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Regime Evolution and the Non-proliferation Regime

The Proliferation Security Initiative as a Case Study of Transgovernmental Networking

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A Thesis

Presented to

the Faculty of the Josef Korbel School of International Studies

University of Denver

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In Partial Fulfilment

of the Requirements for the Degree

Master of Arts

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by

Pallavi Gulati

June 2013

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### **Abstract**

The practice of non-proliferation has evolved significantly since its origins during the Cold War. The most recent and notable contribution to the non-proliferation regime has come in the form of the Proliferation Security Initiative (PSI), a loose consortium of 102 nation-states through which countries can coordinate, share intelligence, and build capacity to interdict weapons of mass destruction (WMD) related transfers. My objective in this paper is to move beyond the “activity not an organisation” rhetoric espoused by proponents of the PSI and to ask a set of deeper and broader questions regarding why transgovernmental networks (TGNs) like the PSI arise and take the form that they do. I argue that for certain issue areas TGNs provide a more suitable organisational design and mechanism for cooperation than IGOs. They offer managerial and participating states a range of functional and strategic benefits that a formal centralised structure is unable to provide. To achieve this objective, I identify 14 threshold criteria for an entity to qualify as a TGN from which I derive six drivers of TGN-formation and cooperation. I also explore the relationship between power and transgovernmental networking, focusing specifically on the role of the U.S. in establishing, managing, and monitoring these institutions. I suggest that TGN-based cooperation is more likely to occur and succeed when there is concentrated power, that is, the presence of a resource rich actor, like the U.S. willing to exercise managerial power in a productive way.

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## Abbreviations

AG	Australia Group
AMB	Anti-Missile Ballistic Treaty
ATT	Arms Trade Treaty
BWC	Biological Weapons Convention
CBP	U.S. Customs and Border Protection
CCP	Critical Capabilities and Practices (CCP) initiative
CIA	Central Intelligence Agency
CRS	Congressional Research Service
CSI	Container Security Initiative
CTBT	Comprehensive Test Ban Treaty
CTF	Combined Task Force
CTR	Cooperative Threat Reduction Initiative
CWC	Chemical Weapons Convention
DHS	U.S. Department of Homeland Security
DOC	U.S. Department of Commerce
DOD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOS	U.S. Department of State
DOT	U.S. Department of Trade
EU	European Union
EXBS	U.S. Export Control and Related Border Security
FATF	U.S. Financial Action Ask Force
FBI	Foreign Bureau of Investigation
FIGO	Formal Intergovernmental Organisation
FSB	Financial Services Board
FSF	Financial Services Forum
GICNT	Global Initiative to Combat Nuclear Terrorism
GTRI	Global Threat Reduction Initiative
IAEA	International Atomic Energy Agency
IGO	Intergovernmental Organisation
IO	International Organisation
LTBT	Limited Test Ban Treaty
MTCR	Missile Technology Control Regime
NATO	North Atlantic Treaty Organisation
NDF	Nonproliferation and Disarmament Fund
NEC	Nuclear Export Committee
NSG	Nuclear Suppliers Group
NPT	Nuclear Nonproliferation Treaty
NRA	National Rifle Association
NSC	U.S. National Security Council
NTBT	Nuclear Test Ban Treaty
NWFZ	Nuclear-Weapon Free Zone Treaty

OEG	Operational Experts Group
OPCW	Organization for the Prohibition of Chemical Weapons
OSD	Office of the Secretary of Defense
PMSC	Private Military and Security Company
PNET	Peaceful Nuclear Explosion Treaty
PSI	Proliferation Security Initiative
RMSI	Regional Maritime Security Initiative
SALW	Small Arms and Light Weapons
SFI	Secure Freight Initiative
SIP	Statement of Interdiction Principles
Sub-PCC	Sub-Policy Coordinating Committee
TECI	Transshipment Countries Export Control Initiative
TGN	Transgovernmental Network
UN	United Nations
UNCLOS	UN Convention of the Law of the Seas
UNESCO	UN Educational, Scientific, and Cultural Organization
WCO	World Customs Organization
WHO	World Health Organization
WMD	Weapons of Mass Destruction

## Chapter One

### An Introduction to Regime Evolution and Transgovernmental Networks

The practice of non-proliferation has evolved significantly since its origins during the Cold War. The most recent and notable contribution to the non-proliferation regime has come in the form of the Proliferation Security Initiative (PSI), a loose consortium of 102 nation-states,<sup>1</sup> through which countries can “coordinate, share intelligence, and build capacity to interdict WMD related transfers.”<sup>2</sup> The initiative is frequently hailed by U.S. public officials as “an activity not an organization,”<sup>3</sup> and it follows in the footsteps of other multilateral export control efforts such as the Nuclear Suppliers Group (NSG), the NPT Nuclear Exports Committee (the Zangger Committee), the Missile Technology Regime (MTC), and the Australia group (AG). Like the PSI, these regime components lack a formal treaty basis and agreements are implemented through national laws and regulations. While nonbinding agreements and informal agreements are not new or exceptional, these arrangements constitute what Keohane, Nye, and Slaughter have referred to as transgovernmental networks (TGNs) – an increasingly ubiquitous

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<sup>1</sup> U.S. Department of State, *Thailand Endorses the Proliferation Security Initiative*, November 2012, Available at: <http://www.state.gov/r/pa/prs/ps/2012/11/200849.htm> Accessed on March 1, 2013

<sup>2</sup> U.S. Department of Defense, *The Nuclear Posture Review Report*, April 2010, p. 32

<sup>3</sup> Joseph G. Robert, *Broadening and Deepening Our Proliferation Security Initiative Cooperation*, Remarks in Warsaw, Poland, June 23, 2006, Available at: <http://2001-2009.state.gov/t/us/rm/68269.htm> Accessed on March 1, 2013

component of modern global governance and regulation.<sup>4</sup> These networks are defined by loose cooperation amongst sub-state officials; they often lack executive oversight and bureaucratic structures, and are depicted as more flexible and cost-effective than treaty-based arrangements. They occupy a middle group between formal cooperation through intergovernmental organisations (IGOs) and informal verbal agreements. As Charles Lipson notes, they are “willows, not oaks.”<sup>5</sup> Although both the PSI and the multilateral export control efforts fall under the scope of TGNs, the multilateral export control initiatives play a supporting and subsidiary role to the existing treaty/IGO structure, while the PSI represents a significant evolutionary step for TGNs. It exists independent of the formal structure and constitutes the political core of collective action,

My objective in this paper is to move beyond the “activity not an organisation” rhetoric espoused by proponents of the PSI and to ask a set of deeper and broader questions regarding why TGNs like the PSI arise and take the form that they do. In this assessment, I define my dependent variable as the formation of TGNs, while my independent variables are the drivers and determinants of TGN-based cooperation. I argue that for certain issue areas TGNs provide a more suitable organisational design and mechanism for cooperation than IGOs. TGNs are not simply a reaction to globalisation and technical complexity,<sup>6</sup> they also provide a range of functional and strategic benefits

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<sup>4</sup> The concept of transgovernmental relations was pioneered by Keohane and Nye in the 1970s. Anne Marie Slaughter is the foremost proponent of transgovernmentalism in the 21<sup>st</sup> century.

<sup>5</sup> Lipson, Charles, 'Why are Some International Agreements Informal?' *International Organization*, 1991, Vol. 45(4), pp. 495-538, p. 500

<sup>6</sup> Eilstrup-Sangiovanni, Mette, 'Transgovernmental Networks and Non-proliferation,' Paper Presented at the New Power Politics Workshop, Josef Korbel School of International Studies, University of Denver, March 2013, p. 2

to dominant and participating states that formal centralised structures like IGOs are unable to provide. Functionality in this paper refers to the capacity to manage tasks, the ability to bring participants to the negotiating forum, to achieve levels of coordination, and to respond to changing threats. This paper is not intended to be an assessment of how effective TGNs are in achieving their ultimate objective. While research on the effectiveness of TGNs is much needed and is likely to form the subject of further investigation, this paper focuses specifically on why TGNs arise. I look to contribute to our understanding of the kinds of organisational benefits that a TGN can offer to managerial and participant states. Furthermore, given that American officials in close cooperation with their allies have founded the vast majority of existing TGNs<sup>7</sup> and that the literature on TGNs has largely ignored underlying power distributions, I explore the relationship between power and transgovernmental networking. I focus specifically on the role of the U.S. in establishing, managing, and monitoring these institutions. I argue that TGN-based cooperation is more likely to occur and succeed when there is concentrated power, that is, the presence of a resource rich actor, like the U.S. willing to exercise managerial power in a productive way.

To demonstrate the dynamics and evolution of transgovernmental networking, I apply the TGN analytical framework to a recent, successful, and in some way novel example of transgovernmental security cooperation, the PSI. I ask three questions: 1) What does the need for an institutional framework like the PSI suggest about the evolving nature of the challenges facing the non-proliferation regime? 2) How does the type of role

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<sup>7</sup> Eilstrup-Sangiovanni, 2013

and the nature of power exercised by the U.S. relate to the players, the organisational structure, and the content of the PSI? 3) If the PSI-TGN interdiction model is deemed to be an effective framework for global cooperation, then can it be transferred to other regimes and security problems awaiting an enforcement mechanism, such as small arms?

The PSI has been the subject of considerable scholarly and policy attention for a number of reasons. First, it reflects a growth in the role of TGNs within the non-proliferation regime. Second, the timeframe in which the PSI evolved and became functional was marked by unusual speed and effectiveness. Third, the rules for interdiction and the obligations on, and expectations of member states were not set out at the time of its establishment. Fourth, it has been credited with numerous successes, including more than two-dozen interdictions of WMD-related technology and shipments to Iran as well as the exposure of the A.Q Khan nuclear smuggling network in 2003. In this paper I take stock of and add to past work on the PSI by exploring changing patterns of cooperation within the non-proliferation regime. I argue that the issue-area of non-proliferation supports the transgovernmentalist perspective – the belief that although globalisation presents significant challenges to states, they are not disappearing or being replaced as the primary source of governance. Instead, states are increasingly disaggregating into their functional components, and these distinct parts “are networking with their counterparts abroad, creating a dense web of relations that constitutes a new transgovernmental order.”<sup>8</sup> While TGNs can provide an alternative to cooperation based on multilateral treaties coupled with support from formal IGOs, TGNs and IGOs do not

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<sup>8</sup> Slaughter, Anne-Marie, ‘The Real New World Order,’ *Foreign Affairs*, 1997, Vol. 76, pp. 183-197, p. 184

have to be competitive architectures of cooperation. TGNs and IGOs can work synergistically within a particular issue area. States will select different levels of formality and structure depending upon the given situation and the factors influencing their interests. The next step for the PSI-TGN is to engage proactively with private industry actors to establish a “network of networks”, that is, a web of denial that greatly diminishes if not eliminates the threat of WMD proliferation.<sup>9</sup>

This paper is organised into four major sections. Chapter Two begins with a discussion of international regimes, including the distinction between formal IGOs and TGNs. The current debate on TGNs has focused on whether TGNs and IGOs have become functional substitutes or if they are simply precursors for more obligatory agreements.<sup>10</sup> In this chapter, I argue that for some issue areas TGNs can provide a more favourable organisational design and mechanism for cooperation than IGOs. I identify 14 threshold criteria for an entity to qualify as a TGN and then outline the functional and strategic benefits that TGN-based cooperation provides. From this, I derive 6 hypotheses regarding when we might expect TGN-formation. I argue that the decision to use one organisational form rather than another is a deliberate choice on the part of an actor exercising leadership and managerial power, namely the U.S. Depending upon the interests of and forces influencing upon U.S. policy, American officials will employ

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<sup>9</sup> Roberts, Guy, Interview, 26 March 2013

<sup>10</sup> Eilstrup-Sangiovanni, 2013

different strategies to engage with different actors. U.S. behaviour within a TGN resembles that of a “quasi-imperial manager.”<sup>11</sup>

In chapter Three, I apply the TGN framework to the PSI. I argue that while TGNs are not new to the non-proliferation regime, the PSI constitutes an evolution of the TGN framework. The PSI is not only a noteworthy response to growing concerns over a series of new challenges but it also represents a strategic choice on the part of U.S. policy makers to place a TGN at the political core of cooperation. Arms control policies have traditionally fallen into the domain of high-politics and have relied upon treaty-based agreements. IGOs such as the United Nations (UN), the International Atomic Energy Agency (IAEA), and the North Atlantic Treaty Organization (NATO) have thus far been the primary engines for creating and enforcing the non-proliferation norms. While TGNs like the NSG and AU exist within the state-centric regime, they act as subsidiaries to the treaty/IGO structure. They plug gaps on technical issues as opposed to functioning as an alternative institutional design for cooperation. The PSI-TGN framework, on the other hand, allows U.S. policymakers to address some of the legal and definitional challenges posed by the treaty based regime, particularly concerning interdiction on the high seas, without actually changing the existing regime. In this instance, cooperation through a TGN enabled collective action on a pressing issue of security concern without resolving or addressing the challenges posed by collective law. Given the nature of the threats facing the non-proliferation regime today, treaties which necessitate approval by

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<sup>11</sup> Avant, Deborah, *US Relations and Global Security “Governance”: Hegemonic versus Quasi-imperial Strategies*, Paper prepared for the 2012 annual meeting of the American Political Science Association, New Orleans, 30 August – 2 September, pp. 1-23

domestic legislatures and multiple rounds of international negotiations are far too cumbersome and time consuming to implement or amend. Moreover, this Chapter will demonstrate that the behaviour of the U.S. in the creation, implementation, and enforcement of the PSI resembled that of a quasi-imperial manager. Rather than acting as a hegemon, U.S. policy makers chose to interact with an array of state and substate actors to shape policy through “soft law” arrangements. The U.S. was initially determined to keep the PSI proposal confidential and away from public or international scrutiny. It sought autonomy in determining the draft principles for interdiction. Once the President had approved the draft document, U.S. policy makers were keen to act quickly and with authority in their efforts to implement the PSI. The players, the organisational structure, and the guiding principles of this TGN all reflect the power dynamics underlying the PSI.

In Chapter Four, I consider whether the PSI-TGN model could be extended to include non-state actors and promoted to fit select transnational issues that require immediate attention but where implementing rapid treaties may be politically difficult. For instance, the PSI Statement of Principles (SIP) could be combined with programmes to disrupt the small-arms trade by land, sea, and air if the U.S. was interested in pursuing it. Both require similar intelligence, legal, and military tools. Overall, this paper aims to illustrate the dynamics and evolution of transgovernmental networking within and beyond the non-proliferation issue area.

## Chapter Two

### Theories of International Cooperation and Transgovernmental Relations

Since the end of the Cold War, the term “regime” has increasingly come to be associated and appended to the term “non-proliferation.”<sup>12</sup> Although some scholars disagree about the impetus for regime creation and compliance, there is an understanding amongst most academics and policy makers that a non-proliferation regime exists. This regime is concerned with the spread of nuclear weapons and related materials to states and non-state actors. Keohane, for instance, notes that the explicit purpose of the nuclear non-proliferation regime in the 1970s was to keep nuclear materials and knowledge from diffusing rapidly to potential nuclear powers.<sup>13</sup> Rublee discusses the norm of nuclear restraint and points to some of the non-proliferation regime’s list of “high-prolife and brazen” failures as well as successes.<sup>14</sup>

The purpose of this chapter is to lay the theoretical foundations for an analysis of the PSI within the context of the non-proliferation regime. The overarching objective is to

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<sup>12</sup> Smith, Roger K, 'Explaining the Non-Proliferation Regime: Anomalies for Contemporary International Relations Theory,' in *International Organization*, 1987, Vol. 41 (2), pp. 253-254

<sup>13</sup> Keohane, Robert. O, 'The Demand for International Regimes,' in *International Organization*, Vol. 36 (2) International Regimes, 1982, pp. 325-355, p. 352

<sup>14</sup> Rublee, Maria Rost, *Nonproliferation Norms: Why States Choose Nuclear Restraints* (Athens, London: University of Georgia Press, 2009)

identify why, in recent years, U.S. policy makers have favoured TGN-based cooperation as opposed to other more formal architectures of cooperation. I begin by briefly surveying contending definitions and characteristics of international regimes and the theoretical approaches to regime development. I explore contributions made by various theories to the study of international regimes including, realism, neoliberal institutionalism, and constructivism. I supplement my primarily institutionalist approach with valuable insights from constructivism, which I see as complementary rather than competitive. As constructivists assert, institutions like TGNs are not simply the “artefacts of strategically and rationally motivated state actors” but they are “also the location in which reflexive new practices and policies develop.”<sup>15</sup> States may choose to operate through TGNs on the basis of the functional and strategic benefits they offer to managerial and participant states, such as reduced transaction costs and speed of implementation but these organisations also serve as forums for establishing new practices and policies. Crucially, alone none of these theoretical approaches adequately explain why states act through formal or informal organisations. They offer key insights into the non-proliferation regime and TGN formation but fail to explain the wider trend towards TGNs. As such, I draw on varying strands of argumentation, combing constructivist thoughts on the role of ideas, norms, and expectations with a focus on the way that powerful states structure such organisations to further their own interests in a way that induces other states to participate. I then focus specifically on the distinguishing features of IGOs and TGNs, concluding that TGNs are not only a way of circumventing

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<sup>15</sup> Haas, Peter. M and Ernst B. Haas, 'Pragmatic Constructivism and the Study of International Institutions,' in *Journal of International Studies*, 2003, Vol. 31, pp. 573-601, p. 575

some of the bureaucratic problems posed by IGO based cooperation but they also provide a more effective means of bringing together like-minded states who share similar social identities to overcome collective action problems.

### ***2.1 What are international regimes and do they matter?***

The convergence of international behaviour through regimes has emerged as a significant focus for empirical and theoretical research. Liberal internationalists and institutionalists have argued that regimes are all-pervasive features of the international system and that we can deduce the existence of a regime from patterned behaviour. Donald Puchala and Raymond Hopkins suggest that “a regime exists in every substantive issue-area in international relations...Wherever there is regularity in behaviour, some kinds of principles, norms or rules must exist to account for it.”<sup>16</sup> However, linking regularity in patterns of behaviour to the existence of regimes runs the risk of overestimating consensus and implicit coordination in the international community. Susan Strange, on the other hand, questions the validity and usefulness of the concept of regimes all together. For her “using this word regime distorts reality by implying an exaggerated measure of predictability and order in the system.”<sup>17</sup> This position is consistent with a realist or structuralist orientation which envisages an international system full of rational self-seeking states that are acting in their own interest. A third way

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<sup>16</sup> Puchala, Donald and Raymond Hopkins, ‘International Regimes: Lessons from Inductive Analysis,’ in *International Regimes* ed. by Stephen Krasner (Ithaca: Cornell University Press, 1983), pp. 61-91

<sup>17</sup> Strange, Susan, ‘Cave! Hic dragones! A critique of regime analysis,’ in *International Regimes* ed. by Stephen Krasner (Ithaca: Cornell University Press, 1983), pp. 337-354, p. 345

of viewing regimes is described by Krasner as modified structuralism. “In a world of sovereign states the basic function of regimes is to coordinate state behavior to achieve desired outcomes in particular issue areas.”<sup>18</sup> This is a middle path between the structural realists who see no value in the concept of regimes and the institutionalists who see regimes as being an ever-prominent feature of international relations. Arthur Stein notes that regimes can have an impact when Pareto-optimal outcomes<sup>19</sup> could not be achieved by states going it alone or through uncoordinated action. Regimes are created to manage the suboptimality that can emerge from individual state behaviour.<sup>20</sup> This approach is helpful in explaining and understanding the non-proliferation regime, as the very nature of the objective of preventing and actively curtailing the spread of nuclear weapons and related materials is dependent upon coordination and cooperation between multiple states, sub-state units, and non-state actors.

Another possible and more helpful way to understand the role of regimes and their institutional components in international relations is through a constructivist lens. Constructivists have sought to reassert the importance of social context into international relations. As Alexander Wendt argues, “through repeated acts of reciprocal cooperation, actors form mutual expectations that enable them to continue cooperation.”<sup>21</sup> The demand for regimes depends upon actors’ perceptions of international problems, which can be a

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<sup>18</sup> Krasner, Stephan, ‘Structural causes and regime consequences: regimes as intervening variables,’ in *International Regimes* ed. by Stephen Krasner (Ithaca: Cornell University Press, 1983), pp. 1-22, p. 7

<sup>19</sup> An outcome is Pareto-optimal if there is no other outcome in the game that can make every player just as well off without hurting at least one player

<sup>20</sup> Stein, Arthur. A, ‘Coordination and collaboration: regimes in an anarchic world,’ in *International Regimes* ed. by Stephen Krasner (Ithaca: Cornell University Press, 1983), pp. 115-140, p. 1232

<sup>21</sup> Wendt, Alexander, ‘Collective Identity Formation and the International State,’ in *The American Political Science Review*, June 1994, Vol. 88 (2), p. 390

product of their norms and beliefs.<sup>22</sup> International regimes, according to constructivists, do more than simply affect the cost benefit calculations of rational actors – they can circumscribe action while also acting as points as reference for acceptable forms of social behaviour. Pragmatic constructivists like Peter Haas and Ernst Haas highlight the role that institutions can play in generating political change. They regard institutions, “partly as arenas for designing change and partly as arrangements that bring about change as they alter the perceptions of their members.”<sup>23</sup> TGNs, for instance, can be the product of managerial states exercises their desire to orchestrate change in a particular issue area, while simultaneously altering or solidifying the perceptions of their participant states on the issue in question, such as interdiction on the high seas. International regimes can thus be conceptualised as principles and understandings of desirable and acceptable forms of behaviour,<sup>24</sup> which both influence actors and are influenced by actors.

Furthermore, constructivists argue that social identities and interests are always in process during social interaction<sup>25</sup> and actors develop understandings of other actors through the mechanism of norms and practices. While neorealists prioritise material capabilities in international relations, constructivists pay homage to the role of social relationships. According to Wendt, social structures have three elements: “shared knowledge, material resources, and practices.”<sup>26</sup> Material resources of individual states, while important, only acquire meaning for human action through the shared knowledge

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<sup>22</sup> Alexander Wendt. 1994. p 389

<sup>23</sup> Haas & Haas, p. 575

<sup>25</sup> Wendt, 1994, p. 386

<sup>26</sup> Wendt, Alexander, ‘Constructing International Politics,’ in *International Security*, 1995 Vol. 22 (1), pp. 71-81, p. 73

and practices in which they are embedded.<sup>27</sup> Social structures like the non-proliferation regime help to shape actors' collective identities, which can then serve as the "basis for feelings of solidarity, community, and loyalty, and thus form collective definitions of interests."<sup>28</sup> These collective identities and interests play out through formal and informal institutions like security communities aimed at curbing the proliferation of WMD related materials. Exercising collective interests through regimes and security communities does not mean that actors are irrational or no longer calculate individual (state) costs and benefits of participation, rather they do so on a higher level of social aggregation.<sup>29</sup> This higher level of social aggregation discourages free-riding by increasing the willingness of like-minded states to collectively bare the costs. Moreover, international organisations (IO) have influence well beyond the material power of individual or collective states. IOs can legitimise or delegitimise actions, they can create ideas, norms, and exceptions, and they can enhance the power of individual states. States (managerial or participant) consciously use these organisations both for their functional benefits such as reduced transaction costs and increased organisational efficiency, and more broadly to influence interests and understandings of other states.

How do we know when we see a regime? Constructivist John Ruggie first introduced the concept of regimes in 1975, defining it as "a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments which

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<sup>27</sup> Wendt, 1995, p. 73

<sup>28</sup> Wendt, 1994, p. 386

<sup>29</sup> Wendt, 1994, p. 386

have been accepted by a group of states.”<sup>30</sup> In 1983, Krasner refined this definition to include “a set of implicit or explicit norms, principles, rules, and decision-making procedures around which actor’s expectations converge in a given area of international relations.”<sup>31</sup> Principles are defined as “beliefs of fact, causation, and rectitude”; norms as “standards of behaviour defined in terms of rights and obligations”; rules as “specific prescriptions or proscriptions for action”; and decision-making procedures as “prevailing practices for making and implementing collective action.”<sup>32</sup> The above definition forms the foundation of this paper and is consistent with other recent understandings of regimes. Ernst Haas, for instance, argues that “regimes are norms, rules, and procedures agreed to by states in order to regulate an issue-area.”<sup>33</sup> He goes on to suggest that “regimes may be housed in single international organizations, comprise the activities of several such organs, or dispense with formal organization altogether.”<sup>34</sup> As an example, the non-proliferation regime consists of a variety of components, both formal and informal in nature, from the 1968 Treaty on the Non-Proliferation of Nuclear Weapons to the Proliferation Security Initiative. Similarly and perhaps most famously, Keohane and Nye define regimes as “networks of rules, norms, and procedures that regularize behaviour

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<sup>30</sup> Ruggie, John Gerard, ‘International Responses to Technology: Concepts and Trends,’ in *International Organization*, 1975, Vol. 34, p. 570

<sup>31</sup> Krasner, p. 2

<sup>32</sup> Krasner, p. 2

<sup>33</sup> Haas, Ernst, ‘Technological Self-reliance for Latin America: the OAS Contribution,’ *International Organization*, 1980, Vol. 34 (4), p. 552

<sup>34</sup> *Ibid.*

and control its effects.”<sup>35</sup> Focusing on interdependence within world politics, they suggest that regimes act as an intermediate step, between capabilities and power structure within a system, and the political bargaining which occurs within it.

While there are multiple definitions of regimes, they all have in common the understanding that they are not simply makeshift or temporary aspects of international relations. They vary over time but they do not change with every shift in national power or interest. Stephan Haggard and Beth Simmons argue that “regime change” can be operationalised in terms of strength, organisational form, scope and allocational mode. Strength is measured by the degree of compliance, organisational form refers to issues such as the centralisation and decentralisation of the administration apparatus, scope concerns the range of issues the regime covers, and allocational mode refers to the different social mechanisms for resource distribution.<sup>36</sup> To this Krasner adds “change within a regime involves alterations of rules and decision-making procedure, but not of norms or principles; change of a regime involves alteration of norms and principles.”<sup>37</sup> The growth of TGNs within the non-proliferation issue area clearly implies change within a regime. The rules and decision-making procedures have shifted from formal IGOs to looser and less formal modes of cooperation. While the implications of the PSI-TGN framework, namely the potential for the development of a new interdiction norm, might imply a change of the regime. Thus, regimes and their components clearly can and do

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<sup>35</sup> Keohane, Robert. O and Joseph S. Nye, *Power and Interdependence* (Boston: Little Brown, 1997), p. 19

<sup>36</sup> Haggard Stephan and Beth A. Simmons, ‘Theories of International Regimes,’ *International Organization*, 1987, Vol. 41(3): pp. 491-517, p. 496

<sup>37</sup> Krasner, p. 5

evolve, however, they do not change overnight or with every shift in political or strategic interest. Regimes are intended to be more permanent features of international politics.

Given the importance of IGOs and the trend towards TGNs within the non-proliferation regime, the following two sections will provide a closer examination of these two regime components and their distinguishing features. This will include an assessment of why TGNs arise and the likelihood for TGN-based cooperation. Drawing from these sections, Chapter Three and Chapter Four will provide an in-depth analysis of the PSI as it fits within the dynamics of transgovernmental networking and the non-proliferation regime.

## ***2.2 The Trend Towards Transgovernmental Cooperation***

The idea of transgovernmental relations was first pioneered by Keohane and Nye in the 1970s. In an article for *World Politics* journal, the authors question the assumption that states are the only actors in the international system and that they always act as individual units. Critiquing the ‘black-box’<sup>38</sup> view of a state and state interactions, they differentiate between two types of international state cooperation - intergovernmental cooperation and transgovernmental cooperation. Intergovernmental cooperation refers to direct interactions between top leaders, heads of state or foreign offices sustained through formal organisations, particularly IGOs. Transgovernmental cooperation, on the other

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<sup>38</sup> A black box state is one whose internal characteristics and behaviour are of little relevance to its external actions

hand, takes place below the apex of organisational hierarchy.<sup>39</sup> It is defined as “sets of direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments.”<sup>40</sup> Within transgovernmental cooperation two separate categories can be identified. The first type of “communication does not necessarily contradict the conventional conceptualization of states as coherent coalitions vis-a-vis the outside world.”<sup>41</sup> It simply refers to the most basic type of informal communication among working level officials of bureaucracies. Informal cooperation of this nature can even take place in the corridors of IGOs. It can help to assist cooperation through more formal structures or it can act as a forum for discussing how to improve the implementation of existing treaties. When these ad hoc patterns of coordination and cooperation become regularised and institutionalised, a more deliberate form of TGN can arise. To increase the likelihood of success and to advance specific policy goals, governmental sub-units may choose to informally coordinate their decision-making with actors from other governments through TGNs.<sup>42</sup> If successful, the products of transgovernmental policy coordination are different than they would be if each TGN partner were limited to acting through their own bureaucracy.<sup>43</sup>

While the first category of basic and informal transgovernmental relations is of analytical and theoretical interest, this second category forms the subject of this paper.

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<sup>39</sup> Keohane, Robert and Joseph S. Nye. ‘Transgovernmental relations and International Organisations.’ *World Politics*, 1974, Vol. 27, pp. 39-62, p. 44

<sup>40</sup> Keohane and Nye. 1974, p. 43

<sup>41</sup> *Ibid.*, p. 44

<sup>42</sup> Keohane and Nye, 1974, p. 47

<sup>43</sup> *Ibid.*

These autonomous and deliberate TGNs are, in and of themselves, sources of governance and informal rule making. Within the non-proliferation issue area, the Cooperative Threat Reduction (CTR) initiative, the Missile Technology Control Regime (MTCR), the Container Security Initiative (CSI), the Regional Maritime Security Initiative (RMSI), and the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction (“10 Plus 10 Over 10 Program”), The Transshipment Countries Export Control Initiative (TECI), the Secure Freight Initiative (SFI), the Global Threat Reduction Initiative (GTRI), the Global Initiative to Combat Nuclear Terrorism (GICNT), and the PSI are all examples of TGNs. Given the PSI’s ability to generate support from 102 different countries and its role in spurring into existence a range of other TGNs, it will serve as the primary case study for this paper.

To date, the literature on TGNs has paid inadequate attention to the relationship between concentrated power and network formation. Some scholars have highlighted the need for a powerful state to act as a bureaucratic point of contact within TGNs,<sup>44</sup> while others have pointed to the effects of regulatory power on policy outcomes. However, there has been little discussion of how material and issue-specific power can initiate, drive and sustain TGN activity. The U.S. has played a crucial role in forming and steering TGN-based cooperation, yet American officials are awarded the same analytical status as sub-state representatives from other countries. As will be discussed in greater detail later in this Chapter, concentrated power is a precondition for TGN formation. Moreover, as Avant notes, “US policy makers are often strategic in determining which relationship(s)

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<sup>44</sup> Lipson, Michael, ‘Transgovernmental Networks and Nonproliferation: International Security and the Future of Global Governance,’ *International Journal*, 2005/2006, Vol.61 (1), pp. 179-198, p. 188

to work through in pursuit of their goals. Performing one role rather than another, however, has consequences.” When the U.S. acts as a hegemon it interacts with states and state based IGOs and is constrained by domestic interests.<sup>45</sup> For instance, the influence of the Jewish lobby on domestic U.S. politics and U.S. ties to Israel, led the Obama administration to stymie a UN General Assembly vote on Palestinian statehood in 2011 – even though the vote would only elevate the status of the Palestinian Authority from nonvoting “observer entity” to “observer state.” Once it became clear that a vote was to go ahead, U.S. officials began to exercise hegemonic power by threatening Palestinian officials with significant financial retaliations. The U.S. also lobbied allies such as the Canada and the United Kingdom to vote against a change in Palestinian status or to simply abstain from the vote. In this case, it was in the interest of the U.S. to use its power to forestall action rather than encourage change.

Avant suggests that the U.S. can also use its powers in a more fruitful way to generate new action.<sup>46</sup> Instead of exhibiting hegemonic traits, the U.S. can act as a quasi-imperial manager (as it does within TGNs), interacting with a range of state and non-state actors to serve both its own interest and the interest of the wider community. While the U.S. lacks the kind of control that was typical in more classical empires, it can nonetheless influence intermediaries and orchestrate support for a particular action by means of its structural and material advantage. Take the private military and security services industry as an example. In the wake of incidents in Iraq and criticism from

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<sup>45</sup> Avant, August-September 2012, p. 2

<sup>46</sup> Ibid. p. 35

Congress and civil society groups, the U.S. began to participate in and lead a range of multi-stakeholder informal regulatory initiatives, such as the Montreux Process. Given that a number of private military and security companies (PMSC) are headquartered in the United States, U.S. officials saw this Swiss initiative as an opportunity to both respond to critiques regarding the PMSC industry, while simultaneously controlling the market for force.<sup>47</sup> In turn, U.S. policy and regulation were informed by the language and content of the Montreux document, which highlighted the deficiencies in the U.S. system that led to problems in Iraq and Afghanistan.<sup>48</sup> The U.S. plays a similar role in the orchestration and management of TGN-based cooperation. When the U.S. wants to generate new action, there are limits to what hegemonic power and going it alone can accomplish. While the U.S. could work through IGOs, these formal arrangements are tedious and more susceptible to international intransigence. As the U.S. possesses sufficient levels of material and issue specific power to bring together sub state units are well connected, that already share their preferences, and have demonstrated capacity to affect the issue in the past, it is more rational for them to establish and manage their own mechanism for cooperation and collective action. Furthermore, the lack of a monitoring and enforcement mechanism implies that TGNs may be dependent upon the actor who established the network to ensure compliance and enforce cooperation. Thus, TGN-based cooperation is more likely to occur when there is concentrated power, such as that possessed by the U.S. in certain issue areas.

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<sup>47</sup> Avant, August-September 2012, p. 32

<sup>48</sup> Ibid.

### ***2.3 Intergovernmental Organisations***

In order to understand why there has been a growing trend towards TGNs, it is important to first consider the characteristics of IGOs and the advantages and disadvantages of IGO based cooperation. There exists a large amount of analytical and empirical scholarship on IGOs, including patterns in IGO growth and membership and the effect of IGOs on state behaviour. States use IGOs in a number of different ways, from setting agendas to settling conflicts. They are a ubiquitous feature of international regimes, which typically form the regime core. This includes, the non-proliferation regime, which has employed IGOs as mechanisms for cooperation.

There have been numerous attempts to identify empirical criteria for IGOs. In 1970, Wallace and Singer identified four such criteria: the organisation must consist of at least two qualified members of the international system; it must hold regular plenary sessions at intervals not greater than a decade; it must have a permanent headquarters; and it must be independent from other IGOs.<sup>49</sup> Because a significant proportion of the literature on IGOs has converged to a three-state definition, Pevehouse, Nordstrom, and Warnke updated their IGO nomenclature to include a three-state minimum in 2004.<sup>50</sup> While an organisation containing two member states could be of academic and theoretical interest, it falls within the domain of bilateral rather than multilateral relations.<sup>51</sup> They

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<sup>49</sup> Wallace, Michael and David Singer, 'Intergovernmental Organizations in the Global System, 1816–1964: A Quantitative Description', *International Organization*, 1970, Vol. 24(2): pp. 239–257.

<sup>50</sup> Pevehouse, Jon, Timothy Nordstrom and Kevin Warnke, 'The Correlates of War 2 International Governmental Organizations Data,' in *Conflict Management and Peace Science*, 2004, Vol. 21: pp.101-119, p. 103

<sup>51</sup> Volgy, Thomas. J, Elizabeth Fausett, Keith A. Grant, and Stuart Rodgers, 'Identifying Formal Intergovernmental Organizations,' in *Journal of Peace Research*, 2008, Vol. 45 (6): pp. 837-850, p. 840

define an IGO as: a formal entity (formed by an internationally recognised treaty); with three or more sovereign states; and a permanent secretariat with institutional features such as a headquarters and/or a permanent staff.<sup>52</sup> Taking together these three empirical criteria, Volgy, Fausett, Grant and Rodgers offer a conceptual definition of formal IGOs (FIGOs) as “entities created with sufficient organizational structure and autonomy to provide formal, ongoing, multilateral processes of decision-making between states, along with the capacity to execute the collective will of their members (states).”<sup>53</sup> They note that this conceptual definition highlights both the process of interactions within FIGOs as well as the possibility of collective outcomes from these processes.<sup>54</sup> They also identify 11 threshold values as operational criteria for designating an entity as a FIGO. These criteria are outlined in Table 1 below.

These threshold values listed are helpful in two ways. First, they help us to identify the distinguishing features of formal IGOs, which in turn will inform our understanding of why states may choose to work through such organisations. Concerns relating to membership criterion, rules of governance, budget, and funding independence all factor into a state’s decision to pursue cooperation through one form of organisation above another. Second, the threshold values will be critical in differentiating between IGOs and TGNs, and understanding the reasons behind why TGNs like the PSI arise.

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<sup>52</sup> Pevehouse et al., p. 103

<sup>53</sup> Volgy, et al., p. 839

<sup>54</sup> Ibid.

*Table 1 Threshold Requirements for FIGOs adapted from Thomas Volgy et al. Table I. Comparison of Threshold Requirements for FIGO Classification versus Other Collections Enumerating IGOs.<sup>55</sup>*

<b>Criterion</b>	<b>FIGO Data</b>
<i>Membership</i>	
Number of States	Three or more
Mix	Predominantly by states; no veto on collective decision by non-state members
Representation	Representing central governments or its sub-units
<i>Rules of Governance</i>	Specified in charter
Meetings	Routinised and meeting at regular intervals and at least every four years
HQ/Secretariat:	Permanent and non-symbolic
Staffing Presence	More than two (paid by IGO)
Staffing Independence	Independence of any IGO or any single state
<i>Budget</i>	
Amount	Sufficient to cover minimal staffing and operation
Funding mechanism	Routinely identified; regularly available
Source	Majority funding not controlled by another IGO or one state

Pevehouse et al.'s focus on membership, rules of governance, and budget as threshold requirements for formal IGO classification is reflected in Abbott and Snidal's research on why states act through formal international organisation. They propose that

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<sup>55</sup> Volgy, Thomas. J, Elizabeth Fausett, Keith A. Grant, and Stuart Rodgers, 'Identifying Formal Intergovernmental Organizations,' in *Journal of Peace Research*, 2008, Vol. 45 (6): pp. 837-850, p. 843

formal international organisations offer centralisation and autonomy – two characteristics which not only distinguish formal organisations from other international institutions, but also produce a range of political effects which make working through an IGO attractive.

Centralisation refers to:

“a concrete and stable organisational structure and an administrative apparatus managing collective activities” while independence refers to “the authority to act with a degree of autonomy, and often with neutrality, in defined spheres.”<sup>56</sup>

Abbott and Snidal argue that established and formal organisation provide a stable negotiating forum that enhances iteration and reputational effects. Even at the height of the Cold War, the IAEA, for example, served as a superpower forum for discussing technical nuclear issues without the intrusion of high politics.<sup>57</sup> By increasing transparency amongst stakeholders in the negotiating process, IGOs can also serve to minimise misperception and avoid miscalculated responses. The diversity of members and the scope of application can facilitate long-term cooperation by encouraging issue linkages in a variety of different areas. IGOs can also help states take the long view on a particular issue or set of relations as opposed to responding to immediate concerns and payoffs.

Representation and voting rules, which are inherent features of certain types of IGOs, “constitutionalise” balances among states that have different levels of power,

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<sup>56</sup> Abbott, Kenneth, and Duncan Snidal, ‘Why States Act through Formal International Organizations,’ in *The Journal of Conflict Resolution*, 1998, Vol. 42(1): pp. 3-32, p. 9

<sup>57</sup> *Ibid.*, p. 10

interest, and knowledge.<sup>58</sup> States that possess advanced nuclear technologies and large quantities of nuclear material are guaranteed seats on the IAEA Board of Governors.<sup>59</sup> IGOs do more than simply support interstate relations; they also act as mechanisms for pooling activities, assets, or risks. A stable organisational structure with a specialised staff can significantly reduce transaction costs.<sup>60</sup> Member states of the World Bank pool their financial resources, which enables the organisation to make credible financial commitments to borrowers who rely upon them for costly planning and investment decisions.<sup>61</sup>

The operation of an IGO as an independent, “neutral actor can transform relations among states, enhancing the efficiency and legitimacy of collective and individual actions.”<sup>62</sup> Consider briefly the example of Libya in 2011. On 26 February 2011 the Security Council voted unanimously to impose sanctions against the Libyan authorities. Resolution 1970 placed an obligation on all United Nations Member States to:

“freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities” listed in the resolution.<sup>63</sup>

The document also placed an arms embargo on Libya, calling on all Member States to:

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<sup>58</sup> Abbott and Snidal, p. 10

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., p. 13

<sup>61</sup> Ibid., p. 13

<sup>62</sup> Ibid., p. 16

<sup>63</sup> UN Resolution 1970 (2011), Adopted by the Security Council at its 6491st meeting on February 26, 2011

“immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related material of all types, including weapons and ammunition.”<sup>64</sup>

Furthermore, the resolution marked the first time that a country had been unanimously referred to the International Criminal Court by the Security Council. While Resolution 1970 was proposed by a small group of states with shared preferences, namely, France, Germany, the United Kingdom, and the United States, approval of the resolution by all 15 members of the Security Council generated obligations for the wider UN community. Support from states that traditionally disagree with the US gave the resolution a neutral overtone, thus enhancing the efficiency and legitimacy of the sanctions. A lack of UN approval might have cast an unsavoury light upon U.S. action as it did with U.S. intervention in Iraq in 2003, but with approval. As Abbott and Snidal note, neutrality adds impartiality to independence,<sup>65</sup> facilitating the achievement of a collective objective.

By taking advantage of the threshold requirements of formal IGOs and characteristics such as centralisation and independence, states can achieve certain goals that they may not have been able to accomplish as effectively through unilateral action or direct relations with other actors. IGOs can provide economies of scale, they can act as forums for discussion, they can enhance transparency and facilitate issue linkages, and

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<sup>64</sup> UN Resolution 1970 (2011), Adopted by the Security Council at its 6491st meeting, on 26 February 2011

<sup>65</sup> Abbott and Snidal, p. 19

they can encourage states to take the long view. The allure of these benefits persuades states to work through formal arrangements as opposed to decentralised ones.

Abbott and Snidel argue that the move from decentralised cooperation to formal international organisations “occurs when the costs of direct state interaction outweigh the costs of international organisation, including consequent constraints on unilateral action.”<sup>66</sup> Drawing from constructivist theories of international relations, I contend that while this assessment is correct, it only advances a partial truth. The U.S. may decide to move from informal to formal arrangements on the basis of a strategic calculation but they may also revert back to decentralised decision-making structures to create new information, ideas, norms, and expectations. Moreover, costs and benefits are not always known in advance or equal to each participating state. The shift from one organisational form to another is not permanent or unidirectional. A decision by U.S. officials to pursue a less formalised structure to further collective goals is also based upon a similar assessment of the functional and strategic costs and benefits (if known) as well as the capacity to influence interests, intersubjective understandings, and the operating environment of other states. There are a number of disadvantages to centralised cooperation that are considered at length in the next section. However, it is worth dedicating some attention to them here.

First, rather than being a forum for cooperation and consensus, IGOs can become a focus of international struggle and disagreement. Although the UN Security Council unanimously approved sanctions against Libya in 2011, there are plenty of instances of

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<sup>66</sup> Abbott and Duncan Snidal, p. 9

power struggles hampering the Security Council's efforts to respond to a crisis. On 19 July 2011, for instance, the Security Council failed to adopt a resolution that would have threatened sanctions on Damascus due to negative votes by permanent member Russia and China. Other IGOs such as the European Union (EU) are similarly prone to controversy. At present, the EU is struggling to unify around a single economic path for the future. One narrative centres on strengthening the EU institutional framework and addressing its structural weaknesses, and the other emphasises the need for domestic austerity and reform of domestic economic policy. All the while, the UK is attempting to renegotiate its membership and calling for a repatriation of powers from the EU to the UK.

Second, the level of support an IGO or a treaty gets is often contingent upon whether it promotes participants' domestic and national interests and/or goals. Realist theory and academics like Susan Strange find that the focus on formal IGOs is naïve because these regime components merely reflect national interest and power. While international law creates an illusion of an ordered system, powerful states like the U.S. will only comply with rules and regulations when it is in their self-interest to do so. The point at which an IGO policy or treaty begins to diverge from U.S. interests will be the point at which U.S. policy makers begin to employ harder and less cooperative forms of power. For instance, in 2006 the Bush administration voted against the Arms Trade Treaty (ATT) as its position in the UN was overly influenced by domestic constituencies

like the National Rifle Association (NRA).<sup>67</sup> Although eight years later, on 2 April 2013, the Obama administration voted with the majority for approval of the ATT, the treaty's ratification prospects in the Senate still appear bleak due to opposition from the gun lobby. Furthermore, formal IGOs often give less powerful countries equal representation and the tools to stymie regulatory and governance efforts generated by more powerful countries. In other words, while powerful countries can veto decisions that are against their interests, so too can less powerful countries. Thus, a major limitation of IGO based cooperation is that support and success is heavily dependent upon the relationship between the issue area under question and the domestic interests of powerful countries that may have the capacity to actually implement and enforce the arrangement.

Finally, formal centralised institutions often suffer from severe budgetary and fiscal problems, which can hinder cooperation and the effectiveness of collective action. The growing cost of operations and pressures stemming from austerity cuts have left a number of countries unwilling or unable to pay their dues. The existing UN assessment system, for instance, has left eight member states covering 76% of the overall costs despite fiscal challenges within each of those countries. The U.S. is the largest contributor to the UN and many have raised concerns over the level of influence and leverage that U.S. officials have over UN policy. In 2011, the Obama administration decided to cut funding for UN Educational, Scientific, and Cultural Organization (UNESCO) following its approval of Palestine's bid for full membership. The

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<sup>67</sup> Avant, Deborah, 'Soft Law and "Effective" Fragmented Governance: Comparing Regulation in Small Arms and Military and Security Services,' Presented at the IISL Conference on Law, Contestation, and Power in the Global Political Economy, Onati, Spain, June 7-8, 2012, p.13

requirement to pool resources often generates an expectation regarding a return on investment, which can undermine IGO claims to autonomy and independence. Formal IGO cooperation, thus, comes with a range of budgetary and fiscal issues.

In the next section, I draw on the characteristics and weaknesses of IGO based cooperation to identify the threshold criteria for TGNs and to assess why TGNs like the PSI arise and take the form that they do.

#### ***2.4 Identifying the Characteristics of and Conditions for TGN-based Cooperation***

Many have pointed to the cross border activities of banks, private corporations, criminals, terrorists and non-governmental organisations to demonstrate the prominence of networks and to argue that this type of non-state actor cooperation has posed a considerable threat to the dominance and authority of states. While these networks are certainly an integral component of the international system, they are not simply confined to the domain of non-state actors.<sup>68</sup> Transgovernmental ties and networks have existed for a number of years (the International Telegraphic Union (1865) and the World Health Organisation (1948)). What is new is the rapid proliferation of these TGNs and the scope and strength of the ties between sub-state officials.

Although TGNs provide an alternative to formal IGO/treaty based cooperation, they do not necessarily have to constitute competitive architectures of cooperation. Under some conditions, TGNs can support the existing structure and treaty. At other times, they

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<sup>68</sup> Eilstrup-Sangiovanni, Mette, 'Varieties of Cooperation: Government Networks in International Security,' in *Networked Politics: Agency, Power, and Governance*, ed. by Miles Kahler, (Ithaca, N.Y.: Cornell University Press, 2009) pp. 194-227, p. 194

may simply play the role of a gap-filler. They can exist independently, in opposition or in congruence with the existing regime. When different components of a regulatory regime work together and complement the efforts of one another, they are more likely to be effective. This section will identify 14 threshold criteria to qualify an entity as a TGN as well as the conditions under which a TGN may arise. Furthermore, I will argue that the impetus for transgovernmental networking is not simply based on an assessment of functional benefits. TGNs are also underpinned by power politics. Empirically, Eilstrup-Sangiovanni notes, most TGNs are linked to powerful states, so what prompts states to delegate a particular policy to a TGN that does not operate under direct supervision as opposed to an IGO that is centralised and has a set operating procedures?<sup>69</sup>

Faced with growing the complexity of world politics and an increase in the variety of actors regulating a particular issue area, many scholars have called into question the realist state-centric analysis of the international system. Liberal internationalists have drawn fire from several quarters with some academics arguing that globalisation and the rise of non-state actors have undermined the traditional statist foundations of the prevailing forms of cooperation. According to a third perspective – the transgovernmentalist perspective - although globalisation does challenge the states’ regulatory capacity, “states remain the only actors with the authority to provide effective and legitimate governance.”<sup>70</sup> While the state is not disappearing, it is being forced to

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<sup>69</sup> Eilstrup-Sangiovanni, 2013, p. 10

<sup>70</sup> Lipson, 2005/2006, p. 182

change the way that it engages with its counterparts and variety of non-state actors both within its domestic constituency and abroad.

#### *2.4.1 TGN Characteristics*

So what are the threshold criteria for qualifying as a TGN? Eilstrup-Sangiovanni suggests that to bring the distinguishing institutional traits of TGNs into focus, its helpful to first consider TGNs qua networks.<sup>71</sup> She identifies three principal features of networks. First, networks are flat and decentralized structures with decision-making dispersed among multiple actors. They lack a top-down management structure. Lower-level units can have relationships with multiple higher-level units as well as lateral links with units at the same level of organisation.<sup>72</sup> Second, networks tend to have self-enforcing governance structures, which rely, to a great extent upon interpersonal trust. Networks lack enforcement and legal arbitration procedures; rather, they depend primarily upon reputation and expectations of reciprocity to govern relations.<sup>73</sup> Third, Eilstrup-Sangiovanni argues that rather than administrative fiat, the decision-mode within networks is predominantly led by deliberation, consensus, and mutual adjustment. The lack of a central or governing authority within networks makes them less suitable for more structured and rigid forms of decision-making.

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<sup>71</sup> Eilstrup-Sangiovanni, 2013, p. 5

<sup>72</sup> *Ibid.*, pp. 5-6

<sup>73</sup> Eilstrup-Sangiovanni, 2013, p. 6

*Table 2 Threshold Criteria for Transgovernmental Networks compared against Intergovernmental Networks*

<b>Criterion</b>	<b>Intergovernmental Networks</b>	<b>Transgovernmental Networks</b>
<u>Membership</u>		
Number of States	Three or more	Three or more; initially a core group but can expand to broader membership
Shared preferences	N/A	Initially like-minded states; can later be expanded to broader membership base
Mix	Predominantly by states; no veto on collective decision by non-state members	Only sub-state units representing states NOT NGOs
Representation	Representing central governments or its sub-units	Representing sub-state units
<u>Rules of Governance</u>		
Meetings	Routinised and meeting at regular intervals and at least every four years	Regularised but not necessarily specified
HQ/Secretariat	Permanent and non-symbolic	None
Staffing Presence	More than two (paid by IGO)	None
Staffing Independence	Independence of any IGO or any single state	None
Decision-mode	Formal Voting	Deliberation and consensus
<u>Budget</u>		
Amount	Sufficient to cover minimal staffing and operation	Unspecified
Funding mechanism	Routinely identified; regularly available	Unspecified
Source	Majority funding not controlled by another IGO or one state	Unspecified; May or may not be controlled by one state
<u>Legal Basis</u>		
<u>Scope</u>	Broad and Narrow	Narrow; tend to focus on specific issues

While there exists a substantial body of literature on TGNs and the characteristics of networks in general, there is a lacuna on the empirical dimensions for identifying TGNs. Based on the three network criteria outlined by Eilstrup-Sangiovanni and the existing literature on TGNs, I present 14 threshold values that may be used to operationalise criteria for designating an entity as a TGN. I title the criteria under the headings of participation, rules of governance, budget, legal basis, and scope. I by no means suggest that these criteria provide a comprehensive and definitive list of TGN characteristics. A full assessment of the qualifying features of TGNs will require a detailed empirical analysis which tests these criteria against the range of TGNs in existence today, which is beyond the scope of the paper.<sup>74</sup> For now, I draw upon the substantial yet disjointed body of literature on TGNs to offer an assessment of the characteristics that might constitute a TGN. These criteria are discussed below and summarised in Table 2.

First, similar to IGOs, I concur that the threshold for participation of a TGN is three or more states, or more specifically, constituent sub-units that represent three or more states. Although transgovernmental relations might occur between two states, these do not constitute a multilateral network as conceived by the majority of the literature on TGNs. Instead, they fall within the domain of bilateral transgovernmental relations. Furthermore, TGNs tend to arise among a small core group of states.<sup>75</sup> The PSI, for instance, involved pledges of support from 11 countries in 2003; the Financial Stability

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<sup>75</sup> Eilstrup-Sangiovanni, 2013, p. 6

Forum (FSF) received endorsement from the Finance Ministers and Central Bank Governors of seven states in 1999; and the Nuclear Suppliers Group (NSG) was formed in 1975 by seven nations with similar nuclear fuel cycle capabilities. While TGNs generally arise from a small core group, they can grow to include a much wider participant list. The PSI now has 102 participants, the FSF (now replaced by the Financial Stability Board (FSB)) has extended membership to 20 states, and the NSG membership has grown to 46 nuclear supplier states.

Second, relating to participation, TGNs are traditionally formed by like-minded states that share preferences with the dominant and central state. More often than not, the state exercising managerial power is the U.S., thus TGN participants tend to be those who share preferences with the U.S. The Financial Action Task Force (FATF), which is often presented as a successful example of a TGN, facilitates coordination of anti-money laundering regulation among 36 liberal democracies.<sup>76</sup> The 11 states that were invited to participate in the initial stages of PSI deliberations were all states that had previously cooperated with the U.S. in the regulation of the non-proliferation issue. Shared preferences ease the process of reciprocity amongst states that have in common similar perceptions of a particular problem and preferences on how to act. Shared preferences will also go some way to explaining network formation in the next section.

The third and fourth criteria refer to the mix and representation of membership. IGOs can be representative of states or sub-state units, TGNs, on the other hand, only represent sub-state units of government, populated by experts as opposed to generalist

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<sup>76</sup> Ibid.

diplomats. The individuals who represent their states are not necessarily expected to represent the declared preferences of the executive branch of government. Furthermore, while NGOs may be invited to participate in discussions, the very nature of transgovernmental relations implies the occurrence of interactions between sub-state units as opposed to states and non-state actors. Of course, a TGN can evolve into a multi-stakeholder process. In fact, this evolution may even be desired and constitute the ideal type for certain issue areas. However, the point at which non-state actors begin having a weighted say in the deliberations of TGNs is when the transgovernmental network can no longer be classified as such; rather, it becomes a transnational network.

The next set of criteria (five to ten) concern the bureaucratic organisation of the TGN, that is, the rules of governance, meetings, HQ/secretariat, staffing presence, staffing independence, and decision mode. The rules of governance refer to whether the procedural requirements are set out in a charter or a treaty and are easy to uncover or if they are uncodified and implicit. For IGOs, Volgy et al. argue that these procedural rules are usually set out in a charter and are easily accessible to member states. In TGNs, however, since there are no set procedures or rules, there is nothing to codify. Meetings are regularised but they are not necessarily specified. There is no explicit agreement that those participant sub-units representing states must meet once, twice, or three times a year. While IGOs are often put forth as representative organisations where voting is conducted through formal procedures and where majority rule may apply, TGNs operate on the basis of deliberation and consensus.<sup>77</sup> A functional benefit of TGNs is that, unlike

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<sup>77</sup> Eilstrup-Sangiovanni, 2013, p. 8

IGOs, they are not limited by the constraints of formal voting and equal representation. TGNs also lack a secretariat and in turn a permanent staffing presence. Of the known TGNs, only the Wassenaar Arrangement has a central secretariat. The CSI, NSG, the Zangger committee, the Missile Technology Regime (MTC), and the AG all lack a centralised international HQ. Staff is usually drawn from or attached to a particular participant state (usually the state that is exercising leadership or acting as the focal point for the TGN). For instance, Japan for the NSG, France for the MTCR, Australia for the AG, and the U.S. for the PSI. In turn, TGN staff is neither autonomous nor independent. Staff members are derived from a particular country and are therefore likely and perhaps even expected to reflect the interests of that country.

Permanent professional staffing requires a permanent source of funding. This raises the next set of criteria concerning budgets. Given that TGN-based cooperation is informal with each participant implementing and enforcing agreements in accordance with domestic laws and practice,<sup>78</sup> TGNs tend to lack a pooled budget that is routinely and systematically available to participants or independent of any one-member state. As the TGN lacks a codified charter, the budget amount, the funding mechanism, and the source of funding are all unspecified. If anything, like the staffing presence, funding for particular projects tends to be associated with or linked to dominant or powerful states, usually the U.S., which also acts as the focal point for negotiations and plays a managerial role.

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<sup>78</sup> Eilstrup-Sangiovanni, 2013, p. 8.

IGO agreements are predominately legalised through a formal treaty. TGNs tend to lack this kind of legal treaty basis. Some TGNs like the EU dual-use regime, the Zangger Committee, and other multilateral export control efforts are loosely attached to formal treaties, such as the NPT, however, the objectives, the guidelines, and the rules of governance are not codified in a treaty and they do not by themselves generate or spur new treaties. Responding to a point of clarification from Russian Deputy Foreign Minister Kislyak, Under Secretary of State for Arms Control and International Security John Bolton said that the text of the PSI “was not carved in stone, but neither should he treat it as still being in the word processor.”<sup>79</sup> TGNs, therefore, occupy a middle ground between international versions of gentleman’s agreements and legally binding international documents.

The final criterion refers to scope. Whereas IGOs have the capacity to simultaneously focus on a range of global issues, TGNs tend to be confined to a few “narrow issue-specific problems.”<sup>80</sup> Many scholars have concluded that the likelihood for TGN-based cooperation is greater on highly technical issues which lack political salience, as opposed to larger issues of national security which attract considerable political and media attention (Keohane 1979; Slaughter 2004; Raustialla 2002). I suggest that although some TGNs may tackle highly technical issues, these networks can also be used to address issues of high political salience, including challenges relating to international security. Technical complexity and political salience are not necessarily inversely

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<sup>79</sup> Bolton, John, *Surrender Is Not an Option: Defending America at the United Nations and Abroad* (New York: Simon and Schuster, 2007), p. 121.

<sup>80</sup> Eilstrup-Sangiovanni, 2013, p. 8

correlated. The qualifying criterion for TGNs is narrow issue-specific scope as opposed to high complexity or low political salience.

Drawing from the existing literature on TGNs and networks, this set of 14 criteria constitutes my threshold for identifying a TGN. It is important to note that not all of the criteria detailed here are exclusive to a TGN. Some TGN characteristics clearly overlap with IGOs: the requirement of three or more members, the shared preferences, the representation of sub-state units, and the narrow issue specific focus. However, these features alone do not qualify TGNs. It is only when taken together with other characteristics, such as the lack of an HQ or secretariat, an uncoded charter, deliberation and consensus as the decision-mode as opposed to formal voting, and the absence of a treaty or a formal budget, can an entity be classified as a TGN. From these criteria, I now derive six hypotheses about why TGNs like the PSI arise and take the form that they do. Many of the widely quoted and generic benefits of TGN-based cooperation, such as flexibility, speed, and low transaction costs stem from the characteristics outlined above. However, there are additional conditions of TGN-based cooperation, including the relationship between power and networked governance and the nature of the issue under question, which help to explain why some problems appear to be better suited to TGN cooperation than others. Some of the conditions outlined below are necessary but alone they are insufficient to spur TGN cooperation.

#### 2.4.2 *Conditions for TGN Formation and Cooperation.*

The dependent variable in this analysis is the formation of TGNs. The purpose of this section is to consider the independent variables, that is, the driving factors that influence the likelihood of TGN-based cooperation.

*H1: TGN-based-cooperation is more likely to occur when there is concentrated power within an issue area, that is, the presence of a resource rich actor willing to exercise managerial power in a productive way.*

As was discussed earlier in this chapter, concentrated power is an important precondition for transgovernmental cooperation. TGNs do not come about organically - they are often created and managed by powerful actors with a vested interest in exercising issue specific power. The U.S. has traditionally acted as a quasi-imperial power, steering TGNs and managing a range of sub-unit stakeholder relationships via soft law arrangements. Without a formal monitoring and enforcement mechanism, TGNs have relied upon a dominant actor like the U.S. to coordinate discussion and action. While this actor is not formally recognised as the focal point of communications, negotiations, and deliberations, it is implicitly awarded a managerial status by participant actors, who give up a degree of their own organisational agency for two reasons. First, they may have been forcibly volunteered to do so in return for a range of participatory incentives, and second, the dominant actor may be the only power with the resources to efficiently and effectively organise cooperation. Without concentrated power, TGN-based cooperation is unlikely to arise or succeed. Successful TGN cooperation requires a degree of confidence

regarding compliance by participants, which in turn necessitates the presence of an agent with the capabilities to monitor and enforce arrangements.

*H2: TGN-based-cooperation favours issues where there are opportunities for heterogeneous contracting by the managerial power.*

Heterogeneous contracting implies that “the terms of incorporation between the center and each periphery involve different rights and responsibilities.”<sup>81</sup> Uniformed contracting, on the other hand, implies that “the same set of generalised agreements hold between all incorporate political communities.”<sup>82</sup> Powerful states, like the U.S., are more likely to favour TGN-based cooperation if they can offer individual participants different terms of engagement. States may have different motivations for joining and adhering to TGN guidelines, and powerful states can use this diversity in their favour. While the ‘core group’ of states may receive favourable treatment, incentives, or policies, the wider network does not necessarily have to receive the same level or type of benefit. Stemming from varying terms of engagement, TGN participants may also have differing levels of obligations. Referring specifically to the non-proliferation area, Guy B. Roberts, NATO Deputy Assistant Secretary General For Weapons of Mass Destruction Policy, suggests that initiatives usually involve three types of obligations:

“Some are active obligations. These initiatives are used to coordinate the activities and participation in a given action. There are passive obligations in which participants merely accede to an agreement, perhaps publicly proclaiming their

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<sup>81</sup> Nexon, Daniel. H, *The Struggle for Power in Early Modern Europe: Religious Conflict, Dynastic Empires, and International Change* (Princeton University Press: Princeton, 2009), p. 72

<sup>82</sup> Ibid.

support, but they are not generally required to perform any specific function. There are also support obligations, in which members agree to provide support such as funding, information, training, or equipment.”<sup>83</sup>

I suggest that even within a particular initiative or TGN, the type of obligations that participants are required to fulfil may vary and evolve. Core states may have “support obligations” which involve providing funding, information, training, or equipment, while others may simply have passive obligations, which stem from the fact that they have proclaimed their support to the initiative. If a powerful state requires action, then it may call upon a state that has passively lent its support to become an active state with active obligations. While IGOs are clearly not devoid of obligations, the shift between one type of obligation and another can be considerably harder. TGNs are predominantly based on trust and awareness of common enterprise – as the nature and demands of this enterprise changes, so might the obligations and terms of engagement. A managerial power is more likely to support TGN-based cooperation if they can shape or dictate the terms of engagement in a specific issue area.

*H3: TGN formation is most likely when there are short time horizons.*

TGNs can enhance the speed of decision-making and reduce the transaction costs of international cooperation for states that share preferences with the dominant state. Treaties often take years and sometimes even decades to negotiate and enact.

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<sup>83</sup> Roberts, Guy. B, ‘Beyond Arms Control: New Initiatives to Meet New Threats,’ in *Arms Control and Cooperative Security* ed. by Jeffrey A. Larsen and James J. Wirtz, 2009, pp. 105-214, p. 207

Deliberations around the Nonproliferation Treaty, for instance, began in 1965; however, the document did not open for signature until three years later in 1968 and enter into force until 1970. The Anti-Ballistic Missile (ABM) Treaty was first proposed in 1967 but only received ratification from the senate in 1972. The UN Convention on the Rights of Persons with Disabilities became the subject of UN debate in 1987; it opened for signature twenty years later in 2007, and it was rejected by U.S. Senate five years after that. Treaty based regimes are consistently slower and more expensive to implement than TGNs, which do not require domestic ratification or a long deliberation process. This is not to say that IGO based cooperation has no value. Instead, formal cooperation may make more sense if the U.S. anticipates that cooperation over an issue or set of issues will endure over time.<sup>84</sup> Furthermore, the lack of binding rules in a TGN may leave scope for frequent renegotiation of the agreement, which in turn can increase the bargaining costs associated with participation.<sup>85</sup> However, TGN-based cooperation may be more attractive to a managerial state like the U.S. if time horizons are short,<sup>86</sup> that is, if the issue under question requires a quick response or if there is an assumption that the arrangement will simply be one-off.

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<sup>84</sup> Eilstrup-Sangiovanni, 2013, p. 12

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

*H4: Issue volatility and uncertainty favour TGN-based cooperation.*

A number of political scientists and sociologists have argued that ability of networks to adapt quickly to unanticipated environmental changes lends them more to addressing issues that are more volatile and unpredictable in nature. IGOs are tied to formal rules and structures. Treaties are set in stone and are often extremely cumbersome to amend. TGNs, on the other hand, are more sensitive to exogenous shocks. The lack of legally binding rules means that they can be changed quickly to suit the required circumstances. The Plaza Communiqué and the Louvre Accord, for example, were informal arrangements designed to respond to volatile currency movements. According to Anthony Aust, a legal counsellor to Britain's Foreign Office in 1986, "One of the greatest advantages of an informal instrument is the ease with which it can be amended."<sup>87</sup> Through TGNs, states can avoid having to commit funds and resources to a particular bureaucratic structure, if they believe that the issue may be volatile, susceptible to exogenous shocks, and require amending in the near future.

*H5: TGN-based cooperation is more likely if the issue is susceptible to intransigence at the international level.*

One can also expect TGN-based cooperation to occur if the issue area under consideration is unlikely to receive quick and extensive cooperation from states working through an IGO mechanism. This benefit speaks to two characteristics of TGNs. First,

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<sup>87</sup> Aust, Anthony, 'The Theory and Practice of Informal International Instruments,' *International and Comparative Law Quarterly*, 1986, Vol. 35, pp. 787-812, p. 791.

TGNs lack an equity based decision-making structure and second, they tend to arise from a small homogenous core of states with shared preferences. Like-minded groups and actors that have cooperated on issues in the past may be more likely to share similar perceptions of a problem and visions of how to address this problem. If the issue has a high level of political salience, states may favour cooperating with smaller groups of sub-state actors, that are less likely to throw a spanner in the bureaucratic works. Furthermore, the lack of an equity based decision-making structure not only allows states to avoid the ‘international veto’ problem but it also enables them to bypass potential international spoilers without having to develop a comprehensive spoiler management strategy. Spoilers are those actors who have a vested interest in derailing the deliberations; in essence, they believe that either the discussion process or the result of the discussions will threaten their power, worldview, or interests; and will employ whatever means necessary and available to undermine the process. Unlike the UN Security Council whose operations and decisions can be constrained by the exercise of veto power by strong and spoiler states, TGNs do not require unanimous approval from their participants. If states do not agree with the guidelines or objectives of the TGN, they can simply leave the network or remain without taking supporting action. By cooperating with like-minded actors, states can achieve compliance and consensus through direct peer-to-peer monitoring and reciprocity,<sup>88</sup> while avoiding the challenges posed by veto power and potential spoilers.

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<sup>88</sup> Eilstrup-Sangiovanni, 2013, p. 12

*H6: Issue intractability at the domestic level favours TGN-based cooperation.*

Linked to international veto power and the problem of spoiler states is the question of domestic hurdles to cooperation. International treaties with legal implications for participant states often require formal ratification by domestic legislatures. These domestic deliberations are generally subject to public scrutiny. Sometimes the treaties or the decision to pursue certain strategies on particular issues can be in keeping with domestic public and political opinion. In small arms, for instance, U.S. behaviour in pursuit of its goals was in keeping with its domestic constituencies, namely, the NRA and weapons manufacturers.<sup>89</sup> The U.S. used its veto power to blunt a treaty on the subject of small arms. In military and security services, on the other hand, U.S. behaviour evolved with domestic pressures. In the wake of the incidents in Iraq and as a result of Congress calling for more regulation, the U.S. began participating in a multi-stakeholder initiative, where it employed productive rather than hard power.<sup>90</sup> While TGNs are by no means free of domestic pressures and influences, they can “pass more easily under the domestic political radar screen.”<sup>91</sup> Clearly, a state’s behaviour in the pursuit of its goals will still reflect its domestic interests. However, given their somewhat secretive nature, TGN-based-cooperation, at least in the initial stages, can allow cooperation between states to go undetected by the domestic political constituency.

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<sup>89</sup> Avant, June 2012, p.7

<sup>90</sup> Avant, June 2012, p. 6

<sup>91</sup> Eilstrup-Sangiovanni, 2013, p. 14

The benefits of TGN-based cooperation and the conditions under which TGNs may form are linked to the characteristics that qualify an entity as a TGN. The lack of a codified charter can enhance the speed of decision-making and reduce the costs of cooperation; TGNs can adapt quickly to unanticipated changes, which in turn, lends them more to cooperation on issues that are more volatile and unpredictable in nature; TGNs lack an equity based decision-making structure and tend to arise from a small core group of states that share preferences, which helps powerful states to avoid the international veto problem and the question of spoilers; they lack of direct approval from domestic constituencies allowing TGNs to reduce domestic-level impediments to cooperation; and finally, TGNs allow powerful states to offer participants different terms of engagement on the basis of their own preferences and requirements.

While all six conditions outlined above make TGN-based cooperation more likely, we may speculate that they are not all mutually exclusive or equally weighted in terms of their influence on TGN formation. Concentrated power in the shape of a managerial state is the principal precondition for TGN formation, however, a decision by U.S officials to use a TGN will also depend on whether: the relationship is anticipated to be one-off or enduring; the issue under question is subject to uncertainty and volatility; and/or if formal cooperation is likely to suffer from international intransigence and domestic-level impediments. Furthermore, opportunities for heterogeneous contracting are biconditional to the existence of a managerial state. The ability to offer participants different terms of engagement depends upon the existence of a resource rich actor willing to exercise productive power in the first place. Additionally, domestic distributive conflict and the existence of domestic veto players are alone unlikely to drive TGN

formation. TGN-based cooperation is more likely when states recognise the potential for joint gains but disagree over the details of an international agreement.<sup>92</sup> This disagreement may be informed by domestic level impediments but it does not always have to be driven by it. Thus, while all six conditions make TGN-based cooperation more likely, they are not all equally weighted or mutually exclusive.

This chapter has assessed why TGNs like the PSI arise and take the form that they do. I have suggested that when the U.S. decides to work through an IGO as opposed to a TGN or vice versa, it conducts an analysis of the utility of that particular organisational form. It takes into consideration not only the nature of the issue area under question but also how the characteristics of each organisational form lend itself to effective cooperation on that specific issue. Both IGOs and TGNs can constrain and shape the behaviour of member states, while simultaneously being the object of strategic U.S. choice. IGOs and TGNs do not necessarily have to be competitive architectures of cooperation within a regime. As demonstrated above, TGNs provide certain benefits that IGOs are unable to provide and vice versa. For some issue areas, TGNs may present a better institutional design for cooperation than IGOs, while for other areas IGOs may be more conducive for cooperation. In the next Chapter, I illustrate the dynamics and evolution of TGN formation and cooperation by applying the TGN framework to the non-proliferation regime and the Proliferation Security Initiative.

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<sup>92</sup> Eilstrup-Sangiovanni, 2013, p. 14

## **Chapter Three**

### **New Initiatives for New Threats: The Proliferation Security Initiative**

The purpose of this chapter is to illustrate the dynamics and evolution of transgovernmental networking using a recent, successful, and in some ways novel example of transgovernmental security cooperation, the PSI. While a range of TGNs exist within the non-proliferation regime, the PSI is of particular interest to this paper as it represents an evolutionary step within the TGN framework. Unlike some of the multilateral export controls which function as subsidiaries or supporting mechanisms to the existing IGO/treaty structure, the PSI-TGN structure constitutes the political core of cooperation over an issue that has yet to be addressed effectively via a treaty. The PSI does not simply plug a gap in the existing regime - it acts as a functional substitute for IGO/treaty based cooperation over a highly salient issue.

This Chapter proceeds as follows. First, it briefly discusses how the non-proliferation regime itself has evolved, tracing its evolution from formal state-oriented treaty based arrangements such as the NPT to a range of less formal initiatives including multilateral export control efforts and today, the PSI. I examine some of the reasons behind why the U.S. initially opted to work through formal instruments of cooperation as opposed to informal ones and then moved towards looser networks of cooperation. Next, the Chapter focuses specifically on the PSI, using the 14 threshold criteria from Chapter

Two to demonstrate how the PSI qualifies as a TGN despite claims by U.S. officials that it is an “activity not an organisation.” The PSI is also assessed against the six conditions for TGN-based formation and cooperation to illustrate that the decision by U.S. officials to cooperate through the PSI-TGN framework was based on a calculation of the functional and strategic benefits that it could offer to the U.S. as opposed to a formal arrangement. The Chapter ends by demonstrating how and why the PSI constitutes an evolutionary step within the TGN framework.

### ***3.1 Evolution of the Non-proliferation Regime***

A regime consists of “a set of implicit or explicit norms, principles, rules, and decision-making procedures around which actors expectations converge in a given area of international relations.”<sup>93</sup> Consequently, the non-proliferation regime consists of beliefs of fact, causation, and rectitude regarding the dangers of proliferating WMD to states and non-state actors; standards of behaviour defined in terms of obligations not to proliferate and entitlements to civil nuclear capabilities; and both formal and informal architectures of cooperation for enforcing collective action. There exists an extensive body of literature on why states demonstrate nuclear restraint and the factors that explain the relatively successful record of nuclear non-proliferation. Variation in organisational form, particularly the trend towards transgovernmental networks within the non-proliferation regime, on the other hand, remains relatively unexamined. There has also

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<sup>93</sup> Krasner, p. 2

been an evolution in the role of TGNs, which demands a closer examination. The objective of this Chapter is to trace, assess, and analyse the significance of these changes.

### *3.1.1 Core Components of the State-Oriented Non-proliferation Regime*

The non-proliferation regime is made up of a constellation of elements, including international agreements and cooperative actions aimed at curbing the spread of WMD and advanced delivery components to states. Since the first tactical use of the atomic bomb in Hiroshima in 1945 and evidence of the vastly destructive capabilities of nonconventional weapons,<sup>94</sup> horizontal WMD proliferation has been a significant concern for the U.S. During the Cold War, the non-proliferation regime was predominantly state-centric and employed as a means of managing superpower nuclear rivalry. By limiting the number of states that could acquire nuclear weapons, the U.S. managed the destabilising effects that possession of nuclear technologies would have on the bipolar system of international states.

During the past half-century and as a result of the threat of WMD terrorism, the U.S has taken a leadership role in building and developing a non-proliferation regime centred on the principles of deterrence and containment. Nuclear deterrence entails security assurances to nonnuclear states in order to prevent them from acquiring nuclear weapons in the future. Negative assurances have included “no first-use” promises in which nuclear power states agree not to use nuclear weapons against any of the NPT

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<sup>94</sup> Busch, Nathan E, and Daniel H. Joyney, ‘Nonproliferation at a Crossroads,’ in *Combating Weapons of Mass Destruction: The Future of the International Nonproliferation Policy* ed. by. Nathan Busch and Daniel Joyner (Athens: University of Georgia Press, 2009), p. 1

parties that do not have nuclear weapons (with the exception of one or two).<sup>95</sup> Positive security assurances, on the other hand, include promises by nuclear states to seek UN Security Council protection for nonnuclear states in the event that an enemy threatens nonnuclear states with nuclear attack.<sup>96</sup> The principle of nuclear containment is intended to prevent states that already possess nuclear weapons from proliferating knowledge or weapons to nonnuclear states.

The foundation of each of the three major components of the non-proliferation regime (nuclear, chemical, and biological weapons) is an almost universally accepted treaty: the NPT, which opened for signature in 1968 and entered into force in 1972; the BWC, which opened for signature in 1972 and entered into force in 1975; and the CWC, which opened for signature in 1993 and entered into force in 1997.<sup>97</sup> The treaties and formal agreements that make up the regime often include “inspection provisions, to verify states’ compliance with the treaty’s most important provisions, and associated export control systems.”<sup>98</sup>

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<sup>95</sup> Bunn, George, ‘The Nuclear non-proliferation Regime and its History,’ in *U.S Nuclear Weapons Policy: Confronting Today’s Threats* ed. by George Bunn and Christopher Chyba (Stanford University: Center for International Security and Cooperation, 2006), pp. 75-123, p. 87

<sup>96</sup> Ibid.

<sup>97</sup> The text of each treaty can be found, respectively, at: the International Atomic Energy Agency <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>; the Organization for the Prohibition of Chemical Weapons [http://www.opcw.org/index.php?eID=dam\\_frontend\\_push&docID=6357](http://www.opcw.org/index.php?eID=dam_frontend_push&docID=6357); and the Organization for the Prevention of Biological Weapons <http://www.opbw.org/convention/conv.html>

<sup>98</sup> Spector, S. Leonard, ‘The Future of the non-proliferation Regime’ in *Arms Control and Cooperative Security*, ed by. Jeffrey A. Larsen and James J. Wirtz, Lynee Rinner Publishes, Boulder; London, 2009, p. 114

The NPT constitutes a legally binding treaty that includes an extensive inspection system to verify that civil nuclear facilities are not being used and abused for the purpose of weaponisation. Discussions surrounding a potential non-proliferation treaty originally began in 1959 and received unanimous approval in the form of a 1961 resolution of the UN General Assembly. Proposed by Ireland and revised by the General Assembly, this resolution called for a treaty under which nuclear powers “would undertake to refrain from relinquishing control of nuclear weapons and from transmitting the information for their manufacture to states not possessing such weapons.”<sup>99</sup> As a result of Cold War disagreements and tensions between the U.S. and the Soviet Union, it took until 1968 to negotiate and produce a final treaty draft. The treaty was eventually signed by 62 countries including the “P-5,” which were the permanent members of the UN Security Council and the only countries permitted to have nuclear weapons among those that joined, namely, the U.S. the Soviet Union, France, China, and the United Kingdom.

With a few notable exceptions, this regime has gained almost universal support, and it has “gradually created a deeply etched norm against the acquisition and use of WMD.”<sup>100</sup> Broad support, however, does not always translate into success. A number of key nuclear states remain outside of the non-proliferation regime or have continued to acquire technologies that would allow them to develop nuclear weapons. Notable examples include India and Pakistan, who declared themselves to be nuclear weapon states in 1998; the Democratic People’s Republic of Korea (DPRK), who tested a nuclear

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<sup>99</sup> UN General Assembly Resoluton 1665, December 4, 1961

<sup>100</sup> Spector, p. 113

device and claims to have a weapon in 2006; Iran, who is believed by many to have developed a nuclear weapons program; and Israel, who is suspected to have possessed nuclear weapons for some decades now.<sup>101</sup>

In terms of a formal structure, as of 2013, 189 states are recognised to be party to the NPT and the treaty itself relies upon the IAEA as an institutionalised mechanism for monitoring and setting standards. The IAEA is headquartered in Vienna, Austria; its personnel includes a team of 2,300 multi-disciplinary professionals and support staff drawn from more than 100 countries; programmes and budgets are set by the 35-member Board of Governors and the General Conference of all Member States; and annual regular budget is set by the General Conference. Both the NPT and the IAEA reflect the state-centric formalised nature of cooperation that characterised the nuclear non-proliferation regime until recently.

The BWC is a politically binding international treaty that was signed by 171 states in 1972 and of those, it has been ratified by 155 states today. It explicitly outlaws the development, production, and stockpiling of biological and toxin weapons in order to exclude completely the possibility that they could be used against human beings, other animals, or plants. Unlike the NPT, the BWC does not distinguish between the “have” and “have not” states. It builds upon other renunciations of the use of biological weapons, including the 1954 Brussels Treaty, the unilateral renunciation by the U.S. in 1954, and

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<sup>101</sup> Simpson, John, ‘The Future of the NPT,’ in *Combating Weapons of Mass Destruction: The Future of the International Nonproliferation Policy* ed. by. Nathan Busch and Daniel Joyner (Athens: University of Georgia Press, 2009), pp. 45-73, p. 45

France in 1972.<sup>102</sup> While the treaty is politically binding, it lacks specific monitoring, accounting, or even enforcement provisions that are today thought to be essential components of a treaty. Neither does it have the provisions of an international organisation “for assisting states parties to discharge their obligations.”<sup>103</sup> Reports of gross violations by the USSR and Iraq led to negotiations for a legally binding verification and compliance-promoting instrument that would strengthen the BWC in 1995. However, these negotiations collapsed in 2001 and the BWC remains a treaty without teeth.

Finally, the 1993 CWC prohibits the development, production, and stockpiling of chemical weapons, and requires signatories to participate in a verification system and to institute domestic compliance-assuring measures. The treaty has now been ratified by 188 member states. The Organization for the Prohibition of Chemical Weapons (OPCW) was established as a result of a treaty provision; it has a secretariat based at the Hague; a trained international inspectorate of 150-200 that is independent of the member states; an Executive Council consisting of 41 members elected by the Conference of the States Parties; a plenary organ which has the power to oversee the implementation of the Convention; codified rules of procedure; and a routinely identified and regularly available budget, which is independent of any one member state.

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<sup>102</sup> Robinson, Julian Perry. ‘Chemical and Biological Weapons,’ in *Combating Weapons of Mass Destruction: The Future of the International Nonproliferation Policy* ed. by. Nathan Busch and Daniel Joyner (Athens: University of Georgia Press, 2009), pp. 74-94, p.78

<sup>103</sup> Robinson, p.78

The NPT, BWC, and CWC are all core components of the formal state-oriented non-proliferation regime. Other formal components include the 1963 Limited Test Ban Treaty (LTBT), which prohibits nuclear testing everywhere but underground; the 1974 Threshold Test Ban Treaty (LTBT) and the 1976 Peaceful Nuclear Explosion Treaty (PNET) which prohibit the testing of weapons underground if their explosive yield exceeds 150 kilotons; the Comprehensive Test Ban Treaty (CTBT), which opened for signature in 1996 but is yet to enter into force; and the five nuclear-weapon free zone (NWFZ) treaties which cover Africa, Latin America, the Caribbean, Central Asia, the South Pacific, and Southeast Asia and under which regional states reiterate their pledge in the NPT not to develop nuclear weapons. Each of these regime components plays a vital role in regulating, monitoring, and enforcing the non-proliferation norm.

Why did states choose to work through the formal instruments of cooperation as opposed to informal ones? First, the primary targets of these regulatory efforts are states. During the Cold War, the U.S. was concerned about the spread of nuclear technologies to Soviet allied states, whose acquisition and development of weaponised nuclear technologies could precipitate a change in the balance of power. By establishing legally and politically binding prohibitions, states would not only have to deal with the repercussions of proliferating knowledge and weapons but also punishments for receiving technologies from proliferators.

Second, while informal cooperation relies upon each participant to implement and enforce the agreement in accordance with domestic laws and practices, treaties often come with international verification systems, inspection agencies, and enforcement mechanisms. The IAEA, for instance, can refer countries to the UN Security Council (as

it did for North Korea in 1994 and Iran in 2006); OPCW members can take collective measures against proliferating or receiving states or refer states to the UN Security Council; and states party to the BWC can lodge complaints with the UN Security Council if they suspect that a state has broken its treaty obligations.

Third, treaty based cooperation can be accompanied by incentives which are offered to all parties on an equal non-discriminatory basis. The CWC and the BWC, for instance, offer signatory states access to peaceful chemical and biotechnology so long as they are used for peaceful purposes. They also offer assistance to victims of a chemical or biological attack. The NPT offers positive and negative security assurances from nuclear states to nonnuclear states in the event of a threat of attack from another nuclear state. States can also negotiate on the basis of aid for civil nuclear energy, as long as they can demonstrate that their programmes are being used for peaceful purposes. This may be more attractive to signatories as they are all explicitly made aware of the terms of engagement when they sign up. Finally, unlike TGNs, which are generally ad hoc in nature, treaties are intended to be instruments with longer-lasting implications for signatory states. While not explicitly prohibited, treaty denunciations and withdrawals are often frowned upon and send a powerful signal of non-compliance. Of course, there are a number of examples of countries withdrawing from treaties. In 2001 President Bush withdrew from the 1971 Anti-Ballistic Missile (ABM) treaty after almost 30 years of being party to it. The U.S. withdrew on the premise that the ABM hindered its ability to develop ways to protect its citizens from terrorists or rogue state missile attacks. The nature of the threat had changed, thus, the U.S. no longer felt that the ABM provided an adequate mechanism for dealing with the new threat. However, the decision to pull out

from the treaty was not without fierce political debate within Washington and around the world. Two days prior to U.S. withdrawal, 31 House of Representative members registered their opposition to pulling out of the treaty, arguing that President Bush could not act alone. There was also opposition around the world, with Russian President Vladimir Putin calling the decision to abandon the treaty a “mistake.”<sup>104</sup> Chinese President Jiang Zemin expressed the greatest concern over U.S. withdrawal, and stated that he “looked forward to further high-level dialogue on the topic.”<sup>105</sup> Withdrawal from an internationally accepted treaty thus is not an easy process. While sometimes desirable or necessary, treaties are intended to be lasting architectures of cooperation.

While treaties and IGOs lie at the core of the non-proliferation regime, TGNs like the multilateral export control initiatives have also played an important role in supporting the traditional state-centric framework. It would be factually inaccurate to suggest that TGNs are an entirely new feature of the non-proliferation regime, gaining prominence only after the fall of the Soviet Union and the events of 9/11. TGNs have played in a critical role in supporting treaties such as the NPT, CWC, and BWC for a number of years. They provide technical assistance, plug gaps, and set standards. While the final section of this chapter will address the evolution of TGNs in greater detail, it is worth at this point detailing the type and role of TGNs that existed prior to the PSI and as subsidiaries to the existing regime.

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<sup>104</sup> Perez-Rivas, Manuel, *U.S. Quits ABM Treaty*, CNN.com/inside politics, December 14, 2001

<sup>105</sup> Ibid.

Since the 1970s and in response to the growing number of states capable of supplying equipment, material, or technology needed for the production of WMD, groups of supplier states have come together to establish informal TGNs that reinforce and expand the national export controls required by the non-proliferation treaties.<sup>106</sup> These networks include the NSG, which was founded in 1976 and includes 45 member states; the AG, which was founded in 1985 and has gained support from 41 member states; and the MTCR, which was founded in 1987 and has 34 partners. The NSG covers transfers relating to nuclear materials, the AG covers chemical and biological related transfers, and the MTCR was established to limit the spread of ballistic and cruise missiles. Other export control initiatives include the NEP (Zangger Committee), which stems from the NPT and the Wassenaar Arrangement, which was founded in 1996 and has 41 participating states. The Zangger Committee concerns safeguards on nuclear exports, while the Wassenaar Arrangement focuses on transfers in conventional arms and dual-use goods and technologies.

The purpose of these supplier networks is to develop and maintain guidelines for national export controls, “including general standards for issuing export licenses and “core lists” of controlled items that might contribute to the manufacture of the respective WMD and advanced deliver systems.”<sup>107</sup> They support the existing structure by plugging regulatory gaps and setting standards. As Spector notes, these supplier organisations have developed informal rules regarding the admission of new members, including, the

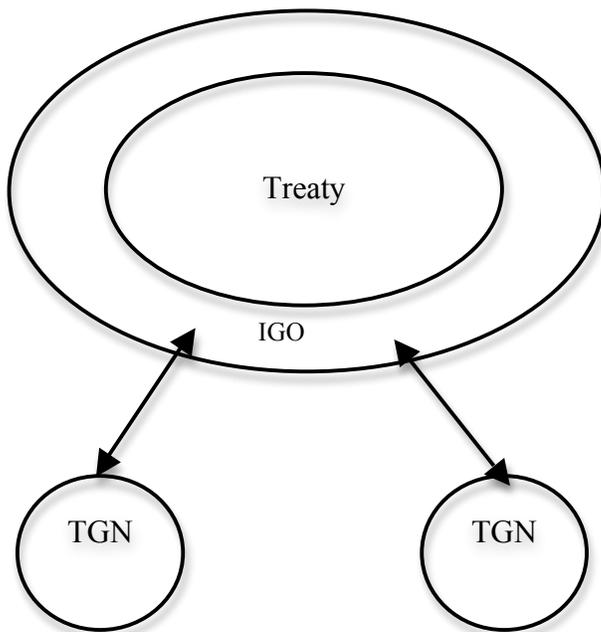
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<sup>106</sup> Spector, p. 120

<sup>107</sup> Spector, p. 120

requirement that new members have to be in good standing with existing state-oriented treaties like the NPT, CWC, or BWC.<sup>108</sup> Countries outside of these groups have complained that these arrangements are discriminatory as they restrict their rights to have access to peaceful nuclear, chemical, and biological technology.<sup>109</sup> While these supplier groups meet the TGN criteria, they are nonetheless, closely tied to the state-centric non-proliferation regime.

*Diagram (A): TGNs in the Traditional Non-proliferation Regime*



*Diagram A* above illustrates the position of TGNs within the traditional state-centric non-proliferation regime. The core component of this regime is a set of widely adopted international treaties. These treaties are supported, enforced, and monitored by

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

IGOs. TGNs like the multilateral export and supplier groups, in this model are auxiliary components. While they do not have a formal treaty basis, they are nonetheless closely affiliated with the treaty/IGO regime – plugging technical and regulatory gaps that the existing structure is unable to effectively address. As the next section will demonstrate, TGNs within the non-proliferation regime have evolved to become sources of decision-making within themselves - independent of the existing structure.

### *3.1.2 New Regime Components to Meet New Threats*

Many have raised doubts about the viability of Cold War-era regulatory instruments to effectively combat the spread of WMD to state and non-state actors. Following the collapse of the Soviet Union and in the wake of September 11 2001 attacks, the U.S. has reoriented its non-proliferation policy to target non-state actors particularly terrorist groups and rogue states supplying weapons to terrorist networks. Guy B. Roberts argues that today, the U.S and its allies face a considerably more complicated, diffuse, rapidly changing, multifaceted, and threatening security environment than the Cold War nuclear confrontation.<sup>110</sup> During the Cold War, non-proliferation treaties were strictly a state-to-state endeavour. Agreements were negotiated by states, approved by state legislatures and implemented by instruments of state power.<sup>111</sup> Today “nations that clandestinely seek WMD also are the same countries that

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<sup>110</sup> Roberts, 2009, p. 195

<sup>111</sup> Kartchner, Kerry M, ‘The Evolving International Context,’ in *Arms Control and Cooperative Security* ed. by Jeffrey A. Larsen and James J. Wirtz, (Lynne Rienner Publishers: Boulder, 2009), pp. 39-66, p. 53

support terrorist groups.”<sup>112</sup> Of particular concern are those terrorist groups who are sponsored or funded by states and who lack a geographic home, infrastructure or identifiable population that can be threatened.<sup>113</sup> How do you craft an effective deterrence strategy if you do not know whom, what, and where your strategy should be directed? The discovery of the nuclear weapons related trafficking network the A.Q Khan network has provided considerable evidence to support the assertion that there exist other organisations that are actively pursuing WMD. Roberts refers to the network of these actors as the ‘secondary proliferation market,’ which exists beyond the scope of traditional arms control treaties, directed primarily at states.<sup>114</sup>

The chosen vehicle for implementing this new policy is not a formal IGO or a treaty; rather, it is increasingly a flexible and decentralised transgovernmental network. While non-proliferation treaties and agreements still enjoy near-universal compliance, the remote possibility of WMD terrorism has forced states to cooperate through looser and easily adaptable arrangements that are deemed to be more suitable to today’s diverse and unpredictable threats.

As *Diagram B* illustrates, TGNs are no longer just a subsidiary component to the existing treaty/IGO structure. TGNs like the PSI have evolved to a stage where they, in and of themselves, constitute the political core of cooperation. These new TGNs work alongside the traditional state-centric regime to create a network of networks. They are

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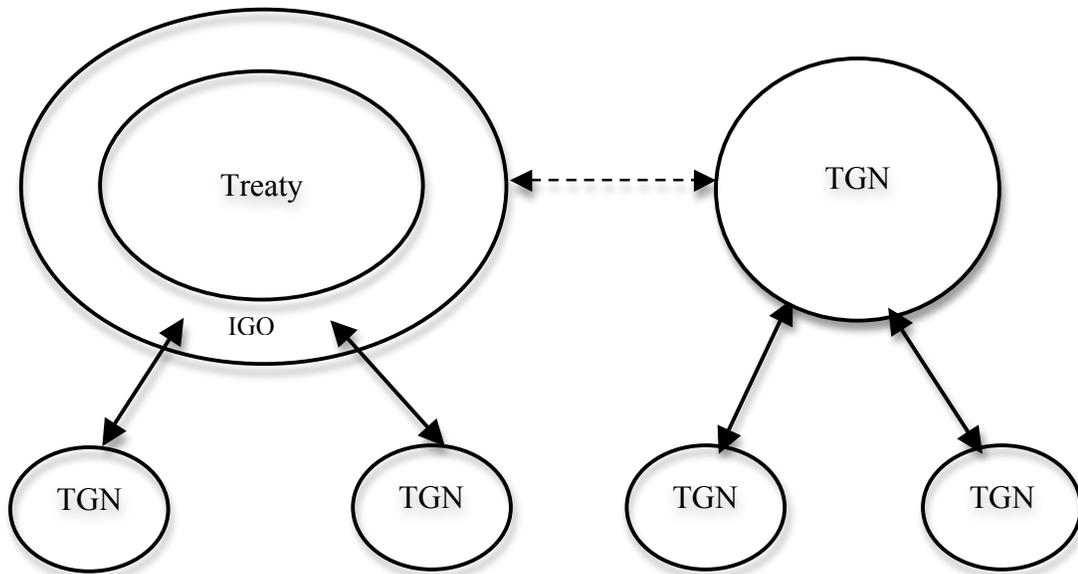
<sup>112</sup> Roberts, Guy B, 2009, p. 195

<sup>113</sup> Ibid., p. 196

<sup>114</sup> Roberts, Guy B. “Beyond Arms Control: New Initiatives to Meet New Threats,” in *Arms Control and Cooperative Security* ed. by Jeffrey A. Larsen and James J. Wirtz, (Lynne Rienner Publishers: Boulder, 2009) pp.195-214, p. 197

also supported by and have given birth to a number of other TGNs like the CSI and the SFI, which interact with the wider non-proliferation regime. Having discussed the state-oriented components of the non-proliferation regime and the trend towards non-state actors and looser cooperative arrangements, I now turn to the PSI as a case study of successful transgovernmental security networking and cooperation.

*Diagram (B): New Non-proliferation Regime*



### ***3.2 Case Study: The Proliferation Security Initiative***

Launched by President George W. Bush at the G-8 meeting in Krakow, Poland on May 31, 2003, the Proliferation Security Initiative (PSI) is now in its tenth year of operation. Announcing its launch, President Bush said:

“When weapons of mass destruction or their components are in transit, we must have the means and authority to seize them. So today I announce a new effort to fight proliferation called the Proliferation Security Initiative. The United

States and a number of our close allies, including, Poland, have begun working on new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies. Over time, we will extend this partnership as broadly as possible to keep the world's most destructive weapons away from our shores and out of the hands of common enemies.”<sup>115</sup>

U.S. involvement in the initiative was bold and timely. It stemmed from an incident with a North Korean vessel known as the *So San*. On December 9, 2002, U.S. and Spanish naval forces interdicted a vessel heading to Yemen in the Arabian Sea. It is reported that the U.S. had intelligence that this vessel was carrying cargo related to Scud ballistic missiles. Although the ship originated from North Korea, it was not flying under a North Korean flag. Neither was there a ship under the name of *So San* in the North Korean registry. Under the UN Convention of the Law of the Seas (UNCLOS), the vessel was stateless and thus subject to interception and boarding by warships on the high seas.<sup>116</sup> UNCLOS states that interdiction is permissible where reasonable grounds exist to suspect a ship of statelessness, engaging in slave trade, shipping narcotic drugs or psychotropic substances, committing unauthorised broadcasting, or piracy.<sup>117</sup> The statelessness of the *So San* and the belief that the ship was carrying WMD cargo was thought to justify the U.S. and Spain taking interdictory action. As soon as the ship reached the waters patrolled by a pre-existing Combined Task Force (CTF), the U.S.

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<sup>115</sup> Ahlstrom, Christer, “The Proliferation Security Initiative: International Law Aspects of Statement of Interdiction Principles,” Chapter 18, *SIPRI Yearbook 2005: Armament, Disarmament and International Security* (United Kingdom: Oxford University Press, 2005)

<sup>116</sup> Koch, p. 1

<sup>117</sup> Art. 99, Art 108, Art 109, Art. 110, U.N Convention on the Law of the Seas, December 10, 1983 (Hereafter UNCLOS), quoted in Mark Shulman, *The Proliferation Security Initiative as a New Paradigm for Peace and Security*, Strategic Studies Institute, April 2006, p. 25

Navy asked the Spanish navy to stop and search the vessel. The vessel's captain refused to stop and allow the Spanish navy to board the vessel, as a result of which, Spanish Naval personnel forcibly boarded the ship by helicopter. U.S. Naval personnel joined soon after. The *So San*'s manifest stated that the cargo contained bags of cement but underneath those bags of cement lay a proliferation cargo of 15 Scud missiles, 15 conventional warheads, 23 containers of nitric acid fuel, and 85 barrels of initially unidentified chemical, later described as an oxidizer for the missile fuel.<sup>118</sup>

On December 11, this example of successful interdiction and intelligence sharing turned to failure. The U.S. had no legal basis for retaining the cargo. As the interdiction became public and received media attention, U.S. officials were forced to release the vessel and to allow the ship to resume safe passage to Yemen. Despite a commitment by the government of Yemen that it was not going to purchase any more Scud missiles from North Korea, the Yemeni President, on December 10, complained that the missiles, warheads, and fuel were Yemen's property and that the *So San* should be allowed to proceed to Yemen without interruption.<sup>119</sup> Former U.S. Government officials believe that had details of the interdiction remained secret, the Yemeni government would have accepted the interdiction and the cargo would have remained in the hands of the U.S.<sup>120</sup> However, upon release of details surrounding the incident, it became politically

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<sup>118</sup> Koch, p. 1

<sup>119</sup> Koch, Susan, p. 2

<sup>120</sup> Ibid.

unfeasible for the Yemeni government to accept the seizure of their property by U.S. and Spanish officials.<sup>121</sup>

In a statement announcing the release of the *So San*, White House Press Secretary Ari Fleischer noted:

“There is no provision under international law prohibiting Yemen from accepting delivery of missiles from North Korea. While there is authority to stop and search, in this instance there is no clear authority to seize the shipment of Scud missiles from North Korea to Yemen. And therefore, the merchant vessel is being released.

...

One thing that this does underscore is the need to take a look-and we will do so, with friends and others around the world-in a diplomatic sense about whether or not the international regimes that deal with missile proliferation need a second look.”<sup>122</sup>

Coincidentally, on the same day that details of the *So San* incident were released, the U.S. government also published its 2002 National Strategy to Combat Weapons of Mass Destruction, which placed an increased emphasis on managing the consequences of WMD use and combating proliferation once it already occurred.<sup>123</sup> As Koch notes, this publication departed from earlier declaratory policy by addressing policies and actions to counter proliferation before addressing ones to prevent it.<sup>124</sup> The 2002 National Strategy to Combat Weapons of Mass Destruction states that:

“We know from experience that we cannot always be successful in preventing and containing the proliferation of WMD to hostile states and

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<sup>121</sup> Ibid.

<sup>122</sup> Fleischer, Ari. Press Briefing, White House office of the Press Secretary, December 11, 2002

<sup>123</sup> U.S. Department of Defense, *National Strategy to Combat Weapons of Mass Destruction*, 2002

<sup>124</sup> Koch, p. 4

terrorists. Therefore, U.S. military and appropriate civilian agencies must possess the full range of operational capabilities to counter the threat and use of WMD by states and terrorists against the United States, our military forces, and friends, and allies.”<sup>125</sup>

Growing awareness of the dangers of WMD proliferation during the 1990s and after the fall of the Soviet Union became a profound concern following the terrorist attacks of 9/11 and the U.S. anthrax attacks of fall 2001. These events not only highlighted the power and capabilities of non-state actors such as Al-Qaeda but also the growing reach of and interconnectedness of terrorist organisations with criminal networks. In recent years, for the right price, black-market operatives, such as the A.Q. Khan network have been willing to use their knowledge and personal connections to provide terrorist organisations with delivery systems through which to transit WMD and related materials.<sup>126</sup> Although WMD were not used in 9/11 attacks and anthrax attacks of fall 2001 were unsuccessful, they did provide overwhelming evidence in support of the claim that terrorist groups were actively pursuing WMD and that if they acquired such capabilities, they would readily use them.<sup>127</sup> Moreover, the terrorist groups and criminal networks discussed here are beyond the scope of traditional arms control treaties and export control TGNs, which are directed primarily towards state actors. At the time, there were few, if any provisions in the non-proliferation legal framework addressing the threat posed by nonstate actors. In recognition of this lacuna within the existing non-

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<sup>125</sup> U.S. Department of Defense, 2002, p. 2

<sup>126</sup> Squassoni, Sharon, ‘Proliferation Security Initiative,’ *CRS Report for Congress*, September, 2006

<sup>127</sup> Roberts, 2009, p. 196

proliferation regime, the 2002 National Strategy to Combat Weapons of Mass Destruction highlighted the need for an effective interdiction mechanism in order to prevent to movement of WMD materials, technology, and expertise to hostile states *and* terrorist organisations.<sup>128</sup> From the U.S. perspective, the PSI would act as an important tool in the international effort to break-up black-markets and to detect and intercept WMD materials in transit.

The Obama administration continued to demonstrate a commitment to the PSI. The 2010 Nuclear Posture Review Report reaffirmed President Obama’s pledge to make the PSI “a durable international institution” through which countries could “coordinate, share intelligence, and build capacity to interdict WMD related transfers.”<sup>129</sup> According to the U.S. Department of State (DOS), the PSI provides committed states with a “framework for coordinating counterproliferation activities to thwart proliferators’ increasingly sophisticated tactics.”<sup>130</sup> Unlike traditional formal organisations, the PSI does not necessitate the creation of new laws or regulations: the interdictions are carried out under existing national regulations. The precise number of desired, attempted, and successful interdictions through the PSI is shrouded in operational secrecy. However, in July 2006, Under Secretary Robert Joseph said that PSI had “played a key role in helping to interdict more than 30 shipments,”<sup>131</sup> and it had been credited with successfully

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<sup>128</sup> U.S. Department of Defense, 2002, p. 2

<sup>129</sup> U.S. Department of Defense *The Nuclear Posture Review Report*, April 2010 p. 32

<sup>130</sup> U.S. Department of State, *The Proliferation Security Initiative Fact Sheet*, May 2008

<sup>131</sup> Nitikin, Mary, ‘Proliferation Security Initiative,’ *Congressional Research Service*, 2012

interdicting WMD parts to Iran and publicly exposing the A.Q. Khan network and Libya's WMD program.<sup>132</sup>

In press statements, U.S. public officials are keen to remind participant states that the PSI constitutes an activity and not an organisation. The initiative's efforts are not aimed at one country but instead at halting the global traffic in proliferation related items. There is no formal treaty or decision-making mechanism and no governing body, headquarters, or membership application. Members are referred to as "participants" and membership as "endorsement." The Statement of Interdiction Principles (SIP) is not a formal treaty; rather, it represents a political commitment to establish best practices to tackle proliferation.<sup>133</sup> Yet the defining characteristics of the PSI fit the criteria for a TGN. While the PSI is not an organisation in the formal sense, it nonetheless constitutes an informal architecture of cooperation. The next section will assess the PSI against the 14 TGN threshold criteria outlined in Chapter Two, with the objective of demonstrating that the PSI not only constitutes a TGN but it also represents an evolution in the TGN framework. The Chapter will then examine the PSI in relation to the six conditions for TGN-based formation and cooperation as a means of outlining the functional and strategic benefits that the PSI-TGN could offer the U.S as opposed to a more formal structure.

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<sup>132</sup> Belcher, Emma. 'The Proliferation Security Initiative: Lessons for Using Nonbinding Agreements,' *Council on Foreign Relations*, International Institutions and Global Governance Program, Working Paper, July 2011, pp. 1-21, p. 1

<sup>133</sup> Kumar, Vinod, 'India's Participation in the Proliferation Security Initiative: Issues in Perspective,' *Strategic Analysis*, 2009, Vol.33(5), pp. 668-900, p. 687

### 3.2.1 *The PSI as a Transgovernmental Network*

#### 1. *Membership Base*

The membership criterion for a TGN refers to the number of states in the network, whether these states share preferences, the type of actors participating, and whom these actors represent. The PSI was the brainchild of a number of mid-level U.S. government officials. The task to analyse the implications of the *So San* case was given to an Interdiction Sub-Policy Coordinating Committee (Sub-PCC), chaired by Brendan Melley, Director for Proliferation Strategy on the NSC staff. A number of agencies, including the U.S. DOS, the Joint Staff, the Office of the Secretary of Defense (OSD), the Central Intelligence Agency (CIA), the Departments of Treasury (DOT), Department of Justice (DOJ), and Department of Commerce (DOC), and the DHS worked closely to analyse the events surrounding the interdiction. Once the analysis had been completed, the Sub-PCC began drafting the proposed PSI rules of interdiction, which were then approved by the Proliferation Strategy PCC.

The NSC staff invited eight like-minded liberal democratic governments to join the PSI. These governments were also members of the “coalition of the willing” in Iraq, specifically, Australia, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom.<sup>134</sup> To this list of eight countries, President Bush added two more: France and Germany. These two countries had a pre-existing relationship with the U.S. on proliferation issues.<sup>135</sup> This group of 11 states came to be known as the PSI “Core Group.” Most of these countries were longstanding allies. As Koch notes,

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<sup>134</sup> Koch, p. 8

<sup>135</sup> Ibid.

“9 were North Atlantic Treaty Organization (NATO) members, 6 were in the G-8, and 8 were in the European Union (EU). Of the non-NATO members, Australia had long and close alliance ties with the United Kingdom and the United States, and Japan with the United States.”

The shared preferences, objectives, and familiarity allowed this set of proliferation experts to work quickly and effectively to translate the PSI draft proposals into reality. The first meeting took place in Madrid on June 12, 2003 – this was less than two weeks after President Bush’s PSI announcement in Krakow and less than 6 months after the *So San* events. Once the core group had agreed on the SIP, John Bolton, Under Secretary of State for Arms Control and International Security contacted the Russian and Chinese governments. While the Russian government accepted the invitation for participation, the Chinese government did not. By Spring 2004, the Core Group had expanded to 15 states, with the addition of Canada, Norway, Singapore, and Russia. This would be the last time that they would meet as a Core Group. By March 2004, the number of participants grew to over 60; by June 2006 membership stood at over 75; by May 2008 it was at 91; by September 2010 membership was at 98 states; and by April 2013, it was 102 (see appendix for a list of PSI participants). The PSI began as a core group of like-minded states that worked closely to draft policies and set agendas. Once the basic rules of interdiction had been agreed upon, membership was extended to a wider participant base.

With regards to the type of actors and whom these actors represent, the PSI is strictly a sub-state affair. The initiative is populated by experts as opposed to generalist diplomats or heads of state. Initially, representatives included individuals like William Ehrman, Director General for Defence and Intelligence in the United Kingdom Foreign Office, who had a long been engaged in countering WMD and missile proliferation.

During negotiations, Ehrman also lead a small group of U.S. and UK officials who were working to counter the A.Q Khan nuclear proliferation network.<sup>136</sup> Stanislas de Laboulaye, Deputy Secretary General, Director General of Political Affairs and Security in the French Foreign Ministry was also closely involved in counterproliferation efforts, particularly regarding Iran. Today, the PSI has become an even more specialised endeavour with diplomatic, military, law enforcement, legal, and intelligence experts meeting on a regular basis to exchange information and conduct training exercises. Although PSI participants have held meetings with IGOs such as NATO, the World Health Organization (WHO), and the World Customs Organization (WCO), there remains work to be done in this area.<sup>137</sup> At present, IGOs and NGOs have little involvement in this initiative. Thus, the PSI meets all four criteria under the membership sub-heading: it initially began as a core group of like minded states; membership was later expanded to the wider community; the participant base constitutes mid-level officials and experts (sub-state units); and membership has been limited to state representatives as opposed or NGOs or IGOs.

## 2. *Rules of Governance*

Under the heading rules of governance fall five specific threshold criteria relating to the HQ/secretariat, staffing presence, staffing independence, meetings and the decision-mode of a TGN. Unlike an IGO, the PSI lacks a codified charter outlining its objective

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<sup>136</sup> Koch, p. 11

<sup>137</sup> Roberts, Guy, Interview, March 26, 2013

and organisational structure. The crux of the PSI lies in the 2003 SIP, which identifies vague steps that participants should take to effectively interdict shipments carrying WMD or related materials, “consistent with national legal authorities and relevant international law and frameworks.”<sup>138</sup> When participants extend support to the PSI, they endorse the broad principles outlined below:

- 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;
- Share information about suspect proliferation activity and dedicate appropriate resources and efforts to interdiction operations and capabilities;
- Strengthen national legal authorities and international legal frameworks to support the initiative’s commitments; and
- Take specific actions in support of interdiction efforts, including, not transporting or assisting in the transport of any such cargoes; taking action to board and search any vessel flying their flag; and seriously considering providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states;

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<sup>138</sup> U.S. Department of State, *The Proliferation Security Initiative: Statement of Interdiction Principles*, September 2003

The initiative is promoted as a channel for land, air, and sea interdiction cooperation outside of treaties and multilateral export control regimes.<sup>139</sup> It is a pro-active enforcement mechanism to prevent the spread of nuclear, biological and chemical weapons. As a voluntary organisation without a codified charter or rules of governance, the PSI avoids some of the pitfalls of existing counter-proliferation efforts, which have included prolonged periods of inactivity due to potential bureaucratic hurdles. There is no PSI HQ or secretariat. There is a small central mechanism to help coordinate the Initiative's activities. However, this mechanism is attached to the United States. During the May 2009 Global and Western Hemisphere Operational Experts Group (OEG) and Outreach Meeting, the U.S. proposed the designation of a PSI focal point.<sup>140</sup> In November 2010, this proposal was formally adopted by the OEG in Tokyo. The U.S. now acts as a central administrative point of contact for disseminating documents, agendas, and schedules. Unlike a formal IGO, where the staff is independent of a particular country, PSI's personnel are drawn from and are part of the U.S. government.

With regards to meetings and decision-mode, there is no formal agreement as to when participants should meet and how decisions should be made. In the year that followed the official launch of the PSI, the Core Group met on five separate occasions and in five different cities - Madrid, Brisbane, Paris, London, and Lisbon. As the number of participants grew, the frequency of their meetings declined. PSI participants met in Krakow in June 2004, Warsaw in June 2006, and Washington in May 2008. Meetings

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<sup>139</sup> Squassoni, 2006

<sup>140</sup> Koch, p. 22

with all PSI participants have become symbolic and ceremonial affairs as opposed to meaningful sources of political deliberation.

The only regular PSI meetings are those held by the OEG. This group includes military, intelligence, law enforcement, legal, and diplomatic experts who work together to translate the SIP into action. When the OEG was first established, it met three to five times in a plenary, with additional regional meetings and workshops.<sup>141</sup> Recent meetings were held in Tokyo in November 2010, Hawaii in June 2011, Berlin in November 2011, and Seoul in September 2012. Decisions at these meetings are made on the basis of deliberation and consensus. On the other hand, the SIP was drafted unilaterally by the United States. Bolton told members that the statement could evolve over time and that they had the opportunity to submit revisions and drafts.<sup>142</sup> However, as the managing power, the U.S. would have the ability to oppose any changes to the statement. The PSI thus meets the TGN rules of governance criteria. It has no HQ/secretariat; the staff are attached to a particular country; meetings are regularised, however they are not specified; and there is no formal decision-making structure - decisions are either made unilaterally by the managing power or by deliberation and consensus.

### *3. Budget*

The TGN budget criterion refers to the amount of funding the entity receives, the mechanism for the provision of this funding, and the source. Unlike an IGO that must

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<sup>141</sup> Koch, p. 21

<sup>142</sup> *Ibid.*, p. 16

have sufficient funds to cover minimal staffing and operation, a funding mechanism that is routinely identified and regularly available, and a source that is not controlled by another IGO or one state, the PSI has none of the above. The PSI has an unspecified budget, an unspecified funding mechanism, and a source that is controlled predominantly by one state – the United States. The U.S. Congressional Research Service (CRS) report on the PSI notes that funds for PSI activities remain in large part a component of other U.S. programmes that address WMD proliferation and interdiction – the PSI does not have separate budget lines.<sup>143</sup> While the DOD includes a breakdown of costs exclusively dedicated to the PSI in its annual report to Congress, there are other DOD programmes which also contribute to PSI efforts but are not included under the PSI umbrella. For example, the U.S. Strategic Command budgets for combatant commanders’ participation in WMD interdiction exercises are not included in its report to Congress.<sup>144</sup> In addition, the State Department’s FY2012 and FY2013 congressional budget stated that the Nonproliferation and Disarmament Fund (NDF) could be used to support exercises such as the PSI, while U.S. staff travel to PSI meetings would be drawn the DOS’s general operating accounts.<sup>145</sup> The CRS report notes further that participation by the Federal Bureau of Investigation (FBI) and the Department of Homeland Security’s (DHS) Customs and Border Patrol (CBP) is funded on an ad hoc basis.<sup>146</sup> The Department of Energy’s (DOE) budget includes funds for National Laboratory research on WMD

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<sup>143</sup> Nikitin, p. 9

<sup>144</sup> Ibid.

<sup>145</sup> Nikitin, p. 9

<sup>146</sup> Ibid.

interdiction technologies, which would also contribute to PSI efforts.<sup>147</sup> While participant states may have their own domestic budget lines, the PSI lacks a pooled budget or funding mechanism. The U.S coordinates and bankrolls the majority of PSI excises, while the individual participants cover their individual delegation's expenditures.

#### 4. *Legal Basis*

While most IGOs have a treaty basis, the PSI was not established through a legally binding treaty. As Durkalec notes, “a blueprint of the PSI’s activities and a clarification of what it means to be a PSI partner were included in the Statement of Interdiction Principles (SIP).”<sup>148</sup> However, the initiative itself was not derived from a treaty. It began as a political understanding between the U.S. and likeminded allies and then expanded to include a range of other countries. Although the PSI exists alongside treaties such as the NPT, the BWC and the CWC, it is not directly connected or derived from them. Many have suggested that while the PSI does not have a legal basis, it is nonetheless intended “to be an embryo of a new legal regime.”<sup>149</sup> Lobsinger, for instance, argues that the PSI’s SIP laid the foundation for the Security Council Resolution 1540 on April 28, 2004.<sup>150</sup> This Resolution calls for all states to: (1) refrain from providing support to nonstates

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<sup>147</sup> Ibid.

<sup>148</sup> Durkalec, Jacek, ‘The Proliferation Security Initiative: Evolution and Future Prospects,’ EU Non-Proliferation Consortium, *Non-Proliferation Papers*, June 2012, No.16, p. 3

<sup>149</sup> Thomas, Ticy. V, ‘The Proliferation Security Initiative: Towards Relegation of Navigational Freedoms in UNCLOS? An Indian Perspective,’ *Chinese Journal of International Law*, 2009, Vol. 8 (3), pp. 657-680, p. 663

<sup>150</sup> Lobsinger, Eric. ‘Post-9/11 Security in a Post-WWII World: The Question of Compatibility of Maritime Security Efforts with Trade Rules and International Law,’ in *Tulane Maritime Law Journal*, Winter 2007, p. 120

seeking WMD; (2) adopt laws prohibiting nonstate actors from acquiring WMD; and, (3) take measures to prevent proliferation.<sup>151</sup> Resolution 1540 is ambitious in its scope, as it requires all states to pass domestic legislation to support its objectives. While it does not directly refer to the PSI, the Resolution originated in a proposal that was made by President Bush to the General Assembly in September 2003. In this proposal, Bush discussed the PSI and called upon the Security Council to “adopt a new anti-proliferation resolution...[that would] call on all members of the U.N. to criminalise the proliferation of weapons – WMD.”<sup>152</sup> So while the PSI was not established through a legally binding treaty, it laid the foundations for a range of other legally and politically binding agreements.

## 5. Scope

Whereas IGOs may have the capacity to simultaneously address a range of global issues, TGNs tend to be confined to a few select, narrow, issue-specific problems. These do not necessarily have to be highly complex issues with low political salience. The PSI was formed to deal with an issue that was both technical in nature and of high political salience. While non-proliferation norms concerning the spread of WMD, their delivery systems, and related materials command almost universal support, norms regarding interdiction of ships and vessels on the high seas are far more controversial and politically salient, as was illustrated by the *So San* case. As a U.S.-promoted initiative

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<sup>151</sup> UN Security Council Resolution 1540, April 28, 2004

<sup>152</sup> President George W. Bush, Address to the United National General Assembly, September 23, 2003

with enduring concerns regarding its legitimacy and legality, the PSI has failed to garner endorsement from key states, including India, Pakistan, China, Malaysia and Indonesia. For instance, many have suggested that countries like India have been deterred from joining the PSI as a result of the initiative's weak legal basis and the absence of UN oversight. One important legal stumbling block for India's participation in the PSI is the discriminatory distinction between NPT and non-NPT states in Article 3 *bis* of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention). This Protocol criminalises and requires the prohibition of transport of any biological, chemical, or nuclear weapon or related materials intended to be used in a nuclear activity not under IAEA Comprehensive Safeguards Agreement.<sup>153</sup> India is not a party to the NPT, and thus as Thomas notes, "carrying of any BCN weapon or its technology by a ship registered in India will be a crime and the same cargo, if carried by a US-registered ship to India will not be a crime."<sup>154</sup> A further concern is whether the PSI infringes on the right to innocent passage as outlined in UNCLOS. While there exist no official documents stating so, India's concerns also supposedly stem from its NPT status as a non-signatory state, and its maltreatment at the hands of the Nuclear Suppliers Group after the 1974 Peaceful Nuclear Explosion and the 1998 nuclear tests.<sup>155</sup> Joining the PSI, the *de facto* enforcement arm of a system that is perceived to have unjustly targeted India in the past

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<sup>153</sup> The Protocol of 2005 to the Convention of the Suppression of Unlawful Acts against the Safety of Maritime Navigation,' *International Conference on the Revision of the SUA Treaties*, IMO, Leg/Conf. 15/21, November 1, 2005

<sup>154</sup> Thomas, 2009

<sup>155</sup> Holmes, James, 'India and the Proliferation Security Initiative: A U.S Perspective,' *Strategic Analysis*, 2007, Vol. 30 (2), pp. 315-337, p. 328

is politically unpalatable for India's leadership. Thus, the scope of the PSI while technical and narrow is still politically salient.

The above discussion has demonstrated that despite adamant claims by U.S. government officials that the PSI constitutes an activity, not an organisation, this initiative clearly meets the TGN threshold criteria outlined in Chapter Two. It also provides a case study of transgovernmental networking within international security, a policy area that is traditionally dominated by executive level formal cooperation. In the next section, I use the elements outlined above to provide an analysis of the drivers of PSI formation and cooperation.

### *3.2.2 Drivers of PSI Formation & Cooperation*

In Chapter Two, I outlined six hypotheses about why TGNs arise and take the form that they do. I argued that while widely quoted and generic benefits of TGN-based cooperation such as flexibility, speed, and low transaction costs are important, they are not the only factors that explain why TGNs arise. There are additional conditions for TGN-based cooperation, including the relationship between power and networked governance and the nature of the issue under question. I will now examine these hypotheses using the PSI in order to illustrate the dynamics and evolution of TGN-based cooperation.

*H1: TGN-based cooperation is more likely to occur when there is concentrated power within an issue area, that is, the presence of a resource rich actor willing to exercise managerial power in a productive way.*

Concentrated power was a critical factor in driving PSI formation and in sustaining TGN-based cooperation. Given the leadership role that the U.S. has played in shaping non-proliferation policy over the last half-century, its wide ranging naval capabilities, the events of 9/11 and the intersection between radicalisation, criminal networks, and technology, as well as the embarrassment generated by the *So San* incident, the Bush administration placed great priority on cultivating a new mechanism for cooperation that could prevent such failures in the future. From the very outset, the U.S. assumed the role of a quasi-imperial manager - setting agendas, directing negotiations, and coordinating action. It was U.S. officials that were tasked with analysing the lessons learnt from the *So San* case and drafting a Statement of Interdiction Proposals; it was the U.S. NSC that identified the governments to be invited to implement the PSI proposal; it was Bolton and Melley who attended all Core Group meetings and had responsibility for keeping tabs on the draft rules of the road and reporting cables; and it was President Bush who announced the launch of the PSI in Krakow as opposed to the head of state of another country. While the U.S engaged with a range of stakeholders via soft law arrangements, it also used versions of hegemonic power to steer the PSI in a direction that best suited its objectives. For example, during the first day of the Paris meeting in September 2003, Bolton informed governments that if they were not yet ready

to endorse the SIP, the United States would take their names off the list.<sup>156</sup> Despite some reservations, all Core Group members endorsed the SIP. According to an interview Susan Koch conducted with Melley, Bolton’s approach that day constituted “a blustery, high-handed move that worked.”<sup>157</sup>

More recently, the U.S. has bankrolled and managed the PSI, leading a number of interdiction exercises. In June 2011, the OEG also approved a U.S. proposal to undertake a Critical Capabilities and Practices (CCP) initiative. In describing this initiative, the U.S. DOS said:

“OEG Countries who volunteer to participate in the CCP effort will do so by identifying and sharing tools and resources that support interdiction related activities and by conducting events in a coordinated manner to develop, implement, and exercise CCPs.”<sup>158</sup>

The CCP will reportedly span across a range of interdiction related requirements, including legal frameworks, identification and inspection, seizure and disposal and rapid decision-making.<sup>159</sup> By launching initiatives such as the CCP and by funding PSI exercises, the U.S. has ensured that it remains the focal point of this TGN. Without the U.S. exercising concentrated yet productive managerial power, it is unlikely that the PSI would have come about or remained active.

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<sup>156</sup> Koch, p. 16

<sup>157</sup> Koch, p. 16

<sup>158</sup> U.S Department of State, Bureau of International Security and Nonproliferation, *PSI-Endorsing States Undertake Effort to Build Critical Capabilities and Practices for Interdicting WMD Fact Sheet*, June 10, 2011

<sup>159</sup> Koch, p. 24

*H2: TGN-based cooperation favours issues where there are opportunities for heterogeneous contracting by the managerial power.*

Bi-conditional to the existence of a resource-rich actor willing to exercise productive managerial power is the presence of opportunities for heterogeneous contracting by this power. Powerful actors like the U.S. are more likely to favour TGN-based cooperation if they are not obligated to offer participants the same terms of engagement. At the same time, these participants may have different motivations for participating in the TGN. The PSI is no exception. The NSC staff selected players that had close ties to the U.S and that were likely to support U.S. efforts on interdiction despite the potential domestic and international political costs to their government. The initial eight Core Group members were all part of the coalition of the willing in Iraq and had publicly committed to countering proliferation in the name of combating terrorism. For instance, the day after 9/11, the U.S invoked the principle of Article 5, that is, the NATO self-defence charter, which states that if one member state is under attack, all other member nations are to come to its defence.<sup>160</sup> Seven of the initial eight Core Group were NATO members had supported the invocation of Article 5. Although France and Germany were also NATO members and backed the use of Article 5 in 2001, by 2003 they actively disagreed with the U.S. on the subject of intervention in Iraq. The U.S. used this as an opportunity for France and Germany to demonstrate that the two countries were still willing partners in the fight against terrorism and WMD proliferation. The move to include France and Germany was as much a functional necessity given their material

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<sup>160</sup> Buckley, Edgar, *Invoking Article 5*, Edgar Buckley describes how NATO invoked Article 5 on 12 September 2001, 24 hours after the terrorist attacks against the United States, 2006, Available at: <http://www.nato.int/docu/review/2006/issue2/english/art2.html> Accessed on March 5, 2013

capabilities, as it was a test - an opportunity for both countries to demonstrate that they were still partnered with the U.S. on critical issues. The U.S was more inclined to favour TGN-based cooperation on this particular issue as it had the opportunity to contract partners according to its own need and terms of engagement.

*H3: TGN formation is most likely when there are short time horizons.*

Short time horizons in this instance refer to situations in which the cooperative arrangement is expected address a one-off problem or the issue under question requires a quick response. The PSI's objective was to address the proliferation threat promptly. While there were already a number of IGO initiatives aimed at defusing proliferation incentives, including a series of committees and working groups established by NATO, the U.S. felt that these initiatives were inadequate in dealing with the current and rapidly changing proliferation threats. Alternatively, as Eilstrup-Sangiovanni notes, the U.S could have opted to reinforce the existing treaty base regime. States might seek an amendment to UNCLOS that would make WMD proliferation a criminal offence and grant a mandate for interdiction of WMD-related shipments.<sup>161</sup> However, treaties are slow and cumbersome to amend. UNCLOS, for instance, took almost 10 years to negotiate and a further 12 years to enter into force.<sup>162</sup> Additionally, unlike many IGOs which have a wider scope of cooperation, the PSI was intended to form the political core of cooperation over one specific issue – interdiction on the high seas. The PSI is not simply another mechanism for discussing issues that have already been addressed

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<sup>161</sup> Eilstrup-Sangiovanni, 2013, p. 25

<sup>162</sup> Eilstrup-Sangiovanni, 2013, p. 26

through the NPT, the CWC, the BWC, the IAEA, and the export control TGNs. Rather, it is intended to address a critical fissure in the global non-proliferation regime, which would have been difficult to manage through a more formal mechanism. The PSI was formed as a response to short time horizons – the need to address a one off problem quickly.

*H4: Issue volatility and uncertainty favour TGN-based cooperation*

A fourth driver for TGN-based cooperation is issue volatility and uncertainty. U.S. officials were looking to build a system of cooperation that could respond to unpredictable threats quickly and effectively. The nature of the threat posed by terrorist networks is unpredictable and malleable. By the time states have negotiated a formal treaty based arrangement to deal with the problem, the threat may have escalated and the solution now requires considerable amending. The *So San* incident was a source of major embarrassment for the Bush administration but more importantly, it demonstrated that the U.S. desperately needed an international cooperative infrastructure that would help to inhibit and interdict the spread of WMD materials to rogue states and terrorist networks. While the technical problem that required overcoming was the *So San* incident, the impetus for a new interdiction mechanism was in fact the threat of WMD terrorism, driven by the failure of the state-centric treaty based regime to adequately address or reduce this threat. It is also critical to note that the while a new interdiction mechanism was essential; the U.S. did not have the time to build an entirely new international legal framework. U.S. officials were uncertain about how a multilateral treaty concerning the

interdiction of ships suspected of proliferating WMD related components would affect its own interests and the interests of its allies. The legal foundation of the global transport of American forces and military hardware is the exclusive flag state jurisdiction outlined in UNCLOS.<sup>163</sup> By negotiating an international treaty that would grant states reciprocal stop-and-search powers, the U.S. would also subject its own ships to scrutiny by foreigners. Moreover, Article 51 of the UN Charter does not authorise the use of force on the basis of threat perception. Interdiction on the basis of suspicion that a ship is carrying WMD related materials would amount to the use of force under the UN Charter. Unless such interdiction is carried out with the express consent of the flag state or by the flag state itself, it constitutes an act of war and aggression. The PSI gets around the problems stemming from uncertainty and issue volatility through a number of ways. First, it is flexible and easily adaptable, which means that as the threat changes so can the solution and the framework of cooperation. Second, participants are not required to undertake a formal legal commitment. Instead, they make a political commitment that is consistent with relevant national and international laws. While the U.S. may have difficulty circumventing international laws, it can, however, shape loose political commitments to fit its own interest, thereby avoiding the possibility of having its own ships being searched by participant countries. Finally, by encouraging 102 states to endorse the PSI and by signing ship boarding agreements that are modelled after similar arrangements in the counter-narcotics arena, the U.S. has laid down procedures which enable it to board, search, and detain the cargo without being accused of war-mongering or aggression. In

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<sup>163</sup> Eilstrup-Sangiovanni, 2013, p. 27

the case of the PSI, issue volatility and uncertainty thus lent them towards TGN-based cooperation.

*H5: TGN-based cooperation is more likely if the issue is susceptible to intransigence at the international level.*

One can expect TGN-based cooperation if the issue area under consideration is unlikely to receive quick and extensive cooperation through the treaty/IGO-based regime. The non-proliferation issue area, particularly, interdiction on the basis of suspicion that a ship is carrying WMD related materials, is no exception. International treaties often suffer from spoilers and are liable to founder under opposition and veto by powerful states. There are also concerns regarding the potential for an overly expansive interpretation or understanding of what an authorisation of forcible interdiction could mean. China, for instance, has yet to endorse the PSI and it has repeatedly refused to condone international interdiction. It was Chinese resistance that led to all references of interdiction being removed from the UN Security Council Resolution 1540. As early as 1994, there were international political disagreements regarding how to develop a more comprehensive interdiction policy. During the North Atlantic Council negotiations, the U.K and France favoured a joint political and military approach, while a number of other European countries believed that the traditional non-proliferation regime was adequate and naval action constituted an unnecessary offensive action.<sup>164</sup> Such divergent views are likely to replicate themselves and constitute an obstacle to negotiations when it comes to

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<sup>164</sup> Eilstrup-Sangiovanni, 2013, p. 28

a formal agreement. Voluntary cooperation through a political agreement as opposed to a legally-binding treaty allows the U.S to successfully sidestep the spoiler issue and overcome intransigence at the international level.

*H6: Issue intractability at the domestic level favours TGN-based cooperation*

Finally, issue divisiveness and intractability at the domestic level also lends itself to TGN-based cooperation. International treaties that have legal implications for participating states often require formal ratification by domestic legislatures. TGNs like the PSI, on the other hand, do not require domestic legislative approval. A legally binding treaty would have generated concern and widespread scepticism from the U.S. Navy and American shipping lobbies who defend the requirement of flag state consent and oppose reciprocal stop-and-search agreements. Such a legally binding and enforceable document might subject U.S private and public vessels, ships, and cargos to checks by other countries upon suspicion that they might be carrying WMD related materials. The loose political commitment generated by the PSI, on the other hand, is consistent with national and international legal frameworks. It simply calls upon states to strengthen their own domestic mechanisms and to take action in support of them. Furthermore, the PSI is shrouded in operational secrecy which allows the details of cooperation between states to go undetected by the domestic political constituencies. PSI exercises are not publicly reported upon and the precise number of desired, attempted, and successful interdictions through the PSI is unknown. Even at the outset, the White House staff was keen to avoid media leaks, as any advance public knowledge of the PSI proposal could jeopardise its

chances of success.<sup>165</sup> The staff would rather potential initiative partners (and states that had were not invited to the Core Group) learn about the initiative via confidential U.S. government communications as opposed to through the press.<sup>166</sup> In the case of the PSI, issue intractability at the domestic level thus favoured TGN-based cooperation, which in turn, allowed collective action to pass more easily under the domestic radar screen.

Together, the six conditions outlined above served to lay the groundwork for the formation of the PSI. Without the U.S. acting as a quasi-imperial manager, it is unlikely that the PSI would have come about. The U.S. not only manages and coordinates the bureaucratic elements of the PSI but it also bankrolls the majority of the PSI training exercises. The opportunity for heterogeneous contracting, on the other hand, allowed the U.S. to shape the initiative in line with its own agenda and objectives. The U.S. could sidestep the international spoiler issue by inviting allies and countries that it already knew would play nice. Moreover, as an informal cooperative solution, which lacks a legal framework, the U.S. was able to quickly implement the initiative in order to address a pressing issue that required immediate attention. Finally, the secretive nature of the PSI enabled the U.S and other participating countries to minimise domestic controversy that could have otherwise posed a serious challenge international cooperation. This Chapter has, thus far, demonstrated that despite claims that it is not an organisation, the PSI is indeed a TGN, and that the conditions and drivers of TGN formation as identified in Chapter Two serve to explain why the PSI has arisen and taken the form that it has. Using

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<sup>165</sup> Koch, p. 8

<sup>166</sup> Ibid.

the information outlined above, the next section will demonstrate how the PSI represents an evolution of the TGN framework.

### *3.2.3 PSI as an Evolution of TGNs within the Non-proliferation Regime*

TGNs are not an entirely new addition to the state-centric non-proliferation regime, however, the role that they play in this regime has evolved over time. Multilateral export control initiatives such as the Zangger Committee, the MTCR, the AG, and the NSG have all played an increasingly important and, at times, prominent role in aiding non-proliferation efforts since the early 1970s. These organizations certainly meet the criteria for transgovernmental networking and support the claim of a growing trend towards TGNs within the non-proliferation issue area. Export controls, for example, represent an attempt by states to manage the “cross-border flows of goods, technologies, and information,”<sup>167</sup> and are a key functional element in any non-proliferation effort. As Michael Lipson notes, export control policy and practice have increasingly become a function of mid-level officials and experts working with a large degree of autonomy from the executive and the concerns of “high politics.”<sup>168</sup> Agreements on common lists of controlled items, targets and procedures for controlling exports are implemented through national laws and regulations.<sup>169</sup> With the exception of the Zangger Committee, which has a formal treaty basis, the majority of these TGNs are not directly and formally

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<sup>167</sup> Lipson, 2005/2006, p. 184

<sup>168</sup> Ibid., p. 183

<sup>169</sup> Lipson, 2005/2006, p. 187

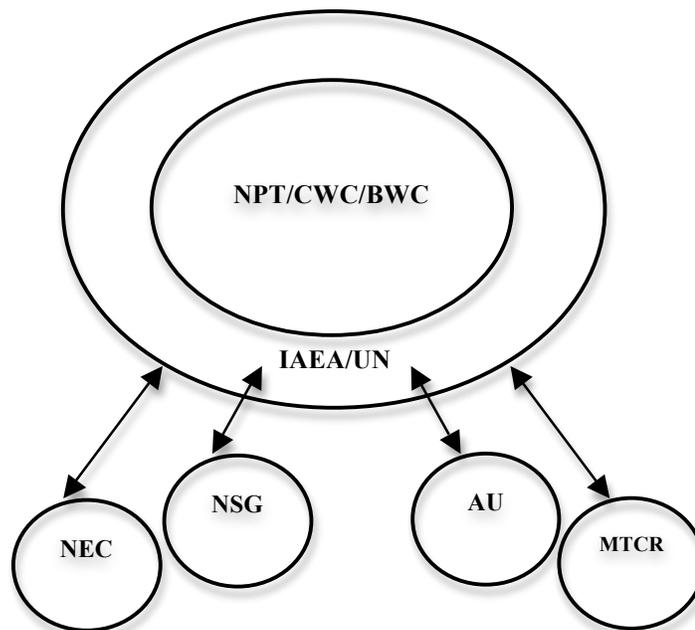
attached to treaties. Yet, while these organisations certainly constitute TGNs, they are technically oriented. They function singularly to plug gaps and set standards that the formal state-centric structure, for a number of reasons, is unable to set. They are subsidiary to the existing treaty/IGO structure, providing compliance-based support to treaties as opposed to forming the core component of cooperation over a politically salient issue.

Earlier in this chapter, I offered a diagrammatic representation of the traditional state-centric non-proliferation regime. I now provide a more specific illustration of the relationship between various components of this regime, particularly, the relationship between TGNs and the treaty/IGO-based structure. The core component of the non-proliferation regime is a set of widely adopted international treaties, including the NPT, the CWC, and the BWC. The outer circle of this diagram represents formal IGOs such as the IAEA and the UN, which serve as an engine for deliberation or an enforcement mechanism, monitoring compliance with the proliferation treaties. Connected to the treaty/IGO structure are a range of TGNs, including the multilateral export and supplier groups as such as the NEC, the NSG, the AU, and the MTCR. These TGNs are closely tied with the formal regime. Although they do not have a treaty basis, they are not independent of the existing structure.

Diagram A below, however, is no longer an accurate depiction of the architectures of cooperation that exist within the non-proliferation regime today. As this chapter has discussed in great detail, the contours of the non-proliferation regime and the nature of the regime components have changed considerably since the end of the Cold War. Events such as the fall of the Soviet Union, the attacks of 9/11, and the discovery of the A.Q

Khan nuclear weapons related trafficking network have created new vulnerabilities and threats for the United States. These events have provided evidence to support the claim that not only are rogue states and terrorist networks actively pursuing WMD capabilities, these actors are key components of a secondary proliferation market which exists beyond the scope of the traditional state-oriented apparatus. The PSI-TGN is the U.S government's response to these threats. The PSI is not simply another example of transgovernmental networking or an attempt to plug regulatory and compliance gap in the traditional regime; it is a "more dynamic, creative, and proactive approach to preventing proliferation transfers to and from nations and nonstate actors of proliferation concern."<sup>170</sup>

*Diagram (A): TGNs Traditional Non-proliferation Regime*

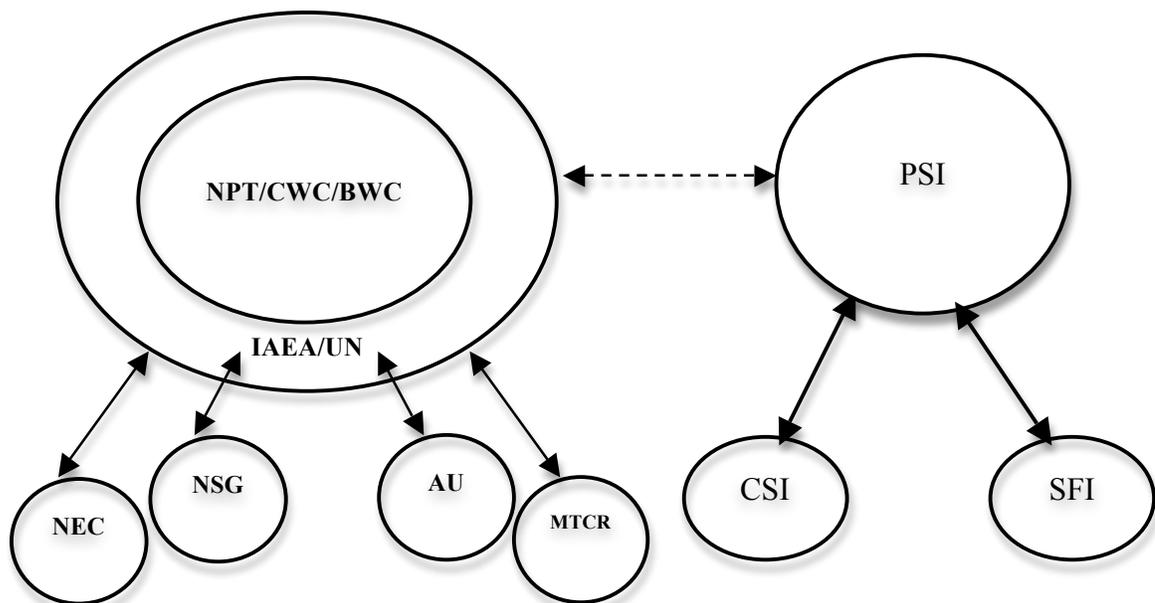


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<sup>170</sup> U.S. Department of State, *Proliferation Security Initiative Press Release*, May 2005

Diagram B provides an illustration of this new and evolved non-proliferation regime. Alongside the traditional state-oriented apparatus now exists the PSI-TGN structure, which constitutes the core of political cooperation over a highly salient issue. It shares with the multilateral export control and supplier initiatives the fundamental characteristics of a TGN. However, unlike the export and supplier initiatives, the PSI is not a subsidiary component of the existing regime; rather it serves as a functional substitute for IGO/treaty based cooperation. The PSI supports the traditional regime by reinforcing the non-proliferation norm established through the core treaties. However, it has also helped to catalyse a shift in the long-held norm regarding the use of force and interdiction on the high seas.

Diagram (B) TGNs in the new Non-proliferation Regime



The PSI has also given birth to and is supported by a number of other TGNs like the CSI and the SFI. These TGNs interact with the wider non-proliferation regime, creating a network of networks. For example, launched in 2002, the CSI

“allows U.S. Customs and Border Protection (CBP) working with host government Customs Services, to examine high-risk maritime containerized cargo at foreign seaports, before they are loaded on board vessels destined for the United States.”<sup>171</sup>

At present, there are 58 foreign ports that participate in the CSI, accounting for 85 per cent of container traffic that is bound for the U.S.<sup>172</sup> While the CSI was founded prior to the PSI, it is a complementary initiative as it also focuses on enhancing global maritime security, albeit on a technical and less politically salient issue. The SFI was launched by the Department DHS in 2006 to support the efforts of the CSI and the PSI. This initiative “uses the latest available technology to enhance risk management tools to identify containers that pose a risk to the global maritime supply chain.”<sup>173</sup> The SFI capitalised on the momentum that was generated by the PSI in order to reach a political commitment in the maritime container-shipping issue. This Initiative deploys a range of existing technology and proven nuclear detection devices in foreign ports to check containers headed to the U.S. If and when the alarm sounds, both the DHS and the host country will simultaneously receive an alert.<sup>174</sup>

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<sup>171</sup> U.S. Department of Homeland Security, *Container Security Initiative Ports*, Available at: <http://www.dhs.gov/container-security-initiative-ports> Accessed on April 1, 2013

<sup>172</sup> Ibid.

<sup>173</sup> U.S. Customs and Border Patrol, *Secure Freights with CSI, Megaports*, October 2007

<sup>174</sup> U.S. Department of Homeland Security, *Secure Freight Initiative*, Available at: <http://www.dhs.gov/secure-freight-initiative> Accessed on April 1, 2013

While the initial non-proliferation TGNs were founded in the 1970s, it was only in the 2000s that TGNs began to grow in scope and number. Networks like the multilateral export and supplier initiatives served a regulatory and standard setting purpose but they also provided evidence that the TGN framework could be used as an effective and comparatively efficient method of cooperation on larger and more salient issues. Following 9/11, the threat of WMD terrorism, the weaknesses in the state-centric regime as highlighted by the *So San* incident, and the urgent need for the U.S to take action, the TGN framework seemed to provide an ideal architecture for cooperation. Not only did it offer the U.S. and the potential participants a range of functional benefits but it also enabled the U.S. to exercise managerial power on its own terms and in line with its own objectives. The evolution of the TGN framework within the non-proliferation regime occurred because the U.S. wanted to act quickly and effectively, whilst also maintaining a large degree of power over the shape and nature of action.

In this Chapter, I have discussed how and why the non-proliferation regime has evolved over time. I have considered the prominence of formal state-oriented treaty based arrangements such as the NPT, the CWC, and the BWC and the growing trend towards a range of less formal initiatives, including multilateral export control efforts such as the Zangger Committee, the AG, and the NSG, and today the PSI. I have distinguished between export control TGNs and the PSI-TGN framework with the objective of demonstrating that the PSI-TGN is not simply a subsidiary to the existing treaty/IGO framework. Rather, it constitutes the engine for political cooperation. It represents an evolution of the role of TGNs within the non-proliferation regime. I have demonstrated that decision by U.S public officials to pursue cooperation through the PSI-TGN

framework was based on a calculation of the benefits that informal cooperation could provide to the U.S. as opposed to formal cooperation.

In the future, TGNs may serve a dual purpose as they do within the non-proliferation regime. They may strengthen and supplement traditional tools in some areas, while also promoting policy convergence and supplanting treaties in other areas. Although this Chapter has focused on the non-proliferation issue area, it is intended to further our understanding of the wider operational dynamics of TGNs. It is plausible that findings from the non-proliferation regime are applied to other issue areas. In the next chapter, I conclude by briefly considering an issue that is still awaiting an enforcement mechanism – small arms. The objective of the next chapter is to briefly consider the future of transgovernmental security cooperation and to determine whether the PSI-TGN model can be promoted to fit select transnational issues that require immediate attention.

## **Chapter Four: PSI & The Future of Transgovernmental Security Cooperation**

A decade after the launch of the PSI and following numerous calls by U.S. government officials to institutionalise this TGN into a formal treaty, the PSI remains a loose, informal network of cooperation. While many have expressed concerns regarding the failure of U.S. officials to garner endorsement from key states like India, Pakistan, and China, the PSI-TGN framework has, nonetheless, served as an effective means to coordinate action on a highly salient issue. PSI participants have worked closely over the last ten years to impede shipments of WMD, delivery systems, and related materials to and from states and non-state actors of proliferation concern.

The purpose of this concluding Chapter is to briefly consider the future of the PSI and transgovernmental security cooperation, in particular, the expansion of the PSI cooperative relationship to include relevant private sector actors. This chapter also asks whether the PSI interdiction model could be promoted to fit select transnational issues that require immediate action but where implementing rapid treaties may be politically difficult. The example considered here is the issue of small arms.

#### ***4.1 Looking Forward: The Proliferation Security Initiative***

While the non-proliferation regime continues to be dominated by formal treaties, informal networks and arrangements have played an increasingly prominent role in policy discussions regarding how to curb the proliferation of dangerous materials. As Roberts notes, the PSI and other recent loose non-proliferation initiatives are making concrete contributions to building a “network of networks” – creating a web that prevents the trafficking of WMD related materials.<sup>175</sup>

I suggest that over the coming years, the PSI will evolve from a *transgovernmental* entity to a *transnational* entity. Transnational applies to when “we relax the assumption that states are the only actors, and “transgovernmental” applies when we relax the assumption that states act as units.”<sup>176</sup> Aside from states and their sub-state representatives, there are a more diverse set of public and private actors and interests at play in the non-proliferation issue area. Avant notes that among global governance arguments, the U.S. is “seen as a particularly important part of a complex array of state and non-state actors that work toward global goals.”<sup>177</sup> The question of whether the PSI will endure over time, however, depends not simply upon which relationship U.S. policy makers decide to work through in pursuit of their goals but also

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<sup>175</sup> Roberts, 2013

<sup>176</sup> Keohane and Nye, 1974, 41

<sup>177</sup> Avant, August-September 2012, p. 1

the kind of role that the complex array of non-state actors play toward achieving this goal.

At first glance, the issue area under question, interdiction on the high seas to curb the proliferation of WMD and related materials, falls neatly within the domain of high-politics. Non-proliferation policy has traditionally been addressed via executive-level, treaty based cooperation. IGOs serve as the engine for deliberation and as a means of ensuring compliance as opposed to entities with their own interests and objectives. As has been discussed in this paper, there are positive incentives for decision-makers to cooperate on some issues at the sub-state level; nevertheless, these expert units are still derived from and attached to their respective states. Non-state actors, like private companies and civil society organisations, on the other hand, may have interests that diverge from the interests of the states that they operate in or are headquartered in. While sometimes TGN-based cooperation can help collective action to pass more easily under the domestic radar, this is not always possible. Private interest groups may be powerful enough to act as spoilers to cooperation or their support may be vital to the success of collective state action. For instance, in the non-proliferation issue area, and with specific relevance to the PSI, the question of liability for delayed cargo remains unresolved. As Roberts notes, most shipments are “just-in-time” deliveries, which means that the warehouse is either non-existent or kept to a minimum to reduce costs. Diverting a suspected ship to a port, off-loading its cargo, and inspect this cargo takes a great deal of time.<sup>178</sup> These vessels can carry up to 10,000 containers. Who is held liable to the private

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<sup>178</sup> Roberts, 2013

dealer that has lost money is an issue that is yet to be addressed by states,<sup>179</sup> and it is a constant hurdle for cooperation with the relevant private actors.

A governor's ability to affect outcomes is largely dependent upon its interactions with others. As Avant, Finnemore, and Sell argue: "No governor governs alone."<sup>180</sup> While private power is no substitute for state power, a new cast of global governors is emerging who also play a role in the process of governance. Thinking in such a governance framework clearly challenges the common dialogue about international relations, which has long privileged the state as the most relevant referent object and the subject of political debate in the international system. There are instances in the non-proliferation issue area where private actors have played a positive role in facilitating collective action and achieving regulatory objectives. The CSI is a good example of a cooperative relationship between states and the container industry. The latter has agreed to implement anti-tampering devices and GPS tracking on containers to protect against diversion or tampering. The benefit for the industry is that it reduces the financial burden that arises as a result of being subject to mistaken stop-and-search interdictions. Furthermore, the PSI OEG recently hosted a series of meeting with the private sector. Individual countries like New Zealand have actively sought to improve the flow of information between their governments and private industry including local traders and

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<sup>179</sup> Roberts, 2013

<sup>180</sup> Avant, Deborah, Martha Finnemore, and Susan Sell, *Who Governs the Globe?* (Cambridge: Cambridge University Press, 2010), p. 21

transport operators.<sup>181</sup> While PSI formation was dependent upon transgovernmental cooperation, the long-term success of this initiative will depend upon transnational cooperation between a range of governors, including IGOs, NGOs, and domestic and transnational corporations. The PSI's evolution from a transgovernmental network to a transnational network has already begun, and with the growing involvement of the private sector, it is likely to gain momentum over the next few years. This multilayer and multiactor approach will create a network of networks, that is, a web of denial that greatly diminishes if not eliminates the threat of WMD proliferation.

#### ***4.2 Beyond Non-proliferation: Small Arms and Light Weapons***

Given the success of the PSI framework in engendering support from 102 countries and in providing a proactive mechanism to counter proliferation, can a PSI-like framework also be promoted to fit select transnational issues that require immediate attention but where implementing rapid treaties may be politically difficult? The issue area under consideration here is small arms. Like the non-proliferation issue, it is highly politically salient and policy makers have struggled to reach a universal treaty concerning the interdiction of vessels that are suspected of carrying illicit small arms.

Small arms and light weapons (SALW) can be defined as “hand-held and crew-served weapons of under 100mm calibre. That covers everything from hand guns to

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<sup>181</sup> Goff, Phil, *Cooperating for Nonproliferation, Opening address of the Proliferation Security Initiative Operational Experts Group Meeting, Auckland, March 26, 2007*

automatic rifles to shoulder-launched surface-to-air-missiles and their ammunition.”<sup>182</sup> The fall of the Soviet Union in the early 1990s brought fresh supplies of assault rifles and a range of other easily portable weapons to the global market. As Waltz notes, these weapons “began flooding conflict zones, threatening life, and livelihood of the world’s poorest peoples.”<sup>183</sup> SALW have played a critical role in sustaining civil war violence and many have argued that they constitute a fundamental threat to human security. Furthermore, Avant suggests that in the 1980s and 1990s, as the demand for larger conventional weapons waned, the production of small arms and the interconnectedness of arms manufactures grew.<sup>184</sup> The increased prominence of illicit SALW on the global market led many, including activists, governments, and IGOs such as the UN, to call for industry regulation. The U.S., as the hegemon, found itself at the centre of this regulatory battle. On the one hand, the pro-regulation camp urged the U.S. to support and enforce regulation as a global public good.<sup>185</sup> On the other hand, anti-regulation groups such as the NRA mobilised to pressure the U.S. government to use their sovereign authority to resist international regulation. This argument was derived from U.S. domestic concerns regarding the Second Amendment right to gun ownership.<sup>186</sup> Formally, the U.S. policy on small arms constitutes a dual track approach - there exists a desire to promote legitimate

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<sup>182</sup> DeSilva-Ranasinghe, Sergei, ‘*The Politics of Small Arms Proliferation*,’ *Policy*, Summer 2012/2013, Vol. 28, Issue 4, pp. 45-45, p. 45

<sup>183</sup> Waltz, Susan, ‘U.S. Small Arms Policy: Having it Both Ways,’ *World Policy Journal*, 2007, Vol. 24 (2): pp. 67-80, p. 67

<sup>184</sup> Avant, July 2012, p. 14

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

exports, while also curbing backchannel deals and the illicit spread of weapons. In reality, however, the position of the U.S. government has generally reflected that of the NRA – stymieing any form of regulation. The United States has also come to be viewed by most countries and pro-regulation groups as a major obstacle to formal treaty cooperation.

On April 2, 2013, an overwhelming majority in the UN General Assembly voted in favour of a landmark Arms Trade Treaty (ATT). This treaty regulates the international trade in conventional arms, including small arms and light weapons (SALW). To the surprise of many, including the U.S. Senate, the U.S. government joined 152 other states in voting in favour of this treaty. The purpose of the ATT is to stop the illicit flow of destabilising weapons to conflict regions. Article 9 of this treaty refers to the transit or trans-shipment of SALW:

“Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit and transshipment under its jurisdiction of conventional arms under Article 2 (1) through its territory in accordance with relevant international law.”<sup>187</sup>

The UN has hailed the ATT as a landmark document and a monumental achievement following seven years of negotiations. However, U.S. government officials are already questioning whether the U.S. will sign the treaty when it opens for signature on June 3. Even if the U.S. signs the treaty, it seems highly unlikely that the Senate will ratify and enact it.

Assuming one of the two likely situations unfolds over the next few years – the U.S. does not sign the ATT or the U.S. signs the ATT but it does not receive Senate

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<sup>187</sup> Arms Trade Treaty, March 27, 2013, Available at: [www.un.org/disarmament/ATT/documents/](http://www.un.org/disarmament/ATT/documents/)  
Accessed on April 5, 2013

ratification – could a PSI-like framework be used to monitor and regulate the illicit global trade in SALW? More importantly, would the U.S. be willing to exercise productive managerial power in order to guarantee the success of this initiative or would domestic interests such as those of the NRA be too great of an impediment to political cooperation?

While, the Wassenaar arrangement is aimed at promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, it lacks the apparatus necessary to regulate, monitor, and interdict the transit and transshipment of SALW. Theoretically, however, the PSI SIP could be combined with existing programmes to disrupt trade by land, sea, and air. To a certain extent, a PSI like model already exists. The U.S. Export Control and Related Border Security (EXBS) Program was established in the 1990s to help countries fulfil their obligations under UN Security Council 1540 and to help them establish capabilities to detect, interdict, investigate, and prosecute illicit transfers of WMD, WMD-related materials, and conventional weapons, including SALW. The EXBS is active in 50 countries and the program is implemented by drawing on the expertise of IGOs, NGOs, foreign governments, the private sector, and U.S. Government agencies.<sup>188</sup> The DOS EXBS webpage makes explicit reference to the PSI as one of the key initiatives that it is working to enforce. Both small arms and WMD require similar intelligence, legal, and military tools and capabilities, which would suggest that the SALW issue might lend itself to PSI cooperation and inclusion into the SIP. However, there is one primary reason

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<sup>188</sup> U.S. Department of State, *The EXBS Program*, Available at: [www.stae.gov/t/isn/ecc/c27911.com](http://www.stae.gov/t/isn/ecc/c27911.com)  
Accessed on: April 5, 2013

for why the U.S may want to avoid making explicit reference to SALW in the SIP: opposition from the domestic arms control lobby. Given its track record of stymieing political cooperation, the NRA is likely to object to the U.S. supporting any written statement, albeit informal, that regulates the trade in SALW. The trade in small arms is an issue of high political salience where U.S domestic hurdles to cooperation may be too great to overcome. Perhaps, given the fact that SALWs are a key component of the EXBS program, which helps to enforce the PSI, and that the PSI is working to interdict shipments suspected of carrying WMD related materials, what may be more helpful and effective in stopping the illicit trade of SALW is the geographic expansion of the EXBS. Although the PSI does not directly cover SALW, EXBS participating states are already being trained by U.S. officials to interdict ships that are suspected of carrying illicit SALWs. Expanding participation of this programme may be a more effective means of addressing the issue as opposed to pursuing cooperation with the NRA on a formal or an informal commitment that they are unlikely to ever support.

## **Conclusion**

International security is traditionally considered to be beyond the scope of transgovernmental networking. Yet, as this paper has demonstrated, TGNs have become an increasingly prominent governance apparatus within issue areas like non-proliferation. Following the fall of the Soviet Union, the events of 9/11, and the growing threat of WMD terrorism, the U.S. reoriented its non-proliferation policy to target rogue states and non-state actors of proliferation concern. The chosen vehicle for implementing this new policy, the Proliferation Security Initiative, is not a formal treaty or an IGO; rather it is a

flexible and decentralised network – a looser mechanism for cooperation that can easily adapt to today’s diverse and unpredictable challenges. The trend towards TGNs in the non-proliferation regime is best explained by the range of functional and strategic benefits that TGNs can offer managerial and participant states, including flexibility, low transaction costs, and the ability to bypass domestic approval and ratification processes, as well as opportunities for heterogeneous contracting and the ability of certain powerful states to influence ideas, norms, and the operating environment for other states through the use of managerial power.

While the literature on TGNs has largely ignored underlying power distributions, this paper has demonstrated that there exists a close relationship between power and transgovernmental networking. TGN-based cooperation is more likely to occur and succeed when there is concentrated power within an issue area, that is, the presence of a resource rich actor, like the U.S., willing to exercise managerial power in a productive way. Thus far, American officials have founded the vast majority of existing TGNs in close cooperation with their allies. However, going forward it would be of interest to see whether an alternative power or group of powers could assume the mantle of responsibility. Could countries like China and India also act as “quasi-imperial managers,” creating, implementing, and enforcing TGNs on issues where the U.S. has blocked regulatory efforts or chosen not to exercise leadership authority?

In the future, TGNs may strengthen and supplement the traditional apparatus in some areas, while also promoting policy convergence and supplanting treaties in other areas. They may serve as stopgaps to formal treaties and mechanisms for plugging

regulatory holes, or for some issue areas and certain problems, they may present a better institutional design as opposed to formal centralised cooperation. The objective of this paper was to explore the conditions under which TGNs arise and take the form that they do. By identifying the threshold criteria for an entity to qualify as a TGN and the conditions under which TGNs arise, this paper has laid the groundwork for an analysis of TGN activity in other areas of security concern, like small arms. TGNs can help to reform and restructure the international security governance framework by making it more flexible and adaptable to today threats and tomorrow's challenges.

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## **Appendix A: Proliferation Security Initiative Statement of Interdiction Principles**

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: (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.
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 law 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 concern, 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 (a) 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 (b) 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 B: States Endorsing the Proliferation Security Initiative Statement of Interdiction Principles as of November 20, 2012**

Afghanistan	Croatia	Luxembourg	Russia
Albania	Cyprus	Macedonia	Samoa
Angola	Czech Republic	Malta	Saudi Arabia
Antigua and Barbuda	Denmark	Marshall Islands	San Marina
Argentina	Djibouti	Moldova	Serbia
Armenia	Dominica	Mongolia	Singapore
Australia	Dominican Republic	Montenegro	Slovakia
Azerbaijan	El Salvador	Morocco	Slovenia
Bahamas, The	Estonia	The Netherlands	Spain
Bahrain	Fiji	New Zealand	Sri Lanka
Belarus	Finland	Norway	St. Lucia
Belgium	France	Oman	St. Vincent and the Grenadines
Belize	Georgia	Panama	Sweden
Bosnia	Germany	Papua New Guinea	Switzerland
Brunei Darussalam	Greece	Paraguay	Tajikistan
Bulgaria	Holy See	Philippines	
Cambodia	Liberia	Poland	
Canada	Libya	Portugal	
Chile	Liechtenstein	Qatar	
Colombia	Lithuania	Romania	