
Can the PSI be Legitimate for the Nonproliferation Regime? *A Critical Analysis*

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The Proliferation Security Initiative was launched in 2003 by the Bush administration right after the So San incident. Its primary purpose is to interdict the spread of WMD and their delivery systems. Due to the provocative and challenging characteristics of the Initiative, which are inconsistent with conventional international law, there are some objections against the Initiative. This paper answers the highly topical questions regarding the Initiative in three parts. The first part addresses the origin and development of the Initiative. The second part critically analyzes the background of the Initiative such as the neoconservative ideology of the Bush administration and its world strategy, international terrorism, and the U.S. arms industry. The third part scrutinizes questions concerning the preemptive use of force for self-defense and the interdiction of foreign vessels on the territorial and high seas. The Initiative is also examined from a viewpoint of customary international law.

Keywords

PSI, Interdiction, Freedom of the Sea, Preemptive Self-Defense, Customary International Law

I. Introduction

The Proliferation Security Initiative (“PSI”) is a highly controversial issue in the post-Cold War era. As a newly established framework for nonproliferation of Weapons of Mass Destruction (“WMD”), the PSI has raised many challenging questions to the conventional principles of international law, including the legitimacy of interdiction on

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the high seas. This paper will try to answer these questions from a viewpoint of international law.

This paper is composed of three parts. Part II will review the origin and evolution of the PSI. As a worldwide network designed to prevent the spread of WMD, the PSI was declared by U.S. President George W. Bush in 2003 just after the September 11 attack and the following *So San* incident. The PSI is a new world strategy, which began in the US under neoconservative wing of the Bush administration, and comports with the “national strategy combating terrorism.” The PSI was the framework for how the Bush administration intended to govern the post-Cold War world. Based on these understandings, a few basic questions regarding the functioning and operation of the PSI will be discussed. Part III will cover some of the underpinnings of the PSI, including the U.S. neoconservative strategy international terrorism and the world’s arms industry. Part IV will analyze the legal issues relating to the PSI, including a close analysis of Article 51 of the UN Charter and review the examples of the preemptive use of force for self-defense, interdiction of foreign vessels on the high seas from the perspective of the law of the sea, and whether the PSI is a customary international norm.

II. Formation

1. Genesis of the PSI

The September 11 attacks drastically changed the world. Nearly 3,000 people were killed and wounded in this horrible act of terrorism, which was presumably committed by Al Qaida. Following the attacks, the U.S. invaded Afghanistan in order to capture Osama bin Laden, the leader of the radical Islamist militant group who was believed to be behind the attacks and residing in Afghanistan. However, the invasion was not successful although the Taliban religious faction of Afghanistan was disposed of its ruling power. The “war against terrorism” was neither efficient nor effective in protecting global stability due to the fundamental difference between the current war against terrorism and those fought during the Cold War era, namely that the enemy has become more indiscernible and ubiquitous. Today, terrorists are not necessarily state-sponsored, but rather come from non-State actors (“NSAs”). The United States respond to this new reality accordingly. The Bush administration released the “national strategy combating terrorism”¹ as a top national security priority in December 2002, which called

¹ The U.S. Department of States, *National Strategy to Combat Weapons of Mass Destruction*, available at <http://www.state.gov/documents/organization/16092.pdf> (last visited on Apr. 5, 2010).