

Endnotes

Chapter 1: Introduction

¹ 'Australia agrees to new WMD exercises', *ABC News Online*, 18 December 2003.

² David McGlinchey 'Anti-proliferation effort will receive no separate funding, personnel', *Government Executive Magazine*, 15 March 2004.

³ The White House, Office of the Press Secretary: 'Proliferation Security Initiative: Statement of Interdiction Principles', Fact Sheet, Washington, DC, 4 September 2003 (cit PSI principles).

⁴ PSI principles, para 1.

⁵ In summary, the Nuclear Non-Proliferation Treaty (NPT), the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BWC), the Comprehensive Nuclear Test Ban Treaty (CTBT), their international secretariats and governing bodies, a number of other treaties, and various other international arrangements designed to limit the spread of critical materials for the production of weapons of mass destruction.

⁶ Quoted by Judith Miller, 'Time and Technology', *New York Times*, 6 December 2003.

⁷ For example, since its inception in 1968, the NPT has been the main legal framework for preventing the proliferation of nuclear weapons to additional states. There are only five recognised nuclear weapons states, and only four states with the non-recognized nuclear weapons capability outside the NPT. Without the NPT, there could have been at least 28 additional states with nuclear weapons. This alone is a significant achievement. Several states, including South Africa, Belarus, Ukraine, Kazakhstan, Brazil, and Argentina have voluntarily given up their nuclear weapons programs. Libya has recently become another convert. There are now four regional nuclear weapon-free zones, which cover virtually the entire southern hemisphere, not to mention treaty regimes that prohibit the stationing of nuclear weapons on the seabed, in Antarctica, in orbit or on the moon and other celestial bodies, or the testing of such weapons at sea, in the atmosphere, or in space. Thus, as Jon Wolfsthal, deputy director of the Non-Proliferation Project at the Carnegie Endowment for International Peace (CEIP) concludes, "While today's proliferation challenges are real and acute, the track record in uncovering, confronting and reversing proliferation with established tools is actually quite strong". Jon Wolfsthal, 'The Key Proliferation Questions', *Proliferation Brief*, Volume 7, Number 6, CEIP, March 24, 2004.

⁸ Many analysts argue that the US Administration has undermined nonproliferation norms and alliances by its policies, including: its determination to develop an antiballistic missile shield and a new class of nuclear weapons; its abandonment of an international, six-year effort to strengthen the bioweapons treaty; and its attack on Iraq as part of its doctrine of preventive war. See, for example, Daryl Kimball, 'Curb Nuclear Weapons Excess', *Arms Control Today*, May 2004; and 'Bush's New Plan to Stop Proliferation', *Proliferation Brief*, Volume 7, Number 5, CEIP, February 20, 2004.

⁹ The White House, Office of the Press Secretary: 'Proliferation Security Initiative: Statement of Interdiction Principles', Fact Sheet, Washington, DC, 4 September 2003.

¹⁰ *Ibid*, paragraph 3.

¹¹ Proliferation Security Initiative: Chairman's Statement at the Second Meeting, Second Meeting of the PSI, July 9-10, 2003, Brisbane, Australia.

¹² Proliferation Security Initiative: Chairman's Conclusions at the Fourth Meeting, Fourth Meeting of the PSI, October 9-10, 2003, London, United Kingdom.

¹³ The United Nations Convention on the Law of the Sea, 10 December 1982, in force from 16 November 1994.

¹⁴ The United States and Turkey has neither signed nor ratified the convention while Denmark has signed but not yet ratified it.

¹⁵ 'The Proliferation Security Initiative: Dead in the water or steaming ahead?', *BASIC Notes*, 12 December 2003.

¹⁶ 'Foreign Ministry Spokesperson's Press Conference', 4 September 2003. The full transcript may be found at <http://www.fmprc.gov.cn/eng/xwfw/2510/2511/t25626.htm>.

¹⁷ *Ibid*.

¹⁸ 'Proliferation Security Initiative: Next Experts Meeting, China's Role', Office of the Spokesman, US Department of State, Washington, DC, 3 December 2003. The full transcript may be found at <http://www.state.gov/r/pa/prs/ps/2003/26867.htm>. If nothing else, PSI participants may need to make sure that China doesn't utilise its veto in the event that they choose to introduce a resolution on the PSI in the UNSC.

¹⁹ 'US lobbies Russia to join campaign against illicit arms shipments', *SpaceWar Wire*, 29 January 2004. The full article is available at <http://www.spacewar.com/2004/040129082721.dcagh536.html>.

²⁰ Nicholas Krlev, 'Russia hesitant to seize materials terrorists desire', *The Washington Times*, 11 January 2004.

²¹ *Ibid*.

²² Carol Giacomo, 'U.S. Presses Russia to Join Arms Body', *Moscow Times*, 29 January 2004.

²³ 'Russia Likely to Join PSI, Japanese Source Says', *NTI Global Security Newswire*, 30 April 2004.

²⁴ Having said this, the possibility of a targeted land 'interdiction' in a third country using missiles or special forces has probably not been ruled out by US defence planners. Neither is such a scenario too far removed from other illegal precedents, such as the targeted assassination of suspected terrorists in their own countries with missiles (e.g. six men suspected of membership in a militant Islamic network were killed in Yemen in November 2002 when their car was hit by a Hellfire missile fired from an unmanned Predator aircraft operated by the CIA, see 'Rights Group Questions Attack - Amnesty Says U.S. Missile Strike in Yemen May Be Illegal', *Reuters*, 9 November 2002) or the bombing of suspected WMD production facilities (e.g. in August 1998 the Clinton Administration used cruise missiles to bomb a Sudanese chemical plant 'suspected' of creating VX nerve gas, although the evidence to back this assertion was weak and vigorously disputed, see Ed Vulliamy, Henry McDonald, Shyam Bhatia and Martin Bright, 'Clinton knew target was civilian', *The Observer*, 23 August 1998; and 'Sudan wants U.N. to probe U.S. bombing of drug factory', *CNN.com*, 18 August 1999).

²⁵ See, in particular, article 35 (a) – (b) of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944.

²⁶ See, for example, John Bolton, 'The New Proliferation Security Initiative', interview by Wade Boese and Miles Pomper, *Arms Control Today*, 4 November 2003; and John R. Bolton, "'Legitimacy" in International Affairs: The American Perspective in Theory and Operation', Remarks to the Federalist Society, 13 November 2003.

Chapter 2: The Interdiction Principles

- ²⁷ President Bush, 'The New World Order', speech to Congress, 6 March 1991.
- ²⁸ UNSC, 'Note by the President of the Security Council', UN doc S/23500, 31 January 1992.
- ²⁹ *Ibid.*
- ³⁰ *Ibid.*
- ³¹ *Ibid.* The IAEA board is required to report all cases of member state non-compliance to the UNSC and UNGA, see IAEA Charter, article III (B) (4) and XII (C).
- ³² The CWC was concluded on schedule. As of the beginning of 2004, 158 countries are parties to it.
- ³³ A future BASIC Research Report will examine this issue in greater detail.
- ³⁴ The White House, 'Remarks by the President to the People of Poland', 31 May 2003.
- ³⁵ 'Chairman's Statement from PSI Meeting in Brisbane on 9-10 July', 16 July 2003.
- ³⁶ US Department of Defense, 'Deputy Secretary Wolfowitz Remarks to PSI Conference', 17 December 2003.
- ³⁷ Representatives of the following countries attended the Warsaw meeting: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Romania, Serbia and Montenegro, Slovakia, Slovenia and Ukraine. Communique after the Information Meeting of the Countries of Central and Eastern Europe on the development of Proliferation Security Initiative, Warsaw, 12 January 2004.
- ³⁸ Interview with UK Foreign and Commonwealth Office officials, April 2004.
- ³⁹ *Ibid.*
- ⁴⁰ The G-8 is composed of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States. The European Union is also represented in the G-8 and acts as one member, and is represented by the head of the European Commission.
- ⁴¹ 'Non Proliferation of Weapons of Mass Destruction - A G8 Declaration', Evian, 2 June 2003.
- ⁴² *Ibid.*, para 1.
- ⁴³ *Ibid.*, para 6.
- ⁴⁴ *Ibid.*, para 9.
- ⁴⁵ 'The G8 Global Partnership: Principles to prevent terrorists, or those that harbour them, from gaining access to weapons or materials of mass destruction', Kananaskis, Canada, 27 June 2002.
- ⁴⁶ *Ibid.*
- ⁴⁷ *Ibid.*, principle 2.
- ⁴⁸ *Ibid.*, principle 4.
- ⁴⁹ *Ibid.*
- ⁵⁰ Pre-2004 membership (EU15): Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden and the United Kingdom. Additional Member States as of May 1, 2004 (the EU25): Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Candidate Countries: Bulgaria, Romania, and Turkey. Applications Pending: Croatia and Former Yugoslav Republic of Macedonia.
- ⁵¹ Thessaloniki European Council, 'Presidency Conclusions', Thessaloniki, Greece, 19-20 June 2003, Chapter VIII and Annex II.
- ⁵² Annex II, para 1.
- ⁵³ Annex II, para 5 (5).
- ⁵⁴ EU-USA Summit, 'Joint Statement on the Proliferation of WMD', By Simitis, Prodi and Bush, Washington DC, 25 June 2003.
- ⁵⁵ As of May 2004, NATO comprised the following states: Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, UK and US.

- ⁵⁶ AFSOUTH Press Release, 'NATO Ships start boarding operations in Mediterranean', 31 July 2003.
- ⁵⁷ NATO Briefing, 'Active Endeavour', December 2003.
- ⁵⁸ PSI principles, para 3.
- ⁵⁹ *Ibid.*
- ⁶⁰ PSI principles, operative para 1.
- ⁶¹ Contrast, for example, the 2002 Strategic Offensive Reduction Treaty (SORT) and the 1991 Strategic Arms Reduction Treaty (START I). The latter is a detailed treaty 19 articles long not including annexes and additional protocols, while the former is comprised of five articles. The operative part of the SORT treaty contains one single article.
- ⁶² Montevideo Convention on the Rights and Duties of States, Signed at Montevideo, ²⁶ December 1933, Entered into Force, 26 December 1934.
- ⁶³ 'The New Proliferation Security Initiative: an interview with John Bolton', *Arms Control Today*, December 2003. See also 'Proliferation Security Initiative: Chairman's Statement at the Second Meeting', Second Meeting of the PSI, July 9-10, 2003, Brisbane, Australia.
- ⁶⁴ 'The New Proliferation Security Initiative: an interview with John Bolton', *Arms Control Today*, December 2003.
- ⁶⁵ See 'The State of Nuclear Proliferation 2001', ACA Fact Sheet 2001.
- ⁶⁶ *Ibid.*
- ⁶⁷ Military technologies show both vertical and horizontal proliferation, but the question of controlling the latter continues to receive little or no attention. Most arms control agreements to date have dealt with existing rather than future weapons, and the number of such weapons as opposed to their qualities. With the exception of the CTBT and BWC, the vertical proliferation of weapons technology is virtually unconstrained. This continual process of weapons innovation endangers existing arms control agreements and undermines efforts to control horizontal proliferation.
- ⁶⁸ All P5 states are modernising their nuclear forces and remain committed to retaining their nuclear arsenals. See Hans Kristensen and Shannon Kile, 'World nuclear forces', Appendix 15A, *SIPRI Yearbook 2003: Armaments, Disarmament and International Security*, Oxford University Press 2003, pp610-638; and 'Vertical Proliferation', NGO presentation at the 2004 NPT PrepCom meeting in New York, delivered by Jacqueline Cabasso, Western States Legal Foundation (WSLF), convened by Martin Butcher, Physicians for Social Responsibility (PSR), at <http://www.reachingcriticalwill.org/legal/npt/prepcom04/NGOpres.html#vertical>.
- ⁶⁹ National Security Strategy of the United States of America, 2002, p 14.
- ⁷⁰ David Frum, *The Right Man: The Surprise Presidency of George W. Bush*, Random House Inc, January 2003. Frum wrote the 'axis of evil' speech and explains in his book that few words were changed from his original text. Essentially, the story begins in late December 2001 when head speechwriter Mike Gerson gave Frum the assignment of articulating the case for dislodging the regime of Saddam Hussein in Iraq in only a few sentences for the upcoming State of the Union address. Frum says he began by rereading President Franklin Roosevelt's '*date that will live in infamy*' speech given on 8 December 1941, after the Japanese surprise attack on Pearl Harbour. While Americans needed no convincing about going to war with Japan, Roosevelt saw the greater threat to the United States coming from Germany, and he had to make the case for fighting a two-ocean war. Frum's original wording was, however, 'axis of hatred' rather than 'axis of evil'.
- ⁷¹ 'Beyond the Axis of Evil: Additional Threats from Weapons of Mass Destruction', John R. Bolton, Under Secretary for Arms Control and International Security, remarks to the Heritage Foundation, 6 May 2002.
- ⁷² U.K. House of Commons, Hansard (House of Commons Daily Debates), 4 February 2003, Column 205W.
- ⁷³ *Ibid.*
- ⁷⁴ Much of the human intelligence came from defectors or organisations working to topple the Hussein regime. Some of the information seems to be single source. With regard to the

possibility that human sources knowingly provided false information on weapons of mass destruction as well as Saddam's whereabouts on the opening night of the war, see Bob Drogin, 'U.S. Suspects It Received False Iraq Arms Tips', *Los Angeles Times*, 28 August 2003. See also Bill Gertz and Rowan Scarborough, 'Inside the Ring', *Washington Times*, 2 January 2004, p.A7.

⁷⁵ 'Entities of proliferation concern listed in Supplement No. 4 to part 744 of the Export Administration Regulations', U.S. Department of Commerce, Bureau of Industry and Security.

⁷⁶ *Ibid.*

⁷⁷ 'WMD: Words of mass dissemination', BBC News, 12 February 2003.

⁷⁸ Developments in both conventional weapons technology (especially area impact munitions, cluster bombs and fuel air explosives) and smaller yield nuclear weapons (so-called 'mini-nukes) are beginning to blur the boundaries, however.

⁷⁹ Al Mauroni, 'Weapons of Mass Delusion?', *Armed Forces Journal*, March 2004, p36.

⁸⁰ US Code, Title 50 'War and National Defense', Chapter 40 'Defense against weapons of mass destruction', Section 2302 'Definitions'.

⁸¹ Statement of special agent in charge James F. Jarboe on 'Homeland Security: Facilitating and Securing Seaports' before the U.S. House of Representatives, Subcommittee on National Security, Veterans Affairs and International Relations in Washington, 5 August 2002.

⁸² Indictment, Count One, United States of America v. Timothy James McVeigh and Terry Lynn Nichols, Case No CR 95-110, United States District Court for the Western District of Oklahoma.

⁸³ Presidential Decree No. 1203 of 30 November 1995, see also article 355 of the Criminal Code of the Russian Federation.

⁸⁴ SALW are now widely recognised as one of the most pressing humanitarian challenges of our time. These weapons are responsible for 90 per cent of the deaths in today's conflicts; combatants in 43 of the last 47 conflicts have relied on them almost exclusively. See *Small Arms Survey 2002: Counting the human cost*, Oxford University Press 2002.

⁸⁵ Vienna Convention on the Law of Treaties (1969), Section III, article 31 (1).

⁸⁶ It is believed that NOSS satellite systems use radio interferometry (or a similar technique) to detect, locate and track ships at sea by their radio transmissions. For more information, see 'NOSS Double and Triple Satellite Formations' at the Visual Satellite Observer's Home Page at <http://satobs.org/noss.html>.

⁸⁷ Global Security Director John Pike, quoted in Makki Beckker, 'Terror Lurks on the High Seas', *NY Daily News*, 21 September 2003.

⁸⁸ 'Yugoslav Army Displays Decoys Said To Have Fooled NATO', *Reuters*, 15 June 2000.

⁸⁹ Nuclear Non-Proliferation (Safeguards) Act of 1987, section 8, §§ 1-2.

⁹⁰ Nuclear Non-Proliferation (Safeguards) Act of 1987, section 23, § 1(a) and 1(d).

⁹¹ PSI Principles, operative para 4.

⁹² Interview with FCO officials, April 2004.

⁹³ PSI Principles, operative paragraph 4 (d) (1).

⁹⁴ PSI Principles, operative paragraph 4 (b).

⁹⁵ PSI Principles, operative paragraph 4 (c).

⁹⁶ Jack Straw, Written Ministerial Statements, Foreign & Commonwealth Affairs, *Hansard*, 25 February 2004: Columns 46 & 47ws.

⁹⁷ 'Proliferation Security Initiative: Chairman's Conclusions at the Fourth Meeting', Fourth Meeting of the PSI, October 9-10, 2003, London, United Kingdom.

⁹⁸ Wade Boese, 'Interdiction Initiative Participants Agree on End, Differ on Means', *Arms Control Today*, November 2003.

⁹⁹ *Ibid.*

¹⁰⁰ Josh Maiyo and Theo Tamis, 'War on terror on the high seas', Radio Netherlands, 5 September 2003.

¹⁰¹ Senator the Hon. Robert Hill, 'Transcript: Media Conference for PSI exercise', on board the HMS Melbourne, 13 September 2003.

¹⁰² 'North Korea Says It Seeks to Develop Nuclear Arms', *New York Times*, 10 June 2003.

¹⁰³ *Ibid.*

Chapter 3: The PSI and the Law of the Sea

¹⁰⁴ 'Table over the status of the convention', Division for Ocean Affairs and the Law of the Sea, 23 December 2003, see also *appendix A* of that report.

¹⁰⁵ Permanent Court of International Justice, 'The Case of the S.S. "Lotus"', Judgment No. 9, 1927 PCIJ, Series A 10, Part IV.

¹⁰⁶ UNCLOS, Part II, Section I, article 2 (1).

¹⁰⁷ UNCLOS, Part II, Section I, articles 3 and 5.

¹⁰⁸ UNCLOS, Part II, Section I, article 8 (1).

¹⁰⁹ UNCLOS, Part II, Section I, article 11.

¹¹⁰ UNCLOS, Part II, Section III, article 17.

¹¹¹ UNCLOS, Part II, Section III, article 19 (1). See also article 19 (2) (a)-(l).

¹¹² UNCLOS, Part II, Section IV, article 33 (a)-(b).

¹¹³ UNCLOS, Part VII, article 88.

¹¹⁴ John Bolton, "'Legitimacy" in International Affairs: The American Perspective in Theory and Operation', Remarks to the Federalist Society, Washington, DC, 13 November 2003.

¹¹⁵ Center for Defense and International Security Studies, 'More on seized North Korean ship and possible nuclear missile exchange between Islamabad and Pyongyang', 23 July 1999.

¹¹⁶ Ramnarayan Gopalkrishnan, 'The Pakistan-North Korea ballistic missile nexus', July 1999.

¹¹⁷ Center for Defense and International Security Studies, 'Update on North Korean ship seized in India', 29 September 1999.

¹¹⁸ Center for Defense and International Security Studies, 'India seizes North Korean ship carrying missile components, 9 July 1999.

¹¹⁹ D.V. Maheshwari, 'North Korean ship case gets curiously', *Financial Express*, 9 July 1999.

¹²⁰ D.V. Maheshwari, "'Scud case' is a dud, dropped without thud", *Financial Express*, 17 September 1999.

¹²¹ A direct or sovereign guarantee transfers the financial burden of the guaranteed firm directly to the government's national treasury in the event the firm is unable to pay its contractual debts. Thus, a sovereign guarantee is simply the transfer of any obligation from the ship-owner to the government should the former fail to pay its debt or honour its commitments.

¹²² UNCLOS, Part II, Section 3, article 27 (1).

¹²³ UNCLOS, Part II, Section 3, article 27 (3).

¹²⁴ The 'comity of nations' is the courtesy by which nations recognise within their own territory, or in their courts, the peculiar institutions of another nation or the rights and privileges acquired by its citizens in their own land. By some authorities private international law rests on this comity, but the better opinion is that it is part of the common law of the land, and hence is obligatory as law. Simply said, a rule of comity is a 'show of good will'.

¹²⁵ New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania v. The Commonwealth [1975]HCA 58; (1975) 135 CLR 337 (judgment 17 December 1975).

¹²⁶ UNCLOS, Part II, Section 3, article 27 (1) (a)-(d).

¹²⁷ UNCLOS, Part II, article 27 (3).

¹²⁸ Maritime and Coastguard Agency, 'Foreign merchant ships in detention in UK ports', March 2003.

¹²⁹ 'Nato 'terror' tipoff on explosives ship sailing to Sudan', *The Guardian*, 24 June 2003.

¹³⁰ 'Greece traces route of seized ship', *CNN*, 24 June 2003.

¹³¹ Roger Wilkinson, 'Ship's Crew Charged With Illegally Transporting Explosives', *VOA News*, 23 June 2003.

¹³² "'Black ship' down", *Al-Ahram Weekly On-line*, Issue no 646, 10-16 July 2003.

¹³³ UNCLOS, part II, article 33 (2).

¹³⁴ UNCLOS, part II, article 33 (1) (a)-(b).

- ¹³⁵ International Tribunal for the Law of the Sea, “The M/V Saiga (No. 2) Case” (Saint Vincent and the Grenadines v Guinea), Case No 2, 1 July 1999.
- ¹³⁶ UNCLOS, part V, article 57.
- ¹³⁷ UNCLOS, part V, article 56 (1) (b) (i)-(iii).
- ¹³⁸ UNCLOS, part VII, article 86.
- ¹³⁹ UNCLOS, part VII, article 92.
- ¹⁴⁰ Judgment No. 9, The Case of the S.S. “Lotus”, P.C.I.J. Series A No. 10, 1927, sec. IV (‘the Law’).
- ¹⁴¹ *Ibid.*
- ¹⁴² *Ibid.*
- ¹⁴³ Arms Control Association, ‘The New Proliferation Security Initiative: an interview with John Bolton’, 4 November 2003.
- ¹⁴⁴ John R. Bolton, “‘Legitimacy’ in International Affairs: The American Perspective in Theory and Operation”, Remarks to the Federalist Society, 13 November 2003.
- ¹⁴⁵ *Ibid.*
- ¹⁴⁶ Ari Fleischer, White House Press Briefing, 11 December 2002.
- ¹⁴⁷ ‘Nuclear Weapons and Rogue States: Challenge and Response’, Under Secretary Bolton’s remarks to the Conference of the Institute for Foreign Policy Analysis, 2 December 2003.
- ¹⁴⁸ E.D. Brown, ‘The International Law of the Sea’, Vol. 1, p 64; and F. Ngantcha, ‘The Right of Innocent Passage and the Evolution of the International Law of the Sea’, p 38.
- ¹⁴⁹ UNCLOS, Part II, Section 3, article 17.
- ¹⁵⁰ ‘Union of Soviet Socialist Republics - United States: Joint Statement with attached uniform interpretation of rules of International Law governing innocent passage’, 28 I.L.M. 1444 (1989).
- ¹⁵¹ *Ibid.*
- ¹⁵² See Brownlie, *Principles of Public International Law*, Oxford University Press, 2003.
- ¹⁵³ See UNCLOS, Part II, Section 3, article 19 (2) (a)-(l).
- ¹⁵⁴ UNCLOS, Part II, Section 3, article 23.
- ¹⁵⁵ US telegram ‘concerning certain provisions of Maldives law not in conformity with international law as reflected in the 1982 United Nations Convention on the Law of the Sea’, June 21, 2001.
- ¹⁵⁶ F. Ngantcha, ‘The Right of Innocent Passage and the Evolution of the International Law of the Sea’, p 142.
- ¹⁵⁷ S.N. Nandan and S. Rosenne, eds., *United Nations Convention on the Law of the Sea 1982, A Commentary*, Vol. II, Dordrecht 1993, at 21.8f, and E.D. Brown, p 68f.
- ¹⁵⁸ The Presidential Statement (at the 176th meeting) read: “They would, however, like to reaffirm that their decision is without prejudice to the rights of coastal States to adopt measures to safeguard their security interests ...”.
- ¹⁵⁹ The states which have voiced opposition to shipments are, according to Greenpeace International: Uruguay, Colombia, Argentina, Brazil, Indonesia, Portugal, Ecuador, Fiji, Dutch Antilles, Jamaica, Philippines, Chile, Spain, Puerto Rico, Martinique, Commonwealth of Dominica, Dominican Republic, Federated States of Micronesia, British and US Virgin Islands, Honduras, Aruba, Hawaii, Ethiopia, South Africa, Republic of Nauru, Mauritius, Antigua and Barbuda and Chile.
- ¹⁶⁰ Statement by His Excellency Ronald Michael Sanders CMG, High Commissioner for the Antigua and Barbuda High Commission on 30 January 1998. Members of the commission were Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts-Nevis, St Lucia, St Vincent and the Grenadines and Trinidad and Tobago.
- ¹⁶¹ Canadian Arctic Waters Pollution Prevention Act of 1970.
- ¹⁶² UNCLOS, Part VII, article 87.
- ¹⁶³ UNCLOS, Part V, article 58 (1).
- ¹⁶⁴ UNCLOS, Part III, article 45.
- ¹⁶⁵ UNCLOS, Part IV, article 53.

- ¹⁶⁶ UNCLOS, Part II, Section 3, articles 17-19.
- ¹⁶⁷ UNCLOS, Part IV, article 52.
- ¹⁶⁸ Compare UNCLOS, Part II, article 18, regarding ‘innocent passage’.
- ¹⁶⁹ Dupuy, R-J; Vignes, D, *A Handbook of the New Law of the Sea*, Kluwer Academic, Netherlands 1991, p. 845.
- ¹⁷⁰ See, *inter alia*, Congressional Records, 103rd Congress, 2d. Sess., 1994, page S14467, 6 October 1994.
- ¹⁷¹ James Malone, ‘Who Needs the Sea Treaty?’, *Foreign Policy*, Spring 1984.
- ¹⁷² Congressional Record, 103rd Congress, 2d. Sess., 1994, page S14475, 6 October 1994.
- ¹⁷³ 19 Weekly Comp. Pres. Doc. 383-385 (Mar. 10, 1983); see also ‘Statement by the President dated 10 March 1983’, DOALOS, Office of Legal Affairs, United Nations, New York.
- ¹⁷⁴ Congressional Record, 103rd Congress, 2d. Sess., 1994, page S14472, 6 October 1994.
- ¹⁷⁵ US Secretary of Defence, ‘Annual Report to the President and Congress’, appendix H, Washington, DC, 2001.
- ¹⁷⁶ *Ibid.*
- ¹⁷⁷ International Court of Justice, Case of Nicaragua v. United States of America (*Nicaragua Case*), Judgment on 27 June 1986. See paras 174 and 214.
- ¹⁷⁸ ‘President John F. Kennedy’s Speech Announcing the Quarantine Against Cuba’, 22 October 1962. Available on-line at: <http://www.mtholyoke.edu/acad/intrel/kencuba.htm>.
- ¹⁷⁹ *Ibid.*
- ¹⁸⁰ The ‘Abolition of the Slave Trade Act’ was passed by the British Parliament on 25 March 1807. The Act imposed a fine of £100 for every slave found aboard a British ship. The intention was to entirely outlaw the slave trade within the British Empire, but the trade continued and captains in danger of being caught by the Royal Navy would often throw slaves into the sea to reduce the fine. In 1827 Britain declared that participation in the slave trade was piracy and punishable by death. Parliament passed the Slavery Abolition Act in 1833. This Act gave all slaves in the British Empire their freedom. The British government paid compensation to the slave owners, the amount received being dependent on the number of slaves that they had. For example, the Bishop of Exeter’s 665 slaves resulted in him receiving £12,700. After 1838, the ‘British and Foreign Anti-Slavery Society’ worked to outlaw slavery overseas and to pressure the government to help enforce the suppression of the slave trade by declaring slave traders as pirates and pursuing them.
- ¹⁸¹ Early news reports indicated that the flag was German. However, the BBC Chartering & Logistics website states that the ‘BBC China’ flies a flag of convenience (Antigua & Barbuda), see <http://www.bbc-online.de/everyship/schiffansicht.php3?art=crane&nr=86>.
- ¹⁸² See, *inter alia*, Barry Schweid, ‘U.S. Nabbed Libya Nuke Parts’, *CBS News Online*, 1 January 2004.
- ¹⁸³ John R. Bolton, Under Secretary for Arms Control and International Security, Remarks with H.E. Arnulfo Escalona, Minister of Government and Justice of Panama, Treaty Room, Washington, DC, 12 May 2004.
- ¹⁸⁴ *Ibid.*
- ¹⁸⁵ Carol Giacomo, ‘Panama Said to Let US Board Its Flagged Ships’, *Reuters*, 10 May 2004.
- ¹⁸⁶ *Ibid.*
- ¹⁸⁷ Brittin, Burdick H, *International Law For Seagoing Officers*, p 243, (4th Ed), Naval Institute Press, 1981.
- ¹⁸⁸ International Court of Justice, Case of Nicaragua v. United States of America, 27 June 1986.
- ¹⁸⁹ Frederic L. Kirgis, ‘NATO Interdiction of Oil Tankers Bound for Yugoslavia’, ASIL Insights, April 1999.

Chapter 4: Exercises and Interdictions – The Story So Far

¹⁹⁰ See Sridhar Krishnaswami, 'U.S. 'allays' fears on Coral Sea exercises', *Hindu Times*, 21 August 2003; David Sands, 'U.S., 10 allies plan series of exercises to stop illegal arms', *Washington Times*, 5 September 2003; and Hamish McDonald, 'Beefed-up exercises in Coral Sea making Beijing nervous', *Sydney Morning Herald*, 9 September 2003.

¹⁹¹ 'Japan postpones sea drills on stopping WMD smuggling', *The Asahi Shimbun*, 31 March 2004.

¹⁹² John Bolton, 'The New Proliferation Security Initiative', interview by Wade Boese and Miles Pomper, *Arms Control Today*, 4 November 2003.

¹⁹³ 'The Proliferation Security Initiative', IISS Strategic Comments, Volume 10, Issue 2.

¹⁹⁴ 'Combating terrorism at sea', NATO Briefing, December 2003.

Chapter 5: The Future of the PSI

¹⁹⁵ 'The Polish-American Alliance for the 21st Century', joint statement by president George W. Bush and polish president Aleksander Kwasniewski, 27 January 2004.

¹⁹⁶ Jim Morris, 'Lost at Sea: 'Flags of Convenience' Give Owners a Paper Refuge,' *Houston Chronicle*, 22 August 1996.

¹⁹⁷ Aviva Freudmann, 'Liberia Taps DC Lawyers to Handle Registry', *Journal of Commerce*, 21 December 1998.

¹⁹⁸ The ISPS Code 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 those requirements in a second, voluntary section (Part B). The purpose of the Code is to provide a "standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities". For further information see the IMO web site: www.imo.org.

¹⁹⁹ IMO adopts comprehensive maritime security measures, http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689, 22 April 2004.

²⁰⁰ The CSR is required to contain: the name of the ship and the state whose flag the ship is entitled to fly; the date on which the ship was registered with that state; the ship's identification number; the port at which the ship is registered; the name of the registered owner(s) and their registered address; and any changes to any of these details.

²⁰¹ IMO adopts comprehensive maritime security measures, http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689, 22 April 2004.

²⁰² *Ibid.*

²⁰³ IMO Status of Conventions. A complete list is available at http://www.imo.org/Conventions/mainframe.asp?topic_id=248.

²⁰⁴ IMO adopts comprehensive maritime security measures, http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689, 22 April 2004.

²⁰⁵ Jack Straw, Written Ministerial Statements, Foreign & Commonwealth Affairs, Hansard, 25 February 2004: Columns 46 & 47ws.

²⁰⁶ Charter of the United Nations, Chapter VII, article 39.

²⁰⁷ UNSC Resolution 82 (1950) adopted on 25 June 1950.

²⁰⁸ UNSC Resolution 83 (1950) adopted on 27 June 1950.

²⁰⁹ UNSC resolution 660 (1990) adopted on 2 August 1990.

²¹⁰ UNSC Resolution 678 (1990) adopted on 25 November 1990.

²¹¹ President Bush Address to the UNGA, New York, 23 September 2003. The full transcript of the speech is available at: <http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>.

²¹² 'US tables UN draft resolution on WMD', *XINHUA online*, 25 March 2004. See also 'UN weapons resolution introduced', *BBC News*, 25 March 2004.

²¹³ See, in particular, article 39 of the Charter which reads: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

²¹⁴ See, for instance, article 48 (1) of the Charter, which reads: "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security **shall** be taken by all the Members of the United Nations or by some of them, as the Security Council may determine" (emphasis added).

²¹⁵ Security Council resolution 1160 (1998) adopted on 31 March 1998, op § 8.

²¹⁶ Statement of the President of the Council, Gunter Pleuger (Germany), Security Council 4956th Meeting, UN Press Release SC/8076, 28 April 2004.

²¹⁷ UN Charter, Chapter V, article 27 (3).

²¹⁸ France, Germany, Spain, the United Kingdom and the United States.

²¹⁹ For more on Russia's attitude to the PSI, see Michael Roston, 'Russia and the Proliferation Security Initiative', *RANSAC Briefing*, 16 March 2003.

²²⁰ H.E. Mr. Vladimir V. Putin, President, 25 September 2003.

²²¹ 'Changing Patterns in the Use of the Veto in the Security Council', Global Policy Forum, 2003. <http://www.globalpolicy.org/security/data/vetotab.htm>.

²²² H.E. Li Zhaoxing, Foreign Minister, 24 September 2003.

²²³ Hugo Grotius, *De Jure Belli Ac Pacis, Libri Tres*, book II, chapter I.

²²⁴ The Neptune, reprinted in IV International Adjudications: Modern Series 372 (John Bassett Moore ed., 1931).

²²⁵ Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953) p 71.

²²⁶ Report of the International Law Commission on the work of its thirty-second session, UN Doc A/35/10 (1980), § 15.

²²⁷ Case Concerning the Gabèkovo-Nagymaros Project (Hungary v Slovakia), ICJ reports 1997.

²²⁸ ILC Draft Articles on State Responsibility, article 33.

²²⁹ National Security Strategy of the United States of America, 2002, p 15.

²³⁰ Letter from Mr. Webster to Lord Ashburton, 27 July 1842. The entire correspondence is available on the Avalon Project, Yale Law School website: <http://www.yale.edu/lawweb/avalon/diplomacy/britain/br-1842d.htm>.

²³¹ '1981: Israel bombs Baghdad nuclear reactor', On this day – 7 June 1981, *BBC online*.

²³² UN Doc S/PV.2284, 16 June 1981, para 11.

²³³ *Ibid.*, para 25.

²³⁴ Resolution 487 (1981) adopted on 19 June 1981, op. para 1.

²³⁵ *Ibid.*, op. para 3.

²³⁶ Mark Bromley, David Grahame and Christine Kucia, 'Bunker Busters: Washington's Drive for New Nuclear Weapons', *BASIC Research Report*, July 2002.

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