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### The EU's Evolving Response to Nuclear Proliferation Crises: from Incentives to Sanctions

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# THE EU'S EVOLVING RESPONSES TO NUCLEAR PROLIFERATION CRISES: FROM INCENTIVES TO SANCTIONS

CLARA PORTELA\*

## I. INTRODUCTION

The European Union (EU) often prides itself on the comprehensiveness of its foreign policy toolbox. The ability to combine different instruments to tackle issues in a comprehensive approach is considered a 'trademark' of EU foreign policy.<sup>1</sup> In the field of non-proliferation, the gradual improvement of coordination in its respective forums has been celebrated as encouraging evidence of progress in the development of the Common Foreign and Security Policy (CFSP).<sup>2</sup> On the other hand, the EU has long been regarded as ineffective at addressing proliferation crises. A 2003 evaluation of its early practice concluded that the EU had failed to respond to proliferation crises in a timely and coordinated fashion: 'in the absence of a pre-agreed agenda, [the EU] lacks the capability for spontaneous action. When responses to proliferation crises have been framed, they tended to be slow and weak'.<sup>3</sup> Since then, the EU has adopted its first Strategy against the Proliferation of Weapons of Mass Destruction (WMD strategy), published in conjunction with the European Security Strategy (ESS) in December 2003. More than 11 years after the publication of these programmatic documents: has the EU made any headway in the mobilization of its policy tools to tackle nuclear proliferation crises? The

\* The author thanks Dr Martin Senn, Lina Grip and an anonymous reviewer for their useful comments on an earlier version of this paper.

<sup>1</sup> Smith, M. E., 'A liberal grand strategy in a realist world? Power, purpose and the EU's changing global role', *Journal of European Public Policy*, vol. 18, no. 2 (2011), p.148.

<sup>2</sup> Müller, H. and Van Dassen, L., 'From cacophony to joint action: successes and shortcomings of European nuclear non-proliferation policy', ed. M. Holland, *Common Foreign and Security Policy: The Record and Reforms* (Pinter: London, 1997).

<sup>3</sup> Portela, C., *The Role of the EU in the Non-Proliferation of Nuclear Weapons*, Peace Research Institute in Frankfurt (PRIF) Report no. 65 (PRIF: Frankfurt/Main, 2003), p.19.

## SUMMARY

The European Union (EU) has evolved a role in the management of crises provoked by states perceived to be in breach of the nuclear non-proliferation regime. At the outset of these non-proliferation efforts, the EU was criticized for the timidity of its reactions. More than 11 years after the adoption in 2003 of its Strategy against the Proliferation of Weapons of Mass Destruction, has the EU managed to improve its performance in responding to nuclear proliferation crises? This policy brief examines how the EU has used the tools in its foreign policy toolbox to address nuclear proliferation crises and discovers that a steady evolution has taken place. The analysis shows that the EU has evolved from a marginal into a key actor over the course of different crises and that it has called upon a variety of tools in a range of crisis situations, from Ukraine to India and Pakistan, Iraq, North Korea and Iran. This policy brief specifically explores the nature of the instruments selected by the EU in the face of each of the challenges to the non-proliferation regime. It discusses the key factors accounting for the activation of the EU's foreign policy toolbox following the adoption of its 2003 strategy, highlighting pressure by the United States and the legitimization of a United Nations Security Council mandate as determinants.

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use of the EU's toolbox to advance non-proliferation objectives serves as a trustworthy indicator of the evolution of the EU's commitment to this goal, as well as of its internal coherence. The more united the EU was in its condemnation of proliferation attempts by third countries, the more resources it mobilized to mitigate, defuse or resolve crises.

The present paper examines the evolution of the mobilization of instruments by the EU in response to proliferation crises, defined as situations where a state undertakes actions that are regarded by others as contravening the non-proliferation regime. To do so, it briefly outlines the establishment and consolidation of the non-proliferation of nuclear weapons as an objective of European foreign policy, and reviews the application of policy instruments in each of the proliferation crises that have erupted since the early 1990s: in Ukraine, India and Pakistan, Iraq, the Democratic People's Republic of Korea (DPRK, North Korea) and Iran.<sup>4</sup> Attention is devoted not only to the articulation of a common response and the choice of instruments employed, but also to the factors that contributed to the framing of such a response. A third section assesses this evolution over time, discussing those factors which account for the activation of the EU in this area such as the role played by the United States. The paper concludes with an assessment of the relevance of the WMD strategy and some reflections on the evolving role of the EU in this area.

## II. SETTING UP A STRATEGY

Prior to the adoption of the WMD strategy, the EU had taken some steps to combat the spread of nuclear weapons, most notably through diplomatic measures geared towards the universalization of relevant international treaties, transparency in export controls and the promotion of some regional initiatives. However, these dispersed efforts had little visibility and were not presented as being part of any coordinated strategy.

The European Council's adoption of the WMD strategy and the ESS simultaneously in December 2003 signalled that the EU was aiming to bolster its role in matters of international security. In implementing the mandate to 'preserve peace and strengthen

international security' spelled out in the 1992 Treaty on European Union (Maastricht Treaty), the ESS and the WMD strategy anchored non-proliferation firmly among the objectives of the EU.<sup>5</sup> The ESS identifies proliferation as 'potentially the greatest threat to our security', while the WMD strategy claims that the 'proliferation of weapons of mass destruction and their means of delivery . . . are a growing threat to international peace and security' and that meeting the proliferation challenge 'must be a central element in the EU's external action'.<sup>6</sup> The strategy devotes special attention to coordination with external partners, singling out the USA among them. Significantly, the WMD strategy heralded the routine insertion of non-proliferation clauses into future bilateral agreements.<sup>7</sup> The ESS lists a number of policies that the EU has traditionally employed in its external relations, such as assistance programmes, conditionality and targeted trade measures.<sup>8</sup> It states the desirability of third countries currently not prepared to cooperate rejoining the international community, and that the EU 'should be ready to provide assistance'. However: 'Those who are unwilling to do so should understand that there is a price to be paid, including in their relationship with the European Union'.<sup>9</sup> In the same vein, the WMD strategy claims that 'the EU must make use of all its instruments to prevent, deter, halt and, where possible, eliminate proliferation programmes that cause concern at global level'.<sup>10</sup> Specifically, it sets out a sequence for the use of its tools in which preventive measures take precedence over coercive instruments:

Political and diplomatic preventative measures (multilateral treaties and export control regimes) and resort to the competent international organizations form the first line of defence against proliferation. When these measures (including political dialogue and diplomatic pressure) have failed, coercive measures under

<sup>5</sup> Treaty on European Union (Treaty of Maastricht), opened for signature 7 Feb. 1992, entered into force 1 Nov. 1993, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>>.

<sup>6</sup> European Council, 'A secure Europe in a better world: European Security Strategy', Brussels, 12 Dec. 2003, <<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>, p. 3. Council of the European Union, EU Strategy against the proliferation of weapons of mass destruction, 157808/3 (ANNEX), Brussels, 10 Dec. 2003.

<sup>7</sup> Council of the European Union 157808/3 (ANNEX) (note 6), p. 5.

<sup>8</sup> European Council (note 6), p.10

<sup>9</sup> European Council (note 6), p.10

<sup>10</sup> European Council (note 6), p. 8.

<sup>4</sup> The handling of the WMD disarmament of Libya in the 1990s is excluded because it was negotiated by the USA and the UK within the framework of a settlement over the terrorist destruction of Pan Am Flight 103 over Lockerbie, Scotland, in December 1988.

Chapter VII of the UN Charter and international law (sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force) could be envisioned.<sup>11</sup>

The use of sanctions to advance non-proliferation goals is reflected in the EU's programmatic document on the employment of sanctions, *Basic Principles for the Use of Restrictive Measures*, published a few months after the ESS. It stipulates that 'the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction'.<sup>12</sup>

The adoption of the WMD strategy boosted EU activity considerably. The strategy resulted from the 'shock' produced by the US and British intervention in Iraq to reverse a purported case of WMD proliferation. The decline in US leadership on arms control in favour of counterproliferation compelled the EU to become a more active supporter of the multilateral regime. The decision by the USA to intervene militarily in Iraq seriously damaged both transatlantic relations and the CFSP, and the framing of a strategy to respond to WMD proliferation was intended to re-establish consensus. Shortly after the adoption of the strategy, awareness of nuclear proliferation issues increased dramatically in EU circles, as evidenced by the allocation of about 25 per cent of the CFSP budget to non-proliferation activities.<sup>13</sup>

The EU's activism on non-proliferation matters took place in parallel with an upgrade of the role of the United Nations Security Council in this area, making the increased salience of non-proliferation a wider international phenomenon. The first UN sanctions regime against WMD proliferation was imposed on Iraq after its forced withdrawal from Kuwait in 1991. In 2006, the UN imposed sanctions on both North Korea and Iran for the first time. Despite its relative novelty, non-proliferation firmly anchored itself on the Security Council agenda: in the three-year period 2006–2009 the only new sanctions regimes agreed by the Security Council were those intended to advance non-proliferation or anti-terrorism goals.<sup>14</sup>

### III. RESPONDING TO NUCLEAR PROLIFERATION CRISES

The activation of the EU as a non-proliferation actor started once France had acceded to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) in 1992, which coincided with the creation of the CFSP.<sup>15</sup> The emphasis of EU action was placed on backing non-proliferation efforts through nuclear-related assistance programmes, in particular the threat reduction efforts in Russia funded by the Technical Assistance to the Commonwealth of Independent States (TACIS) programme. These were designed to help the successor states to the Soviet Union destroy WMD arsenals and establish verifiable safeguards, thereby preventing the diversion of materials for illegal trafficking. In the same period, the EU started to respond, with varying degrees of intensity, to nuclear proliferation crises in which actions by third states were perceived to contravene the non-proliferation regime.

#### **Ukraine: Reluctant relinquishment of Soviet nuclear weapons**

After the dissolution of the Soviet Union, it became a Western priority to ensure that none of the successor states that hosted its nuclear weapons—Belarus, Kazakhstan and Ukraine—took possession of them and emerged as new nuclear powers. To this end, Russia and the USA signed a Protocol to the Strategic Arms Reduction Treaty (START-I) in Lisbon in 1992. The first proliferation crisis to erupt in the post-cold war period took place when the parliament in Kyiv refused to ratify the Lisbon Protocol, which provided for the repatriation to Russia of the nuclear weapons deployed in Soviet times on the territory of Ukraine, as well as the latter's accession to the NPT as a non-nuclear weapon state. The Ukrainian executive branch and military sought to obtain a veto on the use of these weapons, while nationalists in the parliament portrayed their retention as essential to preserving the country's independence.<sup>16</sup> In the event, Ukraine was

<sup>11</sup> European Council (note 6), p. 5.

<sup>12</sup> Council of the European Union, 'Basic principles for the use of restrictive measures (sanctions)', 10198/1/04 REV 1, 7 June 2004.

<sup>13</sup> Tertrais, B., 'The European Union and nuclear non-proliferation: does soft power work?', *International Spectator*, vol. 40, no. 3 (2005).

<sup>14</sup> Eckert, S., 'United Nations non-proliferation sanctions', *International Journal*, vol. 65, no. 1 (2009).

<sup>15</sup> Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), opened for signature 1 July 1968, entered into force 5 Mar. 1970, INFCIRC/140, 22 Apr. 1970, <<https://www.iaea.org/publications/documents/treaties>>.

<sup>16</sup> Foran, V. and Spector, L., 'The application of incentives to nuclear proliferation', ed. D. Cortright, *The Price of Peace: Incentives and International Conflict Prevention* (Rowman & Littlefield: Lanham, 1997), p. 39.

persuaded to ratify the protocol thanks to negative security assurances provided jointly by Russia, the United Kingdom and the USA as the NPT depository states, alongside direct financial contributions offered by the USA.<sup>17</sup> In exchange for Kyiv's accession to the NPT, the Budapest Memorandum was signed in 1994. Under this agreement, Russia, the UK and the USA committed 'to respect the independence, sovereignty and existing borders of Ukraine' and provide assistance to Ukraine if it 'became a victim of an act of aggression in which nuclear weapons are used'.<sup>18</sup> For its part, the EU contemplated making Kyiv's renunciation of nuclear weapons a precondition for the negotiation and signature of a Partnership and Cooperation Agreement (PCA). Eventually, this proposal was abandoned in favour of deferring the implementation of the agreement until Ukraine acceded to the NPT.

#### *The EU response: A unified ancillary role*

Against the background of Ukraine's dire economic situation, the country's elites recognized that its survival depended on Western economic assistance. The government in Kyiv was successful in obtaining benefits in the form of security assurances and direct payments in exchange for relinquishing its nuclear weapons. The EU was united in its response. Given that the repatriation of the nuclear weapons to Russia was part of the post-cold war settlement, the EU did not emerge as an actor in the preparation of the Budapest Memorandum. While the ratification of the PCA by the EU was not the principal incentive offered to Ukraine in return for signing the Lisbon Protocol, the EU's contribution complemented US efforts.<sup>19</sup> The link between compliance with non-proliferation obligations and the provision of EU assistance can be regarded as a precursor of the WMD clause, which was launched 10 years later and has been routinely inserted into EU bilateral agreements since.<sup>20</sup> The commitments

under the Budapest Memorandum ultimately failed to prevent Russia's annexation of Crimea in 2014. This has important—if seldom debated—implications for arms control and non-proliferation. Russia's annexation of Crimea and support for separatist elements in eastern Ukraine has diminished the already meagre prospects of restricting the role of tactical nuclear weapons in Europe, and has put in doubt the credibility of negative security guarantees given to states that renounce nuclear weapons.<sup>21</sup>

#### **India and Pakistan: Testing nuclear weapons and the non-proliferation consensus**

The nuclear tests conducted by India and Pakistan in May 1998 constituted one of the most prominent challenges to the non-proliferation regime. While the USA imposed sanctions in response to the tests, these measures were gradually lifted soon after. Only four months after their imposition, the US Congress authorized the president to lift sanctions provided both countries complied with certain arms control demands.<sup>22</sup> Although the international community was united in its condemnation of the tests, the responses by individual EU member states differed in intensity and were not coordinated. The European Parliament adopted a resolution urging India and Pakistan to refrain from any further tests and to adhere to the NPT and the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT).<sup>23</sup> Certain EU member states, such as Denmark, Germany and Sweden, froze their development aid, while others limited their responses to condemnatory declarations. Some EU member states did not react at all: NPT latecomers such as France and Spain maintained that India and Pakistan had not breached any norm, given that they were not NPT signatories.<sup>24</sup> At the UN Security Council, France expressed its opposition to unilateral sanctions, arguing that

<sup>17</sup> Müller, H., 'European nuclear non-proliferation after the NPT extension: achievements, shortcomings and needs', eds P. Cornish, P. Van Ham and J. Krause, *Europe and the Challenge of Proliferation*, Chaillot Paper no. 24 (Institute for Security Studies of Western European Union: Paris, 1996).

<sup>18</sup> United Nations General Assembly/Security Council, Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-proliferation of Nuclear Weapons, A/49/765, S/1994/1399, 19 Dec. 1994.

<sup>19</sup> Müller (note 17).

<sup>20</sup> For details of the WMD clause see Council of the European Union, 'Fight against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU's wider relations with third countries', 14997/03, 19 Nov. 2003; and Grip, L., 'The European

Union's weapons of mass destruction non-proliferation clause: a ten years assessment', *Non-proliferation Papers*, no. 40 (Apr. 2014).

<sup>21</sup> Meier, O., 'The Ukraine crisis and the control of weapons of mass destruction', *SWP Comments*, no. 30 (June 2014).

<sup>22</sup> Meier, O., 'Involving India and Pakistan: nuclear arms control and non-proliferation after the nuclear tests', *BITS Research Report 99.2* (Berliner Informationszentrum für Transatlantische Sicherheit (BITS): Berlin, 1999).

<sup>23</sup> Comprehensive Nuclear-Test-Ban Treaty (CTBT), opened for signature 24 Sep. 1996, not in force, <<https://treaties.un.org/pages/CTCTreaties.aspx?id=26&subid=A&lang=en>>.

<sup>24</sup> Portela (note 3).

sanctions 'were not the right method for attempting to ensure that India joins . . . the NPT'.<sup>25</sup>

Even so, a common EU response was framed. In addition to declarations inviting both countries to join the NPT and the CTBT, the European Council took some measures outside the CFSP framework. In the aftermath of India's tests, the Council instructed the European Commission to reconsider India's eligibility for trade preferences. Following Pakistan's tests, the Commission extended this consideration to Pakistan, temporarily postponing the impending conclusion of a Cooperation Agreement.<sup>26</sup> Six months after the tests, a CFSP Common Position pledged to support the 'efforts of the international community to achieve enhanced confidence-building among India and Pakistan and in the region', including the organization of seminars, forging links with European think tanks, and offering technical assistance on the implementation of export controls.<sup>27</sup>

#### *The EU response: A weak reaction*

The response by the EU—late, uncoordinated and weak—was characterized as a 'slow declaratory policy'.<sup>28</sup> Despite the fact that all the EU member states were parties to the NPT by 1998, their lack of consensus was symptomatic of a still tenuous commitment to the non-proliferation norm. Some members went so far as to temporarily suspend aid, but for others the non-signatories of the NPT had not violated any norm. The laxity of the EU's reaction was also a reflection of the half-heartedness of the US response. By then, it was already shifting towards a pragmatic accommodation of India's nuclear status outside the NPT framework. Like the USA, EU member states were reluctant to antagonize South Asian actors whose importance was bound to increase in the coming decades. As a consequence, trade preferences were not withdrawn. Indeed, this was one of the last instances where such a move was contemplated for reasons unconnected

<sup>25</sup> Vaillant, D., Remarks by French Government spokesperson Daniel Vaillant, 13 May 1998, as quoted in 'France opposes US sanctions on India over tests', Reuters, 13 May 1998.

<sup>26</sup> Portela, C. and Orbie, J., 'Sanctions under the generalized system of preferences "GSP": coherence by accident?', *Contemporary Politics*, vol. 20, no. 1 (2014), p. 70.

<sup>27</sup> Common Position 98/606/CFSP of 26 Oct. 1998 on the European Union's contribution to the promotion of non-proliferation and confidence-building in the South Asian region, *Official Journal of the European Union*, L290, 29 Oct. 1998.

<sup>28</sup> Hassan, O., 'Securitising proliferation, failing security governance: the European Union's role in India and Pakistan's nuclear rivalry', *Asia Europe Journal*, vol. 11, no. 2 (2013).

with labour rights or basic human rights.<sup>29</sup> The CFSP measures adopted six months later consisted of incentives rather than sanctions.

#### **Iraq: The weapons of mass destruction that never existed**

EU member states failed to articulate a unified stance on the US invasion of Iraq in 2003. The military operation in Iraq constituted a proliferation crisis to the extent that it was largely justified by allegations that Iraq possessed a WMD arsenal. EU member states had long been divided over the Iraq question. Following Baghdad's refusal to allow UN inspectors into the country in December 1998, the USA, the UK and France conducted periodic strikes on Iraq despite the absence of a UN Security Council mandate. After France withdrew from the raids, the USA and the UK continued the bombing campaign until the diplomatic crisis escalated in 2002. Although Baghdad eventually allowed UN inspections in a bid to dispel suspicion of an alleged WMD programme, the evidence these produced failed to assuage the concerns in Washington and London. Efforts to frame a common EU approach proved unsuccessful. The European Council repeatedly condemned Iraq for its lack of cooperation. Part of the EU sided with the USA, most notably the UK but also Denmark, Italy, Portugal and Spain, as well as the recently acceded Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Belgium, France and Germany opposed a military intervention.

#### *The EU response: The Common Foreign and Security Policy disaster*

While the EU was deeply and obviously divided over Iraq, this lack of unity did not mean a lack of commitment to the non-proliferation norm, but rather disagreement over the means to address allegations of non-compliance. This concerned the permissibility of the use of force in the absence of a Security Council mandate as well as doubts about the robustness of the evidence of the existence of Iraqi WMD programmes. The US leadership galvanized only some of its allies.<sup>30</sup> Apart from causing a transatlantic rift, the severity of the disagreement over Iraq called into question the

<sup>29</sup> Portela and Orbie (note 26).

<sup>30</sup> Stahl, B., 'Incoherent securitization: The EU in the Iraq crisis', *Hamburg Journal of Social Sciences*, vol. 3, no. 1 (2008).

CFSP as a political project. At the same time, however, it had the effect of boosting support for a consensual plan on how to address proliferation and how to ensure the security of the EU, which crystallized into the ESS and the WMD strategy shortly afterwards.<sup>31</sup>

### **North Korea: The remote Non-Proliferation Treaty defector**

The management of the proliferation crisis in North Korea that erupted in 1994 was led by the USA, which reached agreement with Pyongyang on the 'US–North Korean Agreed Framework' of 1994. At the centre of US crisis-management efforts was the Korean Energy Development Organization (KEDO), an entity created in 1995 with the task of building two light water reactors (LWRs) in exchange for Pyongyang dismantling its nuclear programme.<sup>32</sup> In 1997, the EU joined the Executive Board of KEDO, on which it was represented by the European Commission by virtue of its European Atomic Energy Community (Euratom) competencies.<sup>33</sup> The EU's financial contribution of \$122 million was the fourth largest after those of the Republic of Korea (South Korea), Japan and the USA.<sup>34</sup> However, the European Parliament was critical of the fact that the EU's involvement in KEDO entailed a significant EU financial contribution without benefiting European industry.<sup>35</sup> Thus, when the treaty between Euratom and KEDO was renewed in 2000, its terms were made more favourable. The first contract had provided for a seat on the Executive Board, staff positions at the KEDO Secretariat in New York, and

access for EU companies to some contracts for the construction of the two LWRs. The new contract in 2001 provided for a new high-level post for an EU citizen at the KEDO Secretariat, improved access to contracts for EU-based companies, exclusion from liability in the event of an accident and a commitment that decision making by the Executive Board would continue to be on the basis of consensus.<sup>36</sup> On the political front, the Swedish Presidency of the EU dispatched a high-level delegation to Pyongyang in 2001 to establish diplomatic relations. The EU also launched a human rights dialogue, and pledged repeatedly to review future cooperation with North Korea in the light of progress on nuclear issues, attempting to use economic relations as an incentive.

Revelations in October 2002 that Pyongyang was developing a clandestine nuclear weapons programme led KEDO's Executive Board to interrupt heavy fuel oil deliveries. The European Parliament froze a €20 million (\$21 million) contribution to KEDO 'until North Korea proved that it was willing to respect the international non-proliferation regime and had discontinued its programme for the production of nuclear weapons'.<sup>37</sup> In the event, the European Commission terminated its technical assistance.

A more adversarial phase ensued following a series of tests conducted by Pyongyang, which, importantly, triggered action by the UN Security Council. Following a test launch of ballistic missiles and nuclear testing in 2006, the UN banned the transfer of aircraft and equipment related to WMD and ballistic missile programmes to North Korea, and imposed a partial arms embargo and a ban on luxury items. Pyongyang's attempt to launch a missile and carry out an underground nuclear detonation led the Security Council to strengthen the sanctions in June 2009. Among other things, states were authorized to inspect cargo travelling to and from North Korea, even on the high seas, and to refuse bunkering services to North Korean vessels if they were suspected of carrying banned items. In response to Pyongyang's satellite launch in December 2012 and its third nuclear test in February 2013, the Security Council extended its list of banned luxury goods and of individuals affected by

<sup>31</sup> Kienzle, B. and Portela, C., 'European Union non-proliferation policies before and after the 2003 strategy: continuity and change', eds S. Blavoukos, D. Bourantonis and C. Portela, *The EU's Performance in the Non-proliferation of Nuclear Weapons* (Palgrave: Houndmills, Basingstoke, 2015).

<sup>32</sup> Council Joint Action 96/195/CFSP of 5 Mar. 1996 on participation of the European Union in the Korean Peninsula Energy Development Organization (KEDO), *Official Journal of the European Union*, L063, 13 Mar. 1996.

<sup>33</sup> Smith, M. E., 'The quest for coherence', eds A. Stone Sweet, W. Sandholtz and N. Fligstein, *The Institutionalisation of Europe* (Oxford University Press: Oxford, 2001).

<sup>34</sup> Yoon, S. and Suh, J., 'Nuclear non-proliferation', eds T. Christiansen, E. Kirchner and P. Murray, *The EU-Asia Handbook* (Palgrave: Houndmills, Basingstoke, 2013).

<sup>35</sup> European Parliament, Proposal for a Council decision approving the conclusion by the Commission of an agreement between the European Atomic Energy Community (Euratom) and the Korean Peninsula Energy Development Organisation (KEDO), Committee on Foreign Affairs, Human rights, Common Security and Defence Policy (Rapporteur: Jas Gawronski), Brussels, 4 Dec. 2001.

<sup>36</sup> Portela, C., 'The European Parliament and the external dimension of EU nuclear non-proliferation policy', eds S. Stavridis and D. Irerra, *The European Parliament and its International Relations* (Routledge: London, 2015).

<sup>37</sup> European Parliament, Resolution on the Korean Peninsula Energy Development Organisation (KEDO), B5-0573/2002, Brussels, 4 Nov. 2002.

asset freezes and travel bans. In addition, cash transfers to North Korea above a certain amount were prohibited and certain financial activities were restricted.<sup>38</sup>

When giving effect to Security Council resolutions, the EU defined the arms embargo on Pyongyang in more stringent terms: it imposed a full arms embargo covering the EU common list of military equipment, instead of the narrow version stipulated in UN Security Council Resolution 1718, and supplementary lists were drawn up of prohibited items, and of persons and entities subject to the assets freeze and travel ban.<sup>39</sup> The inclusion of supplementary unilateral measures when implementing UN resolutions is made possible by the fact that UN measures need to be transposed into EU legislation—CFSP Common Positions before the implementation of the 2007 Lisbon Treaty and Council Decisions since implementation—offering an opportunity to insert additions into the transposing document.<sup>40</sup> The EU agreed further bans, including one on trade in new public bonds from North Korea, a ban on trade in gold, precious metals and diamonds with North Korean public bodies and a ban on the delivery of new North Korean denominated banknotes and coinage to the central bank. There were also bans on the opening of new branches of North Korean banks in the EU, on joint ventures between North Korean and European financial institutions, and on the opening of offices of European banks in North Korea.

#### *The EU response: From carrots to sticks*

Contributing to KEDO was acclaimed as one of the EU's first nuclear non-proliferation actions, and as proof of its commitment to multilateralism.<sup>41</sup> The EU has been consistently united in its responses, which have moved from a strategy of incentives to one of sanctions. This acclaim, however, should be tempered by the fact that the EU was not invited to participate in the six-party talks (the parties to the talks, which began in 2003, were China, Japan North Korea, South Korea, Russia and the USA). Not playing a political role at any stage made disagreements among EU member states less likely.

<sup>38</sup> UN Security Council resolutions 1695, 15 July 2006; 1718, 14 Oct. 2006; 1874, 12 June 2009; and 2087, 22 Jan. 2013. See also Charron, A., *United Nations Sanctions and Conflict* (Routledge: London, 2013).

<sup>39</sup> Taylor, B., *Sanctions as Grand Strategy* (International Institute for Strategic Studies (IISS): London, 2010).

<sup>40</sup> Treaty of Lisbon, signed 13 Dec. 2007, entered into force on 1 Dec. 2009, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12007L/TXT>>.

<sup>41</sup> Tertrais (note 13); and Yoon and Suh (note 34).

The EU's choice of instruments evolved in conjunction with broader international action. From the outset of the crisis, the EU's position has consisted of endorsing US initiatives and complementing them by additional means. The US leadership obtained EU support for its unilateral incentive efforts in the form of KEDO, but it did not manage to convince the EU to impose sanctions on Pyongyang before the UN took action. Prior to the imposition of UN sanctions, the EU had not placed any restrictions on North Korea. Once the Security Council became active, the EU's zealous implementation of sanctions invited comparison with the approaches taken by Australia or Japan rather than with the lax implementation by South Korea, Russia and especially China.<sup>42</sup> Nonetheless, while EU measures currently go beyond UN requirements, they are still some distance from US measures. Most notably, they fall short of proscribing trade and remain more limited than the comprehensive US sanctions.<sup>43</sup> In addition, the EU continues to provide humanitarian and food aid, agricultural support, assistance in the energy sector, and market economy training. Unsurprisingly, on account of the negligible economic exchange between the EU and North Korea, the impact of EU sanctions has hardly been noticed. Only the UN arms embargo and US financial measures are reported to have visibly disrupted North Korean economic activity.

#### **Iran: Approaching the nuclear threshold**

The Iranian nuclear crisis, undoubtedly the most prominent proliferation crisis of recent decades, emerged in September 2003 when the International Atomic Energy Agency (IAEA) confirmed allegations that Tehran was secretly building facilities designed to produce weapons-grade enriched uranium.<sup>44</sup> Before the crisis, US and EU policies on Iran diverged considerably. While the US approach emphasized containment and isolation, the EU followed a policy of 'constructive engagement'. Within this framework, the EU conducted a political dialogue and was negotiating a Trade and Cooperation Agreement (TCA), which

<sup>42</sup> Taylor (note 39).

<sup>43</sup> Vennesson, P. and Portela, C., 'European sanctions and embargoes in Asia', eds T. Christiansen, E. Kirchner and P. Murray, *The EU-Asia Handbook* (Palgrave: Houndmills, Basingstoke, 2013).

<sup>44</sup> International Atomic Energy Agency (IAEA), Board of Governors, 'Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran', GOV/2003/69, 12 Sep. 2003.



was halted on account of the uranium enrichment issue. Prior to the adoption of UN Security Council Resolution 1737 of December 2006, the EU did not have any sanctions in place against Tehran. The EU3—France, Germany and the UK—took the lead in the nuclear crisis owing to the refusal of the administration of US President George W. Bush to entertain direct contacts with Tehran. The talks had a strong EU slant thanks to the inclusion of the EU's High Representative for CFSP, Javier Solana, in the negotiating team in December 2003. Solana was succeeded by Catherine Ashton in 2009. In these negotiations, the EU offered several incentives, such as support for a civilian nuclear programme in Iran, stronger commercial ties, including in the energy and aviation sectors, the completion of the TCA negotiations, and support for Iran's accession to the World Trade Organization.<sup>45</sup> The Paris Agreement of November 2004 represented an early success of EU efforts: Tehran agreed to freeze its enrichment activities and to sign an IAEA Additional Protocol in exchange for the trade and technology incentives offered by the EU.<sup>46</sup> However, implementation of the agreement was frustrated following the election of President Ahmadinejad in 2005, who announced that Iran would start enriching uranium at 20 per cent. The EU3 then encouraged the adoption of a resolution by the IAEA, which eventually referred a file to the UN Security Council. In turn, the Security Council agreed sanctions intended to halt Iran's nuclear enrichment and reprocessing activities in December 2006. Subsequent negotiation rounds continued to be led by Ashton, who was now representing the EU3 and the non-European permanent members of the Security Council (China, Russia and the USA)—a group labelled the 'EU3+3'. The EU sponsored UN Security Council Resolution 1747 of March 2007, which spelled out that sanctions would be suspended if Tehran froze all its enrichment-related and reprocessing activities. In June 2010, the Security Council agreed a new round of sanctions, expanding the arms embargo.<sup>47</sup>

<sup>45</sup> Kienzle, B., 'Between human rights and non-proliferation: norm competition in the EU's Iran policy', *UNISCI Discussion Papers*, no. 30 (Oct. 2012).

<sup>46</sup> International Atomic Energy Agency (IAEA), Communication received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom concerning the agreement signed in Paris on 15 Nov. 2004, INFCIRC/637, 26 Nov. 2004.

<sup>47</sup> UN Security Council Resolution 1929, 9 June 2010; and Charron (note 38).

UN sanctions against Iran supplement the pre-existing US sanctions regime, in force since 1987 and upgraded in 1996. Once Tehran started to enrich uranium to 20 per cent, the EU moved closer to the US approach. Every time the UN Security Council imposed mandatory sanctions, the EU agreed supplementary entries to the UN lists, or adopted more stringent prohibitions than those stipulated in the Security Council resolutions. Having failed to obtain agreement on more far-reaching sanctions at the UN, this step enabled the EU to unilaterally enact measures supported by the Western members of the EU3+3 but not included in the Security Council resolutions due to Chinese or Russian resistance.<sup>48</sup> While the UN sanctions package was composed of a series of measures focused on preventing the transfer of proliferation-sensitive material and knowledge, in addition to an arms embargo, the EU agreed additional measures not directly related to proliferation.<sup>49</sup> These included bans on: the import of oil, petroleum and petrochemical products as well as natural gas; the export to Iran of equipment used for the production of oil and natural gas and in the petrochemical industry; investment in the Iranian oil and gas industries; the provision of insurance and re-insurance to Iranian entities; the supply of key naval equipment for shipbuilding and maintenance; and financial transfers to Iranian banks, exempting those for food, health and humanitarian supplies and personal remittances. Only 78 of the 493 entities featured on EU prohibition lists were designated by the UN.<sup>50</sup> Replicating the approach it followed in the initial phase of the crisis, the EU accompanied sanctions with incentives. It offered to suspend the sanctions in return for the suspension of enrichment activities in Iran, in a 'suspension-for-suspension' formula, moving later to a 'freeze-for-freeze' offer that gave a commitment that there would be no new sanctions in return for a freeze of enrichment activities in Iran.<sup>51</sup>

The election of President Rouhani in 2013 meant that an interim deal could be struck. Under the agreement, concluded in Geneva in November 2013, Tehran agreed to neutralize its stocks of enriched uranium, freeze the

<sup>48</sup> Meier, O., 'European efforts to solve the conflict over Iran's nuclear programme', *Non-proliferation Papers*, no. 27 (Feb. 2013).

<sup>49</sup> UN Security Council resolutions 1737, 27 Dec. 2006; 1747, 24 Mar. 2007; 1803, 3 Mar. 2008; and 1929, 9 June 2010.

<sup>50</sup> Portela, C., 'EU strategies to tackle the Iranian and North Korean nuclear issues', eds Blavoukos, Bourantonis and Portela (note 31).

<sup>51</sup> Kienzle (note 45).

construction of new centrifuges, allow access by IAEA inspectors to the relevant sites and cease enrichment at 20 per cent. In exchange, the EU3+3 eased the sanctions with a relief package that included a suspension of the ban on the provision of transportation and insurance, and of the restrictions on the trade in gold and precious metals, and allowed certain imports of technology for the automobile industry and exports of petrochemicals, as well as the repatriation of \$4.2 billion in previously frozen export revenues obtained from the sale of Iranian oil and lodged in overseas banks.<sup>52</sup> After Iran halted uranium enrichment in line with the Geneva deal, the EU suspended its sanctions. After protracted negotiations, a more durable settlement was reached in Lausanne in April 2015. In exchange for a 15-year freeze on uranium enrichment and full access by UN inspectors, the USA and the EU agreed to lift most of their sanctions.

*The EU response: A first experiment in leadership*

The EU's efforts to manage the Iranian nuclear issue have rightly been acclaimed as the 'most ambitious and high-proliferation action taken by the EU in the field of non-proliferation'.<sup>53</sup> From the point of view of the EU's use of its diplomatic toolbox, two notable developments stand out. Firstly, this was the first time the EU took a leadership role in nuclear crisis management. It did so despite the initial opposition of the US administration, which sought to persuade the IAEA Board of Governors to refer the issue to the Security Council from the start. Once the positions of the EU and Washington converged, however, the EU shared a leadership position with the USA. Secondly, in order to take the lead in negotiations with Iran, it created a format that was previously absent from its CFSP toolbox: that of the EU3. Originally, this informal arrangement encountered some resistance from some member states, as it did not coincide with the institutionalized format of the EU troika which rotates among all member states, but instead privileged the 'big three'. In the event, the EU's High Representative was tasked with assuaging such concerns, although the High Representative complemented rather than replaced the EU3.<sup>54</sup> The EU3 survived the broadening of the negotiating group to become the EU3+3. This ad

hoc creation that withstood the test of the negotiations and ultimately proved successful is evidence, however, of the unsuitability of the existing CFSP toolbox.

The unsatisfactory results of the EU's initial insistence on an incentive-based strategy and the search for a negotiated solution facilitated its eventual embrace of the coercive measures imposed by the USA. The positions of the EU and the USA eventually converged as both sides' stances evolved. The EU only resorted to sanctions after the incentives pathway proved futile. In previous decades, EU member states had resisted US pressure to adopt unilateral sanctions regimes, even benefiting from the US commercial withdrawal from the targeted countries.<sup>55</sup> By contrast, the Iranian uranium enrichment programme galvanized EU support for US unilateral sanctions to an unprecedented extent. Such support was motivated by Europe's commitment to preserving the NPT. As illustrated by the statement by the President of France, François Hollande, in which he asserted that the situation threatened world peace, the desire to prevent a military attack on Iran by Israel or the USA was compelling.<sup>56</sup> While the measures against Iran constituted one of the most far-reaching sanctions packages imposed by the EU to date, paralleled only by the restrictions on Syria, EU sanctions fell short of the more comprehensive US measures, which featured a ban on trade and investment, a prohibition on access to US financial institutions and even sanctions with extraterritorial application.<sup>57</sup>

EU unilateral sanctions had a magnifying effect on existing measures. Their combined impact on Iran's economy was considerable.<sup>58</sup> Sanctions restricting Tehran's ability to use the international financial system had a particularly strong impact.<sup>59</sup> Owing to EU legislation, a number of Iranian banks were isolated from the international internet banking transfer system operated by the Belgium-based Society for Worldwide Interbank Financial Telecommunication

<sup>55</sup> Niblock, T., *Pariah States and Sanctions in the Middle East* (Lynne Rienner: Boulder 2001).

<sup>56</sup> Hollande, F., Speech at the opening debate of the 67th General Assembly of the United Nations, New York, 25 Sep. 2012; and Bergenäs, J., 'The European Union's evolving engagement with Iran', *Nonproliferation Review*, vol. 17, no. 3 (2010).

<sup>57</sup> Portela (note 50).

<sup>58</sup> Sagedhi-Boroujerdi, E., *Sanctioning Iran: Implications and Consequences* (Oxford Research Group: Oxford, 2012); and Parsi, R., 'Iran in the shadow of the 2009 Presidential Elections', *ISS EU Occasional Paper*, no. 90 (April 2011).

<sup>59</sup> Esfandiari, D. and Fitzpatrick, M., 'Sanctions on Iran: defining and enabling success', *Survival*, vol. 53, no. 5 (2011).

<sup>52</sup> Habibi, N., 'A closer look at Sanctions Relief', *Iran Matters*, 9 Dec. 2013.

<sup>53</sup> Meier (note 48).

<sup>54</sup> Farmanfarmanian, R., 'Iran and the EU: re-assessing the European role', ed. L. Marchi, *An EU Innovative External Action?* (Cambridge Scholars Publishing: Newcastle, 2011).

(SWIFT). Sanctions on the energy sector targeted a key vulnerability, given that oil export revenues represent nearly 80 per cent of Iran's total export earnings and account for almost 20 per cent of its gross domestic product. The effect of the ban on insurance for oil shipments was equally severe. Since European companies insure and re-insure 95 per cent of the world's tanker fleet, the ban on insurance led to the reduction or even suspension of Iranian crude oil shipments to India, Japan and South Korea until alternative insurance cover could be found. Significantly, the Iran sanctions had some noticeable effects not only on Iran, but also on several European economies—a phenomenon rarely witnessed in previous EU sanctions policy.<sup>60</sup>

The EU's political role has been acclaimed for preventing an escalation and for keeping diplomatic channels open.<sup>61</sup> It has also been credited for facilitating the resumption of high-level contacts between the USA and Iran as well as paving the way for the UN to find common ground.<sup>62</sup> Initially, the sanctions did not dissuade the leadership from its plans to build up enrichment capabilities. However, over time they provoked growing domestic criticism of the Ahmadinejad Government for failing to prepare for international sanctions. Because they weighed heavily on the popular discontent that brought about the victory of the moderate Rouhani (a former negotiator in the nuclear talks who campaigned on the promise of obtaining sanctions relief) in the 2013 elections, they are credited with having compelled the change in the Iranian position that made agreement at Geneva and Lausanne possible. If the Lausanne Agreement of April 2015 is implemented satisfactorily, it will bring an end to the crisis.

### **The Khan network: Bringing non-state actors into non-proliferation efforts**

The exposure in January 2004 of a clandestine trade network in nuclear technology represents the only recent proliferation crisis with a non-state actor at its centre. At the heart of the network was the Pakistani engineer, Abdul Qadeer Khan, a key figure

in Pakistan's nuclear weapons programme. He was found to have been involved for decades in a black market in nuclear technology that supplied uranium-enrichment centrifuges, nuclear warhead designs, missiles and know-how to Iran, Libya, North Korea and possibly other countries. Revelations about the Khan network sparked unprecedented action by the UN, which had developed a high degree of sensitivity to the role of non-state actors in international security as a consequence of the terrorist attacks on the USA of 11 September 2001, and to nuclear proliferation as a consequence of the debate on Iraq. In April 2004 it adopted Security Council Resolution 1540, which for the first time required states: to enact laws prohibiting non-state actors from developing, acquiring or transferring WMD; to enforce domestic control, physical protection and border control measures to prevent proliferation to non-state actors; and to control the provision of funds and services that contribute to non-state proliferation. Aware that many states would require help to abide by the terms of the resolution, the Security Council inserted a clause recognizing 'that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions'.<sup>63</sup> According to the Security Council's 1540 Committee, 56 states have so far requested assistance with the implementation of the resolution.<sup>64</sup> The EU followed up on this encouragement by extending financial and technical support to third states to help them meet their Resolution 1540 obligations. Shortly after the adoption of the resolution, the EU conducted an awareness campaign among third states, and its implementation support has gradually gone beyond supporting 1540 Committee activities to encompass funding for the IAEA's nuclear security activities, and for the implementation of export controls and border security.<sup>65</sup> Another important follow-up by the EU was the setting up of Chemical, Biological, Radiological and

<sup>60</sup> Portela, C., *European Union Sanctions and Foreign Policy* (Routledge: London, 2010).

<sup>61</sup> Kienzle, B., 'A European contribution to non-proliferation? The EU WMD strategy at ten', *International Affairs*, vol. 89, no. 5 (2013).

<sup>62</sup> Alcaro, R. and Bassiri Tabrizi, A., 'European and Iran's nuclear issue: The labours and sorrows of a supporting actor', *International Spectator*, vol. 49, no. 3 (2014).

<sup>63</sup> UN Security Council Resolution 1540, 28 April 2004, para. 7.

<sup>64</sup> Security Council Committee established pursuant to Resolution 1540 (2004), 'Summary requests for assistance from member states', accessed 20 June 2015, <<http://www.un.org/en/sc/1540/assistance/requests-for-assistance-from-states.shtml>>.

<sup>65</sup> Grip, L., 'The role of the European Union in delivering Resolution 1540 implementation assistance', *Non-Proliferation Papers*, no. 22 (Oct 2012).

Nuclear (CBRN) Risk Mitigation Centres of Excellence worldwide, shifting the focus of its non-proliferation assistance away from Russia to encompass regions where it had not been active previously, such as South East Asia.<sup>66</sup>

#### *The EU response: Funding as positioning*

At first sight, it seems counterintuitive that a non-state actor features among the list of most relevant proliferation crises of the past two decades. However, the magnitude of the efforts devoted by the EU to aid the implementation of Resolution 1540 justifies its inclusion. The resolution was not adopted without controversy: the authority of the Security Council to impose obligations of a legislative kind was contested by several countries, not least India. The generally poor record on reporting on implementation, an obligation under the resolution, reveals a widespread lack of capacity, but also suggests some degree of resistance.<sup>67</sup> Through its support for implementation, the EU has positioned itself firmly as committed to detailed follow-up. If properly implemented, Resolution 1540 represents a significant strengthening of international standards related to the export of sensitive items and preventing non-state actors such as terrorists and illicit networks from gaining access to chemical, nuclear or biological weapons.

#### **The US–Indian nuclear deal: Accommodating the Non-Proliferation Treaty outsider**

The most salient nuclear power outside the NPT, and formerly one of the treaty's most vocal critics, India has recently begun to push for acceptance within the regime as a nuclear weapon state. These efforts bore fruit when India signed a framework agreement with the USA in 2005, which paved the way for the US–India Civil Nuclear Agreement of 2008. Under the agreement, India was to place its civil nuclear facilities under the control of the IAEA in exchange for upgraded civil nuclear cooperation with the USA.<sup>68</sup> Even though EU member states were not party to the bilateral deal, its implementation required concessions

<sup>66</sup> Zwolski, K., 'Institutions and epistemic networks in EU non-proliferation governance', eds Blavoukos, Bourantonis and Portela (note 31).

<sup>67</sup> Evans, G., Ogilvie-White, T. and Thakur, R., *Nuclear Weapons: The State of Play, 2015*, (Australian National University: Canberra, 2015).

<sup>68</sup> Office of the Press Secretary, 'Joint statement between President George W. Bush and Prime Minister Manmohan Singh', 18 July 2005, <<http://georgewbush-whitehouse.archives.gov/news/releases/2005/07/20050718-6.html>>.

by entities in which EU member states are represented: the IAEA and the Nuclear Suppliers Group (NSG). The IAEA had to conclude an agreement with India similar to those it has in place with the recognized nuclear powers. In addition, the NSG, an informal grouping of states capable of supplying nuclear technologies, had to issue a waiver to allow nuclear technology transfers to India. Initially, Austria and Ireland, supported by the Netherlands and Sweden, were reluctant to agree to the exceptions for fear of weakening the non-proliferation norm. Allowing a country in breach of the NPT to benefit from the privileges of recognized nuclear weapons states was seen as undermining the regime, and possibly encouraging non-compliance. However, resistance was weakened due to pressure from EU member states with large nuclear industries and by the prospect of diminished economic opportunities in India. In the event, the EU refrained from challenging any of the India-specific exceptions. Prior to the meeting of the IAEA Board of Governors, on which several EU member states sit, the EU decided it would neither oppose an agreement nor call for a vote. Instead, Austria and the Netherlands simply joined Costa Rica and Norway in drafting a declaration expressing reservations.<sup>69</sup> Similarly, the NSG, where all EU member states are represented, approved the waiver for India in the summer of 2008 without any opposition.

#### *The EU response: Unified but inconsistent*

Although not formally involved in the US–India deal, EU member states had the ability to force a vote in the IAEA and enjoyed a veto power at the NSG. However, they refrained from taking action that could have frustrated the implementation of the agreement, despite the fact that its terms ostensibly undermine the non-proliferation norm the EU purportedly wishes to preserve. Ultimately, the prospects of lucrative deals with India, coupled with reluctance to antagonize the USA and an emerging Asian power, prevailed. Indeed, following the adoption of the waiver, France concluded an agreement with India, and both France and the UK allowed nuclear exports to India. The EU showed a high degree of internal cohesion under US leadership, albeit, paradoxically, in support of measures contrary to the NPT. While the reaction to the 1998 tests by India and Pakistan was meek, the EU had at least been

<sup>69</sup> Kienzle, B., 'The exception to the rule? The EU and India's challenge to the non-proliferation norm', *European Security*, vol. 24, no. 1 (2015).

unified in condemning rather than condoning India's nuclear status.

#### IV. EVALUATING EU RESPONSES TO PROLIFERATION CRISES

In evaluating EU responses to proliferation crises, the central question remains how the choice of instruments to address proliferation has evolved over time, and how to account for this evolution. The analysis below considers the degree of unity within the EU and the extent to which a common response was framed, the nature and mix of the tools employed and the role of US leadership. In doing so, it stresses the significance of the WMD strategy of 2003 as a turning point.

##### EU coordination and visibility: From marginality to prominence

Before the publication of the WMD strategy, EU responses to proliferation crises were inconsistent. In terms of EU internal coordination, attempts to frame a unified stance were uneven, almost displaying a weakening trend. The EU was unified with regard to Ukraine, but much less so in responding to the tests by India and Pakistan. Notably, in relation to Iraq it was unable to frame a common response. After the adoption of the WMD strategy, however, the EU exhibited a considerable level of unity in facing proliferation challenges. Disagreements surfaced in the European Council, but these could be surmounted. This is particularly remarkable given the fact that the crises that ensued have been protracted, in contrast to the rather short-lived pre-strategy episodes. Management of the situation in North Korea has dragged on for 20 years, and the Iranian crises for 10 or more. Exceptionally, the Iran nuclear case has even profiled the EU as a manager of proliferation, allowing it to acquire unexpected prominence in international security.<sup>70</sup> The EU was the sponsor of several IAEA resolutions and the initiator of the UN sanctions regime, drafting a majority of the resolutions.<sup>71</sup> The High Representative's role as the lead negotiator, representing the views of the UN Security Council, improved the image of the EU as a bridge-builder. Although consent to the NSG waiver for India

constituted an anti-climax in terms of EU support for the NPT, it nonetheless demonstrated a striking degree of unity from the viewpoint of intra-EU coordination.

##### Instruments: Transitioning from incentives to coercive tools

Before the WMD strategy, EU responses to proliferation crises were almost exclusively comprised of 'carrots' (i.e. incentives). The only 'sticks' (i.e. penalties) used consisted of the threatened or actual withdrawal of the carrots. Conspicuously, the nature of the carrots and sticks was intimately related to the core activities of the EU—cooperation agreements, trade preferences and the provision of technical assistance or aid—rather than characteristic of the traditional toolbox of state actors.

The EU's first reflex is—and always has been—to resort to incentives. The proclivity of the EU to offer incentives rather than wield sanctions is typical of an actor with an established role in development cooperation but scant experience in security policy. This dovetails with research that shows that it is institutionally easier for the EU to agree on the provision of aid and incentives than on sanctions.<sup>72</sup> Indeed, openness to dialogue characterized early initiatives in the field, exemplified in the EU's establishment of diplomatic relations with North Korea in May 2001 while the USA maintained its confrontational approach. In the early stages of a crisis, the EU invariably attempted to use its trade and economic leverage to advance non-proliferation objectives, thus anticipating the subsequent introduction of WMD conditionality. The EU offered contractual cooperation as an incentive in the cases of Ukraine and Iran. However, the incentive-based approach showed its limitations after India and Pakistan conducted their nuclear tests: the offer of confidence-building measures and export control assistance appeared to come close to rewarding objectionable behaviour.

After the Iraq shock and the WMD strategy, the EU exhibited an increased readiness to employ sticks, most notably in the North Korean and Iranian crises. Over time, and as a result of the setbacks suffered in

<sup>70</sup> Blavoukos, S. and Bourantonis, D., 'Do sanctions strengthen the international presence of the EU?' *European Foreign Affairs Review*, vol. 19, no. 3 (2014).

<sup>71</sup> Farmanfarmaian (note 54).

<sup>72</sup> Hazelzet, H., 'Carrots or sticks? EU and US reactions to human rights violations, 1989–2000', unpublished PhD dissertation, European University Institute, San Domenico di Fiesole, 2001.

the negotiating processes, it warmed to the use of security policy tools, or sanctions. The discovery of North Korea's clandestine nuclear facilities in October 2002 prompted the EU to discontinue its technical assistance, a measure that followed the termination of heavy fuel deliveries to North Korea. With aid withheld, the next step was to impose restrictions. The opportunity arose with the adoption of mandatory sanctions by the UN Security Council, starting in 2006. Once the Security Council became active in the North Korean and Iranian nuclear issues, the EU moved to adopt unilateral restrictions. Initially, the EU limited itself to implementing UN measures. However, during the process of transposing UN Security Council resolutions into EU legislation, it started to designate additional entities and individuals, and subsequently introduced supplementary measures absent from the UN mandate. Out of frustration with the lack of progress and with the difficulty of agreeing measures at the UN, the EU ended up imposing more severe measures than those stipulated by the Security Council. While the EU's unilateral measures against North Korea are of marginal significance, the sanctions package against Iran was characterized as the broadest unilateral sanctions regime ever adopted by the EU.<sup>73</sup>

The use of funding as an instrument to support non-proliferation efforts has not disappeared. The enthusiastic support for implementation of UN Security Council Resolution 1540, following the revelation of the clandestine Khan network, demonstrates that it is still an option. Despite the EU's long experience of non-proliferation support, the funding modalities might still need to evolve, in particular given that the support for international organizations has originated from the CFSP budget, which was designed with urgent needs in mind.<sup>74</sup> The provision of funding by one regional organization for projects to be implemented by a different international organization has been highlighted as an unusual phenomenon.<sup>75</sup> Drawing a parallel with the developments witnessed in the handling of the North Korea and Iran crises, channelling assistance through UN agencies in support of UN objectives provides EU non-proliferation activities with additional legitimacy, while underlining the EU's commitment to multilateralism.

<sup>73</sup> Meier (note 48).

<sup>74</sup> Grip (note 65), p. 10.

<sup>75</sup> Kienzle (note 61), p. 1158.

### Cooperation with the USA: Convergence with distance

The EU's WMD strategy singled out the USA as a key partner in non-proliferation efforts, reflecting an ambition to re-engage the one time leader of arms control in multilateral processes. The proximity between the EU and the USA in the field of WMD non-proliferation increased following the adoption of the WMD strategy. It is illustrative that, in contrast to the other strategic partnerships of the EU, all member states attend the political dialogue meetings between the EU and the USA.<sup>76</sup> With the notable exception of the Iraq crisis, EU responses to proliferation have invariably been in consonance with the US stance. When the USA takes on a leadership role, EU responses have tended to complement its actions, as exemplified in the 1992 Ukraine crisis or the EU funding of KEDO. When the USA frames a half-hearted response, as happened with the South Asian tests, the EU reaction is found wanting. In the only case where the EU took a leadership role—Iran—it first pursued 'constructive engagement' in open contradiction to the US policy of containment. The original decision to engage Iran in nuclear negotiations reflected the EU's unease about the counterproliferation policy of the Bush administration.<sup>77</sup> However, after transatlantic relations improved once President Barack Obama took office in 2008, and the USA eventually succeeded in persuading the EU to impose tough economic measures against Iran in 2010, the USA and the EU acted in tandem. Following the Geneva Agreement of November 2013, analysts complained that the EU had gradually relinquished the initiative to the USA.<sup>78</sup> In sum, while initially intent on developing an alternative approach to that of the USA, the EU stance came closer to Washington. Nonetheless, the EU approach to the use of sanctions is evidence of the persistence of a differential between the transatlantic partners. EU sanctions never achieved the level of severity of the US restrictions, which approximated a comprehensive embargo.<sup>79</sup> The EU's design of restrictive measures

<sup>76</sup> Renard, T., 'Partnering for a nuclear free world: The EU, its strategic partners and nuclear non-proliferation', *European Strategic Partnerships Observatory Working Paper*, no. 3 (Oct. 2013).

<sup>77</sup> Rynning, S., 'Europe's emergent but weak strategic culture: The case of the EU, Iran and nuclear weapons diplomacy', eds K. Engelbrekt and J. Hallenberg, *The European Union and Strategy* (Routledge: London, 2008).

<sup>78</sup> Alcaro and Bassiri Tabrizi (note 62).

<sup>79</sup> Portela, C., 'European and Chinese perspectives on the handling of the Iranian nuclear question', eds J. Wouters, J. C. Defraigne and

is characterized by a marked desire to avoid humanitarian consequences and to comply strictly with international law that was not relinquished even when the sanctions activities reached their apex. Thus, a comparison of EU and US unilateral sanctions shows an increasing convergence of the Iran policies of the transatlantic partners, while at the same time confirming their differences.

However, the EU's adoption of autonomous sanctions in support of non-proliferation cannot be accounted for exclusively with reference to the galvanizing role of the USA. Even though US pressure undeniably constituted the main 'push' factor compelling the EU to resort to unilateral measures, it should once again be noted that the EU did not agree any unilateral restriction against North Korea or Iran before the UN Security Council imposed mandatory sanctions. As with North Korea, the UN's seizure of the issue facilitated consensus within the EU, which felt legitimized to enact measures beyond the proliferation-related restrictions authorized by the Security Council resolution. Thus, the UN activation constituted a 'threshold', the crossing of which enabled the EU to adopt supplementary sanctions.

### **Conclusions: The EU's toolbox and its embrace of non-proliferation**

The management of proliferation crises emerges as a field in which the EU has upgraded its role dramatically since the release of the WMD strategy. The above analysis confirms that the WMD strategy heralded a shift as the EU proved increasingly willing to articulate a common stance and progressed from an incentive-based approach to unilateral sanctions.

The activation of sanctions testifies to a full embrace of the non-proliferation norm by the EU and its rise to become a political priority. The USA has followed its declared policy of imposing sanctions in order to stem nuclear proliferation since the implementation of the Nuclear Non-Proliferation Act of 1978, but neither the UN nor the EU had established similar practice before 1992.<sup>80</sup> The UN imposed non-proliferation sanctions

for the first time following the discovery of Iraq's clandestine nuclear programme in the aftermath of the latter's invasion of Kuwait. The non-proliferation sanction measures taken to address the situation in North Korea and Iran were only the second and third instances of the use of such measures in the history of the UN. For its part, the EU had never imposed autonomous sanctions in response to nuclear proliferation challenges prior to the UN Security Council's activity in this field. During the early crisis episodes, the lack of coordinated EU responses beyond condemnatory declarations was evidence that consensus on the significance of the non-proliferation norm had not yet been reached, despite the fact that all the EU member states had ratified the NPT, which by then had been extended indefinitely. A decade on, the Iranian and North Korean crises constituted the first instances in which the EU agreed autonomous sanctions in pursuit of nuclear non-proliferation goals. The 2010 round of sanctions against Iran was the first time that energy restrictions were imposed in a situation that was not characterized by violent conflict.<sup>81</sup> Autonomous sanctions imposed in pursuit of non-proliferation objectives remain rare in the EU's post-Maastricht Treaty sanctions experience, where sanctions imposed in support of human rights and democratic rule predominate. Nonetheless, in order to counter the danger of nuclear proliferation in the Middle East, the EU has, for the first time, been willing to bear the notable costs of imposing economic sanctions.

M. Burnay, *China, the European Union and the Developing World*, (Edward Elgar: Cheltenham, 2015).

<sup>80</sup> Nuclear Non-Proliferation Act of 1978, US Public Law 95-242, signed into law on 10 Mar. 1978, <<http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg120.pdf>>. Miller, J., 'The secret success of non-proliferation sanctions', *International Organization*, vol. 68, no. 4 (2014).

<sup>81</sup> Portela (note 60).

**ABBREVIATIONS**

CBRN	Chemical, Biological, Radiological and Nuclear	NSG	Nuclear Suppliers Group
CFSP	Common Foreign and Security Policy	PCA	Partnership and Cooperation Agreement
CTBT	Comprehensive Nuclear-Test-Ban Treaty	START-1	Strategic Arms Reduction Treaty
ESS	European Security Strategy	SWIFT	Society for Worldwide Interbank Financial Telecommunication
IAEA	International Atomic Energy Agency	TACIS	Technical Assistance to the Commonwealth of Independent States
KEDO	Korean Energy Development Organization	TCA	Trade and Cooperation Agreement
LWR	Light water reactor	WMD	Weapons of mass destruction
NPT	Non-Proliferation Treaty		



## A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

## STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

## MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



## FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



## PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



## INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



## STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>