Establishing a Global Quarantine Against Weapons of Mass Destruction

BY DEREK D. SMITH

Faced with mounting threats to international security in 1937, U.S. President Franklin Delano Roosevelt gave his famous “Quarantine Speech” in which he likened the rise of fascism to an epidemic. “When an epidemic of physical disease starts to spread,” Roosevelt remarked, “the community approves and joins in a quarantine of the patients in order to protect the health of the community against the spread of the disease.” 1 Fearful of becoming embroiled in another world war, the United States was slow to shed its isolationism, only gradually increasing the provision of arms to its allies and restricting exports to the Axis powers. When war finally came at Pearl Harbor, Nazi and Japanese forces had expanded like a cancer throughout Europe and Asia, requiring far more than a quarantine to eliminate the malignancy.

Today the proliferation of weapons of mass destruction (WMD) represents another danger that threatens to develop into an epidemic. With the Indian and Pakistani nuclear tests in 1998, the clandestine nuclear progress of North Korea and Iran, and over a dozen nuclear-capable states waiting in the wings, the world has arrived at a “nuclear tipping point” at which a few decisions to produce WMD could spark a cascade of proliferation. 2 Such an outcome could have some stabilizing effects via nuclear deterrence, but it would also create an expanding supply of material for catastrophic terrorism and raise the stakes between adversaries when conflicts do occur. Since convincing states to give up WMD once they acquire them is an uncertain prospect, the United States and the international community should lay the foundation

Derek D. Smith is a Clerk on the Court of Appeals for the District of Columbia Circuit and a graduate of Yale Law School. This article is adapted from a chapter in his recent book, Deterring America: Rogue States and the Proliferation of Weapons of Mass Destruction.
for a global quarantine against WMD, prohibiting all forms of transfer. This article will explain why a global quarantine is legitimate under international law—a set of rules derived from the consistent practice of states based on a sense of legal obligation—and how it can be established in an effective and multilateral manner.

**Interdiction, International Law, and Self-Defense**

Recognizing the limitations of traditional responses to WMD proliferation, such as export controls, deterrence, defenses, and preemption, U.S. President George W. Bush announced in May 2003 the Proliferation Security Initiative (PSI), a multinational effort to equip states to prevent the transfer of WMD. The PSI’s founding participants issued a “Statement of Interdiction Principles” identifying specific areas of cooperation, particularly in sharing intelligence information and providing mutual consent in interdiction missions. Already the PSI has had some notable successes. For example, the September 2003 interception of a freighter bound for Libya carrying parts for centrifuges used in uranium enrichment may have been responsible for Libyan leader Muammar Al-Qadhafi’s decision to accept inspections and disarm.

The PSI is meant to “be consistent with existing national legal authorities and international law and frameworks.” Generally, while a state has complete jurisdiction over its airspace, territory, and internal waters, its authority diminishes in relation to the distance from its coastline. Under the principle of exclusive flag state jurisdiction, vessels on the high seas “are subject to no authority except that of the State whose flag they fly.” Article 110 of the UN Convention on the Law of the Sea (UNCLOS) lists the primary exceptions to this rule: when reasonable grounds exist for suspecting that it is engaging in piracy, slave trading, unauthorized broadcasting, is without nationality, is flying a false flag, or lacks a flag, warships have the right to board and search a vessel. International law thus bars any state from interdicting suspected WMD traffickers on the high seas without the consent of the ship’s flag state.

The potential consequences of this restriction were brought into sharp relief in December 2002, when Spanish special forces acting on a tip from the U.S. boarded the unflagged North Korean freighter So San and uncovered...
a cache of Scud missiles hidden beneath sacks of cement.\textsuperscript{11} Yemeni officials claimed ownership shortly thereafter, declaring that they had purchased the missiles for defensive purposes. Since international law does not bar such a sale, the United States and Spain allowed the So San to proceed, accepting an agreement from the Yemeni president not to make further purchases. This incident was disturbing not because of its specific circumstances, but because it highlighted the limited legal authority for similar operations in the future.\textsuperscript{12} If the So San had been flying a North Korean flag and had refused permission to board (PTB), international law would prohibit interdiction, even if it were carrying WMD.

Making the best of its limited legal authority, the PSI focuses on streamlining the process for acquiring PTB from flag states, thereby satisfying the conditions of UNCLOS. Besides the provisions addressing mutual consent in the PSI’s “Statement of Interdiction Principles,” the United States has signed six ship-boarding agreements including some of the world’s major shipping registry states, establishing bilateral procedures for boarding vessels suspected of carrying WMD or related materials.\textsuperscript{13} Modeled after counternarcotics arrangements, these agreements limit the number of flag states a proliferating state can rely upon to transport illicit materials under the protection of UNCLOS. Despite this initial progress, securing PTB from the remaining key shipping registry states could prove difficult. Many states that offer “flags of convenience,” which allow registration with little regulation or oversight, depend on the earnings from such transactions and may be reluctant to grant consent.\textsuperscript{14} Unless the United States can reach ship-boarding agreements with virtually all states, WMD traffickers will remain nearly immune from interdiction. Moreover, even if universal participation were possible, the most likely proliferators, such as Pakistan, Iran, and North Korea, could always transport WMD shipments under their own flag, thus guaranteeing the safety of their vessels.

A gap therefore exists between the stated objectives of the PSI and its legal authority to achieve them. But the threat posed by WMD is simply too great to allow a pocket of immunity under UNCLOS to prevent all interdiction efforts without consent, regardless of the magnitude of the threat. The notion that some states should profit from lending the use of their flag as a shield against inspection is likewise untenable in an age of WMD. Instead, an all-inclusive global norm against WMD proliferation should hold responsible any state that transfers WMD regardless of nationality, thereby establishing a global quarantine.\textsuperscript{15} Since the UNCLOS provisions will not support a robust interdiction regime, the key issue is how to establish a legal foundation for a global quarantine against WMD.
Some scholars argue that the specter of terrorists gaining access to WMD necessitates a re-conceptualization of Article 51 of the UN Charter, the main provision concerning self-defense. Along these lines, the 2002 U.S. National Security Strategy aims to redefine the notion of imminent threat, reserving what it describes as an option to take preemptive actions against threats to national security. Others believe that Article 51 should remain unaltered. For instance, the UN High-level Panel on Threats, Challenges and Change, a blue ribbon commission convened by Secretary-General Kofi Annan to analyze emerging security concerns, states unequivocally in its December 2004 report that Article 51 “needs neither extension nor restriction of its long-understood scope.” According to the panel, the “risk to the global order and the norm of non-intervention” is simply too great to allow unilateral preventive action when the alternative of collectively endorsed action exists.

In historical perspective, the drafters of the UN Charter faced a very different security environment, centered on the threat of land invasion and aerial bombardment. The terminology of Article 51 was thus enmeshed in an international context with a very conspicuous and unambiguous notion of what qualified as an armed attack. Today, the prime danger to the United States is not an army charging across the border, but an individual stepping off a plane with a suitcase of plutonium. There would likely be little warning and limited ability to defend against the threat posed from those whom columnist Thomas Friedman describes as “people of mass destruction.”

The UN Charter incorporated the “inherent right of individual or collective self-defense” in Article 51, acknowledging that there may be circumstances under which a state cannot wait for the United Nations to act before defending itself. Preemptive defensive action is limited in turn by the principle of state sovereignty, which posits that a state should remain free from interference in its domestic affairs if it has not violated the rights of another state. However, the appropriate degree of deference to sovereignty remains unclear since the UN Charter’s parallel mandate in Article 2(4) requires that all member states shall refrain from the threat of force “against the territorial integrity or political independence of any state.” Certainly sovereignty should not act as a shield protecting a state from foreign intervention up until the point it attacks another state, regardless of its other actions. Indeed, scholars increasingly define sovereignty as a source of responsibility as much as a claim of immunity. Under this conception, states may lose their sovereign status if they fail to protect their citizens or become a menace to the international community by trafficking WMD. A correlated duty of other states may be to forcibly prevent such nations from carrying out genocide against their citizens or selling WMD.
WMD in the hands of brutal and aggressive regimes pose an inherent threat to world peace, creating a tension with Article 2(4). The question is, at what point do states have the legal authority to respond in self-defense? On its face, Article 51 allows self-defense only in response to an armed attack. The main rationale for a plain reading of Article 51 is to eschew the unavoidable elasticity of self-interested interpretations of what constitutes a threat to a state’s security. As Michael Glennon puts it, “What is self-defense to one state is aggression, armed reprisal, armed attack, intervention, or forcible counter-measures to another.”

States with axes to grind may set the threshold of danger artificially low, instigating wars that might have been avoided through diplomacy, containment, or other means. Requiring the actual employment of force establishes a theoretically unambiguous bright-line rule. However, such a restrictive notion of self-defense has become increasingly difficult to sustain. One scholar contends that “the destructive nature of [WMD] requires that the point of unacceptable danger move further in time from the actual moment of aggressive use.”

The United States cannot be expected to wait until an attack like September 11 occurs before acting against a terrorist organization like Al-Qaeda. In such circumstances, deterrence is untenable and there is little chance of reaching settlement or providing an adequate defense.

To provide flexibility in Article 51’s bright-line rule, the UN High-level Panel invoked customary international law to identify a state’s right to defend itself against imminent threats. Derived from the principles that former U.S. secretary of state Daniel Webster articulated in the famous Caroline case, states may respond with proportionate force to a threat that leaves no choice of means and not a “moment for deliberation.” However, the standard of imminent threat may be an inadequate response to WMD proliferation given the difficulty of considering the many real-world scenarios that would satisfy the Caroline criteria. Terrorists, especially those intending to use WMD, are unlikely to give any warning of an imminent attack, preferring to keep their preparations as secret as possible.

The High-level Panel acknowledged that “the problem arises where the threat in question is not imminent but still claimed to be real....” In such cases, the panel urged not the abandonment of Article 51, but recourse to Article 39 of the UN Charter. Since Article 39 empowers the U.N. Security Council to recommend military measures in response to “any threat to the peace, breach
of the peace, or act of aggression,” a state that cannot legally pursue independent action under Article 51 can always turn to the Security Council for authorization, even for a preventive military operation. However, the potential for council stalemate or a veto during an authorization vote remains, as illustrated by the wrangling at the Security Council prior to the 2003 U.S. invasion of Iraq. According to the panel, if the Security Council elects to withhold its consent for a preventive action, “there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment—and to visit again the military option.” This reasoning might apply when considering whether to attack and disarm a state gradually developing a WMD arsenal. In that situation there might be time to make a subsequent request to the Security Council; with interdiction missions there may be no second chance.

Article 39 alone is insufficient to deal with the limited time available for interdiction. Rather than risk delay and dissension at the Security Council, the United States may act on its own or with other PSI participants, claiming a rationale of self-defense. To prevent this outcome, the United Nations should provide an avenue for multilateral interdiction efforts, adopting a bright-line rule against the transfer of WMD. Such a reform accords with the UN Charter because the proliferation of WMD is a form of aggression against world order that merits a limited form of protection. When a state elects not merely to build but to transfer WMD, placing other states in danger, it sacrifices the sovereignty its ships and planes would traditionally enjoy in international waters and airspace. To be sure, the potential for an abuse of interdiction power will remain, even when carried out multilaterally. Establishing a global quarantine will not eliminate the problems of proof surrounding authorization of interdiction operations in practice, but it is a step in the right direction.

**Building Blocks of a Global Quarantine**

An effective global quarantine system will require an integrated framework of initiatives, supplying both the legal foundation to establish a global norm against WMD proliferation and the needed capabilities to carry out interdiction missions. Numerous combinations of means exist to achieve this end, but this section will focus on the most promising: the International Maritime Organization (IMO) can strengthen and extend its general provisions forbidding the transfer of WMD; the UN Security Council can broaden its mandate against WMD proliferation to include all forms of transfers; and the PSI can enforce this system, acquiring UN mandates as needed. These three proposals are not mutually exclusive since the PSI can always act independently, but ideally they would operate complementarily.
The London-based International Maritime Organization, established in 1948 to promote maritime safety, has adopted some forty conventions and protocols since its inception.\(^{33}\) At a December 2002 Conference on Maritime Security, IMO members approved a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS), establishing a comprehensive new security regime for international shipping that entered into force July 2004. The centerpiece of these changes is the International Ship and Port Security Code (ISPS Code), requiring all vessels and port facilities to develop security plans in order to reduce their vulnerability to terrorism.\(^{34}\) Initial reports indicate that by August 2004 nearly 90 percent of the over nine thousand declared port facilities had approved security plans.\(^{35}\) The ISPS Code also requires a number of tracking, monitoring, and security alert systems that should be useful in WMD interdiction missions.\(^{36}\)

Perhaps more relevant to a quarantine regime is the IMO’s 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA). The SUA was drafted originally to ensure the extradition and prosecution of persons who attacked or attempted to seize ships at sea, but the IMO’s Legal Committee began reviewing the scope of the SUA Convention following September 11. The committee considered amendments that would broaden the range of covered offenses to include acts of terrorism and introduce provisions for boarding vessels suspected of being involved in terrorist activities.\(^{37}\) Specifically, the United States proposed boarding provisions similar to those in its agreements with Liberia, Panama, the Marshall Islands, Croatia, Cyprus, and Belize that would streamline the process of gaining PTB from other flag states. At its October 2002 meeting, the Legal Committee also discussed seven proposed criminal offenses, two of which concerned the use of a ship to transport WMD.\(^{38}\)

Initially, the Legal Committee’s response to the U.S. proposals was mixed. At a meeting in April 2004, the committee “[r]ecognized that the inclusion of boarding provisions implied a substantial inroad into the fundamental principles of freedom of navigation on the high seas and the exclusive jurisdiction of flag states over their vessels.”\(^{39}\) Finally in October 2005, the Diplomatic Conference on the Revision of the SUA Treaties adopted the proposed amendments, incorporating protocols that forbid the transport of WMD on any ship and outline basic boarding provisions that require flag state consent.\(^{40}\) Although a remarkable step forward, the 2005 protocols continue to honor exclusive flag state jurisdiction and fail to curb the abuse of flag state privileges. The protocols maintain a loophole for proliferators who can secure a promise to deny PTB from their flag state
A global WMD quarantine. Regardless, IMO members should ratify the new SUA protocols as soon as possible since these international statements will form the normative substructure for building a global quarantine regime.

Meanwhile, in April 2004, the Security Council unanimously passed Resolution 1540, its strongest proclamation against the proliferation of WMD. Resolution 1540 represents a step forward because “it makes strong national controls and enforcement a requirement rather than an option.” Acting under Chapter VII of the UN Charter, Resolution 1540 mandates that “all States shall refrain from providing any form of support to nonstate actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.” It also requires all states to “adopt and enforce appropriate effective laws” to prevent assisting nonstate actors and to “establish domestic controls to prevent the proliferation of [WMD].” At the very least, the resolution reaffirms the universal appreciation of the threat posed by WMD, and forces states to examine their own nonproliferation laws and practices. The United States should work with its fellow members of the special Security Council committee convened to monitor the resolution’s implementation to offer model legislation to states that fall short of compliance.

At the same time, Resolution 1540 only addresses part of the WMD threat. The most glaring limitation concerns several portions of the document that apply only to transfers to nonstate actors. Although nonstate actors in fact may represent the most serious WMD threat, this restriction clashes with Resolution 1540’s unqualified opening statement that proliferation of all forms constitutes a threat to international peace and security. Even WMD transfers between states represent proliferation and threaten international security. Resolution 1540 is also very conservative in its enforcement procedures, merely calling upon all states, “in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in [WMD].” As current international law does not allow for any form of nonconsensual interdiction on the high seas, this provision may minimally restrain WMD suppliers and flag-state traffickers. Although the Security Council could authorize a one-time interdiction mission under Article 39 and 42 of the UN Charter, states will remain reluctant to bring an interdiction request if the legal and institutional framework is not in place to support it. This will invite stalemate in the Council. A follow-on resolution could expand the scope of Resolution 1540 to apply to all transfers of WMD, regardless of the status of the proliferation recipient. It could explicitly declare that no transportation method in the pursuit of WMD transfer will receive sovereign protection.
Moreover, the Security Council should either take a leading role in institutionalizing interdiction operations, or loosely coordinate with the PSI, which can carry out its own missions. The former is preferable as it ensures the Security Council’s continued relevance in nonproliferation matters. The Security Council could institutionalize Resolution 1540’s implementation committee and establish an “interdiction committee” empowered to decide cases on short notice. In effect, the committee could expedite interdiction requests, review the supporting intelligence—which is often of a fleeting nature—and make a rapid recommendation. Of course, even if the interdiction committee met in secret, many states would be reluctant to divulge sensitive intelligence in a multinational setting. In such an event, if a state pursued an interdiction mission outside the auspices of the Security Council, perhaps through the PSI, the committee could review the results of the interdiction, declaring an appropriate level of compensation if the search turns up empty-handed. Such a regime has precedent in UNCLOS, which in Article 110(3) requires compensation “for any loss or damage that may have been sustained” if a ship is boarded based on an exception to flag-state exclusivity and the suspicions prove unfounded. Setting monetary compensation for a violation of sovereignty is surely not a simple task, but the alternative—not allowing searches despite reasonable suspicion—is untenable.

An integrative approach requiring Security Council authorization for all interdiction missions would be ideal, particularly given multilateral cooperation in other WMD-related tasks such as seizure of assets and access to air space and foreign bases. Especially if the Security Council integrates the SUA Convention amendments into an expanded version of Resolution 1540, partnerships like PSI would enjoy new legal authorities to act as opposed to the current limitations imposed by UNCLOS. Although PSI’s gradual accumulation of bilateral boarding agreements may at some point form the basis for a universal right of interdiction based on customary law, this will remain unlikely for the foreseeable future.

Realistically, the United States may have to “go it alone” in the event that the Security Council does not authorize an interdiction mission that U.S. leaders believe is vital to its national security. Even the UN High-level Panel acknowledged that the Security Council “may well need to be prepared to
be much more proactive on [threats to international peace and security,] taking more decisive action earlier, than it has been in the past.”

In such an event, the United States may need to explore alternative avenues to support its action. It may turn to regional organizations, perhaps built upon the PSI framework, and invoke Article 52(1) of the UN Charter: “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action....”

During the Cuban Missile Crisis of 1962, for example, the United States legitimized its maritime quarantine based on the provisions of the Rio Treaty of the Organization of American States, which sanctioned assistance to meet threats of aggression in the region. Although some legal scholars were deeply critical of this justification, a similar strategy could serve to impose an inspection zone in a troubled region, perhaps if intelligence indicated that North Korea was engaging in widespread sales of WMD materials.

If regional cooperation is not forthcoming, the United States could either assert a revised conception of self-defense or ultimately rely on “exceptional illegality,” wherein a state simply chooses to violate the law rather than seek to modify it. Considering the politically sensitive nature of interdiction operations and the need for international cooperation in such missions, the United States should maximize the possibility that it could act through the PSI or the Security Council. A sensible starting point would be to ensure that all interdiction decisions are based upon sound criteria. Numerous authors have put forward factors for consideration, but the High-level Panel has produced the most relevant list in this context. It includes multiple factors: the seriousness of the threat; the legitimacy of the purpose behind using military force; whether the action is a last resort; whether the means are proportional to the threat; and whether there is a reasonable chance of success. Overall, these criteria should serve as guiding principles for any actor or institution considering interdiction, be it the United States, the PSI, or the Security Council interdiction committee.

Defeating the WMD Cancer

Even before FDR applied the term to international affairs, states had used quarantines to protect themselves from threats on the high seas, requiring the temporary detention of incoming ships and sailors to ensure that they did not pass on the plague or other infectious diseases. Today, because the volume of international trade and travel render a localized system of quarantine impractical, the quarantine must take on a global character, aiming to prevent the spread of WMD altogether. Some observers may contend that
this proposal has only a modest chance of gaining widespread approval, and that the SUA Protocols and Resolution 1540 could represent the furthest the IMO and the Security Council are willing to go in countering proliferation. However, the likeliest alternative appears to be increasing reliance on the PSI since the threat posed by WMD will not go away. The prospect of a more robust role for the PSI may be disconcerting to much of the world given the predominant position of the United States. Many people fear granting the United States greater latitude in confronting proliferation and terrorism than it already possesses, especially in light of its failure to find WMD in Iraq. However, the best way to maintain the relevance of international institutions such as the Security Council is to frame them so that the United States and others have an incentive to use them. If the United Nations cannot expedite interdiction claims through a special committee, there is little chance that PSI nations will turn to it for authorization.

Other critics may object that these proposals do not go far enough. Since interdiction relies heavily on intelligence capabilities and good fortune, some might conclude that forcible disarmament is the only reliable solution. Especially if a series of WMD terrorist attacks were to occur, victimized states might believe they had no choice but to eliminate all WMD stockpiles beyond those of their allies. Given the incredible risk and likely damage that would result from such a course, a global quarantine offers the best matching of ends and means. To avoid leaving interdiction to the United States alone, and to forestall more drastic disarmament measures, the world community should come together to draw a clear line in the sand, on the water, and in the air forbidding all forms of WMD transfer.

NOTES

1 For the text and audio of FDR’s speech, see http://history.sandiego.edu/gen/text/us/fdr1937.html.
3 With regard to compelling states like Iran and North Korea to forego WMD, reaching a negotiated settlement with states along the lines of the December 2003 agreement with Libya would clearly be the most desirable outcome, but appears unlikely given the fairly advanced state of their WMD programs. Inspiration to apply the quarantine concept to this topic is drawn partly from Ruth Wedgwood, “A Pirate is a Pirate,” Wall Street Journal, 16 December 2002, A12. Although conceptually the principles behind a global quarantine apply equally to interdiction on land, sea, and air, this article focuses primarily on maritime interdiction.

10 UNCLOS, art. 110(1).


12 The boarding itself was legal because the ship was flagless.

13 The United States has signed agreements with Liberia (11 February 2004), Panama (12 May 2004), the Marshall Islands (13 August 2004), Croatia (1 June 2005), Cyprus (25 July 2005), and Belize (4 August 2005). Each of these agreements enables a party to request that the other confirm the nationality of the ship in question and, if needed, authorize interdiction. For the text of the agreements, see United States Department of State, “Treaties and Agreements, Ship Boarding Agreements.” http://www.state.gov/t/np/c12386.htm.


15 This is not meant to imply that interdiction will suffice as an exclusive or even primary strategy to combat WMD. Interdiction missions require extraordinary intelligence, timing and coordination to be successful. Detecting plutonium is incredibly difficult given its faint radiation emission, and monitoring biological and chemical weapons is even more challenging since their precursor elements are often dual-use in nature. See Nuclear Threat Initiative, “Interdicting Nuclear Smuggling.” http://www.nti.org/e_research/cnwm/interdicting/index.asp. However, given the limitations of existing arms control measures, if states do choose to develop and sell WMD, interdiction may be the last viable line of defense against their use.


19 Ibid., 63.


22 Ibid., art. 2(7).

23 Ibid., art. 2(4).


28 United Nations, *A More Secure World*, 63 (“[A] threatened State, according to long established international law, can take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate.”) (emphasis in original).


32 Ibid., 63.

33 Persbo and Davis, *Sailing into Uncharted Waters*, 70.


37 Ibid., 72.

Derek D. Smith

43 Ibid., para 1.
44 Ibid., para 2, 3.
46 Security Council Resolution 1540, preamble.
47 Security Council Resolution 1540, para 10.
48 As mentioned earlier, the resolution would need to include exceptions for the transfer of nuclear material under the auspices of the International Atomic Energy Agency (involving civilian nuclear power) or the Non Proliferation Treaty (involving the use of nuclear-armed submarines and the like). Alternatively, the Security Council could pass a resolution expanding interdiction authority in dealing with a specific state—a more focused quarantine. There are some indications that the United States is considering pushing for such a resolution vis-à-vis North Korea. See David E. Sanger, “White House May Go to U.N. Over North Korean Shipments,” New York Times, 25 April 2005, A13.
49 See Persbo and Davis, Sailing into Uncharted Waters?, 75-76.
51 Voting in the interdiction committee could perhaps parallel the Security Council itself, with veto-holding permanent members and a limited number of additional seats on a rotating basis.
52 UNCLOS, art. 110(3).
54 See Byers, “Policing the High Seas,” 532-540.
56 UN Charter, art. 52(1).
59 See Byers, “Policing the High Seas,” 543.
61 See United Nations, A More Secure World, 67:“(a) Seriousness of threat: Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? (b) Proper purpose: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes may be involved? (c) Last resort: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed? (d) Proportional means: Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question? (e) Balance of consequences: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences on inaction?”