

2007

## In My View

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### Recommended Citation

Quinn, Brian and Doolin, Joel A. (2007) "In My View," *Naval War College Review*: Vol. 60 : No. 2 , Article 23.  
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol60/iss2/23>

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## IN MY VIEW

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### MONDAY MORNING QUARTERBACKING?

Sir:

Professor Owens's article "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations" (Autumn 2006, pp. 68–80) provides a welcomed counter-punch to Rumsfeld's retired uniformed critics and rightly places Rumsfeld's involvement in military planning in historical context. However, in criticizing the "generals in revolt" for overstepping their bounds, Owens unfortunately (and unjustly) gives Secretary Rumsfeld a near-free pass for his missteps in Iraq.

Owens aptly contextualizes Secretary Rumsfeld's actions in light of a distinguished American tradition of civilian control of the military. As he notes, it is not unprecedented for a civilian leader to ignore military advice or to exercise a heavy hand in operational planning (Owens omits the helpful example of President John F. Kennedy, who ignored military advice in advocating the use of special operations forces in counterinsurgency operations). He also provides helpful perspective on why Rumsfeld might have dismissed military advice. The 9/11 Commission, along with several critics, has pointed out that senior military leadership has resisted deployment requests since Somalia and looked for situations where it would be assured victory; Iraq was far from such an instance. It is reasonable that a civilian leader might selectively heed military advice if he believes that his military advisers are not adequately considering his position.

Yet by focusing on the errancy of the generals' public criticism, Owens loses sight of Rumsfeld's missteps. Owens argues that Rumsfeld's key mistake was that he was "much more optimistic than the facts on the ground have warranted" and that Rumsfeld "acknowledged changes in the character of the war and adapted to them." Rumsfeld's mistake was not that he was optimistic; it was that he was out of touch entirely with critical facts on the ground and did not exercise leadership once the consequences of his bad decisions were

apparent. Rumsfeld's "stuff happens" attitude turned out to be a strategic miscalculation of the highest order. De-Baathification and the disbanding of the Iraqi military were likewise strategic misjudgments that flew in face of civilian and military advice. We now know that no one in the secretary's office even asked the advice of General Jay Garner, who was at the time working to include both groups in post-Saddam Iraq before the decision was made to exclude them. These decisions were not products of "optimism" but were rather woeful misreadings of the realities.

To state that Rumsfeld "acknowledged changes in the character of the war and adapted to them" is also generous. Who can forget that Rumsfeld strenuously resisted calling the war "an insurgency" until the commander of U.S. Central Command had already contradicted him publicly and the facts were nearly indisputable? The onus rests on Owens to demonstrate how a leader who refused to call the situation on the ground an insurgency, who hesitated to reconfigure civil support elements, and who did not solicit advice or execute new strategies for the spiraling situation in Iraq "adapted to change" and provided an effective counterinsurgency strategy.

Owens rationalizes the folly of deploying with a smaller force as Monday morning quarterbacking, and he notes that there were potential consequences to a larger buildup, namely "losing the opportunity to achieve surprise." Owens cherry-picks here—there were numerous foreseeable consequences of deploying a smaller force to Iraq, some of which were voiced to Secretary Rumsfeld prior to the invasion. This is not "hindsight"; it is fair analysis of a bad decision. As a tactical matter, the element of surprise was relatively insignificant in attacking Iraq. Saddam, like most viewers of CNN, had extensive warning during the slow buildup to war that the United States would attack. Regardless, by minimizing criticism of Rumsfeld as the product of hindsight, Owens creates a nearly impenetrable defense of Rumsfeld; it is difficult to prove a negative of how the invasion could have unfolded had Rumsfeld not made the decisions he did.

Finally, Owens attempts to save Rumsfeld's legacy by arguing that "[his] critics have been no more prescient than he." True, but Rumsfeld's critics—by Owens's own admission—were not the ones pushing to go to war. Lumping the generals with Rumsfeld gives the impression they all agreed with the secretary's planning and eventual decision to attack, when, in fact, many officers were dumbfounded by the decision.

If Owens wants to position Rumsfeld's meddling in war planning as part of the American tradition of strong civilian oversight, he should also hold Rumsfeld accountable for the profound mistakes made on his watch. By minimizing Rumsfeld's mistakes, Owens implicitly justifies them as part of Lincoln's

and Roosevelt's legacy of firm civilian leadership. This is both a disservice to the tradition of civilian-military relations and a poor reading of recent history.

BRIAN QUINN

*Stanford, California*

## PSI AND UNCLOS

Sir:

In his response ("Is the PSI Really the Cornerstone of a New International Norm?" Autumn 2006, pp. 123–30) to my article on the subject in the Spring 2006 issue (pp. 29–57), Mark J. Valencia opines "that the implementation, if not the conception of the PSI, was and is seriously flawed" (quoting Valencia at p. 128). He fears that the primary goal of PSI is to stop vessels without consent, undermining the freedom of navigation in the process. To the contrary, the foundations of the PSI are the sovereign powers of nation states and their authority, as flag-nations, to provide *consent* for boarding and search of their vessels. Valencia forgot that PSI participants have already produced six bilateral agreements to facilitate WMD inspections at sea that "raise the percentage of vessels accessible to consent boardings to well over half" (Doolin, p. 36). The remainder of this rebuttal highlights other aspects of PSI.

PSI was initiated precisely because there is no blanket legal authority to interrupt a ship's navigation for a WMD inspection and because the situations in which national self-defense could and should be used to seize WMD are extremely limited (see Doolin, pp. 29–31, on the *So San* incident and origins of PSI, and pp. 46–48 for Article 51). The strategy PSI uses to correct this gap is multinational cooperation. The 9/11 Commission recognized the potential of multinational cooperation and specifically recommended garnering support for PSI (Doolin, p. 45, for discussion and citation of the 9/11 report). PSI core members have done so, and "over 40 countries have participated in fourteen training exercises" (Doolin, p. 43; pp. 41–44 outline steps to improving interoperability among the expanding membership of PSI).

Contrary to Valencia's assertion, PSI works within the United Nations system. The UN Convention on the Law of the Sea (UNCLOS) provides the framework for consensual boardings. President Reagan established the policy of the United States "to exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Convention" (A. R. Thomas and James C. Duncan, eds., *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations*, International Law Studies 79 [Newport, R.I.: Naval War College Press, 1999], p. 43). Although UNCLOS does not list WMD transport as an act prejudicial to the coastal state, Valencia failed to tell the reader that "any threat or use of force" violates innocent passage; moreover, three other provisions of UNCLOS Article 19 may also be used as authority to deem illegal WMD transport inconsistent with innocent passage. (Here I quote UNCLOS Article 19[2][a]. Article 19 establishes the regime of innocent passage; the other provisions that could be used as authority are 19[2][b], prohibiting exercise or practice with weapons of any kind; 19[2][f], prohibiting the launching, landing, or taking aboard of any military device; and 19[2][l], barring "any other activity not having a direct bearing on passage.") Valencia ultimately concedes that coastal nations may criminalize and enforce laws against transporting WMD in their territorial seas and contiguous zones (Doolin, pp. 34–35, for a complete discussion, including the premise: "Weapons of mass destruction are by definition dangerous materials, transportation of which must be consistent with custom laws"). This is consistent with Valencia's observations (pp. 124–25) that a coastal nation "would probably have to have laws criminalizing WMD transport" and UNCLOS Article 19 codification that innocent passage cannot be prejudicial to the coastal state. Indeed, United Nations Security Council (UNSC) Resolution 1540 calls upon member states to, among other things, perfect their legal systems and enforcement against WMD trafficking (see Doolin, pp. 45–46, for a complete discussion, mentioning that China supported UNSC Resolution 1540). But Valencia buried discussion of UNSC Resolution 1695 in an endnote: "UNSC Resolution 1695 of 15 July 2006 does prohibit all UN member states from providing to or receiving from North Korea WMD and related materials or technology, specifically including missiles" (p. 130, note 22).

It remains my prediction that "PSI activities, exercises and operations" will leverage UNCLOS and numerous conventions against WMD to make "maritime searches for WMD more common, the first steps toward a change in international practice" (Doolin, p. 50, elaborated pp. 50–51). PSI will continue to harness the collective sovereignty of its membership, and of our CNO's thousandship navy, to execute mostly consensual (and more rarely nonconsensual)

boardings. As I asserted last year (p. 31), “Over time, PSI will make seizure of weapons of mass destruction at sea an international norm.”

JOEL A. DOOLIN

*Dr. Valencia replies:*

*Doolin:* “He [Valencia] fears that the primary goal of PSI is to stop vessels without consent, undermining the freedom of navigation in the process. To the contrary, the foundations of the PSI are the sovereign powers of nation states and their authority, as flag-nations, to provide *consent* for boarding and search of their vessels.”

This *may* be the present practice, although the secretiveness surrounding PSI interdictions prevents a conclusion one way or the other. However, it was not the original intent of its founders, and leading advocates and U.S. government policy makers may well still harbor such intent. Early on, John Bolton, then Under Secretary of State of Arms Control and International Security and the point man for the PSI, stated that “we are prepared to undertake interdictions right now, and, if that opportunity arises, if we had actionable intelligence and it was appropriate, we could do it now” (“US Interdiction Poses Legal Problems,” *Oxford Analytica*, 30 June 2003). He further asserted that the countries concerned had reached an agreement authorizing the United States to take action on the high seas and in international air space. Indeed, the United States insisted that the boarding of ships is permitted if there is “reasonable cause” (Virginia March, “US-led Group Takes to High Seas in First Drill against WMD Trade,” *Financial Times*, 13–14 September 2003, p. 5). On 2 December 2003, Bolton again asserted that the United States and its allies are willing to use “robust techniques” to stop rogue nations from getting the materials they need to make WMD—including interdicting and seizing such “illicit goods” on the high seas or in the air. These remarks were reportedly cleared by Secretary of State Colin Powell and senior White House officials (David Ensor, “U.S. to Seize WMD on High Seas,” CNN, 2 December 2003). And in October 2005, at a meeting in London of PSI core participants, it was agreed that the PSI is aimed at preventing transfers of WMD and related material “at any time and in any place” (“Chairman’s Conclusions,” *Proliferation Security Initiative: London*, 9–10 October, M2 Presswire, 13 October 2003).

The actualization of this intent was constrained only by the objections of core PSI participants. The United Kingdom was surprised by the U.S. interpretations and intentions. Its representative at the July 2003 Brisbane Conference said that all eleven participants agreed that any action taken under the PSI would need to be consistent with international law. Others in the PSI coalition felt that the United States was moving too quickly and too aggressively for them (“Japan Moves Forward to Hinder WMD Smuggling,” *Asahi Shimbun*, 18 July 2003; “Korea, Trade Top PM’s Agenda,” *Sunday Mail*, July 2003). Indeed, at the extreme there were concerns that the proposal could evolve into a multinational force roaming the seas and skies in search of transporters of illegal or undesirable weapons. To underscore this concern, Javier Solana, the European Union’s “foreign minister,” said, “The fight against terrorism, in which the EU is fully engaged, has to take place within the rules of international law” (Robin Wright and Henry Chu, “Bush Defends Israeli Strike,” *Los Angeles Times*, 7 October 2003). After the Brisbane meeting, a team from the eleven PSI nations was assigned to work on reaching a consensus regarding the relevant principles of international law.

Although the PSI’s operating principles include compliance with international law, some participants may still harbor intent to change it. This is because PSI effectiveness is constrained by the legal prohibition against interdiction of flagged ships and planes of North Korea, Iran, and other “countries of proliferation concern” without their consent. Indeed, the six U.S. bilateral boarding agreements that Doolin considers to be so important are likely to have little or no effect on WMD trade to or from these nations.

*Doolin:* “Contrary to Valencia’s assertion, PSI works within the United Nations system.”

The PSI was purposely conceived, initiated, and implemented without UN authority outside of the UN system. Indeed, Bolton argued that Annan’s insistence on the Security Council’s being the sole source of legitimacy in the use of force is “unsupported by over 50 years of experience with the UN Charter’s operation,” referring in particular to the non-UN-sanctioned U.S./NATO intervention in Kosovo in 1999 (John Bolton, “Remarks at Proliferation Security Meeting,” Paris, France). And Secretary of State Condoleezza Rice stated that the PSI provides an effective way to deal with North Korean attempts to trade in WMD and that it does not need or require Security Council authorization (“Rice: U.S. Has Not Lost Patience with Six-Party Talks,” 27 April 2005).

In March 2004 the United States tried to obtain a UN Security Council resolution specifically authorizing states to interdict, board, and inspect any vessel or aircraft if there were reason to believe it was carrying WMD or the technology to make or deliver them. But Russia and China prevented a specific endorsement of interdiction and the PSI (Ralph Cossa, introduction to “Countering the Spread

of Weapons of Mass Destruction: The Role of the Proliferation Security Initiative,” *Issues and Insights* 4, no. 5 [July 2004], pp. 1–6). Indeed, the text was agreed upon only after the United States accepted China’s demand under a threat of a veto to drop a provision specifically authorizing the interdiction of vessels suspected of transporting WMD, a cornerstone of the PSI. China also objected to any suggestion that the Council would endorse ad hoc frameworks like the PSI.

*Doolin*: “Valencia failed to tell the reader that any threat or use of force violates innocent passage.”

The transport of WMD components, related materials, and their means of delivery does not in itself necessarily imply a threat of use of force against the coastal state. The other three provisions of Article 19 mentioned by Doolin are not relevant to transport of WMD, related materials, and their means of delivery.

*Doolin*: “Valencia buried discussion of UNSC Resolution 1695 in an endnote.”

The note was added in press to acknowledge this most recent development. However, as the endnote said, the resolution does not authorize the use of military force to ensure compliance, and it applies only to North Korea. As it turned out, China, South Korea, and Japan declined to interdict North Korean vessels or aircraft at sea despite strenuous U.S. pressure to do so—either under UNSCR 1695 or the PSI. Their refusal to do so underscored the ineffectiveness of the PSI. Its effectiveness can only be enhanced if it and high seas interdiction are endorsed by the UNSC as advocated by a measure passed in March 2007 by the House of Representatives. Only then will PSI seizures of WMD at sea become an accepted international norm.