



# PSI and the Emerging Non-Proliferation Regime

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## General Questions

Some history is necessary before situating the Proliferation Security Initiative (PSI) within the Republican [Bush] thinking premised on unilateralism, strategic dominance, preemptive strikes, and using military rather than diplomatic means in dealing with nations. Announced by President Bush in May 2003, its seeds lay in his National Strategy to Combat WMD announced in 2002. It emphasized the need for strengthened "military, intelligence, technical and law enforcement assets to prevent the movement of WMD materials and technology to hostile states and terrorist organizations...the long-term objective of the United States is to create a web of counterproliferation partnerships, through which (sic) proliferators will have difficulty carrying out their trade in WMD and missile-related technology." PSI is an important aspect of the Bush Administration's policy to deal with the proliferation of Weapons of Mass Destruction (WMDs).

What PSI is designed to accomplish is set out in the 'Statement of Interdiction Principles' published by the U.S. Department of State in September 2003, which envisages "interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern"; "rapid exchange of relevant information concerning suspected proliferation activity"; "strengthen[ing] their [participants] relevant national legal authorities"; and "specific actions in support of interdiction efforts regarding cargoes of WMD."

An intervention by one state infringes the national sovereignty of another state, and therefore is suspect, although it is arguable that humanitarian

intervention is permissible to save lives after a natural calamity or prevent genocide or forced migration and so on. Three conditions are needed to justify intervention.

- First, adequate and plausible validation. India's intervention in East Bengal (Bangladesh) was a singular case of justifiable intervention in recent years.
- Second, intervention must be seen as being the last resort option, after available remedial instrumentalities have been exhausted like in the situation currently obtaining in Darfur, which reflects poorly on the international conscience and the UN's responsibilities.
- Third, the U.N. is the proper forum for exercising the collective will of the international community by adopting, collective preemptive measures to address extreme threats like an imminent threat to use weapons of mass destruction. Collective international action can be differentiated from unilateral imposition of national policies on target nations to serve strategic interests, eg. American intervention in Iraq.

## Is the Non-Proliferation Regime in Crisis?

The PSI has been justified as necessary by urging that the NPT regime is in crisis. Is this true? Despite several pessimistic prognostications the Nuclear Five have only become a Nuclear Eight or Nine (if North Korea be included) since 1964 when China entered Club. But several nuclear aspirants gave up their nuclear option like Sweden, Taiwan, South Korea (despite recent doubts), Brazil, Argentina, South Africa (which dismantled some 8 nuclear devices in its possession), apart from Kazakhstan, Belarus and

Ukraine (that voluntarily gave up their nuclear arsenals inherited from the Soviet Union). Most recently, Libya has dismantled its nuclear infrastructure. The present standoff with North Korea and Iran notwithstanding the non-proliferation regime remains robust.

Undoubtedly there are several systemic reasons questioning this sanguine conclusion, which can also be enumerated:

- First, the international non-proliferation regime rests on three pillars viz. the NPT, International Atomic Energy Agency (IAEA) monitoring system and Nuclear Suppliers Group (NSG) guidelines. Several Articles of the NPT have been regularly infringed by its signatories- North Korea and Iran are only the latest culprits. The NPT's greatest loophole is that nations can acquire a virtual arsenal without infracting its provisions. The IAEA has, regrettably, become the handmaid of the Nuclear Weapon States over the years. Its failure to fulfill its basic responsibility to promote the use of nuclear energy has dented its credibility. It is only a regulatory

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Brazil and South Africa are well documented, as are China's exports of nuclear technology to Pakistan even after it entered the NPT.

- Second, several inquiry reports-eg. Iraq Survey (Duelfer) report--have confirmed that Iraq did not possess WMDs, although this was the cynical reason for U.S. intervention in Iraq. U.S. has now concluded that North Korea has acquired nuclear weapons, which explains its cautious policy towards that country, stressing negotiations, offering incentives, seeking the

assistance of other countries in the region and so on. Towards Iran U.S. policy is muscular in the confidence that it does not have nuclear weapons. Sanctions are threatened, and there are recurrent rumours that the U.S. might launch a preemptive strike against Iran, either by itself or via Israel. The impression created is that weak nations need WMD capabilities to confront strong nations and maintain their sovereignty and independence. But strong nations can attack and invade weak nations precisely because they did not have nuclear weapons eg. Iraq and Afghanistan.

- Third, the A.Q. Khan episode highlights the existence of a flourishing nuclear black-market that lubricates the trade in nuclear technology, materials and equipment. The likelihood of terrorist groups like the al Qaeda acquiring WMDs through rogue scientists acting with state collaboration, and using such weapons along with state actors, is no longer in the realm of science fiction, but could become an ugly reality. The South Korean case also reveals that the rogue scientists phenomenon is fairly universal.
- Fourth, these newer threats to the international non-proliferation regime should not obscure the earlier, post Cold War era threats that are persisting viz. the 'loose nuke' problem arising from possible leakage of nuclear technology, materials and equipment from the former Republics of the Soviet Union, and qualified nuclear engineers and scientists making their services available to nuclear aspirants. There is also the problem of 'failed' or 'failing' states adding to the problem. The danger therefore of 'surge' proliferation or several countries and/or "non-state actors" acquiring nuclear capabilities in a short time is not fanciful. There is also the likelihood of technologically advanced countries like Japan exercising its nuclear option due to developments in Northeast Asia, like North Korea going nuclear.
- Fifth, a further danger to the non-proliferation regime arises from the U.S. determination to test and deploy a new range of nuclear weapons falling in the genre of mini-nukes and earth-penetrating 'bunker busters', designed to perform specialized battlefield tasks. A permissive atmosphere would thereby be

generated, encouraging have-nots to acquire nuclear weapons, since the U.S. is contravening its Article VI obligations, and is also willing to use these weapons in violation of the norm against using WMDs.

### The Proliferation Security Initiative

The PSI is the U.S. response to these strains in the non-proliferation regime. It falls squarely within the American logic of pre-emption. Incidentally, the specific actions contained in the Interdiction Principles envisaged by the PSI include steps " to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such [ WMD suspect] cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry". These specific actions have been extended, mutatis mutandis, to aircraft transiting through national airspace, and to denial of transit facilities to aircraft suspected of carrying such cargoes.

Whether the PSI could deter non-state actors, who are outside the global non-proliferation and disarmament structure based on treaties, conventions and norms, is quite another matter. Entry into the PSI regime is voluntary. But pressures to join it are subtle and persistent. Thus, U.N. Security Council Resolution 1540 is cited as part of this persuasion, which calls on all states to establish effective national export controls; to adopt and enforce effective laws to criminalize proliferation; to take cooperative action to prevent non-state actors from acquiring weapons of mass destruction; and to end illicit trafficking in such weapons, their means of delivery, and related materials. Another authority cited is the G-8 plan on Nonproliferation, envisaging that these countries would " cooperate to defeat proliferation networks and coordinate, where appropriate, enforcement efforts, including by stopping illicit financial flows and shutting down illicit plants, laboratories and brokers, in accordance with national legal authorities and legislation and consistent with international law."

The basic premise underlying all these measures to implement the PSI is that WMD proliferation, which includes biological and chemical weapons, and radioactive dispersal devices (dirty bombs), apart from nuclear weapons, must be criminalized by the international community. Hence, partnerships of nations should harness their own resources and enact national legislation to halt shipments of WMD related materials to and from suspect states and non-state actors. The thesis underlying the PSI is that WMDs become threats if suspect (aspirant) entities possess them.

Some 68

countries are now on board and negotiations with another 20 countries are proceeding to negotiate bilateral agreements to permit the boarding of ships suspected to be carrying WMDs. A singular success in this direction has been the signing of agreements with Liberia and Panama that have large registries of ships carrying flags of convenience.

### Conclusion

It is evident that the PSI only applies against suspect nations that are unable to resist this onslaught on their sovereign rights. The hypothetical case of China transporting WMD sensitive materials and equipment to Pakistan or Iran can be raised. Would the PSI adherents "board, search and seize" such suspect cargoes? Further, the PSI will not apply to suspect cargo transiting over the high seas, or by overland routes through non-PSI adherent countries. An international norm to enable ships carrying suspect cargo to be boarded and searched on the high seas would require the universally accepted norm relating to the freedom of the seas being abridged voluntarily by all nations to curb WMD proliferation. Will this abridgement of sovereignty be agreeable to the international community without some credible progress being made by the nuclear weapon states to reduce their bloated arsenals? There are several

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operational difficulties also in implementing the PSI like the superiority of force required to board and search a naval vessel that may be suspected of carrying contraband.

At the conceptual level, the PSI, a transparently coercive measure, extends the American policy of using technology denial and controls to stem proliferation, adding forcible means to address this problem. However, the underlying roots of regional conflicts need being addressed, which is not happening. Significantly the states of proliferation concern are to be found in conflict zones like the Middle East, South Asia or Northeast Asia. There is also a need to address the reasons underlying international terrorism. More than economic deprivation or religious revivalism; it is the burning sense of injustice that fuels the growth of terrorism in many parts of the world.

Finally, the U.S. commitment to PSI, and its exhorting the international community to join its counter-proliferation efforts to halt WMD proliferation, is ironical. The Bush Administration has systematically weakened the international non-proliferation regime by emasculating the Chemical Weapons Convention, sabotaging the negotiations on a Verification Protocol for the Biological Weapons Convention, abrogating the Anti-Ballistic Missile Treaty, shelving the Comprehensive Test Ban Treaty, apart from ignoring other international conventions, treaties, protocols, codes and norms that define a multilateral approach to global issues. Why, then, should it expect international cooperation to pursue its obsession with the PSI?

Should India join the PSI regime for the sake of expediency or stay out on moral/ legal grounds. The issue gains salience and urgency with India's need to work out its nuclear deal with the United States. The Government should get a 'sense of the House' by placing this issue before Parliament for debate, which would also permit its discussion in the country.



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