

## Recommendations for enhancing the Proliferation Security Initiative (PSI) through IMO's role

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(Received November 13, 2023 ; Revised December 12, 2023 ; Accepted December 22, 2023)

**Abstract:** This study is on the Proliferation Security Initiative (PSI) which is a global effort through which nations deliberately interdict carriage of illicit WMD-related substances commuting States and non-State actors. Given its flexibility as an “activity” rather than an organization, the initiative has gained supports from more than 105 countries since its interception in 2003. Now, in its 20th year, the ongoing hostility between Russia and Ukraine makes the possibility of WMD use and their transport more likely. Therefore, there is a growing need to enhance the PSI. Still, the PSI continues to face legal, political, and structural challenges. By looking into the realities of PSI activities, the study attempts to explore some of the key challenges, with its practical means of operations. Furthermore, this study reviews how security-related instruments of the IMO have been involved in maritime transportation of WMD and related materials and provides recommendations that the IMO play an effective role in strengthening the PSI. It is concluded with sound recommendations for the IMO on ways to find an optimal point between maintaining the security of the ship and stopping the trafficking of WMD and related materials.

**Keywords:** Proliferation security initiative (PSI), Interdiction, Operational experts group (OEG), Statement of interdiction principles (SIP), United nations convention on the law of the sea, 1982 (UNCLOS), Weapons of mass destruction (WMD)

### 1. Introduction

The Democratic People's Republic of Korea (DPRK) has been continuously increasing the intensity of its armed provocations with various types of power, including missiles that can carry nuclear weapons. The nuclear issues in the DPRK as well as the threat of terror groups using weapons of mass destruction (WMD) show how hard it is to deal with noncompliance and stop illegal use of machinery under the nuclear nonproliferation regime. To cope with such shortcomings, “the US-led Proliferation Security Initiative (PSI) has focused international attention on the proliferation of WMD, including proliferation by maritime transport.” [1]

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

The PSI has increased a need for interdiction because of the rising number of states pursuing missile and WMD, as well as

the threat posed by the connection between WMD and terrorism. Interdiction was able to become a real complement by guaranteeing fulfilled responsibilities and by obstructing trades aiming at proliferation of WMD from one nation to another. Even though interdiction was a big part of the PSI, the essence of the initiative improved its implicational deliberation in ports and at sea.

The rules of the route to interdiction were not spelled out by Bush's announcement of the PSI. Instead, by immediately inhibiting prospective customers and suppliers of proliferation, he aimed at contending with an imperious matter. Even though either the concept or the training of WMD interdiction was not brand-new, its emphasis was magnified by its definite mention.

At the beginning, a lot of observers such as experts and governments all around the world were doubtful about the PSI and its unenforced situation. However, because the North Korean nuclear program posed a continuous security threat to Northeast Asia, the U.S. started urging the International Atomic Energy Agency (IAEA) to patronize the principles of the PSI.

It is suggested by the performance of PSI that, to push forward

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with hasty global support for vital international maritime security troubles, a non-binding initiative may be functional. The initiative has been adopted to nourish recreated nonproliferation initiatives, led to international legal outgrowth, and mobilized cooperative nonproliferation activities. For example, the PSI has been powerful in forming novel global legitimate schemes—the sanctions-specific resolutions of Iran and the DPRK, UN Resolution 1540, and the Suppression of Unauthorized Acts (SUA) Protocol of 2005 and the Beijing Convention; indeed, the PSI developed all of them.

By reviewing how security-related instruments of the IMO have been involved in maritime transportation of WMD and related materials, the paper aims to give sound recommendations for the IMO on ways to find an optimal point between maintaining the security of the ship and stopping the carriage of illicit WMD and associated substances.

## 2. An Overview of Proliferation Security Initiative

### 2.1 Purpose

The PSI is an instrument for promoting States' practical cooperation and assuring the political commitment of them, to contend with the transfer of WMD, their shipment networks, and related materials crossing over countries. In order to support the PSI, the initial eleven PSI partners met in Paris in September 2003 to establish the PSI Statement of Interdiction Principles (hereinafter SIP) which calls on all endorsing States to establish, consistent with national legal authorities and relevant international law and frameworks [2]. As it says on the SIP, the PSI has been developed to close a gap in the common non-proliferation system and as a method to defy the “increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade.” [3] The responsibility of the PSI fundamentally sits upon a shoulder of every State which endeavors to control the trade in wares related to WMD.

### 2.2 Background

Being a dependent initiative, the PSI builds on wide attempts by the international community using available conventions and regimes. The event happened on December 9, 2002 is extensively believed to have triggered the threshold of the PSI. The United States enlisted the Spanish Navy in stopping and boarding a North Korean vessel, the *So San*; in this case, a coalition

interdiction was successfully in the Arabian Sea. The U.S. realized that a ship departed from North Korea was carrying potentially dangerous weapons. Moreover, the ship was not flying a flag. The ship, therefore, was a target of being boarded and interdicted by naval vessels in open waters. Soon, however, it was verified that the missiles, warheads, and chemical propellant were part of a lawful sale from North Korea to Yemen and that there was not any legal basis for detaining the ship or taking over the consignment. In fact, if ascertaining the flag State of the ship was the legal basis for boarding, it is difficult to excuse a search of the ship's hold to support in verifying the flag State. The ship was then given permission to keep sailing and deliver the goods to Yemen.

Although the *So San* case is considered the catalyst for the creation of the PSI, the PSI is not the basis for new legal grounds for interdiction, search, or seizure. If the *So San* interdiction occurred today, and assuming the vessel were flying the Cambodian flag, the grounds for boarding, searching, and seizing the cargo would not derive from the PSI. UN Security Council Resolution 1718 and Resolution 1874 were adopted in 2006 and in 2009 respectively, which mentioned that “All Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories...” [4] and all Member States to inspect vessels, with the consent of the flag State, on the high seas, if they “have information that provides reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited [5].” In fact, prior to the adoption by both Resolutions, which imposed sanctions on North Korea, the international legal basis for such actions did not exist. Even after their adoption, there would still be no legal basis for boarding, examining, and seizing the cargo because Cambodia did not merge the resolutions into Cambodian law effectually.

If Cambodia did it, and if the interdiction of the *So San* occurred nowadays, the first action for the Spanish Navy would be to be granted by Cambodia to board and examined the ship. In other words, if there were appropriate bases that the *So San* broke Cambodian law, then the Spanish Navy would be able to capture the cargo.

Thus, the *So San* case indicates the main challenges of the PSI: ‘the shortcomings or limitations of the current legal systems.’ In the same context, the SIP includes “an explicit commitment to work together to strengthen national and international law in this area.” [6]

Nowadays, the ongoing hostility between Russia and Ukraine makes the possibility of WMD use and their transport more likely. Consequently, there is a growing need to enhance the PSI. Also, recent nuclear and ballistic missile tests by the DPRK, conducted in defiance of numerous UN Security Council resolutions, serve as a stark instance of the necessity of bolstering the global nonproliferation regime and restraining the spread of WMD and their delivery systems.

### 2.3 Development

The PSI's structure and the nature of participation have evolved significantly since its inception in 2003. Initially, eleven "like-minded States"—Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom, and the U.S.—formed what was called the "core group". In 2004, the core group expanded to include Canada, Norway, Russia, and Singapore, reflecting the desire to enlarge the geographic scope of the group and incorporate States that would be able to make positive contributions. Along with this rising participation, the concepts of PSI such as its availabilities and challenges became clearer.

And as the SIP had been determined, the core group disintegrated and created so-called the "Operational Experts Group (OEG)". A chapter of expert gatherings were additionally held all the year round.

The type and scope of the PSI activities were established quickly: meetings, workshops, exercises, and outreach. Until then, allegedly owing to concerns of setting against North Korea, China and South Korea were withheld from joining the exercise. Later, however, since North Korea conducted its second nuclear test in 2009, South Korea has endorsed the PSI.

In 2011, there was a PSI conference hosted by both governments of U.S. and Mongolia. The conference's main topic was how to stop the spread of WMD. Furthermore, to interdict WMD in Hawaii, the PSI participants were required to develop Critical Capabilities and Practices (CCP) which was to support all PSI-endorsing States in improving critical counter-proliferation capabilities.

In 2013, the PSI especially promoted regional expansion to strengthen cooperation with countries in the Asia-Pacific regions. In 2018, seventeen of the PSI states have jointly issued statements supporting United Nations Security Council Resolutions (UNSCRs) 2375 and 2397 which were concerning about limiting North Korea's efforts to proliferate. The PSI has evolved into a significant tool for international collaboration in the field of

counter-proliferation, with the number of 107 endorsing states. (see **Table 1**).

**Table 1:** States that have endorsed the Proliferation Security Initiative Statement of Interdiction Principles as of March 2019 (Sources: "Proliferation Security Initiative (PSI)", The Nuclear Threat Initiative, <https://www.nti.org/education-center/treaties-and-regimes/proliferation-security-initiative-psi/>, Accessed April 5, 2023.)

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

### 2.4 Hybrid Approach

Bilateral ship-boarding agreements that are legally binding between open-registry States and the U.S. are supporters of PSI's political commitment; the Bahamas, Liberia, Panama, and other seven countries are included in the open-registry States. Although the U.S. is the sole country which shall seize the ships with open registry, the American bilateral agreements can be asked for when necessary.

Rested on the PSI's principles, these agreements were negotiated by the U.S. after it formed the PSI. Shunning the potential destruction of evidence, the bilateral agreements provide contact points and procedures for urgent interdiction as well as help share information and settle disputes. The bilateral agreements also address a number of sensitive details that the countries involved evade addressing particularly.

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

## 2.5 Container Security Initiative (CSI)

The Container Security Initiative (CSI) was initiated by the U.S. Customs and Border Protection (CBP) Agency in 2002. The CSI is to preliminarily screen cargo, which is made for the U.S., before that cargo arrives at the U.S. ports or crosses borders. The CSI first focused on the leading twenty ports which dispatched vessels to the U.S., like Bremerhaven, Hong Kong, and Singapore.

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

The CSI is reciprocal with the PSI; the aim of both initiatives is to enhance international maritime security through an improvement in the ability to interdict or preclude shipments of WMD freight. On the other hand, it should be noted that there is a difference between the two initiatives. Whereas the CSI concentrates on maritime cargo toward the U.S., the PSI manages cargo in transit, on ocean, on land, and in the air worldwide. Furthermore, the PSI measures encompass acting against shipments during their entire transportation cycle, in addition to when they arrive at a port. At ports abroad, the CSI has efficiently used and is elaborating cargo screening strategies, including radiation detection technique and x-ray machines. What is more, it collects database information on the chronicle and performance of

freighters all over the world. Significantly, the PSI efforts would be easily connected to CSI stewardship.

## 2.6 Operation of the PSI

Nowadays, the PSI participants make up of more than half of the entire Member States of the United Nations. Nevertheless, the participants' active dedication is essential for operating the PSI. To establish the foundations of the PSI activities, the supporting countries are recommended to consider several practical means such as interdictions, exercises, signing boarding agreements, and attending Operational Experts Group (OEG) meetings.

### 2.6.1 Interdictions based on SIP

Actual interdictions possibly provide the most important standard of PSI's impact. A successful interdiction, for instance, took place in February 2007 when four nations collaborated to stop the delivery of equipment to Syria what might have been used to test ballistic missile parts. To be specific, the four countries each took on the position of a producer of the equipment, an intercessor, a shipping company, and customs officials who unload and examined the equipment; such an interdiction is considered very successful.

It is formulated in the SIP's preface that they are "committed to working together to stop the flow of these items to and from States and non-State actors of proliferation concern." [7] Based on the purposes of the SIP, participants are certainly allowed to determine whether circumstances qualify in consideration of the recipient or the sender as a player of "proliferation concern" at the moment of an interdiction.

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

It is inferred from another vital passage of the SIP that the PSI-endorsing countries would operate to hinder and cut off WMD trades "consistent with national legal authorities and relevant international law and frameworks, including the U.N. Security Council." [8] The legitimacy of the PSI's activities is only briefly and crudely broken down in this chapter. Significantly, the PSI was discarded to operate within existing legal frames even if exposition of international law quite varied. In addition, the PSI participants were devoted to "review and work to strengthen ... national legal authorities ... and to strengthen ... relevant international law and frameworks in appropriate ways to support these commitments." [9]

Finally, the duty mentioned in the SIP recites possible strategies in which PSI-endorsing nations could advocate interdiction attempts like blocking, embarking, and examining through ships in their ports or territorial waters. As a matter of fact, participants immediately started the first multinational exercise under the auspices of the PSI only three weeks later the principles were proclaimed.

2.6.2 Exercises

Particularly, depression in PSI activities has been noticeable in the exercise domain until recently. There have been more or less seventy PSI exercises since 2003, including application of PSI scenarios in conventional regional exercises, command post exercises, and dedicated live exercises (see **Table 2**). While several have dealt with interdictions in the air, on the ground, and at ports, most have concentrated on maritime capabilities.

**Table 2:** Proliferation Security Initiative (PSI) Activities  
(Source: "Proliferation Security Initiative (PSI)", The Nuclear Threat Initiative, <https://www.nti.org/education-center/treaties-and-regimes/proliferation-security-initiative-psi/>, Accessed April 5, 2023.)

2023	Western Hemisphere PSI Workshop (Florida, U.S.)
2021	Exercise DEEP SABRE 2021 (Singapore)
2018	Exercise PACIFIC SHIELD 18 (Japan)
2017	Exercise EAGER LION 2017 (U.S. and Jordan)
2016	PSI Asia-Pacific Exercise Rotation (APER) Exercise Deep Sabre 2016 (Singapore) Baltics Regional PSI workshop and TTX (Estonia) Exercise PHEONIX EXPRESS 2016 (Med Sea) Mid-Level Political Meeting (Washington, DC)
2015	PSI Asia-Pacific Exercise Rotation (APER) Exercise Maru (New Zealand) Exercise LEADING EDGE 2015 (Qatar) PSI Mediterranean Initiative regional workshop/TTX (France) PSI Post-endorsement workshop (Malaysia) PSI Caribbean workshop/TTX (St. Vincent & Grenadines) Asia-Pacific PSI Outreach (Republic of Korea) PSI Mediterranean Initiative regional workshop (Germany) Regional Mediterranean workshop/TTX (Cyprus)
2014	Exercise FORTUNE GUARD 2014 (Hawaii, U.S.) Western Hemisphere Table Top Exercise (Miami, Florida, U.S.)
2013	Southeastern European PSI Table Top Exercise (Zagreb, Croatia)

	PANAMAX 2013 (U.S.) PSI Tenth Anniversary High-Level Political Meeting (Warsaw, Poland) Exercise EXPRESS 2013 (Western Africa) Exercise LEADING EDGE 2013 (Abu Dhabi, UAE)
2012	Exercise EASTERN ENDEAVOR 2012 (Busan, Korea) Exercise PANAMAX 2012 (Panama, Miami) PACIFIC SHIELD 2012 (Sapporo, Japan) Exercise PHOENIX EXPRESS 2012 (Mediterranean Sea) Exercise SAHARAN EXPRESS 2012 (Western Africa)
2010	Exercise EASTERN ENDEAVOR (Busan, Korea) Exercise PACIFIC PROTECTOR 10 (Cairns, Australia) Exercise PHOENIX EXPRESS 10 (Mediterranean Sea) Exercise LEADING EDGE (UAE)
2009	Exercise DEEP SABRE II (Singapore) Exercise PANAMAX 09 (Panama, Miami) Exercise PHOENIX EXPRESS 09 (Mediterranean Sea)
2008	Exercise MARU 07 (Auckland, NZ) Exercise PANAMAX 08 (Panama & Miami) Exercise ADRIATIC SHIELD 08 (Croatia) Exercise PHOENIX EXPRESS 08 (Mediterranean Sea) Exercise GUISTIR 08 (Djibouti)
2007	Exercise EASTERN SHIELD 07 (Ukraine) Exercise PACIFIC SHIELD 07 (Japan) Exercise PANAMAX 07 (Panama, Miami) PSI Gaming Exercise (Newport, U.S.) Exercise ADRIATIC GATE (Slovenia) Exercise SMART RAVEN (Lithuania)
2006	Exercise LEADING EDGE (Persian Gulf) Exercise AMBER SUNRISE (Poland) Exercise HADES '06 (France) Exercise PACIFIC PROTECTOR '06 (Australia) Exercise ANATOLIAN SUN (Turkey) Exercise PACIFIC PROTECTOR 06 (Australia) Exercise TOP PORT (Netherlands)
2005	Exercise EXPLORING THEMIS (UK) PSI Air Gaming Exercise (Bergen, Norway) Exercise DEEP SABRE (Singapore) Exercise BLUE ACTION 05 (Spain) Exercise BOHEMIAN GUARD 05 (Czech Republic) Exercise NINFA 05 (Portugal)
2004	Exercise CHOKEPOINT 04 (U.S.) Exercise TEAM SAMURAI 04 (Japan) PSI Gaming Exercise (Newport, U.S.) Exercise APSE '04 (France)

	<b>Exercise SAFE BORDERS</b> (Wroclaw, Poland) <b>Exercise CLEVER SENTINEL</b> (Mediterranean) <b>Exercise HAWKEYE</b> Frankfurt, Germany) <b>Exercise AIR BRAKE 03</b> (Trapani, Italy) <b>Exercise SEA SABER</b> (Arabian Sea)
2003	<b>Exercise BASILIC 03</b> (Western Mediterranean) <b>Exercise SAN SO 03</b> (Western Mediterranean) <b>Exercise PACIFIC PROTECTOR</b> (Coral Sea)

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

In June 2011, OEG partners formalized a U.S. proposal to take over a CCP initiative which is another, maybe less pricy, mean to help raise PSI interdiction capabilities. If the CCP promise is materialized, it would enhance interdiction capabilities of the PSI supporters as well as revive their hub on the practical purposes of the PSI. Allegedly, four areas mapped out for the CCP evaluate interdiction-related requirements in all directions: identification and inspection, rapid decision-making, and legal frameworks.

In May 2023, the Republic of Korea held the most recent High-Level Political Meeting (HLPM) of the PSI to mark the 20th anniversary of its launch. [10] The future of PSI was discussed by senior officials from more than 100 endorsing States, who looked back on 20 years of PSI activities and achievements. Alongside the HLPM, the Republic of Korea also hosted the annual PSI APER multinational operational exercise, EASTERN ENDEAVOR 23, and the annual meeting of the OEG.

#### 2.6.3 Boarding Agreements

In October 2003, the U.S. and the PSI partners first discussed a potential boarding agreement that may improve the PSI's practical implementation.

Eleven foremost flag States such as the Bahamas, Cyprus, and Marshall Islands have signed the agreements. Schemes to embark

and examine vessels on suspicion of delivering WMD materials are listed on those agreements. For instance, the agreements even call for an official and prompt response to an inquiry from the other State to board the suspicious ship no longer than two hours. Especially, the agreements may be influential from that point because all the countries with whom the U.S. has filled boarding agreements are not the OEG's members. Also, the mutual and legally binding agreement indicates that permission to board and search ships tend to be granted, although the mutual agreements do not ensure that the flag State would collaborate with when it is asked.

#### 2.6.4 Operational Experts Group (OEG)

Most planning for the initiative takes place during meetings of the PSI Operational Experts Group (OEG). As of today, the OEG consists of 21 States from Europe and North America among all the States that have signed up to the PSI Interdiction Principles. The purpose of OEG is to develop policies, arrange the schedules of PSI exercise in various arenas all over the world, and provide a conference to share expertise and intelligence.

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

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

### 3. Challenges of the PSI

#### 3.1 Legal Challenges

##### 3.1.1 Criminal Jurisdiction in Maritime Zones

The U.S. and the Republic of Türkiye are the only two countries which have not agreed and endorsed the United Nations Convention on the Law of the Sea (hereinafter UNCLOS), 1982 among 107 PSI participants. The stipulations held in the UNCLOS are extremely a collection of the customary international law concerning the law of the sea. Even before the UNCLOS was formally ratified, numerous countries had signed on the PSI which had already been taken as a part of customary

international law. Although the U.S. is not a party to the UNCLOS, it has declared that customary law has included most contents of the UNCLOS when it comes to coastal State jurisdiction of territorial sea, continental shelf, the Exclusive Economic Zone (EEZ), and the rules regarding navigation and flight over straits and territorial sea.

In those diverse maritime areas, the criminal and civil jurisdiction of external ships can be skeptical for being applied to the PSI because each country holds criminal and civil jurisdiction over vessels which belong to its own State. If an interdiction is performed by the flag State of the objective vessel, the interdiction is considered legal. Therefore, most expected PSI operations on international waters tend to be illegal, because they are supposed to be taken up by other countries rather than the vessel's flag State.

Moreover, based on the SIP, it is considered that the PSI states can search and stop vessels that are reasonably suspected of transporting WMD material while they are sailing through their internal waters, territorial sea, or contiguous zone; this gives the PSI participants national enforcement jurisdiction. expression "national waters" from the PSI participants can combine the respective maritime areas. The "national waters", however, actually compose the below respective categories of legal jurisdiction with the purpose of interdiction of ships which are under suspicion of transporting WMD materials. Thus, maritime areas implicated in the PSI's interdiction of ships suspected of transporting WMD materials can be divided into the following categories.

① Internal waters

Internal waters enable nations to enjoy utmost criminal jurisdiction over vessels delivering unlawful WMD or related carriage sources. The nations freely board and probe into those ships which are staying in the port area because part of internal waters of the coastal States are made up by the port. In addition, if the delivery of the problematic goods is illegal under the national laws, the States can take over the cargo moved into the internal waters.

The Ku Wol San incident shows a case of such a seizure in internal waters. In June 1999, a cargo ship M/V Ku Wol San coming from North Korea casted anchor in the Kandla port in India and then it was allowed to unload its sugar. At the Kandla port, a few customs officials embarked the ship to check its North Korean cargo vessel M/V Ku Wol San, coming from Namp'o which is 50 km southwest of Pyongyang. Then it sought permission to unload its sugar. At the Kandla port, a small contingent of

customs officials boarded the vessel to check its shipping invoice. They were confident that the vessel contained mountains of equipment in relation to a pneumatic press, hardware, missiles, and even toroidal air bottles employable for guiding missiles. The seizure of such a big quantity of missile components was the first and greatest ever made by any nation.

② Territorial waters

"Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State." [11] under Article 19 of the UNCLOS. The delivery of WMD, their shipment networks, and associated substances are not particularly encompassed by the PSI's potential items of interdiction targets, even though the UNCLOS specifies that a passage can be condemned in case of certain affairs. Uniform clarification of regulations of international law controlling innocent passage is provided by the United States mentioning that the right of innocent passage shall be utilized regardless of the ship's freight and, thus, the inventory in Article 19 makes logical sense.

The UNCLOS states that "the coastal State shall notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew." [12] Criminal jurisdiction over foreign ships, accordingly, is not supposed to be exercised by coastal States excluding under concrete cases specified in Article 27(1) below: [13]

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

The overall rule for criminal jurisdiction of coastal States, therefore, is not meant to oppose the illicit dealing of WMD substances.

The PSI participants shall outlaw transportation of WMD and constitute rigorous regulations over exportation corresponding to transnational criterion by force of their integral jurisdiction.

Based on the SIP 4(d), nevertheless, strongly prompts the PSI participants to work properly to "stop and/or search in their internal waters, territorial seas, or contiguous zones vessels that are

reasonably suspected of carrying such cargoes to or from States or non-State actors of proliferation concern and to seize such cargoes that are identified.” [14] Hence, three diverse maritime zones with comparably diverse legal regimes are tied together by this provision. It enlarges the geographical breadth of the PSI actions unlawfully and unreasonably. The SIP is consequently in conflict with not only the limits on governance of a coastal State in the contiguous zone but also the legitimate regime controlling “innocent passage” in the territorial sea.

### ③ Contiguous zone

The strait nearby the territorial waters, according to the UNCLOS, is considered the contiguous zone, which “may not extend beyond twenty-four nautical miles from the baselines from which the breadth of the territorial sea is measured.” [15] Basically, the jurisdiction of the coastal State largely declines in such a contiguous zone. The State must have constituted laws on a violation of its customs laws in terms of an unauthorized cargo, so that it can interdict a vessel delivering WMD constituent in this zone.

The cargo, furthermore, should be derived from the mainland going towards international waters or needs to be going towards the mainland. For instance, the International Tribunal for the Law of the Sea ruled in the *M/V Saiga* case that “in the contiguous zone, a coastal State may exercise the control necessary to punish infringement of the laws and regulations committed within its territory or territorial sea.” [16] There is naturally no authorization to control the ships navigating within the contiguous zone.

### ④ Exclusive economic zone

Based on the UNCLOS, “the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured”. [17] The EEZ is fundamentally aimed to keep the economic advantages that a State can acquire from its bordering seas; specifically, those involved in fishing and discovering minerals. In terms of confiscation of WMD and associated substances, international waters can be considered to include the EEZ. A State could only barely claim that an interdiction of a ship transporting WMD is required for the preservation of the marine environment.

### ⑤ International waters

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

to the UNCLOS, ships “shall be subject to its exclusive jurisdiction on the high seas.” [18]

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

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

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

#### 3.1.2 Right of Innocent Passage

Since headway of a shipment of WMD or kindred material is not likely to be an innocent passage, the right of innocent passage ensured by the UNCLOS is often held down by the PSI. In addition, the PSI is against one of the UN’s goals envisaged in the UN Charter— “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”. [19] The relations among alliances worldwide may get affected because the PSI agitates “the principles of international law concerning friendly relations and co-operation among States”. [20]

#### 3.1.3 Freedom of Navigation

When it comes to the interdiction, the essential factor in the PSI is a menace to international law of the sea which guarantees freedom of navigation. In October 1946, one of the *Corfu Channel* incidents occurred; four British Navy ships were heading north over the *Corfu Channel* with the specific orders to try out Albanian response to their freedom of navigation. One of the ships hit a mine and got battered while passing into what was deemed a zone without a mine nearby the Albanian coast, then another ship also hit a mine while towing the damaged ship. The



International Court of Justice declared that Albanian had to pay for the loss of British Navy. The *Corfu Channel* incident serves as a clear example that maritime navigational freedoms cannot be restricted, not even in the name of other countries' security concern, and that costs must be paid when people or property are damaged.

The freedom of navigation is confined by the UNCLOS in many ways such as negotiating mutual settlements. In addition, if WMD and related materials are detected, countries could agree on specific actions which can be initiated by the interdicting country. Nevertheless, confiscation of cargo could be commonly allowed, only if the interdicting country and the flag State are at war. Another way is to call for the consent of either the government of the flag State or the master of the target ship itself.

#### 3.1.4 UN Security Council Resolutions (UNSCR)

The current UNSCRs do not give sufficient latitude to States to deviate from international law to interdict vessels of concern. There are four UNSCR sets currently relevant to stopping the illegal transport of WMDs. Firstly, UNSCR 1540 (2004) calls on all States "to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials." [21] However, UNSCR 1540 limits any measure used to those "consistent with international law."

The second set of UNSCR refers to Iran's nuclear enrichment program. Of these, UNSCR 1803 (2008) is aimed at tightening restrictions on Iran's nuclear activities, and calls on States to "inspect cargo to and from Iran ..., provided there are 'reasonable grounds' to believe that the aircraft or vessel is transporting goods prohibited." [22] However, such action is again limited within the ranges of international law.

The third set of UNSCR focuses on North Korea's nuclear program. Of these, UNSCR 1874 (2009) was enacted in response to North Korea's 2009 nuclear test, and "called on all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargo to and from the DPRK ..." [23] Given that UNSCR 1874 still maintains this restriction despite clear evidence of nuclear capability by North Korea, it seems the UN Security Council is unwilling to shut the proverbial barn door even after the horse has bolted.

Generally, the ultimate target of Security Council sanction resolutions is to put a strain on a country or entity to obey the aims held by the Security Council without turning to the use of saber. However, it is important to note that the State is only bound in Security Council resolutions; they claim national implementation

so that they are binding on personnel or other legal entities. Countries are, hence, faced with delicate problems of domestic implementation, in general, adaptation of internal law. A small number of States at present merely have the necessary empowering legislation to obviously comply with decisions made by the UN Security Council. The implementation of the measures contained in Security Council resolutions, and the establishment of offences and their subsequent enforcement, is therefore dependent on adopting effective national laws.

### 3.2 Political challenges

#### 3.2.1 Absent Partners

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

Firstly, even if China is a potentially significant country, it is a missing partner of the PSI. It is a China's view that the greatest method to stop the spread of WMDs is to protect and advance global security by communication and consultation. Thus, the U.S. Government and other PSI participants appear to have been willing to discuss with China on the PSI issues.

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

Yet, it is indefinite that what Russia meant by saying "share the direction of the initiative." It can be inferred that Russia supports the PSI's practicality as well as shares its aim and objective. However, casting doubt on the initiative, Russia does not seem to be ready to sign up for it. Their participation in the PSI or endorsement of its principles would add significant clout and momentum to the initiative. It is undoubtedly considered, for instance, that Russia's geopolitical locality, military forces, and perpetual membership in the UNSC could highly promote the PSI's success.

#### 3.2.2 Sovereignty

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

Indeed, some of these States went further and sought to make certain that important straits include their absolute sovereignty. For instance, two archipelagic States, Indonesia, and the Philippines, tried to use the approach of straight baselines uniting the points of the outermost islands of the archipelagoes to delimitate their expanding territorial seas, encompassing some of the most significant straits. Indonesia, in particular, holds a monopoly over all deep straits between the Asian continent and Australia which is linking up the Pacific and the Indian Oceans. The shutoff of those straits like Sunda, Lombok, Ombai-Wetar or Macassar would necessitate a diversion of traffic around Australia or through the Panama Canal resulting in higher consumer costs, time delays, and the reduced flexibility and maneuverability of naval forces.

### 3.3 Structural challenges

#### 3.3.1 Distribution of Bilateral Agreements

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

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

#### 3.3.2 Transparency

A lack of transparency appears to be an institutional characteristic of the PSI, and this is detrimental to international perception of the PSI's impartiality. There is no guarantee to make credible information available to all the PSI states, and the intelligence is not distributed equitably among members. The issue of transparency relates to two different PSI arenas of activity: organizational—the workings and activities associated with the OEG, the ROEGs (Regional Operational Experts Groups), exercises, and

workshops; and operational—the activities associated with a specific interdiction.

At the organizational level, there is a significant amount of information in the public domain. The chairman's remarks and the keynote address during the OEG and the ROEG meetings are frequently made public by a host state. For exercises, press statements are usually issued that include the exercise scenarios and details of participants. Similarly, press statements and other information are released about workshops and capacity building.

The basis for the criticism may therefore relate to accessibility, rather than the quantity or quality, of information available. To solve this problem, the German Federal Foreign Office established a public PSI website in the beginning of 2013. [24] The objective of the website is to inform the public about the PSI and it contains a wide range of information, publications, videos, and links.

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

Even if the PSI is unable or unwilling to publicize interdictions, it could be more open about its internal workings, offer more clarity on the operational realities of the activities it promotes and make the information more accessible. In fact, it is not obvious yet that how much the OEG and its members are prepared to aggressively work on the website. However, an optimistic improvement can be seen from the official PSI website. [25]

## 4. Coordination between the IMO and the PSI

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

#### 4.1 Security-related IMO instruments

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

##### 4.1.1 SOLAS and ISPS Code

Maritime security is essential as one of the IMO's imperatives. A thorough mandatory security regulation for transnational shipment, the 1974 Safety of Life at Sea Convention (hereinafter SOLAS), entered into force on 1 July 2004 and included several amendments to it. Among them, the one which had the most massive influence was the International Ship and Port Facility Security Code (hereinafter ISPS Code). The IMO states that "it contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B)". [26] Under the SOLAS Chapter XI-2 and the ISPS Code, ship security plans must address measures contemplated preventing shipment of weapons, unwarranted goods, and dangerous materials for the use of application against human beings, ports or ships.

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

##### 4.1.2 Declaration of Security (DOS)

The IMO maritime security measures also require Governments to determine when a Declaration of Security (DOS)—which is an agreement between a port or port facility and a ship or between a ship and another ship that confirms the security responsibilities of each party during a ship/port interface or a ship-to-ship activity—is required. [27] It is the responsibility of the respective security officers of the ship and port/port facility to assess whether those activities put human beings, environment, or possessions at risk. These circumstances are usually specified

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

##### 4.1.3 International Maritime Dangerous Goods (IMDG) Code

Launched in 1965, the International Maritime Dangerous Goods (IMDG) Code "amplifies the requirements of both conventions and has become the standard guide to all aspects of handling dangerous goods and marine pollutants in sea transport". [28] Initially, the amended Code was suggested to governments as the ground for domestic supervisions; the influenced contents were the requirements of the 1974 SOLAS Convention and International Convention for the Prevention of Pollution from Ships (MARPOL) Annex III. But the amendments 32, 33, 34 and 35 are compulsory at present. There are basic principles enacted by the Code: elaborate recommendations for respective articles, materials, and substances, and several recommendations for sound operational practice, including guidance for emergency response action, labeling, packing, stowage, and buzzwords.

##### 4.1.4 2005 Protocol to the SUA Convention

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) was amended by a 2005 protocol (2005 SUA Protocol) [29] which added a novel Article stating several charges concerning terror acts. Moreover, the 2005 protocol addresses the situation where a vessel in international waters is carrying WMD, and states that have signed the Convention are required to work together to identify and prosecute the responsible individual. Shipping explosive or radioactive materials and delivering nuclear weapons are all included in these innovative charges.

In addition, the ship-boarding management has been developed by the 2005 protocol. New regulations over agreed ship-boarding in open waters are included in the amended SUA Convention which demands States parties to "co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible." [30]

The precondition for ship-boarding is, of course, the cooperation and empowerment of the flag State. However, every OEG member has not registered or ratified the 2005 protocol, although it is potentially useful at reaching the PSI's aims.

## 4.2 Recommendations for the IMO

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

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

- ① The PSI could depend on the current IMO conventions and security regulations. For example, if a lot of Member States express their concerns about illegal transfers of WMD at the IMO, this could lead to the adoption of a resolution or circular. To some extent, of course, the PSI is considered as political and therefore less likely to be discussed at the IMO. However, the perspectives of the Member States must be thoroughly deliberated at the IMO to adopt a resolution or a circular that will improve maritime security.
- ② There is a need for the IMO to offer a mechanism to facilitate sharing legal guidance among those nations that are seeking to strengthen their domestic legislation against proliferation. In addition, the IMO would be able to either make the PSI activities operated in ranges of existent international law or perform as a ministry for amending it.
- ③ The WMD interdiction that supports the PSI can be advocated by the IMO. As a neutral organization under U.N. auspices, the IMO could assess financing and judgment and give suggestions regarding interdictions. To be specific, if the IMO can be recognized as fair, nonpartisan, objective, and transparent, it would be capable of answering key questions like what defines a maritime menace as well as what qualifies as "good cause" for interdiction.
- ④ It is recommended to offer the PSI a genuine framework

with compatible strategies, methods of operation, and a budget to bridge gaps between intelligence collection endeavors and interdiction. For instance, if the IMO plays a role as a host of the OEG meetings, it could promote a technology sharing where the PSI can engage in a win-win exchange with Member States. The sharing of detection technology such as hand-held radiation detectors, cargo scanners, and stand-off sensors can increase the effectiveness of the PSI participants in screening port traffic. In that way, the IMO could advocate for and support developing, planning, and executing the PSI.

## 5. Conclusion

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

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

Based on the lessons learned over the past twenty years, the recommendations for the IMO mentioned above are several examples of the kinds of steps that can be taken to enhance and

reinvigorate the PSI. By achieving the coordination between the IMO instruments and the PSI regime, the PSI will become a more useful tool in the battle against proliferation for years to come and the effectiveness of the initiative will increase which will lead to attaining international maritime security.

### Author Contributions

Conceptualization, S. Yi; Writing-Original Draft Preparation, S. Yi; Writing-Review & Editing, S. Lee; Supervision, S. Lee.

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