

²³⁷ See, for instance, Shannon N. Kile, 'Nuclear arms control, non-proliferation and ballistic missile defence', *SIPRI Yearbook 2003*, p 577.

Chapter 6: Conclusions and recommendations – building on a positive start

²³⁸ Jack Straw, Written Ministerial Statements, Foreign & Commonwealth Affairs, Hansard, 25 February 2004: Columns 46 & 47ws.

²³⁹ 'Dual use' refers to the tangible and intangible features of technology that enable it to be applied, or have potential application, to both peaceful and hostile purposes. The 'dual use dilemma' in terms of chemical and biological weapons non-proliferation is that many of these dual-use technologies are spreading across the world as part of normal commerce and globalisation trends. Policing dual-use technology transfers therefore poses a serious policy design problem: the regulatory regime needs to balance suppression of negative applications (in order to reduce the risk of germ or chemical warfare) without hindering the development of technology for positive economic purposes.

²⁴⁰ For an analysis largely driven by ideological bias against multilateral agencies, see Baker Spring, 'Harnessing the Power of Nations for Arms Control: The Proliferation Security Initiative and Coalitions of the Willing', *The Heritage Foundation*, Backgrounder No.1737, 18 March 2004.

²⁴¹ The Global Maritime Distress and Safety System (GMDSS) became fully operational in 1999. A ship that is in distress anywhere in the world can now be virtually guaranteed assistance, even if the ship's crew do not have time to radio for help, as the message is transmitted automatically. For further information, see the IMO web site: www.imo.org.

²⁴² Overall the study found a wide variety of discrepancies amongst the four lists, indicating that the criteria for deciding which countries should be subject to special procedures are not uniformly applied by these four exporting countries. Deltac Limited and Saferworld, *Proliferation and Export Controls: An analysis of sensitive technologies and countries of concern*, Chertsey: Deltac/Saferworld, 1995, pp.xiii-xiv.

²⁴³ David McGlinchey 'Anti-proliferation effort will receive no separate funding, personnel', *Government Executive Magazine*, 15 March 2004.

APPENDIX 1 Statement of Interdiction Principles

Paris - 2-3 September 2003

The Proliferation Security Initiative (PSI) is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the UN Security Council Presidential statement of January 1992, which states that the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation.

The PSI is also consistent with recent statements of the G8 and the European Union, establishing that more coherent and concerted efforts are needed to prevent the proliferation of WMD, their delivery systems, and related materials. PSI participants are deeply concerned about this threat and of the danger that these items could fall into the hands of terrorists, and are committed to working together to stop the flow of these items to and from states and non-state actors of proliferation concern.

The PSI seeks to involve in some capacity all states that have a stake in non-proliferation and the ability and willingness to take steps to stop the flow of such items at sea, in the air, or on land. The PSI also seeks cooperation from any state whose ships, flags, ports, territorial waters, airspace, or land might be used for proliferation purposes by states and non-state actors of proliferation concern. The increasingly aggressive efforts by proliferators to stand outside or to circumvent existing non-proliferation norms, and to profit from such trade, requires new and stronger actions by the international community. We look forward to working with all concerned states on measures they are able and willing to take in support of the PSI, as outlined in the following set of "Interdiction Principles".

Interdiction Principles for the Proliferation Security Initiative

PSI participants are committed to the following interdiction principles to establish a more coordinated and effective basis through which to impede and stop shipments

of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council. They call on all states concerned with this threat to international peace and security to join in similarly committing to:

1. Undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. “States or non-state actors of proliferation concern” generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through : (a) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (b) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.
2. Adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity, protecting the confidential character of classified information provided by other states as part of this initiative, dedicate appropriate resources and efforts to interdiction operations and capabilities, and maximize coordination among participants in interdiction efforts.
3. Review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary relevant international laws and frameworks in appropriate ways to support these commitments.
4. Take specific actions in support of interdiction efforts regarding cargoes of WMD, their delivery systems, or related materials, to the extent their national legal authorities permit and consistent with their obligations under international law and frameworks, to include:
 - a. Not to transport or assist in the transport of any such cargoes to or from states or non-state actors of proliferation concern, and not to allow any persons subject to their jurisdiction to do so.
 - b. At their own initiative, or at the request and good cause shown by another state, to take action to board and search any vessel flying their flag in their internal waters or territorial seas or areas beyond the territorial seas of any other state that is reasonably suspected of transporting such cargoes to or from states or non-state actors of proliferation concerns, and to seize such cargoes that are identified.

- c. To seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states and to the seizure of such WMD-related cargoes in such vessels that may be identified by such states.
- d. To take appropriate actions 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 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.
- e. At their own initiative or upon the request and good cause shown by another state, to (1) require aircraft that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and that are transiting their airspace to land for inspection and seize any such cargoes that are identified; and/or (2) deny aircraft reasonably suspected of carrying such cargoes transit rights through their airspace in advance of such flights.
- f. If their ports, airfields, or other facilities are used as transshipment points for shipment of such cargoes to or from states or non-state actors of proliferation concern, to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying such cargoes, and to seize such cargoes that are identified.

APPENDIX 2

Chairman's Conclusions from other PSI Meetings

Proliferation Security Initiative: Chairman's Statement at the First Meeting

Foreign Ministry of Spain First Meeting of the PSI, Madrid, June 12, 2003

The International Community is deeply concerned by the proliferation of weapons of mass destruction [WMD] and related materials, as well as by the risk that these may fall into the hands of terrorists. There exists a wide-spread consensus that this menace, together with terrorism, constitutes the greatest challenge to International Security.

In this context, the Government of Spain hosted a meeting of countries on June 12, where, building on the Proliferation Security Initiative announced by U.S. President Bush May 31 in Krakow, participants agreed on the need to take more active measures to stop the flow of WMD and missiles to and from states and non-state actors of proliferation concern. Participants recalled G-8 efforts, including the Global Partnership Against the Proliferation of Weapons of Mass Destruction, and the EU Strategy and Action Plan against Proliferation of Weapons of Mass Destruction.

The group included Australia, France, Germany, Italy, Japan, Netherlands, Poland, Portugal, Spain, the United Kingdom, and the United States.

All agreed that proliferation of weapons of mass destruction, their means of delivery, and related materials and equipment is a serious threat to national and international security and that trafficking in these items by certain countries or non-state actors must be stopped.

They agreed to assess existing national authorities under which such practical measures could be pursued, and to encourage the various export control regimes to take this initiative into account in strengthening the regimes.

They expressed the desire to broaden support for and, as appropriate, participation in the Proliferation Security Initiative to include all countries that are prepared to play a role in preventing this dangerous commerce, and that can contribute to proactive measures to interdict shipments.

Brisbane Meeting, 9-10 July 2003 CHAIRMAN'S STATEMENT

The participants in the Proliferation Security Initiative (PSI) meeting in Brisbane on 9-10 July reiterated their strong political support for the initiative, and underscored that the PSI is a global initiative with global reach. They agreed to move quickly on direct, practical measures to impede the trafficking in weapons of mass destruction (WMD), missiles and related items.

This was the second meeting of the eleven PSI countries. The first meeting was in Madrid on 12 June. Participants are Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the UK and the US.

The Madrid meeting was unanimous on the need to take active measures to stop the flow of WMD, missiles and related items to and from proliferators. This reflected the international alarm at the growing trade in WMD, missiles and related items, including the risk that these might fall into the hands of terrorists.

Under Australian chairmanship, the Brisbane meeting built on the results from the Madrid meeting and moved forward in translating the collective political commitment of PSI members into practical measures.

The Brisbane meeting focused on defining actions necessary to collectively or individually interdict shipments of WMD or missiles and related items at sea, in the air or on land. Participants emphasised their willingness to take robust and creative steps now to prevent trafficking in such items, while reiterating that actions taken would be consistent with existing domestic and international legal frameworks.

The Brisbane meeting made good progress in considering interdiction modalities, particularly in the information sharing and operational arenas. Participants emphasised that effective information sharing is vital to interdiction, and agreed to strengthen and improve capabilities for the exchange of information and analysis between participants as a basis for cooperative action to impede WMD and missile trade. Participants acknowledged that although interdiction efforts have been under way for some time, there is a need to further develop and enhance the capabilities of PSI nations to conduct actual air, ground and maritime interdiction operations in partnership against WMD and delivery systems. To that end, they agreed in prin-

ciple to the concept of a series of interdiction training exercises, utilising both military and civilian assets as appropriate, and that such exercises should take place as soon as practicable.

Participants agreed on the importance of building a broad and effective partnership of countries prepared to play a part in disrupting and stopping the trafficking in WMD, missiles and related items. They agreed effective implementation of the PSI will require the active involvement of countries around the world. As the PSI moves forward, they aim to involve all countries that have the will and ability to take action to address this menace. It also will be crucial to involve countries that are key flag, coastal or transit states, and others that are used by proliferators in their WMD and missile trafficking efforts.

Participants underlined that the spread of weapons of mass destruction, their means of delivery, and related materials and equipment is a serious threat to national, regional and global security.

Participants expressed concern that WMD and missiles are increasingly being acquired by states of concern which reject international standards against the acquisition, use and proliferation of such weapons.

PSI participants considered the question of states and non-state actors of proliferation concern. They referred to the relevant statements of the G-8 Evian summit on 1-3 June and the EU-US Joint Statement on the Proliferation of Weapons of Mass Destruction of 25 June which addressed countries of proliferation concern and non-state actors with particular reference to North Korea and Iran.

The Brisbane meeting strongly supported the strengthening of the existing framework of national laws and export controls, multilateral treaties and other tools which remain the international community's main means for preventing the spread of WMD and missiles. They emphasised that the increasingly aggressive and sophisticated efforts by proliferators to circumvent or thwart existing non-proliferation norms, and to profit from the trade of WMD and missiles or related items, requires new and stronger enforcement action by law-abiding nations. The PSI was therefore welcomed as a necessary and innovative approach to the problem of countries which cheat on their international obligations, refuse to join existing regimes or do not follow international norms, and for non-state actors seeking to acquire WMD.

Participants acknowledged that the PSI is a fast-track initiative that will require continued interaction among experts and policy makers in the days and weeks ahead, and agreed to a next high-level meeting in early September.

Proliferation security initiative: London, 9-10 October Chairman's conclusions

Participants in the Proliferation Security Initiative (PSI) met at Lancaster House, London, on 9-10 October. Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the UK and the US were represented. The meeting was preceded on 8 October by an air interception command post exercise (CPX), organised by the UK.

The London meeting was the fourth meeting of the PSI, consolidating and building on the foundations laid at Madrid (12 June); Brisbane (9-10 July); and Paris (3-4 September).

Outreach

Following the publication of the Statement of Interdiction Principles on 4 September 2003, PSI participants approached other countries to seek their support for the Statement, and their views on how they might contribute to the Initiative.

Participants agreed that the response had been very encouraging. The Initiative had been well received. Over 50 countries had already expressed support for the Statement of Principles.

It was agreed that further co-ordinated outreach work would be needed to broaden international understanding of and co-operation with the Initiative. In this context, further regionally based meetings and activities would be valuable. In this regard the meeting welcomed planned efforts in the Asian region by Japan and Australia. The possibility was discussed of inviting additional participants to specific PSI exercises or other activities, on an ad hoc basis.

Participation

The meeting agreed that the PSI was a global initiative with an inclusive mission. Successful interdiction of trafficking in WMD, their delivery systems and related materials requires the widest possible co-operation between states.

Participation in the PSI, which is an activity not an organisation, should be open to any state or international body that accepts the Paris Statement of Principles and makes an effective contribution.

The meeting noted that participation would vary with the activity taking place, and the contribution participants could provide. Some countries had particular experi-

ence, assets or expertise relevant to all PSI activities; other countries or organisations could be expected to contribute according to their particular capabilities.

It was noted that a number of countries which had expressed particularly keen interest in participating in future PSI activities and meetings had experience and capabilities which would be of value to the Initiative, and which should be taken into account in future decision making.

Focus of efforts

The Statement of Interdiction Principles, agreed at Paris in September, outlines the scope of the Initiative. It makes clear that ‘States or non-state actors of proliferation concern’ generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.

Participants agreed that the Initiative aimed to impede and stop trafficking of WMD, their delivery systems and related materials by any state or non-state actor engaged in or supporting WMD proliferation programmes, at any time and in any place.

WMD is a global threat which calls for a global response. Participants looked forward to working with all concerned states on developing the specific measures they were able and willing to take in support of the PSI.

Operational matters

Participants had an initial exchange of views on a possible Boarding Agreement, presented by the US, which could facilitate practical implementation of the Initiative. They agreed that participants should make comments as rapidly as possible, so that states which are interested can move forward with concluding the agreement.

Participants agreed that future interdiction exercises should build on the successful exercises that have already taken place: an Australian-led maritime interdiction training exercise in the Coral Sea in September, and a UK-led air interception command post exercise in London. Future exercises should seek to integrate civil, military, and law enforcement decision making, as appropriate.

The meeting agreed further steps to plan training exercises that will take place in the coming months:

- Spanish led maritime interdiction training exercise in the Mediterranean, 14-17 October
- French led maritime interdiction training exercise in the Mediterranean, 24-28 November
- Italian led air interception training exercise, 3-4 December
- US led maritime interdiction training exercise in the Arabian Sea, January 2004
- Polish led ground interdiction exercise, early 2004
- Italian led maritime interdiction exercise in the Mediterranean, Spring 2004
- French led air interception exercise, Spring 2004
- German led interdiction exercise, at an international airport, March 2004

It was noted that there could be lessons to be learnt from NATO’s maritime interdiction operations.

Contacts with international organisations

Participants agreed that all relevant fora should be kept informed of significant developments under the Initiative. To this end, the chair of each PSI Plenary meeting should, as appropriate, circulate its conclusions.

Recalling the 1992 UN Security Council Presidential Declaration on the proliferation of WMD, the meeting noted the value of securing an expression of support in relevant international fora for greater international co-operation against trafficking in WMD, their delivery systems and related materials.

Future meetings

Concluding, the Plenary Chair noted that the broad direction of the PSI had now been agreed. Plenary meetings might therefore become less frequent. But exercises and expert discussion of specific operational and policy issues under the PSI umbrella would continue, with the broadest possible participation by states committed to PSI Principles and to making effective contributions.

The offer by the United States to host an operational experts' meeting in December was warmly welcomed. A number of countries, beyond the original 11 participants, that support the PSI Principles and have concrete contributions to make to PSI activities will take part in that meeting.

Participants warmly welcomed Portugal's offer to host the next PSI Plenary meeting in early 2004.

Proliferation Security Initiative: Chairman's Statement at the Fifth Meeting

Palácio Foz

Fifth Meeting of the PSI, March 4-5, 2004

Lisbon, Portugal

March 5, 2004

1. The fifth Plenary meeting of the Proliferation Security Initiative (PSI) took place at Palácio Foz, Lisbon, on March 4-5, 2004, building on deliberations at Madrid (December 6, 2003); Brisbane (July 9-10, 2003); Paris (September 3-4, 2003) and London (October 9-10, 2003). Australia, Canada, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Singapore, Spain, the UK, and the U.S. were represented.

2. The participants reaffirmed their strong determination to respond effectively to the threat represented by proliferation and trafficking of WMD [weapons of mass destruction], their delivery systems, and related materials worldwide. Recent developments leave no doubt as to the seriousness of the danger posed by such proliferation activities. The PSI [Proliferation Security Initiative] has been successful in raising worldwide awareness to this threat and in fostering the international cooperation that is required to stop WMD-related shipments as well as the proliferation networks. Trafficking in WMD constitutes a global threat to international peace and security. It is an unacceptable activity and should be addressed by all countries. If linked to terrorism, it can represent a random threat to anyone, in any continent.

3. Deterring trafficking is therefore in the interest of all peace-loving countries. The open nature of this Initiative is reiterated and the contributions from countries that share PSI concerns, principles and goals continue to be welcomed. This is a global endeavor with an inclusive nature and it relies on the widest possible cooperation between states from different parts of the world. Participants considered that geographical balance and regional diversity are assets that need to be preserved, as they represent an important added value to PSI effectiveness. In this spirit, the strengthened commitment of Canada, Norway, and Singapore to the PSI is warmly welcomed.

4. Participants supported the call by U.S. President Bush to expand the role of the PSI to not only interdict shipments of WMD, their delivery systems and related materials, but to cooperate in preventing WMD proliferation facilitators (i.e. individuals, companies, and other entities) from engaging in this deadly trade. They also warmly welcomed contributions by other participants namely the UK. Participants agreed to pursue greater cooperation through military and intelligence services and law enforcement to shut down proliferation facilitators and bring them to justice. PSI participants agree to begin examining the key steps necessary for this expanded role, including:

- identifying national points of contact and internal processes developed for this goal;
- developing and sharing national analyses of key proliferation actors and networks, their financing sources, and other support structures;
- undertaking national action to identify law enforcement authorities and other tools or assets that could be brought to bear against efforts to stop proliferation facilitators.

Outreach

5. The participants agreed that it was essential to continue broadening the international consensus in favor of the fight against the proliferation of WMD, their delivery systems, and related materials, as well as to the widening of the international political and operational support for PSI aims and actions. This will be carried out notably by building on previous outreach activities (over 60 countries have expressed support for the Paris Statement of interdiction Principles until now). This may also be done by concluding bilateral agreements with interested States, notably in view of obtaining their consent for expeditious procedures for the boarding of vessels flying their flag, as required. The first examples of such bilateral agreements seem to indicate that this is an approach that can bear fruit most rapidly and which participants could/should usefully pursue.

6. Regarding significant developments related to the fight against WMD-related trafficking, complementary efforts by all relevant international organization and information sharing with such organizations should be pursued as appropriate.

7. Regional outreach activities have shown to be an effective awareness-raising tool. They provide a useful framework for enhancing the involvement in the PSI activities and create a link between its global aims and the various regional contexts. Participants are encouraged to host further meetings to present and promote the PSI along

the lines of those organized by Japan and Poland. The Portuguese announcement of one such outreach meeting for the African continent was welcomed.

8. While continuing to promote wide support for the Initiative, participants agreed to focus their outreach efforts particularly on states that have potentially unique contributions to make to interdictions efforts (i.e. flag states, transshipment states, overflight states, transit states, and coastal states). The support of all countries interested in PSI and cooperation in interdiction is welcome and states are encouraged to consider the following practical steps that can establish the basis for involvement in PSI activities:

- Formally commit to and publicly endorse the PSI and its Statement of Interdiction Principles and indicate willingness to take all steps available to support PSI efforts.
- Undertake a review and provide information on current national legal authorities to undertake interdictions at sea, in the air or on land.
- Indicate willingness to strengthen authorities where appropriate.
- Identify specific national assets that might contribute to PSI efforts (e.g. information sharing, military and/or law enforcement assets).
- Provide points of contact for PSI interdiction requests and other operational activities. Establish appropriate internal government processes to coordinate PSI response efforts.
- Be willing to actively participate in PSI interdiction training exercises and actual operations as opportunities arise.
- Be willing to consider signing relevant agreements (e.g. boarding agreements) or to otherwise establish a concrete basis for cooperation with PSI efforts (e.g. MOU on overflight denial).

9. The participants discussed the proposed amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) that would criminalise the transport of weapons of mass destruction, their delivery systems, and related materials on commercial vessels at sea.

Operational Activities

10. The participants noted with satisfaction that the PSI is by now operationally active. They also recognized that specific, significant progress was thereby obtained in fighting proliferation activities and that PSI partners had contributed decisively to recently disclosed successes in the disruption or indeed dismantling of some previously covert WMD programs.

11. The meeting heard a report from the chairman of the operational experts meeting that took place in Washington, DC on December 16-17, 2003. It encouraged the operational experts to pursue their work at the meeting that was announced in Canada, to take place in April, notably in view of reaching conclusions on the improvement and rationalization of the PSI exercise program, providing for improved thematic and geographical balance, as well as on several other steps identified at the Washington meeting.

12. Training is required for operational effectiveness. Six exercises took place in different parts of the world since the launching of the PSI and further important operational activities are foreseen in the months to come. The Plenary took note with satisfaction that the UK, Australia, Spain, France, Italy, the U.S., Germany, and Poland, have organized or will organize PSI exercises. Other participants are encouraged to take similar initiatives, in the framework of a coordinated and rationalised exercise program.

13. The Plenary particularly drew the participants' attention to the fact that the attainment of the PSI goals requires continued efforts within the operational experts group to work through operational legal issues, as commenced at the Washington meeting. All countries are encouraged to take the necessary steps to improve their legal systems and practical tools to strengthen their capacity to effectively act as and when required to take action consistent with the PSI Statement of Interdiction Principles. Bearing in mind our common goals, appropriate consultations might be required in this regard.

Future of PSI

14. Not yet one year from the moment it was launched, the Proliferation Security Initiative has established itself as a crucial instrument to respond effectively to some of the most serious security challenges of the XXI century. This is reflected in the growing number of countries supporting the PSI. All participate in this sense in the Initiative and all their contributions are warmly welcomed. Just like proliferation can be a multifaceted phenomenon, the responses may have to be flexible and may need to take many shapes and forms.

15. PSI is an activity, not an organization. Progress since the London Plenary demonstrates that the main lines of the PSI are now well established and that several directions of action can be pursued separately but still in a mutually reinforcing mode. However, to further build the PSI as an activity, political vision and strategic guidance remain necessary. Further consideration shall be given to the suggestion of establishing a network of contact points at policy level among participants.

Next Meeting

16. To commemorate the anniversary of the launching of the PSI Poland offered to host a meeting in Krakow that will bring together all countries that support the PSI.

APPENDIX 3

Union of Soviet Socialist Republics – United States: Joint Statement with attached uniform interpretation of rules of International Law governing innocent passage

Since 1986, representatives of the United States of America and the Union of Soviet Socialist Republics have been conducting friendly and constructive discussions of certain international legal aspects of traditional uses of the oceans, in particular navigation.

The Governments are guided by the provisions of the 1982 United Nations Convention on the Law of the Sea, which, with respect to traditional uses of the oceans, generally constitute international law and practice and balance fairly the interests of all States. They recognize the need to encourage all States to harmonize their internal laws, regulations and practices, with those provisions.

The Governments consider it useful to issue the attached Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Both Governments have agreed to take the necessary steps to conform their internal laws, regulations and practices with this understanding of the rules.

Jackson Hole, Wyoming

September 23, 1989

UNIFORM INTERPRETATION OF RULES OF INTERNATIONAL LAW GOVERNING INNOCENT PASSAGE

1. The relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea (Convention of 1982), particularly in Part II, Section 3.

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage.

4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic separation schemes have been prescribed, ships nevertheless enjoy the right of innocent passage.

6. Such laws and regulations of the coastal State may not have the practical effect of denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.

7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. in such case the warship shall do so immediately.

8. Without prejudice to the exercise of rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.

APPENDIX 4

UN Security Council Resolution 1540 (2004)

“The Security Council,

“Affirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery,** constitutes a threat to international peace and security,

“Reaffirming, in this context, the Statement of its President adopted at the Council’s meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

“Recalling also that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

“Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

“Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

“Welcoming efforts in this context by multilateral arrangements which contribute to non-proliferation,

“Affirming that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

“Gravely concerned by the threat of terrorism and the risk that non-State actors** such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom

resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,

“*Gravely concerned* by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials,* which adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security,

“*Recognizing* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security,

“*Recognizing* that most States have undertaken binding legal obligations under treaties to which they are parties, or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials, such as those required by the Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources,

“*Recognizing* further the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

“*Encouraging* all Member States to implement fully the disarmament treaties and agreements to which they are party,

“*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

“*Determined* to facilitate henceforth an effective response to global threats in the area of non-proliferation,

“*Acting* under Chapter VII of the Charter of the United Nations,

“1. *Decides* that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

“2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

“3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

“(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

“4. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

“5. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

“6. *Calls upon* all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

“7. *Calls upon* all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

“8. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

“9. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;

“10. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

“11. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

“12. *Decides* to remain seized of the matter.”

* The 4955th Meeting was closed

** Definitions for the purpose of this resolution only:

Means of delivery: missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use.

Non-State actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.