

The Proliferation Security Initiative

By Col. Dan Smith (Ret.) | October 16, 2003

Look for the Bush administration to push its “Proliferation Security Initiative” (PSI) during the president’s October trip to Asia. Look for Asian leaders already not on board (only Japan and Australia are participating) to politely agree—and get on with other priorities.

Such a reaction would be consistent with the plethora of “proliferation” challenges confronting the world. Speaking a month after a suicide car bomb destroyed the UN headquarters in Baghdad, killing 22 people, Secretary General Kofi Annan, bluntly told the UN General Assembly that the world must come to grips with the multiple instances of proliferation that constitute “the many pressing crises that confront [the world] today.”

Given the trauma in Baghdad, Annan spoke first of the need to meet the challenge of terrorists employing conventional and home-made explosives. He named other “proliferation” challenges: the widespread trade in small arms, the growth and stubborn persistence of poverty, the spread of infectious diseases, and increased environmental degradation, all of which are present dangers.

But the Secretary General was not done. As pervasive and compelling as these challenges are, Annan’s chief proliferation concern is an idea: that countries would succumb to the temptation to copy the Bush administration’s preventive (or “preemptive”) war doctrine that the White House implemented when it attacked Iraq in March. Clearly, Annan believes the routine acceptance and use of preventive war is a corruption of the concept of self-defense as contained in Article 51 of the UN Charter. He regards preventive war as an abandonment of containment and deterrence which, during the first half-century of the UN’s existence, kept the superpowers from direct conflict and restrained Saddam’s activities between the two Gulf wars.

Justifying Perpetual War

Although the Secretary General did not explicitly do so in this UN speech, he effectively dissected the three strands that constitute the basis of and justification for the U.S. policy of perpetual war. The first two produce “new imminent threats” (or perhaps more accurately, old threats enhanced by new capabilities) through the proliferation of technology—specifically, the potential for terrorists to acquire chemical, biological, or nuclear weapons. Fearful that a weapon of mass destruction (WMD) will someday be used on its soil, a government may opt to launch a preventive attack (the third strand) on another country where anarchic conditions might allow terrorists to establish a base or whose leaders might someday be complicit in terrorists acquiring WMD.

This third strand is the very antithesis of Annan’s call for spending the “time and patience to forge a policy that is collective, coherent, and workable... [regarding] all the many pressing crises that confront us [the UN] today.” While the UN has condemned terrorism and committed itself to defeat it, the “war on terror” rubric has become an all too common justification for military actions by governments against non-conforming ethnic, religious, or cultural sub-groups among their citizens or even against another country.

While not renouncing preventive war, Washington is constrained in its further use at this time because it simply doesn’t have the forces to keep 133,000 personnel in Iraq and Afghanistan and thousands more in Kuwait. Les Brownlee, Acting Secretary of the Army, noted in early October that the U.S. Army had 300,000 soldiers in 117 countries around the



globe. And the globe is heating up with Israeli air strikes into Syria (the first since 1973) and Taiwan's President Chen Shui-bian declaring "The people of Taiwan firmly believe that there is one country on each side of the straits—one China and one Taiwan" (*The Washington Post*, October 7, 2003).

North Korea in Focus

Nonetheless, the Bush administration is still obsessed with trying to counter what it regards as the world's most dangerous weapons proliferator: North Korea, a country suspected of having at least two nuclear weapons and known to have intermediate- and long-range missiles. Washington's list of grievances also includes:

- breaking agreements with South Korea to keep the peninsula a nuclear-free area and with the U.S. to shut down its heavy water reactors;
- beginning a secret uranium enrichment program in the late 1990s;
- expelling observers from the International Atomic Energy Agency (IAEA) and
- re-opening nuclear reactors.

In late September Pyongyang said it had started fabricating additional nuclear bombs using plutonium extracted from 8,000 reprocessed spent nuclear fuel rods. In early October Pyongyang asserted it was not interested in a second round of six-party (China, Japan, both Koreas, Russia, and the U.S.) discussions and would not engage in further multi-party talks were Japan included. (Diplomats from the North then dropped hints about a meeting in December.)

It is true that North Korean ships have supplied ballistic missiles, missile parts, and technology to countries in the Middle East. One recent shipment was discovered when a Spanish warship looking for al Qaeda fugitives stopped a North Korean vessel on the high seas. After consultations with the U.S., the Spaniards released the vessel, which proceeded with its missile cargo to Yemen. (Other North Korean ships have been found carrying contraband drugs and "dual-use" {military and civilian} chemicals.)

Missile Technology Control Regime

Since 1987, Washington's main line of defense against such proliferation has been the informal, voluntary Missile Technology Control Regime (MTCR). Originally consisting of seven countries (Canada, France, Germany, Italy, Japan, UK, U.S.), the regime now boasts 33 countries. It attempts to control the spread of missile and rocket technology that could be used to carry WMD. The weakness of the MTCR is that it is a "supply-side" effort to control a technology that has spread beyond its members. Moreover, some countries that have either acquired or enhanced missile capabilities to the point that their neighbors are concerned, such as is the case with North Korea, have not been invited to join. Nor do MTCR members engage in diplomatic or economic exchanges or otherwise reward countries that might want missile technology—the "demand" side—but forego acquiring it surreptitiously.

That leaves, essentially, inspections, seizures, and other punitive measures. Washington has won agreements to station U.S. inspectors in some overseas ports to examine cargo (especially containers) bound for the U.S. But Washington's apparent preferred remedy for the MTCR's shortfalls in controlling WMD and missile proliferation is embodied in the Proliferation Security Initiative (PSI), a still nascent scheme for stopping and searching ships at sea and requiring (or even forcing) aircraft to land for searches of cargo.

While the Bush administration has published its "National Strategy to Combat Weapons of Mass Destruction" (December 2002), Washington may be justifying its WMD stand internationally on the January 31, 1992 UN Security Council determination that WMD proliferation constituted a threat to peace. The U.S. has unilaterally asserted that possession of WMD by nations "of proliferation concern" (or rogue nations)—currently defined as Cuba, Iran, Libya, North Korea, Sudan, and Syria—constitutes such a threat. These countries are deemed more likely to either use such weapons against their own populace, neighboring nations, or the U.S. (where missiles would probably be used) or to give these weapons to terrorist organizations. Hence, wherever necessary,

forbidden cargo inbound to or outbound from any of these countries must be interdicted before it can be used. In reality, North Korea is the real target of the PSI, for it has shipped and received missile and nuclear technology, is probably working to combine them, and is on the rogues list. (Pakistan would also qualify except that it is a U.S. ally in the war on terror and crucial to stabilizing Afghanistan.)

Given that North Korea is the chief U.S. worry, it is instructive that only two of the eleven countries who have agreed to act under the PSI are Asian nations. (The eleven countries forming PSI membership and participating in PSI-related naval “exercises” are Australia, France, Germany, Italy, Japan, Netherlands, Poland, Portugal, Spain, UK, and U.S.) Countries have agreed in principle to share intelligence, coordinate activities, and cooperate when suspect vessels are under the flag of any PSI state.

Just how and how many PSI interdictions will occur is uncertain because PSI is not international law and interdiction is not even “common practice” except in the case of unflagged vessels, which are deemed pirates. PSI risks violations of international law (e.g., Law of the Sea Convention), which in general forbids interdicting vessels on the high seas and in international airspace. Article 19 of the Convention guarantees innocent (non-threatening) passage for ships through the territorial waters of coastal countries. The Convention (which the U.S. has not signed even though it was quite active in crafting the treaty) and other international law permit boarding and searching vessels in international waters if there is cause to believe wanted terrorists are aboard or items identified internationally as contraband (e.g., illicit drugs, slaves) are being carried. At best, under current law, PSI interceptions will be restricted to suspicious ships and planes in a PSI-member or “cooperating” country’s territorial waters and national airspace. (Note also that officials of a “host” country have inherent jurisdiction already to board and inspect ships that dock at its ports to enforce its laws.) This suggests that it will have minimal impact on its main target, North Korea, whose “shortest distance” (air and surface) to sympathetic countries is through China. For this reason, and in light of the importance of revenues from its missile

sales, North Korea will be careful not to antagonize China too much.

The U.S. may also try to suborn Article 51 of the UN Charter, which gives states facing an imminent military threat the right to use force in self-defense until the Security Council can take action. But as with the general “Bush Doctrine” of preventive war, this use of Article 51 would be a gross misrepresentation of its intent.

For its part, North Korea has declared that any interdiction of its vessels would be considered an act of war. From the North’s perspective, this is logical as the interdicting vessel will inevitably be a warship. It is also important to keep in mind that carrying weapons per se, even nuclear weapons, is not a violation of international law. (In fact, Article 23 of the Law of the Sea Convention assures “innocent passage” for ships carrying nuclear weapons.) Since North Korea has withdrawn from the Nuclear Non-Proliferation Treaty, its flagged vessels can carry nuclear weapons or weapons materials with impunity unless a terrorist connection can be established. Were a PSI state to interdict a North Korean vessel, at the moment Pyongyang’s ability to retaliate or even threaten to retaliate is limited to countries in its region. (U.S. intelligence believes that the North is well along in developing its Taipo Dong II missile, which is expected to have intercontinental range. Believing that Kim Jong Il is irrational, the administration holds that classic position that deterrence will not work; hence the U.S. must spend tens of billions of dollars on continental missile defense.)

Thus Washington may believe it has a very finite window of opportunity to muster international acquiescence to the PSI. A sense of urgency was evident during the October 9th State Department press briefing held by spokesperson Richard Boucher. Referring to an ongoing third gathering of PSI states, Boucher reaffirmed that “An essential component of [U.S.] counter-proliferation strategy is to work with other concerned states to develop new means to disrupt the proliferation trade at sea, in the air, and on land. The Proliferation Security Initiative reflects the need for a more dynamic and proactive approach to the global proliferation problem.” He also noted that the objective of this London meeting was to work

out “how to implement the principles of interdiction that we have agreed upon,” suggesting that at least some of the other PSI states are being very cautious about abruptly “extending” international law at the behest of the United States, lest it be seen as “caving-in” to U.S. unilateralism.

Finally, as the “high seas shall be reserved for peaceful purposes” (Article 88 of the Law of the Sea Convention), the use of—or threat to use—force to stop a flagged North Korean vessel without a clear reason tying it to terrorism or contraband cargo is itself a breach of international maritime law. For a

nation that has always insisted that freedom of the seas is a fundamental part of international law, the PSI runs close to subverting this principle. In fact, the PSI itself may well be seen as constituting an unlawful solution—and thus a very basic and serious challenge to—the multiple challenges of “proliferation.”

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Published by Foreign Policy In Focus (FPIF), a joint project of the Interhemispheric Resource Center (IRC, online at www.irc-online.org) and the Institute for Policy Studies (IPS, online at www.ips-dc.org). ©2003. All rights reserved.

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Recommended citation:

Dan Smith, “The Proliferation Security Initiative: A Challenge Too Narrow,” (Silver City, NM & Washington, DC: Foreign Policy In Focus, October 2003).

Web location:

<http://www.presentdanger.org/papers/prolif2003.html>

Production Information:

Writer: Dan Smith

Editor: John Gershman, IRC

Layout: Tonya Cannariato, IRC

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