.<sup>10</sup> The traditional nonproliferation measures are mostly embedded in “organizations.” A country is obliged to comply with legally binding agreements when it becomes a member. On the other hand, PSI does not entail either legal obligation or membership. It is designed in a way that countries can join PSI easily and start with what they can do. All that a country has to do to join PSI is to declare its political commitment to the PSI principles. A diplomatic note to the U.S. is preferable but not necessary. A country is also regarded as a PSI participant if a senior official publicly states the country’s commitment to the PSI principles.<sup>11</sup> After joining PSI, a country participates in some activities according to its preference and capability.

Second, PSI is a non-traditional multilateral mechanism; it is a U.S.-led coalition of the willing. The U.S. proposed the idea of PSI to “like-minded” countries first and, together with these countries, the U.S. has rallied support from other countries which come to agree to the idea. Reaching a consensus among participants, which is often the heart of multilateralism, is disregarded in PSI.

Third, PSI is an initiative to encourage countries to take proactive actions, not one to prohibit them from taking certain actions or to urge them to obey certain rules. NPT is a treaty to restrain member states from transferring and receiving nuclear weapons and to order them to accept the IAEA safeguards. Both BWC and CWC prohibit any country from producing biological and chemical weapons. However, if we look at the PSI principles, all we can find are verbs urging one to be proactive, such as “commit,” “undertake,” and “be willing to.”<sup>12</sup> This means that, while the conventional nonproliferation treaties play some roles just by their existence,

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8. Interview in Washington, DC on October 19, 2005 and Under Secretary Robert Joseph’s speech at the Institute of Defense and Strategic Studies on August 15, 2005 [<http://singapore.usembassy.gov/081505.html>].

9. David Sanger, “U.S. Widens Campaign on North Korea,” *The New York Times*, October 24, 2005.

10. The website of the Department of the State. See <http://www.state.gov/t/np/rls/fs/46839.htm>.

11. Interview in Washington, DC on October 19, 2005.

12. The Statement of Interdiction Principles. See <http://usinfo.state.gov/products/pubs/proliferation/#future>.

PSI becomes effective only when countries proactively take actions in accordance with the PSI principles.

### The Origin of PSI<sup>13</sup>

The essential idea of PSI, interdiction by a coalition of the willing, originated in the Bush administration's fundamental skepticism of international organizations and its recognition of the need for more proactive measures against WMD proliferation.

Since the beginning, the Bush administration has maintained some reservations about multilateralism in the field of nonproliferation and has pursued a more proactive approach. In "Promoting the National Interest," written by Condoleezza Rice during the 2000 presidential campaign, which formulated primary disciplines for the administration, we can already see skepticism about the effectiveness of multilateral agreements on WMD proliferation issues, such as the Comprehensive Test Ban Treaty.<sup>14</sup> *National Security Strategy of the United States of America* declares that "U.S. can no longer solely rely on a reactive posture as we have in the past" against WMD threats. In the war in Iraq, we saw the administration's determination to go with a coalition of the willing, without waiting until multilateralism works, in order to counter WMD threats.

*National Security Strategy of the United States of America 2002* illustrated the administration's interest in interdiction by saying "[w]e will . . . when necessary, interdict enabling technologies and materials."<sup>15</sup> This was more expressly laid out in the *National Strategy for Combating Weapons of Mass Destruction* as "[e]ffective interdiction is a critical part of the U.S. strategy to combat WMD and their delivery system."<sup>16</sup> Among all measures for nonproliferation, interdiction was put in the first place in this strategy. Then, an incident occurred, which made the administration more convinced about the importance of interdiction. In December 2002, Spain, at the initiative of the U.S., interdicted a suspected ship traveling east of Somalia on the high seas and found that the ship carried 15 Scud missiles from North Korea to Yemen. However, as the government of Yemen assured that these missiles were purely for defense purposes and WMD transportation itself was not a violation of international laws, Spain and the U.S. could do nothing but allow the ship to continue.<sup>17</sup> Through this frustrating experience, the administration identified the need to create a new effective mechanism which makes interdiction more effective to prevent WMD proliferation.

### How It Started

PSI is unique not only in its concept but its birth. Unlike some other initiatives, PSI was blessed with both strong political commitment and rigid bureaucracy

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13. The idea on the origin of PSI came from the author's interview with a Japanese official in Tokyo on December 23, 2005.

14. Condoleezza Rice, "Promoting National Interests," *Foreign Affairs*, vol. 79 no.1 (January/February 2000), p. 59.

15. *National Security Strategy of the United States of America* (September 2002), p. 14.

16. *National Strategy for Combating Weapons of Mass Destruction* (December 2002), p. 2.

17. Rebecca Weiner, "Proliferation Security Initiative to Stem Flow of WMD Material," Center for Nonproliferation Studies at the Monterey Institute of International Studies (July 16, 2003) [<http://cns.miis.edu/pubs/week/030716.htm>].

support.<sup>18</sup> The political leadership, namely then State Department Under Secretary for Arms Control and International Security John Bolton, had a vision that the U.S. needed a new and more dynamic counter-proliferation approach. The Department of State quickly turned this vision into a concrete action plan. As a result, PSI was put into practice at a remarkable speed.

PSI was also able to garner support from other countries. One of the reasons why other countries were willing to cooperate with the U.S. on this initiative is how the U.S. approached them. The U.S. asked some governments for cooperation before the idea was finalized and shaped the plan with them. In other words, the U.S. left room for other countries to contribute to developing the idea. In addition, the U.S. chose the timing of the PSI launch very carefully so that it could effectively exploit “a political vacuum” created by the initial successful military operation in Iraq.<sup>19</sup> The first PSI meeting was held in Krakow, Poland, in May 2003 right after the statue of Saddam Hussein was destroyed by the Iraqi people and there was still optimism about prospects of the war in Iraq. Even Germany and France, which had been reluctant to cooperate with the U.S., were looking for opportunities to cooperate with the U.S. and PSI must have looked to be a perfect opportunity for them. At the end of Krakow meeting, President Bush publicly announced PSI with 10 countries including France, Germany, Italy, Netherlands, Poland, Portugal, Spain, UK, Australia and Japan.

## **WHERE IS PSI TODAY?**

This section evaluates where PSI is today. For the purpose of evaluation, the section first examines what kind of indicators of success should be used and then assesses what PSI has and has not achieved based on these indicators in the three years since its birth.

### **Indicators**

In order to evaluate how successful or unsuccessful PSI has been, ‘indicators of success’ should be defined. The most important and tangible indicator would be the number of actual interdiction operations. However, as PSI includes not only actual interdictions but a set of activities aiming at building a platform for countries to work together for interdiction operations, we need indicators other than the number of actual interdiction.

First, the number of countries who have committed to the PSI principles matters. As more countries join, the more effective interdiction operations become. In addition, it should be taken into consideration whether current PSI participants include “important” countries. Some countries are more important for the success of PSI than other countries when they have many flagged ships due to their ship registry policies or if they are in the region of proliferation concern. Second, PSI should be evaluated based on how each PSI activity has progressed so far. Major elements of PSI activities are joint exercises and meetings, participants’ routine

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18. The author’s interview with an official at the State Department in Washington, DC on November 2, 2005.

19. The story about the timing that the U.S. launched PSI was based on the author’s interview in Tokyo on December 23, 2005.

effort to prepare for future interdiction and intelligence. In addition, it is important to know how much industry has been involved in PSI activities as all transportation either by air, land or sea is operated by the private sector. Third, we need to look at the feasibility of PSI. PSI becomes more feasible for countries if there is a stronger international legal basis to back up its activities.

To sum up, the indicators of success are; 1) the number of actual interdictions, 2) PSI's global reach, 3) the level and frequency of PSI exercises and meetings, 4) the degree of implementation in the governments of PSI participants, 5) the progress of intelligence sharing, 6) the degree of public-private partnership and 7) an international legal foundation.

### 1) Actual Interdictions

In May 2005 on the PSI's second anniversary, Secretary Condoleezza Rice of the State Department mentioned, "[i]n the last nine months alone, the United States and ten of our PSI partners have quietly cooperated on 11 successful efforts."<sup>20</sup> She particularly explained how PSI "provided the framework for action in the 2003 interdiction of the ship BBC China."

In October 2003, the U.S. and UK alerted the German and Italian governments that BBC China, a German-owned ship near Italian territorial waters, was suspected of carrying WMD-related materials. The U.S. and British naval assets followed the ship and the Italian authorities interdicted it with the approval from the German government. The interdiction discovered that the ship was carrying uranium centrifuge to Libya and provided evidence of the existence of the AQ Khan network. Some critics however, including former State Department Assistant Secretary for Nonproliferation John Wolf, have raised doubts whether the interdiction was really a PSI operation, by claiming that it stemmed from previous efforts to trace the AQ Khan network.<sup>21</sup>

Though it could be true that PSI alone did not make this interdiction possible, these governments would not have been able to react quickly enough to interdict the ship within the participant's territorial waters without PSI.<sup>22</sup> As countries would surely become more hesitant to take aggressive actions once a ship sailed into the high seas due to a weak international legal basis for interdiction operations, the speed of interdiction is critical. Every process necessary for interdiction, e.g., alerting to other governments, contacting a ship's owner to get its approval for interdiction, conveying the approval from one government to another, and deploying naval assets for interdiction, takes time within a huge bureaucracy. Unless the governments routinely simulate these processes, speedy interdiction is impossible. Therefore, though PSI might not be a single contributor to the BBC China interdiction, it is fair to conclude that PSI actually helped the governments move quickly enough to achieve the interdiction.

There still remain doubts about other 10 successful interdiction operations which Rice mentioned. State Department spokesperson disclosed that among 11 operations, two cases were related to North Korea and several cases involving

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20. Remarks on the Second Anniversary of the Proliferation Security Initiative by Secretary Condoleezza Rice (May 31, 2005) [<http://www.state.gov/secretary/rm/2005/46951.htm>].

21. Wade Boese, "Key U.S. Interdiction Initiative Claim Misrepresented," *Arms Control Today* (July/August 2005) [[http://www.armscontrol.org/act/2005\\_07-08/Interdiction\\_Misrepresented.asp](http://www.armscontrol.org/act/2005_07-08/Interdiction_Misrepresented.asp)].

22. Interview in Washington, DC on October 19, 2005.

countries of proliferation concerns including Iran.<sup>23</sup> The State Department, however, has claimed that they cannot reveal the details of these operations as sensitive intelligence information is involved.<sup>24</sup> This claim may be true. Officials in the Japanese Ministry of Foreign Affairs (MOFA) and the Japan Coast Guard (JCG) told the author that they knew only about one other operation.<sup>25</sup> If the Japanese government, one of the original PSI countries and the U.S.'s closest allies, does not know about nine out of 11 operations, how credible could this record be? These officials also said that there had been no actual interdiction operations involving the Japanese government.<sup>26</sup>

## 2) Global Reach

As of November 2005, the State Department said that PSI had gained commitment from over 70 countries, mainly from Europe, Latin America, Central Asia and Pacific.<sup>27</sup> Regarding "important" countries in terms of ownership, PSI has covered major ship registry countries, such as Belize, Cyprus, Croatia, Liberia, Marshall Islands and Panama, through bilateral Ship Boarding Agreements. Since most of the ships have flags of these ship registry countries, it is said that 80% of the ships in the world are technically under PSI.<sup>28</sup> This is a significant achievement for the PSI.

As for countries in the region of proliferation concerns, there have been both successes and failures in negotiations to bring these countries into PSI. In Northeast Asia, where North Korea is located, China and South Korea have not yet joined PSI, meaning that they have not officially committed to the PSI principles. However, in December 2005, the South Korean government agreed to join some PSI-related activities. Among eight PSI-related activities the U.S. had asked South Korea to take part in, South Korea accepted five of them including the dispatch of government officials as observers of PSI exercises and the inclusion of anti-proliferation drills in an annual South Korea-U.S. military exercise.<sup>29</sup> In South Asia, where Pakistan is located, Secretary Condoleezza Rice mentioned in her testimony on the U.S.-India Civilian Nuclear Deal that India was showing its intention to participate in PSI.<sup>30</sup> There has also been a progress in Southeast Asia, such as Singapore and Philippines, but for PSI to be more successful, more Southeast Asian countries need to join as the region possesses one of the busiest seaways. Despite Rice's visit in March 2006, Indonesia rejected a U.S. request to join the PSI, claiming that PSI is not truly multilateral, PSI is against the 1982 International Convention on the Law of Seas, and that PSI would interfere in Indonesia's sovereignty.<sup>31</sup> Neither Thailand

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23. *BBC Monitoring Asia Pacific-Political*, "U.S. has intercepted N Korea-bound nuclear, chemical materials—spokesman. (June 1, 2005).

24. Interview in Washington, DC on October 19, 2005.

25. Interview in Tokyo on December 21, 2005.

26. *Ibid.*

27. Interview in Washington, DC on October 19, 2005.

28. The author's phone interview with an official at the Ministry of Foreign Affairs in Tokyo on December 27, 2005.

29. *BBC Monitoring Asia Pacific-Political*, "South Korea consents objectives of U.S. proliferation initiative," (January 24, 2006).

30. Remarks of Secretary of State Condoleezza Rice at the Senate Foreign Relations Committee on the U.S.-India Civil Nuclear Cooperation Initiative (April 5, 2006), p. 5.

31. *BBC Monitoring Asia Pacific-Political*, "Indonesia rejects U.S. request to join Proliferation Security Initiative" (March 18, 2006).

nor Malaysia is a PSI participant yet, although both countries have been close partners on the Global War on Terror. In the Middle East, only Iraq seems to be officially committed to PSI.

### 3) The Level and Frequency of PSI Exercises and Meetings

There is no doubt about the effectiveness and frequency of PSI exercises and meetings. First of all, the first joint exercise, “Exercise PACIFIC PROTECTOR,” an Australia-led maritime exercise in the Coral Sea, was held at remarkable speed after PSI was launched: it took only four months. Second, joint exercises have been held frequently. There have been already 23 exercises within three years, which can be counted as twice every three months. Third, the exercises have effectively covered all types of interdiction. At the early stage, most of the exercises were focused on maritime. However, as PSI participants gained confidence in maritime interdiction, they shifted the focus to ground and air. The exercises now include ones to simulate how to make political decisions regarding interdiction, called CPX, command post exercises. Fourth, as exercise participants carefully review lessons learned after every exercise, countries have accumulated expertise on interdiction which will be extremely useful in an actual interdiction. Finally, PSI exercises have built a foundation for international cooperation. This can be well described in a comment by a Japanese official: “Through PSI exercises, we now have deeper understandings of what other governments think and how they act in case of emergency, which is going to be critical information when various governments have to work together in a stressed situation.”<sup>32</sup> In addition, Operational Expert Groups (OEG) meetings, where countries discuss what they should do next, have been held 15 times so far and they have also contributed to building an international platform.

### 4) The Degree of Implementation

The degree to which a government has implemented PSI can be evaluated based on how much it practices the following three PSI principles: 1) “Undertake a review and provide information on current national legal authorities to undertake interdictions at sea, in the air or on land . . .” 2) “Identify specific national assets that might contribute to PSI efforts . . .” 3) “. . . Establish appropriate internal government processes to coordinate PSI response efforts.”<sup>33</sup> Although it would be ideal if this paper could evaluate cases of as many governments as possible, due to the limitation of this research, the paper evaluates the degree of PSI implementation based on the Japan’s case.

Japan has begun to implement all three principles. After the PSI meeting in Krakow, the Japanese government, mainly the Ministry of Foreign Affairs (MOFA), the Japan Defense Force (JDF) and the Japan Coast Guard (JCG), reviewed all possible national legislation related to nuclear, chemical and biological materials, and made their best effort to figure out what Japan could and could not do in the PSI framework. Through these reviews, they figured out that existent national legislation was broad enough to support most of the PSI activities. The Japanese have currently

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32. The author’s interview with officials at the Japan Defense Agency in Tokyo on December 26, 2005.

33. The Statement of Interdiction Principles. See <http://usinfo.state.gov/products/pubs/proliferation/#future>.

discussed whether those legislation should be strengthened to cover more activities and operations.<sup>34</sup>

Regarding assets and interagency cooperation, while MOFA, the JDF and the JCG have figured out the assets and responsibilities of each agency to some extent, a consensus on these issues has not been reached in a broader community including the Ministry of Land, Infrastructure and Transport (MLIT), the Ministry of Economic, Trade and Industry (METI), which is in charge of export control, the National Policy Agency and the customs. There is especially much to do about interagency coordination for air interception operations. Unlike maritime interdiction which “national security agencies,” MOFA, the JCG and the JDF, can cover most of such operations, air interception needs to involve MLIT which is in charge of air traffic control.<sup>35</sup> For MLIT, air interdiction prevents them from conducting their most important mission: to maintain safe air traffic. In addition, MLIT still regards PSI as a matter for national security agencies, not theirs. It will therefore take time to engage these non-national security agencies in PSI activities.

It should be noted that we cannot draw too many conclusions about general PSI implementation that PSI has been well implemented, as this evaluation is only based on Japan. It should be also noted that U.S.-led missions mean more to Japan than to other countries as the relationship with the U.S. is critical for Japan’s security and stability.

## **5) Intelligence Sharing**

There are two types of intelligence sharing in the case of PSI; interagency sharing and intergovernmental sharing. Both the U.S. and Japanese officials interviewed confirmed that the degree of intelligence sharing among relevant agencies had greatly progressed. According to a JCG official, the most important factor for intelligence sharing among agencies is trust and affinity between personnel in charge, which PSI has created through routine daily communication “far beyond original expectation.”<sup>36</sup> Though intergovernmental intelligence sharing has also progressed, there seems to remain strong hesitancy to share intelligence with other governments, especially with non-ally governments.

## **6) The Degree of Public-Private Partnership**

It is the private sector that carries out practically the entire global transportation, either on air, land or sea. It is therefore essential to involve the private sector in PSI activities for two reasons. First, without industry’s perspectives and insights, effective interdiction operations cannot be realized. Second, PSI should be operated in a way to minimize cost that the industry has to bear by taking the industry’s concerns into account. Otherwise, the industry may stop cooperating with PSI.

There have been two OEG meetings which were aimed at increasing PSI governments’ capability to cooperate with key industry partners. At the OEG meeting in Denmark, October 2004, PSI core participants held discussions with players in the container industry.<sup>37</sup> The container industry explained their concerns on how they

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34. Interview in Tokyo on December 21, 2005.

35. Interview in Tokyo on December 26, 2005.

36. Interview in Tokyo on December 21, 2005.

would be compensated in a case of false interdictions.<sup>38</sup> They also gave insights on how to open containers effectively.<sup>39</sup> In September 2005, players in the air cargo industry explained to government officials that passenger planes are more likely to be used as a means of illegal trafficking than cargo planes.<sup>40</sup> Meetings between U.S. government officials and key industry representatives have been also held.<sup>41</sup>

Although discussions between the public and private sector on PSI have started, both American and Japanese officials emphasized that the public-private partnership is the area which should be more improved.<sup>42</sup> The governments should actively engage the industry in building the PSI system that can effectively interdict suspected ships/cargos/planes while protecting the industry's interests.

## 7) An International Legal Foundation

One of the harshest accusations at the early stage against PSI was that it might violate international laws. Especially when some administration officials suggested that interdictions of suspected ships could be justified by the logic of "self-defense,"<sup>43</sup> there were a few reports, e.g., one by Bipartisan Security Group, surfacing to warn the administration about the grave consequences of pushing PSI without legal basis.<sup>44</sup> Regarding interdictions in territorial waters outside internal waters, interdictions could contradict with the right of "innocent passage" that is guaranteed by Article 19 of the Law of the Sea Convention.<sup>45</sup> Interdictions on high seas are legal only if the flag state authorizes, which countries of proliferation concerns would not do.<sup>46</sup> There are countries, notably China and Indonesia, which have not joined PSI, claiming that it conflicts with international law.<sup>47</sup> These suggest that, if PSI has a stronger international legal basis, more countries would join PSI and operate without struggling with legal interpretation.

There are two major developments in the international law arena for PSI. One is UN Security Council 1540, *Non-proliferation of weapons of mass destruction*, which calls for domestic efforts to deal with WMD finance and international cooperation on WMD proliferation.<sup>48</sup> The U.S. government was deeply involved in drafting the resolution and negotiating with other UN members and passed this resolution in April 2004.

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37. The author's phone interview with a U.S. government official in November 2005.

38. The author's interview with an official at the Ministry of Foreign Affairs in Tokyo on December 27.

39. Ibid.

40. Ibid.

41. The phone interview in November 2005.

42. Interview in Washington DC on November 2, 2005 and interview in Tokyo on December 27, 2005.

43. Weiner.

44. Bipartisan Security Group Policy Brief, "The Proliferation Security Initiative: The Legal Challenge," (September 2003).

45. Benjamin Friedman written for the Bipartisan Security Group, "The Proliferation Security Initiative: The Legal Challenge" (September 4, 2003), p. 1.

46. Ibid., p. 3

47. The author's personal communication with an official at the Embassy of the People's Republic of China in Washington, DC on December 13, 2005.

48. United Nation Security Council Resolution 1540 [<http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>].

The other is the amendment of the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). In October 2005, at the International Maritime Organization (IMO) diplomatic conference, SUA signatory countries agreed to amend SUA to criminalize terrorism and WMD proliferation and to allow signatory countries to interdict suspected ship on the high seas,<sup>49</sup> despite oppositions from non-NPT countries such as India, Pakistan and Israel.<sup>50</sup> Though many countries have struggled to figure out how they can maintain consistency between this rather radical amendment and their national legislation, the existence of the SUA amendment can be a great help to push PSI efforts.

To conclude, PSI has achieved a lot, “much more than originally expected,”<sup>51</sup> in terms of the number of participatory countries, the level and frequency of activities such as joint exercises and meetings. Moreover, PSI has played a role as a driving force to encourage its participants to review and amend national legal authorities, procedures, and inter-agency cooperation for more effective interdiction operations. However it is also true that there are still challenges in every aspect which PSI should overcome. I will examine these challenges more in detail in the next section.

## CHALLENGES

There are three big challenges that could undermine the effectiveness and sustainability of PSI. First, in order to enhance its effectiveness, PSI needs to reach more critical countries in the region of great proliferation concern. Critical countries include China and South Korea in Northeast Asia, India in South Asia, Indonesia and Malaysia in Southeast Asia, none of which have joined PSI. This paper particularly looks at China as a case study and examines why China has been reluctant to join PSI. Second, PSI has issues in validation of its success due to its secretive nature. If the success is not more clearly defined and announced, PSI participants may have a hard time maintaining their morale. Third, PSI faces a dilemma in sustaining its flexible voluntary nature over a long period.

### 1) China

China is located next to North Korea, one of the world’s largest missile exporters, a suspected WMD exporter and an importer of WMD related materials. North Korean commercial entities extensively use Chinese ports and railways.<sup>52</sup> China also appears to have the biggest leverage over North Korea through its political and economic relationship. For example, China has 40% of the North Korean trade and it is a dominant oil supplier to North Korea.<sup>53</sup> Therefore, if China joined PSI and actively participated, the probability that shipments from and to North Korea would be interdicted would increase. China’s participation would also give North Korea a signal that China might use some of its leverage to pressure North Korea if North Korea transported WMD, missiles and related materials. Furthermore, China’s par-

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49. The author’s email communication with a legal advisor at the Department of State.

50. Interview in Washington, DC on October 19, 2005.

51. Ibid.

52. James Cotton, “The Proliferation Security Initiative and North Korea: Legality and Limitations of a Coalition Strategy,” *Security Dialogue*, vol. 36 no. 2 (June 2005), p. 196.

53. The author’s interview with a Chinese researcher in Washington, DC on December 9, 2005.

ticipation will have a symbolic meaning for the U.S.-led coalition of the willing. The U.S. could argue that the concept of PSI is truly universal and accepted by everyone, not only by the U.S. allies. China's participation might encourage other countries to join PSI, which have so far resisted. There is no doubt that China is one of the most critical countries which PSI should reach.

Despite diplomatic efforts by the U.S. and Japan acting as the U.S.'s unofficial envoy in the region, China has been reluctant to join PSI. Officially the Chinese government has said that "China feels concerned about the legitimacy of the interdiction measures taken by PSI participants beyond the international law and their possible consequences"<sup>54</sup> and it will not join PSI as long as there is "a conflict between PSI and international laws."<sup>55</sup> As examined in the previous section, PSI operations could violate international laws. PSI is, however, designed in a way that participant countries can "take specific actions in support of interdiction efforts...to the extent their national legal authorities permit and consistent with their obligations under international law and frameworks"<sup>56</sup> so that countries can choose not to take part in PSI activities which they think infringe international laws. In addition, China is not generally known for championing international laws or rules. It may be reasonable to assume that this Chinese claim on international laws could perhaps be used to cover up other real reasons. Three reasons why China has not joined PSI so far will be discussed below.

### **North Korea**

Officials and academics whom the author interviewed in Japan and the U.S. suggest that China does not want to join PSI because it is afraid that its participation might increase a sense of isolation in North Korea and undermine China's efforts on the Six Party Talks. The U.S., Japan and South Korea are the countries taking a tough stance on North Korea, requiring it to eliminate its nuclear programs, while China and Russia play a balancing role between North Korea and the former countries by siding with North Korea if necessary. Even though PSI in principle is not aimed at any specific country, it is obvious that PSI particularly targets North Korea in practice and North Korea knows it. If China were to join PSI, it could upset the balance among the six parties, which may only harden the North Korean attitude toward the nuclear negotiation.

A Chinese expert on Northeast Asian security stresses that China views policy towards North Korea in a broader context than the Six Party Talks.<sup>57</sup> There has been an increasing political and economic gap between two Koreas. In the 1970s, North Korea had a stronger military and economy than South Korea. However, due to the collapse of the Soviet Union, worsening relationship with the U.S. and its ill-managed economic policies, North Korea's economic and security situation has been totally devastated. North Korea has now to ask South Korea for food and electricity and does not have any security guarantees other than through its ideology of self-help. With the growing imbalance between two Koreas, China has tried to maintain regional balance through its diplomacy, which could include its decision thus far, at least, not to participate in PSI.

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54. The website of Ministry of Foreign Affairs of the People's Republic of China [available at: <http://www.fmprc.gov.cn/eng/wjzb/zzjg/jks/kjlc/fkswt/fksaq/t141208.htm>].

55. Interview in Washington, DC on December 13, 2005.

56. The Statement of Interdiction Principles.

57. Interview in Washington, DC on December 9, 2005.

### ***Distrust in a U.S.-led Interdiction***

In 1993, the Chinese vessel *Yinhe* was detained in the Middle East by the U.S., alleged to be carrying chemical warfare precursors to Iran.<sup>58</sup> It turned out that the ship was purely a commercial one and did not carry anything related to weapons of mass destruction despite reports from the U.S. intelligence services. For the Chinese, this experience has been remembered and regarded as a “shame and disgrace.”<sup>59</sup> They have since developed deeper distrust towards U.S.-led interdictions including PSI, another U.S.-led initiative to strengthen interdiction operations that could possibly target China.

### ***Not Ready Yet?***

The idea of PSI is that a country can decide how to take part in PSI activities according to its willingness and capability. For example, a country can just send observers to a joint PSI exercise if it feels it does not have enough naval or air capabilities to dispatch. For China, however, this may not even be an option. Although it has increased its defense budget by double-digits annually for the past ten years,<sup>60</sup> China may not have sufficient naval capabilities to substantially contribute to PSI activities. It could be assumed, and a U.S. State Department official also agreed, that the Chinese pride of being seen as a major power may not allow them to join something which could result in revealing its lack of capability.

Another Chinese concern is that it may be pushed further to tighten its export control system. Chinese state-owned corporations have been known to be engaged in illicit nuclear arms transfers to Pakistan, Iran, North Korea and Libya.<sup>61</sup> A Chinese expert on nonproliferation told the author that, although China had made great progress in the field of export control, there still remained major problems such as a lack of human resources and inter-agency cooperation.<sup>62</sup> The international community has not been satisfied with how China deals with export control and has not allowed China to join the Missile Technology Control Regime (MTCR).<sup>63</sup> As PSI is an initiative to stop the transfer of the WMD and related materials which might evade export control, a country like China is likely to wait to join PSI until its export control system gains international acceptance.

## **2) Ambiguous or Secret Success**

PSI is not an organization but a set of activities, so whether PSI remains or not depends on participants' continuous effort. If participants come to understand the value of this initiative, they are more likely to continue to commit to PSI. Particularly, if a country has a chance to actually interdict a suspected ship and find WMD

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58. Mark J. Valencia, *The Proliferation Security Initiative: Making Waves in Asia*, Adelphi Paper, International Institute for Strategic Studies, p. 39.

59. The author's interview with a Chinese expert on nonproliferation in Beijing on January 5, 2006.

60. China's Defense Budget on the website of GlobalSecurity.org [<http://www.globalsecurity.org/military/world/china/budget.htm>].

61. Joseph Cirincione, Jon Wolfsthal and Miriam Rajkumar, *Deadly Arsenal: Nuclear, Biological, and Chemical Threats Second Edition* (Carnegie Endowment for International Peace; Washington, DC, 2005) p. 165.

62. Interview in Beijing on January 5, 2006.

63. Nuclear Threat Initiative homepage, see <http://www.nti.org/db/china/mtcrg.htm>.

technologies exported to a state of proliferation concern, that country will more appreciate the role of PSI. On the other hand, if a country keeps its effort to get prepared for possible, but never-happening interdictions, the country may start having reservation about the importance of PSI. A Japanese official said, "It is important to practice in order to win a game. If there is no game for a long period, however, we start to wonder why we are practicing only for practices. We need a game."<sup>64</sup> The problem about PSI is that "no game" may also indicate success. One of the PSI's expected outcomes is to deter states and non-states actors from transferring WMD so that countries do not have to operate interdictions, or play a game, in the first place. The better the mechanism works, the fewer actual interdictions are necessary, which may discourage participant countries to keep working hard on PSI's activities.

When a country does not have a "game" to play, its morale can be better sustained if other countries share their "game" experiences. However, sharing also presents some difficulties. A U.S. State Department official said the details of the successful PSI interdiction cases cannot be revealed since they include sensitive intelligence whose sources should be strictly protected.<sup>65</sup> The U.S. may not be able to make the details public because the interdiction operations may contain some violations of international laws which could undermine the legitimacy of the PSI. In either case, actual interdiction experiences, success of PSI, are kept secret and cannot be used as morale booster for participants.

### 3) Implementation

Driven by the strong political leadership and followed up by strong bureaucratic support, PSI was put into practice at a remarkable speed and has so far enjoyed rapid developments in the quality and quantity of joint exercises and the level of international cooperation. From now on, PSI should move from the development phase to the maintenance phase whereby each participant government makes routine effort to sustain this non-organizational initiative. The most clear-cut way to maintain this initiative is to create a new international organization with membership for PSI. Creating an organization with full-time personnel could allow the initiative to automatically survive for a while.<sup>66</sup> However, some policy-makers argue that creating an organization is not currently an option since it could jeopardize one of the PSI's most important characteristics: flexibility. Thus, PSI needs a mechanism to institutionalize its activities in every participant without creating a formal institution, which will be explored in the last section on recommendations.

## BY-PRODUCTS

Like any foreign policy, PSI has produced some by-products. The case study of Japan demonstrates that PSI has changed domestic political dynamics in the government to some extent. PSI has also changed the relationship between countries and the U.S. This section identifies these by-products of the PSI and examines

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64. Interview in Tokyo on December 27.

65. Interview in Washington DC on October 19, 2005.

66. The author's interview with an official at the State Department on November 3, 2005.

whether they have a positive or negative impact on the prospects generally. It should be noted that two of the consequences examined here are from Japan's experience and that other governments may have had different experiences.

### **Changes in Political Dynamism**

Among PSI's activities, joint exercises are most important as they help countries prepare for actual interdictions and they have a deterrent effect on WMD proliferators. At the same time, exercises involving the deployment of naval, ground and air forces beyond territories can be sensitive especially when conducted in a region where mutual rivalry exists among countries. This is especially true of Japan, whose neighbors suffered under Imperial Japan's military rule and still have a deep distrust of the Japanese military.

Japan also has domestic restraints on the deployment of the Japanese Self Defense Forces (JSDF). The Japanese constitution prohibits Japan from having any military capabilities and from executing military actions except for the purpose of self-defense.<sup>67</sup> While these have gradually changed, the Japanese public still holds strong reservations about the use of the JSDF. In addition, under the current interpretation, the Japanese constitution forbids Japan engaging in "collective defense," meaning that Japan cannot join military operations with other governments. All these factors have made the Japanese government extremely careful in sending JSDF abroad. Japan dispatched a maritime mine sweeper to the Persian Sea in 1992 as a Peace Keeping Operation (PKO) only after it realized that Japan was not even on the list of countries that Kuwait showed appreciation for the Gulf War, despite the USD130 million financial contribution. In the 1990s, though the Japanese government gradually increased the number of overseas detachments, all were PKOs. The only joint military exercises Japan joined were those organized by the U.S. in the U.S. or Japanese territory under the framework of the U.S.-Japan Security Alliance.

These regional and domestic concerns about military exercises involving the JSDF greatly influenced how the Japanese government responded to two PSI joint exercises in Asia: a Japan-led maritime exercise TEAM SAMURAI in 2004 and a Singapore led maritime/ground exercise DEEP SABRE in 2005. TEAM SAMURAI exercise was delayed two months. Some people said that it was because the Japanese government was concerned about the possible reaction from South Korea and China, both of which were not PSI participants.<sup>68</sup> The real reason, according to a Japanese official, was that it took longer than expected for the Japanese government to solve the domestic issue of collective defense. Even in exercises, Japan cannot join military operations with other countries as the constitution denounces the

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67. Article 9 of the Constitution says "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." (Available at the website of the Prime Minister of Japan and his Cabinet; [http://www.kantei.go.jp/foreign/constitution\\_and\\_government/frame\\_01.html](http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html)) Although a current interpretation of Article 9 is that it allows Japan to have military forces for self-defense, there has been a long controversy over the constitutional legitimacy of the Self Defense Forces.

68. Mark Valencia, "Japan in a corner over interdictions at sea," *International Herald Tribune* (October 21, 2005).

right of collective defense. Therefore, the Japanese government had to design the exercise in a way that Japan would not infringe or violate the rule of no collective defense. The solution was to run two scenarios simultaneously: one was a scenario for Japan which the Japan Coast Guard (JCG) captured and inspected a suspected ship while guarded by the Japanese Maritime Self Defense Force (JMSDF) and the other was one for other countries, the U.S., France and Australia, to conduct interdiction operations using their naval forces, coast guards, and customs, so that Japan did not have join “military” operations with other countries.<sup>69</sup> With this exercise, the Japanese government figured out how to contribute to international security needs without changing the existing legislation despite great constraints.

DEEP SABRE was a Singapore-led exercise held in Singapore territorial waters and on the high seas. It was unprecedented for Japan to dispatch its naval assets outside Japanese and U.S. territories. As anything unprecedented is regarded as something to be avoided in the Japanese bureaucracy, the Japan Defense Agency (JDA) expected harder opposition in the government.<sup>70</sup> However, as PSI had gained political support as one of the most important initiatives for national and global security, they were able to get approval rather quickly for sending one naval vessel and two aircrafts to the exercise. The exercise, according to a JDA official, “let the Japanese government leap the high hurdle,”<sup>71</sup> which is to send non-PKO JSDF assets to overseas territory.

In both cases, the Japanese government did not receive any official complaints or concerns from its neighbor countries. Moreover, the government overcame legal and emotional barriers on the overseas use of the JSDF outside the frameworks of PKO and the Japan-U.S. Security Alliance. These experiences may allow Japan to use the JSDF more actively and effectively for maintaining global security from now on. This kind of change in domestic politics in the PSI’s participant government is what the U.S. government expects to see happen more.

### **Interagency “Confrontation”**

PSI urges participating countries to take actions necessary for possible interdictions. Interagency coordination is crucial to do so. PSI has mostly played a role to enhance interagency cooperation in the participant governments. However, there is undeniable evidence that PSI has also sometimes increased interagency “confrontation.”

A series of interviews with Japanese officials revealed that there is a clear division on how to approach PSI between the Ministry of Foreign Affairs (MOFA), the JCG, and the JDA. From the perspective of MOFA, PSI is an extension of export control mechanisms.<sup>72</sup> PSI is necessary when export control fails to prevent WMD and related material from being transported further. Therefore, PSI should be defined as law enforcement, not defense, and the main execution entity should be the JCG, the maritime police. On the other hand, the JDA believes that PSI is one of the defense activities and should be carried out mainly by the JSDF as WMD prolifera-

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69. Interview in Tokyo on December 26, 2005.

70. Ibid.

71. Ibid.

72. Interview in Tokyo on December 23, 2005 and Daisuke Kajimoto, “Proliferation Security Initiative: A Case Study of U.S.-Japan Alliance Cooperation within the Coalition of Willing,” a paper presented at the Henry L. Stimson Center on October 19, 2004, p. 5.

tion is a national security concern. "What if," a JDA official asked, "a suspected ship was armed? JCG does not have sufficient capability to deal with it. And we know foreign countries greatly expect our capability."<sup>73</sup> The MOFA and the JCG has always disputed with the JDA over who should be in charge and whose assets should be sent to exercises. The historical rivalry between the JCG and the JDA has only further inflamed the confrontation. The JDA officials even suggested that PSI should be coordinated by the Cabinet Secretary, not MOFA.<sup>74</sup>

Interagency confrontation is probably inevitable and a true interagency cooperation will emerge only after agencies overcome confrontation. In that sense, this newly created interagency confrontation in the Japanese government is not a bad sign.

### **Partially Restored Relationship with the U.S. and Other Countries**

The war in Iraq caused the U.S. to lose the trust and cooperation from its important allies in the Europe, mainly France and Germany. The war has also increased doubts about the nature of the U.S. leadership whether it is truly a "benevolent empire" as Robert Kagan advocated in 1998.<sup>75</sup> PSI has played a role for the U.S. to restore the damaged relationship with its old allies and lost legitimacy at least partially.

In this context, PSI's timing was perfect. It was announced in May 2003, right after the statue of Saddam Hussein was destroyed by the Iraqi people and before the world learned that there were no WMD programs in Iraq, which the U.S. had used as a reason to start war against Iraq. Even countries like France and Germany, which had harshly criticized the U.S. decision and had refused to cooperate with the U.S. coalition in Iraq, may have started to wonder whether their decision was right. PSI gave an excellent opportunity for these countries to show that they were with the U.S. as long as it acted as a benevolent leader. For the U.S., PSI provided a chance to prove that the U.S. did not lose its European allies.<sup>76</sup>

Since then, PSI has gained commitments from over 70 countries, a number that exceeds original expectations. Even countries which do not participate in the PSI, such as China, say "PSI principles are right and perfect"<sup>77</sup> and it "share[s] the concern of PSI participants over the proliferation of Weapons of Mass Destruction and their means of delivery and favors PSI's purpose of nonproliferation."<sup>78</sup> Experts on nonproliferation and U.S. foreign policy who are usually critics of the Bush administration even seem to welcome the idea of the PSI. PSI has enhanced U.S.'s ability to work with other countries and to establish a lasting international cooperation basis.<sup>79</sup>

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73. Interview in Tokyo on December 26, 2005

74. Ibid.

75. Robert Kagan, "Benevolent Empire," *Foreign Affairs* (Summer 1998) [<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=275>].

76. The idea that U.S. restored legitimacy as a global leader through PSI came from the author's discussion with a Japanese official.

77. Interview in Beijing on January 5, 2006.

78. The website of Ministry of Foreign Affairs of the People's Republic of China [<http://www.fmprc.gov.cn/eng/wjw/zjjg/jks/kjlc/fkswt/fksaq/t141208.htm>].

79. Interview in Washington, DC on October 29, 2005.

PSI has changed the way some governments behave. PSI has pushed the government to do what it otherwise could not do, e.g., breaking the taboo and forcing an agency to work with unfamiliar or even hostile agencies, at least in the case of Japan. These experiences ensure governments that participating in PSI helps them adapt to new security environments. PSI has also helped the U.S. restore the damaged relationship with some countries due to the war in Iraq, which would help the U.S. widen and strengthen the PSI's coalition of the willing. Overall, by-products that PSI has created are positive for prospects of PSI.

## **THE IMPACT OF PSI ON EXISTING NONPROLIFERATION REGIMES**

Even among opponents of the Bush Administration's nonproliferation policy, there seems to be a consensus that PSI is not a bad idea for addressing global nonproliferation. Joseph Cirincione, former Director of the Nonproliferation Program at Carnegie Endowment for International Peace said "it [PSI] is an excellent, though incomplete, step towards a more comprehensive and strengthened nonproliferation regime."<sup>80</sup> He is known to be one of the harshest critics of the recently proposed U.S.-India nuclear cooperation. Georgetown Professor Chester Crocker asserts that the administration has wrongly coped with post 9/11 security threats but regards the PSI as "a good precedent" for the administration to follow in rebuilding "smarter and broader approach."<sup>81</sup> While there are some criticisms on the PSI, they are mainly on its weak legal foundation, ambiguous "success" and a lack of key countries' involvement, all of which could be possibly improved.

This section examines whether and how PSI has contributed to strengthening global nonproliferation regimes. In order to do so, the section first defines nonproliferation. It then discusses how PSI supplements or contradicts other nonproliferation efforts. The section also argues that, though PSI has given a positive impact on global nonproliferation, the administration's other nonproliferation policies actually undermine nonproliferation regimes.

### **Definition of Nonproliferation**

Although there have been many detailed debates about the definition of nonproliferation or distinction between nonproliferation and counterproliferation, this article uses the following definition announced by the National Security Council in 1994 as it is one of the most comprehensive definitions among those available: nonproliferation is the "full range of political, economic and military tools to prevent proliferation, reverse it diplomatically or protect our interests against an opponent armed with weapons of mass destruction or missiles, should that prove necessary. Nonproliferation tools include: intelligence, global nonproliferation norms and agreements, diplomacy, export controls, security assurances, defenses and the application of military force."<sup>82</sup>

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80. Joseph Cirincione and Joshua Williams, "Putting PSI into Perspective," Carnegie Endowment for International Peace (April 27, 2005) [<http://www.carnegieendowment.org/npp/publications/index.cfm?fa=view&id=16827>].

81. Chester Crocker, "A Dubious Template for U.S. Foreign Policy," *Survival*, vol. 47, no.1 (Spring 2005), p. 66.

82. Henry Sokolski, *Best of Intentions* (Praeger; Westport, 2001), p. 94.

### **PSI's Contributions to Nonproliferation**

Overall, we could argue that PSI supplements other nonproliferation regimes and helps the regimes work more effectively. Fully implementing PSI would make three major contributions to nonproliferation. First, PSI could supplement the NPT and export control regimes. History shows that the NPT cannot completely prevent countries from developing nuclear weapons and PSI is designed to catch what neither NPT nor export control regimes can. In 1991, the international community discovered that Iraq, an NPT signatory since 1969, had clandestinely developed nuclear programs despite IAEA safeguards. Moreover, NPT has an inherent loophole to enable states to develop nuclear weapons even legitimately. Under Article IV and X, the NPT allows any country to develop civilian nuclear programs and gives signatory countries a right to withdraw from the treaty for “the supreme interests.” In other words, countries can legitimately develop civilian nuclear programs, withdraw from the treaty and then convert them into weapons. Therefore, the reality is that the NPT cannot stop a country from developing nuclear weapons if a country is determined to do so. Export control regimes, such as the Missile Technology Control Regimes and the Nuclear Supplier Group, also supplement the NPT. These regimes attempt to restrain transactions of sensitive equipment and material to, or from countries without appropriate IAEA safeguards. However, as these regimes are voluntary and non-state actors such as the AQ Khan network are simply beyond their scope, the effectiveness of the regimes is inevitably limited.

Second, to the extent that joint exercises or preparations for interdictions work as deterrence against proliferators, PSI could reinforce diplomatic efforts on nonproliferation. Libya is the example.<sup>83</sup> The U.S. and the UK had negotiated with Libya, attempting to persuade Libyan autocrat Muammar Gaddafi to give up WMD programs since the late 90s. Sanctions had been also imposed both from the U.S. and the UN on Libya. Gaddafi started to realize that WMD programs did not lead him to be a leader of the Arabs but instead harmed his leadership and the country. Then, the BBC China interdiction occurred in October 2003, which revealed the link between Libya and the AQ Khan network and, in December, Libya announced the renunciation of the WMD programs. Whether BBC China was purely a PSI interdiction<sup>84</sup> and how much this incident should claim for the victory is still largely debatable. However, we can fairly assume that the interdiction was one of the factors to make Libya realize that adhering to the WMD programs made no sense. It could be said that PSI helped push diplomatic efforts forward.

Third, PSI has helped brace international norms on nonproliferation. By urging governments to get prepared for possible interdictions and to reconsider strengthening international legal basis for more effective interdictions, PSI has enhanced global awareness toward WMD proliferation. UN Security Council Resolution 1540, which encourages member states to take appropriate actions against WMD proliferation, could be an example to show how much the international community is now aware of the importance of WMD nonproliferation.

### **Possible Contradiction to Nonproliferation**

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83. Regarding the debate about what really convinced Libya to give up its nuclear programs, see, Bruce W. Jentleson and Christopher A. Whytock, “Who ‘Won’ Libya: The Force-Diplomacy Debate and Its Implications for Theory and Policy,” *International Security*, vol. 30 no. 3 (Winter 2005/2006).

84. Boese (July/August 2005).

One negative impact that PSI could have on global nonproliferation would be on negotiations with North Korea. Whenever its neighbors engaged in PSI activities, North Korea took it as an offense and repeatedly denounced the countries' decisions. For example, North Korea defined the PSI maritime exercise TEAM SAMURAI conducted in Japanese territorial waters in October 2004 as the U.S. "scheming to prepare a pretext for the maneuvers to isolate and crush our Republic and for war provocation by using the provocative training as a momentum."<sup>85</sup> After South Korea agreed to join the PSI partially in December 2005, North Korea condemned South Korea's decision saying, "The South Korean authorities must immediately withdraw its decision to participate in the PSI exercise. . . . Otherwise, the South Korean authorities will take full responsibility for all consequences arising therefrom."<sup>86</sup> If the North Korean government decides to let its neighbors and the U.S. "take full responsibility,"<sup>87</sup> it is possible that North Korea might take more assertive actions including withdrawing from the Six Party Talks or even accelerating nuclear weapons programs. If that happens, unlike the Libyan case, PSI could end up triggering the collapse of nonproliferation efforts in this part of the world. Our hope, however, is that North Korea would be technologically discouraged in developing nuclear weapons by the PSI. North Korea still needs foreign assistance on nuclear technologies and fissile material and, if proliferators to North Korea were deterred by the PSI, North Korea might find it too difficult to pursue nuclear weapons alone and eventually give up.

### **The Administration's Overall Nonproliferation Policy**

PSI, the administration's featured nonproliferation policy, has contributed to global nonproliferation through supplementing the NPT and export control regimes, reinforcing diplomatic efforts and enhancing global awareness toward WMD proliferation. However, it should be noted that some of the administration's policies or attitudes on nonproliferation have actually undermined the nonproliferation regimes. The administration did nothing about Iran for its first four to five years and neglected the opportunity to negotiate with a more moderate Iranian government under President Khatami. In North Korea, the administration also did nothing for the first two years and gave North Korea a momentum to restart its nuclear programs.

The administration has opposed any arms control treaties which could restrict U.S. future armament including, the Comprehensive Nuclear Test Ban Treaty (CTBT) and the Anti-Ballistic Missile Treaty. The administration declared that it would no longer support a verifiable Fissile Material Cut-off Treaty (FMCT), a treaty to ban the production of fissile material for nuclear weapons and other nuclear explosive devices, in December 2004.<sup>88</sup> The most disastrous moment was the NPT Review Conference in May 2005. The 2005 Review Conference was supposed to discuss the progress and prospects "13 Steps for Disarmament," which was agreed at the

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85. *BBC Monitoring Asia Pacific*, "North Korean TV denounces South over participation in U.S. joint training" (February 19, 2006).

86. *BBC Monitoring Asia Pacific*, "North Korean reunification body denounces South-U.S. military exercises" (February 10, 2006).

87. *Ibid.*

88. State Department Press Release [<http://www.armscontrolwonk.com/204/fissile-material-cut-off-treaty-policy>].

2000 conference and aimed at urging nuclear weapon states to meet their disarmament commitments under Article VI of the NPT. As the steps included some to which the administration would never agree, such as the early entry into force of the CTBT, promotion of a verifiable FMCT and maintenance of the ABM Treaty, the U.S. delegation blocked any discussion on these steps. Due to the complete lack of U.S. interests and efforts, the conference ended without any conclusion for the first time in the history.

PSI should not be confused with these other nonproliferation policies of the Bush Administration. At the same time, the administration should not try to justify what it has achieved on global nonproliferation based solely on claims that PSI has been tremendously successful. PSI can never be more than just a supplement to existing nonproliferation regimes.

## **RECOMMENDATIONS TO THE U.S. GOVERNMENT**

Three years have passed since the PSI was launched. Though the PSI has been operated successfully based on initial enthusiasm, it is time for the U.S., as an advocate of the PSI, to take actions to make this initiative more effective and sustainable for a longer period. The following are recommended actions:

### **Make Successes More Transparent**

While exercises and meetings may have sufficiently motivated PSI participants to remain active about the PSI so far, PSI needs to move beyond them to sustain the participants' motivation from now on. The successful precedent would be the Missile Technology Control Regime (MTCR) as it has been maintained for about 30 years despite its nature as a voluntary coalition of the willing. The possible reason why the MTCR has survived and remains active would be that MTCR members know through experiences how effective the regime is and what the regime has achieved.<sup>89</sup>

To follow the same path as the MTCR, PSI's participants have to know about, and believe, the actual achievements of the PSI. As the PSI is aimed at preventing the transfer of WMD and related materials by interdictions, the most powerful and convincing evidence of achievements are actual interdictions. Though the argument that the details of interdictions cannot be revealed due to the inclusion of sensitive intelligence sources is understandable, the U.S. government should review this policy considering the trade-off between protecting intelligence and losing international support. If the U.S. government keeps the details of interdictions secret, the suspicion that the U.S. exaggerates achievements may grow among participants. Before this suspicion affects the motivation of PSI participants, the U.S. should share more about interdictions, at least with their operational counterparts.

### **Continue Efforts to Strengthen the Legal Basis**

The legal basis of the PSI has been greatly strengthened through the UN Security Council Resolution 1540, *Non-proliferation of weapons of mass destruction*, and the

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89. The author's interview with former Assistant Secretary of Arms Control and International Security at the Department of State, Avis Bohlen, on February 8, 2006.

amendment of the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). Particularly, the SUA amendment is critical to make the PSI more effective as it would allow signatory states to interdict suspected ship on the high seas.

However, there is still strong hesitation about signing the SUA amendment among PSI participants since this amendment would require many changes in national legislation. A Japanese official told the author that the boarding provision would be supported by changing the interpretation of existing legislation but Japan would probably need to amend legislation regarding WMD proliferation as an unlawful act.<sup>90</sup> The U.S. will probably need to continue to urge countries to sign the amendment. Otherwise, PSI activities that are legally legitimate will be limited within territorial waters.

### **Introduce an “Organization”**

As mentioned, PSI is not an organization but a set of activities. This approach has helped the PSI achieve much in a short period through frequently held exercises and meetings, as it allows countries to focus on actual activities not on adjustments or negotiations on rules and procedures, which would be necessary if it were an organization. The action-oriented approach of the PSI has successfully convinced the governments of PSI participants to review national legislation and assets so that they could effectively conduct interdiction operations in the future.

However, the approach carries the inherent weakness that the level of PSI activities totally relies on the motivation of participants. Especially, the de-motivation of the U.S. government would be a knock-out factor to the PSI. As the PSI was originally advocated by John Bolton, a major Republican figure, and has been a featured nonproliferation policy of the Bush Administration, PSI would be possibly paid much less political attention if the Democrats take over the oval office in 2008. Without strong support from the political leadership, PSI might fade away. The U.S. government should start considering a way to create some type of organization in order to keep this initiative alive without being subjected to the vulnerability of changing political administrations.

The model could be the MTCR, as Jofi Joseph wrote in *Arms Control Today*.<sup>91</sup> MTCR does not have an office but the French Ministry of Foreign Affairs carries out point-of-contact functions including the distribution of working papers to all members and the hosting of monthly expert meetings.<sup>92</sup> In addition, the MTCR has clear standards for membership. A country can join the MTCR only when the current membership agrees by consensus that the country meets the MTCR guidelines. PSI, therefore, could locate its virtual headquarter in the U.S. State Department and redefine the standards for a state to join PSI. Although clearer standards for partici-

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90. A phone interview in Tokyo on December 27, 2005. The same official told the author that though SUA has criminalized piracy and has had a boarding provision about it since 1988, Japan has not yet executed the boarding provision against a piracy ship on the high seas as it thinks national legislation to support the boarding is still weak. It would be difficult for countries to actually board the ship suspected to carry WMD or related materials on the high seas even with an international legal basis.

91. Jofi Joseph, “The Proliferation Security Initiative: Can Interdiction Stop Proliferation?,” *Arms Control Today* (June 2004).

92. *Ibid.*

pations would decrease the number of PSI participants, it could help countries continue to actively engage in PSI activities. It would also solve current operational problems about PSI that even the U.S. does not know which countries are PSI participants.<sup>93</sup>

### **Keep Up Diplomatic Efforts to Engage Key Countries**

The most recent diplomatic achievement of PSI is South Korea's partial involvement and India's show of interest in joining the initiative. Both countries are critical in global WMD proliferation efforts because they are the neighbors of WMD proliferators, North Korea and Pakistan. If South Korea and India, which thus far have distanced themselves from the initiative, join PSI, China may feel more anxious about not being a part of the PSI. As India's interest has been expressed through the negotiations about the U.S.-India nuclear cooperation deal, the U.S. should seize the moment and push India to accept the idea of the PSI further. The U.S. should also keep encouraging South Korea as it may feel hesitant to be more involved in the PSI due to recent North Korean negative propaganda against South Korea.

As India's case shows, a country may be more willing to join the PSI when there is another diplomatic negotiation to boost the relationship with the U.S. rather than when it is only asked about the PSI participation. In order to involve more key countries in the PSI from Southeast Asia and the Middle East, the U.S. needs to utilize creatively any bilateral negotiation opportunity and search for levers that may vary from one country to another.

### **CONCLUSION**

When PSI was launched, with the administration's rather assertive attitudes, there were concerns that PSI activities involving forces would provoke more aggressive actions from targeted countries, notably from North Korea. There were also concerns that PSI might contradict international laws, so pushing the initiative could undermine international norms on nonproliferation. However, after three years since its birth, it is now clear that PSI has contributed to international security by enhancing global awareness towards WMD proliferation, building an active international platform to work to prevent trafficking of WMD and strengthening nonproliferation regimes. As threats from WMD proliferation remain and existing nonproliferation regimes such as the NPT and export control regimes are not perfect, it is in the interest of the international community, not only of the Bush Administration, to maintain this initiative in the years ahead.

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93. Interview in Washington, DC on October 19, 2005.