

Anyanova Ekaterina Sergeevna
Cand. Jurid. Sciences, legal adviser
LLC "Balttorg"
Kaliningrad, Kaliningrad region

PARTICIPATION OF RUSSIA IN THE PROLIFERATION SECURITY INITIATIVE

***Abstract:** as a result of the security threat posed by the proliferation of nuclear and missile technologies, the Proliferation Security Initiative was developed. However, the effectiveness of the Initiative has been called into question due to the failure to reach agreement with a number of states. This article reveals the particularities of Russia's membership in this initiative. The methodology of international legal research and analysis of data is applied in this paper.*

In the paper the conclusion is made that PSI as an organizational and legal form of international cooperation in the sphere of WMD nonproliferation is currently in the process of development. Its effectiveness depends directly on compliance with international law. Since the PSI has not gained global coverage to combat terrorism and WMD proliferation, with the loss of participants as Russia and China, the fight against WMD terrorism should be conducted exclusively with the direct involvement of the UNSC.

***Keywords:** weapon of mass destruction, WMD, Proliferation Security Initiative, PSI, terrorism, law of the sea, high seas.*

Анянова Екатерина Сергеевна
канд. юрид. наук, юрисконсульт
ООО «Балтторг»
г. Калининград, Калининградская область

DOI 10.31483/r-110320

УЧАСТИЕ РОССИИ В ИНИЦИАТИВЕ ПО БЕЗОПАСНОСТИ В ОБЛАСТИ РАСПРОСТРАНЕНИЯ

***Аннотация:** в результате угрозы безопасности, создаваемой распространением ядерных и ракетных технологий, была разработана Инициатива по безопасности в области распространения. Однако эффективность Инициативы была поставлена под сомнение из-за неспособности достичь соглашения с рядом государств. В статье раскрываются особенности участия России в этой инициативе. Автором применяется методология международно-правовых исследований и анализа данных.*

В статье делается вывод о том, что ИОО как организационно-правовая форма международного сотрудничества в сфере нераспространения ОМУ в настоящее время находится в процессе развития. Его эффективность напрямую зависит от соблюдения норм международного права. Поскольку ИОО не получило глобального охвата для борьбы с терроризмом и распространением ОМУ, с потерей таких участников, как Россия и Китай, борьба с терроризмом, связанным с ОМУ, должна вестись исключительно при непосредственном участии СБ ООН.

***Ключевые слова:** оружие массового уничтожения, Инициатива по безопасности распространения, ИОО, терроризм, морское право, открытое море.*

Introduction.

The nuclear technologies continue to evolve. There is a need to control the proliferation of nuclear and missile technologies. Among the international legal instruments the Proliferation Security Initiative (PSI) should be mentioned. This initiative is currently very controversial. The effectiveness of PSI, even if implemented by the participating states, is questionable [5, pp. 90–91]. The reason for this is the failure to reach agreement with a number of states. The Russian Federation has not become an exception. This article reveals the evolution of Russia's participation in this initiative.

History of the development of PSI.

The PSI was developed as a result of the national security threat posed by the proliferation of nuclear and missile technologies [5, p. 87].

The PSI was launched on May 31, 2003, in Krakow, Poland, by George W. Bush, Jr. The PSI aims to detect, prevent, and disrupt illicit trafficking and cross-border movement of weapons of mass destruction, their delivery systems, and related materials [11, p. 260] by potentially dangerous states and non-state actors. PSI participating States shall conduct boarding and search actions on any vessel flying their flag in their internal waters or territorial seas [12, p. 242], or in areas beyond the territorial seas of any other State reasonably suspected of transporting such cargo to or from States or non-State actors of proliferation concern. Under the Initiative, vessels or aircraft suspected of transporting WMD could be arrested [13, p. 44] for transporting WMD elements by sea [2, p. 128], and the shipments identified could be seized.

The PSI was created in part in response to legal gaps identified during the detention of the North Korean-flagged vessel *So San* by the Spanish Navy, which was carrying Scud missile parts to Yemen in December 2002 [6, p. 1]. The *So San* incident made it clear that there was no legal basis for confiscating a shipment of Scud missiles from North Korea to Yemen. The *So San* incident clearly demonstrated that existing maritime regimes lack the capacity and prohibition of conventional arms transportation to prevent WMD proliferation [14].

Format of the PSI.

The PSI operates outside the framework of an international organization and represents a political commitment by participating States [6, p. 1]. In fact, the PSI initiative is a collection of bilateral agreements. If a country adopts the PSI, it agrees to the PSI Statement of Interdiction Principles [1].

The PSI is neither institution, nor organization. The PSI has no international secretariat or headquarters with permanent staff. The PSI has neither formal decision-making nor monitoring mechanisms to ensure compliance. The PSI has no charter defining the scope of its activities. The PSI lacks a budget, a unified technical and organizational framework and institutional structure.

The PSI established the Operational Experts Group (OEG), which meets annually on an ad hoc basis. The PSI organizes exercises [14, p. 23], political summits and seminars several times a year [12, pp. 245, 265].

The informal nature of PSI [5, p. 89] and the lack of structure and organization as a form of international cooperation contribute to the initiative's greater operational efficiency [11, p. 260–261].

There are currently 111 States participating in the PSI [1], although there were originally 11 participants in the PSI.

International legal framework for the PSI.

PSI participants are authorized to conduct control measures against vessels flying the flag of another state, including interception, seizure and confiscation. In order to properly assess these powers, it is necessary to analyze the relevant rules of international law governing state jurisdiction in various maritime zones [5, p. 89]. What rights does a PSI State Party have in the different maritime zones?

In inland waters, a coastal state has full jurisdiction to intercept suspected vessels, stop a vessel suspected of carrying WMD-related materials, board, inspect the vessel, and even detain such a vessel and its cargo in accordance with its national law (Article 8 of the 1982 UN Convention on the Law of the Sea, UNCLOS).

But these powers cannot be applied to warships and other state vessels operated for non-commercial purposes, which have immunity. In the territorial sea, every state has the right of innocent passage, and the 1982 Convention (Article 17 UNCLOS) does not designate the transportation of WMD as a violation of this right [4, p. 110]. It is debatable whether transportation of WMD violates the peace, good order or security of the coastal state. On the basis of Art. 19, 23, 24, 301 UNCLOS it can be concluded that it is allowed to limit the right of innocent passage of a vessel of a foreign state by the jurisdiction of the coastal state [12, pp. 255–256]. This is the main weakness of this initiative [6, p. 4].

The implementation of measures to counter WMD proliferation within the territorial sea and internal waters of coastal states is based on the universally recognized sovereignty of states over these waters [10, p. 80].

In the contiguous zone, only in case of the violation of customs law by the transportation of WMD the coastal state can take measures to stop the ship in question.

In maritime zones with rights of archipelagic passage through maritime corridors and transit rights, PSI control measures are not allowed (Articles 38, 47, 49 of the Convention).

Such activities are authorized when the consent of the flag State is obtained or agreed to by the master of the ship concerned.

In accordance with article 56 UNCLOS, the coastal State in the exclusive economic zone has no sovereign rights or jurisdiction to stop and search ships [12, p. 258].

Article 110 UNCLOS does not establish jurisdiction over vessels carrying or transporting WMD. International law does not authorize control measures against a foreign-flagged vessel on the high seas to stop the movement of WMD and associated cargo.

In any case, control measures will be legitimate if the flag State waives exclusive jurisdiction or the consent of the ship's master is obtained.

Possible ways to strengthen the legitimacy of the PSI.

The legitimacy of the PSI initiative from the perspective of international law is certainly limited. The dual-use nature of some goods also complicates the effectiveness of the PSI [6, p. 5]. The legal authority of states to conduct operations to interdict WMD proliferation by sea has been repeatedly proposed to be strengthened.

Bilateral ship inspection treaties signed between the U.S. and other nations are the basis for such control measures under the UNCLOS.

The 2005 SUA Protocols, among other things, expanded the range of offenses, and the transportation of WMD and related materials became a criminal offense. In addition, a provision was added allowing states to board a suspicious vessel on the high seas. If ratified by a majority of states, these amendments would greatly enhance the effectiveness of PSI, but ratification of these protocols has been extremely slow.

The provisions of Chapter VII of the UN Charter are also excluded from such activities.

According to Article 42 of Chapter VII of the UN Charter, the Security Council (SC) may take action by air, sea or land forces necessary to maintain or restore international peace and security. It was proposed to elaborate an additional international

legal instrument to narrow the gap between the requirements of international security and the limitations of international law [5, p. 89] – a UNSC resolution. An explicit authorization in a UNSC resolution would give legitimacy to the interdiction of shipments of WMD, their delivery systems, and related materials in territorial waters or on the high seas [12, pp. 259–264].

Participation of the Russian Federation in the PSI.

The PSI initiative has not received a positive response from countries in the East Asian region such as China and India [8, p. 33]. Indonesia, Pakistan, North Korea, Iran and Indonesia remain outside the initiative. North Korea is strongly opposed to the initiative.

Initially, Russia did not join the PSI, doubting its legitimacy under international law. However, on May 31, 2004, in Krakow, Poland, the Russian Federation supported the PSI [14, pp. 80, 91] for the purpose of combating the threat of WMD proliferation [9]. The Russian Federation became a member of OEG and participated in joint operations to intercept prohibited materials. On September 13–15, 2006, the AMBER SUNRISE exercises took place in Gdansk, Russia (jointly with Denmark, Russia, and Sweden).

However, the situation has changed. The decision not to involve Russian experts to participate in the PSI OEG session in Rome in 2022 was made in accordance with the opinion of the main countries participating in the initiative, based on the international legal situation. This decision of Italy was considered by Russia as a hostile and unfriendly step.

In 2014 and 2015, the Russian Federation was already temporarily excluded from such sessions for political reasons. Canada's decision to deny visas to the Russian delegation to the PSI OEG meeting in 2015 was a blatantly unfriendly step, contrary to the usual practice of multilateral events [3].

Nevertheless, later, for example on September 29–30, 2017 during the OEG meeting in Singapore, meetings were again held with the participation of Russia [14, p. 81].

Thus, Russia found itself in an unequal position in the PSI. Russia made a statement that it was unacceptable to isolate Russia from global efforts to end WMD

trafficking and withdrew from further participation in the international PSI project. The relevant decision on Russia's termination of its participation in the PSI entered into force on December 23, 2022.

Russia was forced to take such a retaliatory step as the termination of its participation in the PSI [7], as cooperation within the PSI ceased to be equal for it.

Conclusion.

Although the PSI plays an important role in combating WMD proliferation by controlling trade routes by sea [11, p. 260], and the number of participating states in the PSI, launched in Krakow, Poland, in 2003, has increased from 11 to 111 [6, p. 1], the legitimization of the PSI conflicts with existing international law [8, p. 33].

PSI as an organizational and legal form of international cooperation in the sphere of WMD nonproliferation is currently in the process of development. Its effectiveness depends directly on compliance with international law [11, p. 261], but it has not gained global coverage to combat terrorism and WMD proliferation.

It seems that with the loss of the involvement of such strategic partners as Russia and China, the fight against WMD terrorism should be conducted exclusively with the direct involvement of the UNSC. Only in the case of direct authorization by the UNSC the control measures of the courts can be currently considered as legitimate.

References

1. About the Proliferation Security Initiative // U.S. Department of State [Electronic resource]. – Access mode: <https://www.state.gov/proliferation-security-initiative/> (Accessed 15.02.2024).
2. Allen C. Maritime Counterproliferation Operations and the Rule of Law. Westport, Connecticut: Praeger Security International, 2007. 255 p.
3. Commentary by the Information and Press Department concerning Canada's refusal of entry to Russian delegation for PSI working group meeting // Website of the Ministry of Foreign Affairs of the Russian Federation. 22.05.2015 [Electronic resource]. – Access mode: <https://mid.ru/tv/?id=1509101&lang=en> (Accessed 15.02.2024).

4. Gudev P. Politika SShA v Mirovom okeane [U.S. Policy in the World's Oceans] // Mezhdunarodnye processy [International Processes]. 2016. Vol. 14, №1. P. 106–120. DOI 10.17994/IT.2016.14.1.44.9. EDN: VXDXFJ

5. Korsakov G.B. Strategija kontrrasprostraneniya v voennoj politike Vashingtona [Counterproliferation Strategy in Washington's Military Policy] // Puti k miru i bezopasnosti [Roads to peace and security]. 2015. №1 (48).

6. Nikitin M.B. Proliferation Security Initiative (PSI). 09.08.2018. Washington, D.C.: Congressional Research Service, 2018. Available at: www.crs.gov (Accessed 15.02.2024).

7. Obzor MID Rossii. Vneshnepoliticheskaja i diplomaticheskaja dejatel'nost' Rossijskoj Federacii v 2022 godu [Review of the Ministry of Foreign Affairs of the Russian Federation. Foreign policy and diplomatic activities of the Russian Federation in 2022] // Ministry of Foreign Affairs of the Russian Federation. 29.03.2023 [Electronic resource]. – Access mode: <https://www.mid.ru/ru/detail-material-page/1860242/> (Accessed 15.02.2024).

8. Orlov V. Est' li budushhee u DNJaO: zametki v preddverii obzornoj konferencii 2015 g [Is there a future for the NPT: Notes in advance of the 2015 Review Conference] // Indeks bezopasnosti [Security Index]. 2014. №4 (111), Vol. 20. P. 27–48. (In Russian).

9. Plan dejstvij «Gruppy vos'mi» v oblasti neraspromstraneniya [G8 Non-Proliferation Action Plan] // Ministry of Foreign Affairs of the Russian Federation. 16.06.2004. [Electronic resource]. – Access mode: https://mid.ru/ru/foreign_policy/news/1692767/ (Accessed 15.02.2024). (In Russian).

10. Romashev Y. Bor'ba s prestuplenijami mezhdunarodnogo haraktera, sovershaemymi na more (terrorizm, piratstvo, nezakonnyj oborot narkotikov) [Combating crimes of international concern committed at sea (terrorism, piracy, drug trafficking)]. Moscow: RosConsult, 2001. 300 p.

11. Simonova A.E. Inicijativa po bezopasnosti v bor'be s raspromstraneniem oruzhija massovogo unichtozhenija (IBOR): istorija i sovremennoe sostojanie [The Weapon of Mass Destruction Proliferation Security Initiative (PSI): history and current

status] // Actual problems of combating crimes and other offenses [Aktual'nye problemy bor'by s prestuplenijami i inymi pravonarushenijami]. 2017. №17–1. P. 260–261. EDN: YHLNSL

12. Song Y. The U.S.-led Proliferation Security Initiative: Participation and Concerns of the Asean Member States // *Asia-Pacific Journal of Ocean Law and Policy*. 2023. Vol. 8. №2. P. 242–265. <https://doi.org/10.1163/24519391-08020004>.

13. Valencia M.J. *The Proliferation Security Initiative: Making Waves in Asia*. London: Routledge, 2005. 93 p.

14. Yokoi T. *The Proliferation Security Initiative (PSI): the compability with UNCLOS and the 2005 SUA convention – the way forward in the East Asian region*. Dissertation. World Maritime University. Malmö, Sweden: World Maritime University, 2008. [Electronic resource]. – Access mode: https://commons.wmu.se/cgi/viewcontent.cgi?article=1092&context=all_dissertations (Accessed 15.02.2024).