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### The Role of the EU in the Non-Proliferation of Nuclear Weapons: The Way to Thessaloniki and Beyond

Clara PORTELA

Singapore Management University, [claraportela@smu.edu.sg](mailto:claraportela@smu.edu.sg)

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Clara Portela

# **The Role of the EU in the Non-Proliferation of Nuclear Weapons:**

## **The Way to Thessaloniki and Beyond**

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Address of the Author:

PRIF • Leimenrode 29 • 60322 Frankfurt

Telephone: +49(0)69/959104-0 • Fax: +49(0)69/558481

Email: C.Portela@Bradford.ac.uk

Internet: <http://www.hsfk.de>

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## Summary

Over the past few years the EU has begun taking some steps against the spread of nuclear weapons within its Common Foreign and Security Policy (CFSP). At the Thessaloniki Summit June 2003, the European Council adopted its first draft Strategy against the proliferation of Weapons of Mass Destruction (WMD). In order to assess the significance of the Strategy, this paper will first present and evaluate the Union's record in the field, then review the newly released Strategy, and finally make suggestions as to how it can be improved.

The EU is not an unitary actor in the nuclear non-proliferation domain, being mainly constrained by the diversity of positions of its members as regards nuclear weapons on the one hand and the transatlantic link on the other. The EU notably includes eleven NATO members comprising two NWS and four countries that host Alliance's nuclear weapons, along with four highly disarmament-minded countries.

One of the strands of EU action has consisted in taking initiatives aimed at strengthening the existing regime at multilateral forums. They have been geared predominantly to the universalisation of treaties and the multilateralisation of arrangements. Examples include the promotion of the indefinite extension of the Non-Proliferation Treaty (NPT), the entry into force of the Comprehensive Test Ban Treaty (CTBT) and the adoption of a Code of Conduct on ballistic missile proliferation. In general, the EU performs increasingly well at multilateral venues, which offer a favourable framework for internal co-ordination.

The effectiveness of the Union's action remains limited, though. Insufficient means to accomplish the stated objectives account for that. Furthermore, this policy remains selective in nature, addressing some issues while sidelining others. Important omissions, which often illustrate EU reluctance to oppose the US over nuclear issues, are exemplified by the European silence on the NMD question or the weakening of the US-Russian strategic arms reduction process.

Another significant strand of action consists of the Union's approaches to regional proliferation crises. In this domain, the EU has a fairly uneven and predominantly negative record. It is significantly involved in nuclear-related assistance programmes to Russia in the form of Co-operative Threat Reduction (CTR) efforts. Additionally, the Union contributed to facilitate Ukraine's renunciation of nuclear weapons through the ratification of the Lisbon Protocol. It has also participated in KEDO while upgrading its diplomatic role in the Korean peace process. Most recently, the European input has proved central in handling the crisis over Iran's lack of compliance with IAEA requirements.

However, the EU has had difficulties in framing responses to some of the most acute proliferation crises of the past few years. The example of Iraq serves a recent illustration of intra-European disagreement on how to tackle proliferation. The reaction to the Indian/Pakistani nuclear tests in May 1998 was hardly noticeable. In general, the EU's approach to avert proliferation is characterised by a tendency to take a comprehensive approach to reducing regional tensions and, in most cases, to follow US-crafted responses.

Despite the enhancement of its action during the last decade, the EU is still ineffective as a non-proliferation actor. The Union's selective approach has privileged non-proliferation over disarmament, and even within the non-proliferation realm, it has emphasised some issues and regions to the detriment of others. The virtual absence of policies directly focused on addressing proliferation constitutes a further difficulty. Finally, the EU does not yet make an effective and concerted use of the means at its disposal.

Against this record, the newly released Strategy against the proliferation of WMD reaffirms the traditional features of the Union's role, while correcting some of its most obvious deficiencies.

Broadly speaking, the Union will be guided by the following primary objectives: the universalisation of disarmament and non-proliferation agreements; the enhancement of the effectiveness of inspection/verification mechanisms, especially by improving the detectability of violations; the strengthening of export control policies and the expansion of CTR and technical assistance programmes. The initiatives presented in the Action Plan include some institutional measures designed to upgrade the capacity of action of the Union, the strengthening of EU internal legislation and a few proposals for EU external action. On the whole, the Strategy's principal emphasis is placed on enhancing the effectiveness of the existing regimes rather than in launching new steps to expand the non-proliferation agenda.

At the level of means, the Union first reaffirms its current policy, i.e. "to contain proliferation while dealing with its underlying causes". The principal novelty is that the Strategy also introduces new instruments. It envisages the introduction of a policy of "sticks and carrots" that links non-proliferation commitments to co-operation agreements or assistance programmes into the EU's relations with third countries. Political and economic levers are included in the list of instruments the Union can avail itself of. Finally, the strategy also foresees the use of force as a measure of last resort, which constitutes an absolute breakthrough.

The Strategy offers some potential for the EU to make a relevant contribution to the non-proliferation regime, especially since it has framed some answers as to how deal with non-cooperative states. In order to realise this potential, it is suggested that the Union considers a series of issues in the further development of the strategy.

Firstly, it should ensure that non-proliferation objectives are adequately mainstreamed into the Union's external relations. To this end, it should concretise the proposed "sticks and carrots" model into a clear conditionality framework with a *Non-Proliferation Clause* analogous to the Human rights clauses already applied by the Community in its relations with Third Countries.

Secondly, the EU should further enhance its capacity to act by putting in place an "internal think tank" to craft further non-proliferation initiatives. As far as possible, it should find a satisfactory "division of labour" with the US in the resolution of proliferation crises, complementing US initiatives with other means rather than merely endorsing them financially.

Finally, it should also try to adopt a balanced approach capable of engaging the non-Western as well as the Western world. This includes facilitating the access of Third World countries to civilian nuclear technology, clearly linking forcible counter-proliferation action to an UN Security Council mandate, and, most importantly, introducing disarmament measures into the Strategy.



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## 1. Introduction

Nuclear non-proliferation has long been absent from the political agenda of the European Union. Over twenty years the EU has begun taking some steps against the spread of nuclear weapons within its Common Foreign and Security Policy (CFSP) focusing mainly on promoting the universalisation of treaties, transparency in export controls and some regional initiatives. The emergence of a EU non-proliferation role has taken place notwithstanding notable disparities between the positions of the Member States. Nevertheless, neither the objectives set have been ambitious, nor have they been pursued vigorously. Notably, they have never been part of a co-ordinated strategy.

In recent years the need for the EU to enhance its role as a non-proliferation actor has increased dramatically. Firstly, the US has effectively relinquished its leadership in arms control and adopted alternative methods to avert the spread of WMD. This makes it necessary for other actors willing to uphold the existing regime to upgrade their efforts. Secondly, particularly in the aftermath of Sept.11<sup>th</sup>, the proliferation threat is no longer seen in terms of the acquisition of nuclear weapons by states, but also by terrorist organisations. Although the Sept. 11<sup>th</sup> attacks did not involve the use of WMD, claims by Al-Qaida to be in possession of nuclear weapons have put this concern at the centre of the international agenda.<sup>1</sup> Finally, the recent invasion of Iraq, largely justified on the basis of allegations that it was running an active WMD programme, has placed proliferation at the centre of public attention.

All this is increasingly compelling the EU to frame some effective policies to avert the spread of nuclear weapons.<sup>2</sup> At the Thessaloniki Summit in June 2003, the European Council responded by adopting its first Strategy against the proliferation of WMD.<sup>3</sup> This is by far the most comprehensive and detailed document on non-proliferation ever issued by the EU.

In order to assess the significance of the Strategy, as well as its prospects for future implementation, it is necessary to have a close look at the record of EU action in the field so far. This paper will first present and then evaluate the Union's emerging role in the nuclear non-proliferation field, restricting its scope to the *external* action of the Union. It

- 1 The G8 adopted a programme to prevent terrorists from acquiring WMD, and NATO has also approved terrorism and WMD-related agendas. See respectively: Statement by G8 Leaders, G8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction, Kananaskis, 27 June 2002 and Heads of State and Governments of the North Atlantic Council, Prague Summit Declaration, Prague, 21 November 2002.
- 2 Chronologically, the enhancement of the EU as a non-proliferation actor coincides with the development of the European Security and Defence Policy (ESDP), which started at the Cologne European Council of June 1999. However, the framing of this intergovernmental policy has been restricted to the establishment of a crisis-management capacity and remains unconnected to the subject of this paper.
- 3 High Representative of the CFSP Mr. Javier Solana, "Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction" and "Action Plan for the Implementation of the Basic Principles for an EU-Strategy against Proliferation of Weapons of Mass Destruction", 16 June 2003. The combination of both documents will henceforth be referred to as "the Strategy".

will review the newly released Strategy against this record. Finally, suggestions will be made as to how the Strategy can be improved. This paper will argue that, if developed and implemented correctly, the Strategy can serve as a basis for both a true enhancement of EU action in the field and the advancement of nuclear non-proliferation objectives.

## **2. The EU as a Non-Proliferation Actor: How Does It Operate?**

### **2.1 First Steps towards a “European” Non-Proliferation Policy**

The European non-proliferation policy developed from a situation in which the EC already had a substantial role in civilian nuclear issues. One of the communities established by the Rome Treaties in 1957 was precisely the European Atomic Energy Community (EURATOM), which is endowed with far-reaching competencies in the civilian nuclear industry of the Member States, including the operation of a verification and inspection system for the civilian fuel cycle.<sup>4</sup> Although EURATOM had a clear non-proliferation function, its scope of action was severely restricted to the civilian field by the Treaty, which exempted all commodities related to national security from Community regulation.

The role of the EC in non-proliferation began to take shape when the Council decided to set up a Working Group on nuclear questions in the context of the European Political Co-operation (EPC) in 1981. With the Community bearing responsibility for external commercial nuclear relations, Member states realised the need to coordinate national positions in international forums. While EURATOM had the task of dealing with proliferation within the Community, the EPC Working Group on nuclear questions was concerned with averting proliferation externally.

At a first stage, the Working Group produced some common statements at UN forums and the Nuclear Suppliers Group (NSG), concentrating on the field of safeguards and nuclear transfers. Notably, the European Council imposed an embargo on major nuclear supplies to South Africa in 1986.

At the beginning of the nineties, two closely connected factors compelled the EC to upgrade its role in non-proliferation. They relate to the transformed security environment: While during the Cold War nuclear arms control had remained an almost exclusive domain of the superpowers, its end allowed for a strengthening of multilateral approaches. Secondly, the disclosure of the Iraqi nuclear programme in the aftermath of the Gulf War in 1991 delivered a powerful impulse for increased international efforts in averting proliferation.

4 EURATOM is also responsible for the physical safety, accountancy, import and export of special fissile materials excepting those designated for military use by the UK and France.

Furthermore, European integration had reached a state in which Member States felt ready to proceed to a closer coordination of its foreign policies. After the Single European Act (SEA) had included “economic aspects of security” into the scope of the EPC, the Treaty on European Union brought about a qualitative leap in foreign policy coordination with the creation of CFSP, of which security is an integral part. The subsequent enhancement of foreign policy instruments and mechanisms has largely aided the development of the EU’s role in non-proliferation.<sup>5</sup>

Therefore, once France revised its traditional opposition to the NPT and decided to join the Non-Proliferation Treaty (NPT) and finally acceded to the treaty in 1991, EC policy on non-proliferation could be activated. Non-proliferation objectives started to be stated at the highest level: The European Council issued its first statements on non-proliferation at the Dublin and Luxemburg Summits in 1990 and 1991. In the follow-up to the Treaty on European Union, it singled out arms control, non-proliferation and disarmament as priority areas for CFSP. Most importantly, these objectives were also translated into concrete initiatives: EU Member States began presenting policy proposals at international conferences, such as in 1992, when the then Twelve put forward a joint initiative to the IAEA Board of Governors Conferences on the strengthening of safeguards.<sup>6</sup> Under current CFSP arrangements, nuclear non-proliferation matters are covered in two Council committees, the Committee on Non-Proliferation (CONOP) and the Committee on Nuclear Affairs (CONUC), which consist of national experts and representatives from the Commission and from the Council Secretariat.

The single most important initiative of the EU in the 1990s was its campaign for the indefinite extension of the Non-Proliferation Treaty (NPT) at the Extension Conference of 1995. Formally a CFSP instrument, this initiative did not only expand the EU’s field of action beyond its traditional forums (UN Conferences, IAEA and NSG) to the main forum of the non-proliferation regime, but it also made use of diplomatic, often bilateral means to accomplish its goal. As we shall see, the EU has since then gradually widened the scope of its non-proliferation policy. Moreover, it has included non-proliferation initiatives in wider policy frameworks, such as the Common Strategy with Russia.

## 2.2 Constraints

The EU is far from being a unitary actor in the field of nuclear non-proliferation. Before the EU can take an initiative in a proliferation issue, it first needs to achieve internal consensus. Two main factors constitute powerful constraints to EU action with regard to nuclear non-proliferation: the disparity of nuclear statuses existing in the Union, and the different attitudes to the transatlantic link.

5 See Harald Müller/Lars Van Dassen, *From cacophony to Joint Action: Successes and shortcomings of European nuclear non-Proliferation policy*, in: Martin Holland (ed.), *Common Foreign and Security Policy. The Record and Reforms*, London (Pinter) 1997, pp.52-72.

6 On the same year, the Nuclear Suppliers Group adopted the requirement of full-scope safeguards as a precondition for export decisions on proposal of the Twelve.

Eleven Member States are members of the North Atlantic Treaty Organisation (NATO), two of which – the UK and France — are recognised nuclear powers. Four other members host NATO nuclear weapons on their territory (Belgium, Germany, Italy the Netherlands), and the remaining four remain protected by the Alliance’s nuclear umbrella (Denmark, Greece<sup>7</sup>, Luxemburg, Spain and Portugal). Finally, four further nonaligned EU Member states (Austria, Finland, Ireland and Sweden) are not only nuclear free, but also highly disarmament-minded.

Closely related to this situation, different attitudes exist with regard to the transatlantic link. The gradual acquisition of a role in non-proliferation by the EU during the nineties has taken place in an environment in which the centrality of NATO has been often put into question. Relations with US remain of great importance to the whole of the Union. However, in security matters, Member States display different degrees of preparedness to express divergences with the US policies. For the members of the Alliance, which make up the majority of EU states, there is a fear that antagonising the US over nuclear issues will weaken the security relationship embodied by the Alliance. The attitude of every single European state towards nuclear weapons is largely determined by its relationship with NATO.<sup>8</sup>

Beside these constraints, the fact that non-proliferation has been a non-issue in the European political discourse has certainly not facilitated the development of a EU role in the field. The virtual absence of a public debate on nuclear weapons during the past decade meant that European governments have been under no pressure from civil society to upgrade its role in non-proliferation.

Obviously, the diverging attitudes towards nuclear weapons among its Member States make it difficult for the EU to agree on a number of subjects. This situation puts the nuclear non-proliferation action of the Union in terms fundamentally different from its role in averting chemical and biological weapons proliferation, as in these fields, all Member States are signatories to the relevant conventions and none possesses those weapons. Due to the multiplicity of positions on nuclear questions, and since CFSP still operates by consensus on substantive issues, the EU has only been able to take those initiatives on which everyone agreed. This has resulted in a selective approach to nuclear weapons issues, which has privileged non-proliferation over disarmament. Even within the non-proliferation realm, the level of attention devoted to different issues has varied substantially. While some of them have been subject to EU action, others have been hardly dealt with or even completely neglected.<sup>9</sup>

7 Although Greece used to participate in the nuclear sharing arrangement, US nuclear weapons were removed from its territory in 2001. See Taina Susiluoto, US Nuclear Weapons removed, *Athens News*, 18 January 2001.

8 See Harald Müller, Introduction, in: Harald Müller (ed.): *Europe and nuclear disarmament*, Frankfurt/M. (PRIF), 1998. See also Stuart Croft, Nuclear issues, in: Jolyon Howorth/Anand Menon (eds.), *The European Union and National Defence Policy*, London (Routledge) 1997, pp.141-154.

9 For a discussion of the attitudes of different European countries to possible steps towards nuclear disarmament, see Müller 1998.

Conspicuously, EU non-proliferation efforts have not been guided by anything like a long-term strategy. Rather, the objectives the Union has set itself have been middle — term objectives whose context can be described as “middle way”: they can be situated somewhere between the preservation of the nuclear status quo and the far-reaching proposals of disarmament-minded states.

### 3. Strands of EU Action: What Does It Do?

Since 1995 the EU has increased its activity in the non-proliferation domain. At a rhetorical level, the importance attached to non-proliferation has also been augmented gradually. In last year’s CFSP Annual Report to the European Parliament, the Council stated that “support for the reinforcement of global non-proliferation and disarmament is at the core of the external action of the EU”.<sup>10</sup>

EU action in the field can be broadly categorised in two main types: firstly, efforts aimed at strengthening existing regimes, whose setting are generally multilateral forums, and, secondly, approaches to regional proliferation issues which are implemented outside these frameworks.

As in other areas of EU policy, these activities have taken the shape of CSFP instruments as specified in Title V of the Treaty on European Union. These tools greatly diverge in its significance in terms of the allocation of diplomatic efforts and financial resources.

At the lowest level of intensity we find the *Declarations* issued by the Presidency, which express the viewpoint of the EU with regard to punctual developments. These are issued either at the Presidency’s own initiative in reaction to major events in the field, or delivered in the form of speeches as part of the general debate in international forums.

Further up on the scale of sophistication we find the *Common Positions*, which “define the approach of the Union to a particular matter of a geographical or thematic nature”.<sup>11</sup> They impose an obligation upon Member States to conduct their national policies in conformity to them, and to uphold them when they coordinate positions at international forums.

The next stage is represented by the *Joint Actions*, designed to “address specific situations where operational action by the Union is deemed to be required.”<sup>12</sup> Predictably, Joint Actions often entail considerable financial allocations from both the EC budget and national budgets.

10 Council of the European Union, Annual Report from the Council to the European Parliament on the Main Aspects and Basic Choices of CFSP - 2001, 26 April 2002.

11 Treaty on European Union (TEU), consolidated version: Title V, arts. 15 and 19 respectively.

12 Ibid, art. 14.

Finally, the *Common Strategies*, the instrument of most recent creation, set out the objectives of the Union “in areas where the Member States have important interests in common.”<sup>13</sup> In contrast to the Joint Actions, no direct initiatives emanate directly from Common Strategies. They serve as a basis for the adoption of instruments or decisions requiring a qualified majority, while otherwise the Council decides unanimously.<sup>14</sup>

### 3.1 Initiatives Aimed at Strengthening Existing Regimes

#### 3.1.1 Analysis

In recent years, the Union has carried out a number of initiatives intended to complement the existing non-proliferation regime in a number of forums. The pattern for EU action has been to achieve internal consensus on one particular question first and to “export” the idea to the exterior subsequently.

In general, the EU performs well at multilateral venues. They offer a favourable situation for EU co-ordination because decisions are taken on pre-agreed agendas within specific time frames that leave member states enough time for approximating their positions.<sup>15</sup> Conversely, when coordination has been poor, the EU has performed disappointingly. This was exemplified by the EU’s weak performance in the 1995 Review Conference — as opposed to the successful results at Extension Conference.<sup>16</sup>

While at the beginning of the last decade the EU already counted on a remarkable record in frameworks such as the IAEA Conferences, UN forums (1<sup>st</sup> Committee of the General Assembly, Conference of the Peaceful Uses of Nuclear Energy) as well as the export control regimes (NSG, Zangger Committee and MTCR), Member States only began to coordinate their positions in the NPT Review Conferences in the nineties.<sup>17</sup> While co-ordination has been substantially improved lately, it has still not achieved the same level attained in the other forums. This is primarily due to the more political nature of this framework, but also to the much shorter record of co-operation, which could only begin at the 1995 session on the French accession to the Treaty.

At NPT Conferences, the EU has developed a formula that allows it to present itself as a unified actor while permitting certain Member States to preserve their distinct national positions. On the one hand, the EU as such submits Working Papers to the Conference

13 Ibid, art. 13(2).

14 Ibid, art. 23(2). Equally, decisions implementing joint actions and common positions are taken unanimously.

15 An observation of the voting behaviour at the 1st Committee of the UN General Assembly shows that EU Member States present common positions on most resolutions.

16 See David Fischer/Harald Müller, *United Divided, The Europeans at the NPT Extension Conference*, PRIF Report No. 40, Frankfurt/M. (PRIF), 1995.

17 The Treaty on European Union imposes an obligation upon Member States to coordinate their positions at international forums. See TEU (consolidated version), Title V, art. 19(1).

containing those proposals that have proved capable of attracting consensus. The Presidency also delivers statements on behalf of the whole of the EU outlining its general position. However, this does not preclude Member States from presenting further Working Papers and statements either in national capacity or in the framework of other groupings. This practice, which predates the creation of the Union, continues to be pursued by the both France and the UK as NWS as well as the EU members of the NATO-5 (Belgium, Germany, the Netherlands and Italy)<sup>18</sup>, and the G-11 (Austria, Ireland, Sweden, the Netherlands and Finland) or the New Agenda Coalition (Ireland and Sweden).<sup>19</sup>

As regards the contents of EU initiatives, there has been a general trend towards strengthening the existing regime, either through the promotion of concluded treaties, or through the multilateralisation of arrangements.

The best-known and most celebrated example of EU action in non-proliferation is the diplomatic campaign for the indefinite extension of the NPT. One year before the beginning of the Conference which was to decide whether the NPT should be renewed for a limited period of time or extended indefinitely, the EU agreed on a Joint Action on the promotion of the second option among the parties.<sup>20</sup> This objective, which was pursued through concerted diplomatic demarches, was successfully attained at the NPT Review and Extension Conference of 1995. Co-ordination at the Review Conference, though, was rather poor, arguably due to the concentration of efforts on the Treaty extension.

After 1995, the EU adopted three instruments with regard to multilateral forums. One of them is the Common Position adopted in the run up to the 2000 NPT Review Conference, which constituted a “list of objectives” to be advanced at the Conference under the general aim of “strengthening the...nuclear non-proliferation regime by promoting the successful outcome of the conference”.<sup>21</sup> In order to correct the lack of coordination witnessed at the 1995 meeting, the EU was careful to identify in advance a number of issues on which agreement existed. Its contents revealed an emphasis on the strengthening of legal regimes through the promotion of their signature, ratification, entry into force and implementation, as in the case of the NPT and the CTBT. Also, a number of provisions centered on nuclear safety and export controls.

As regards the actual impact of this instrument in the Review Conference, at least three of the provisions of the Final Document were inspired by EU proposals. They can be found in the principles of “irreversibility” and “transparency”.<sup>22</sup> Respectively, they embed a political commitment that nuclear disarmament measures must not be reversed, and

18 The fifth member of NATO-5 is Norway.

19 The other members of the New Agenda Coalition are Brazil, Egypt, Mexico, New Zealand and South Africa. Originally a member, Slovenia withdrew its participation.

20 Presidency Conclusions, Corfu European Council, 24-25 June 1994. The text of the Joint Action was also reprinted in: Europe no. 6277, 20 July 1994, p.6.

21 Council Common Position (2000/297/CFSP) of 13 April 2000 relating to the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Art.1.

22 See Final Document of the NPT Review Conference 2000, Art. VI, paragraph 15, sub-paragraph 5 and 9 respectively.



that more information should be made available on nuclear weapons capabilities and the implementation of disarmament measures. A provision calling for reductions in non-strategic nuclear weapons was also included in the final document, as suggested in the Common Position. While the inclusion of the provision on transparency was not only due to the Union's efforts, the proposal contributed to finding an acceptable formulation between more extreme positions.<sup>23</sup> Equally, its backing reinforced the pressure for reducing non-strategic weapons, which appeared in an NPT Final Document for the first time.

One of the objectives emphasised in the run-up to the 2000 NPT Conference, the promotion of the Comprehensive Test Ban Treaty (CTBT), has also been the subject of a separate Common Position.<sup>24</sup> The treaty was opened for signature in 1996, but its entry into force was made dependent on its signature and ratification by a list of 44 states. In the Common Position, the EU pledges to help in accelerating the entry into force by supporting the CTBT Conferences, in particular by encouraging the remaining states of the list of 44 to sign and ratify the Treaty.<sup>25</sup>

Outside the NPT framework, the EU adopted a Common Position on the Code of Conduct against ballistic missile proliferation in July 2001.<sup>26</sup> The draft of the Code was elaborated within the framework of the MTCR, and was later circulated to all countries with a view to obtaining a wider participation for its adoption, which eventually took place in November 2002.<sup>27</sup> The purpose of the Common Position was to promote the finalisation of the Code, and particularly its universalisation. Furthermore, it suggests that the Code "could be of interest to the United Nations."

As regards export controls, the EU adopted a modest initiative in order to promote transparency, to which end it committed to contribute to the work of the NSG Working Group on Transparency and to finance a seminar on nuclear-related export controls.<sup>28</sup> In the context of the 2000 NPT Review Conference, the EU also sided with the G-10 in an unfruitful attempt to recognise the role of the Zangger Committee and national export

23 In the provision on irreversibility, the wording in the Final Document is slightly stronger than in the original EU Common Position. See Tanja Ogilvie-White/Ben Sanders/John Simpson: Putting the Final Document into practice. Possible ways to implement the Results of the 2000 Review Conference, Programme for Promoting Nuclear Non-Proliferation (PPNN) Study, Southampton (PPNN) 2002.

24 Council Common Position (1999/533/CFSP) of 29 July 1999 relating to the European Union's contribution to the promotion of the early entry into force of the CTBT.

25 In a decision adopted two years later, those states designated to hold stations of the International Monitoring System (IMS) were added as a priority. See Council Decision (2001/286/CFSP) of 9 April 2001 implementing the Common Position 1999/533/CFSP. A Council Decision on the CTBT Conference in Vienna in September 2003 is mentioned in the Conclusions of the 2522nd General Affairs and External Relations Council Meeting, Brussels, 21 July 2003.

26 Council Common Position (2001/567/CFSP) of 23 July 2001 on the fight against ballistic missile proliferation.

27 The Council indicated its support of the final text in the 2450th External Relations Council Conclusions of 30 September 2002, p. I.

28 Joint Action (97/288/CFSP) of 29 April 1997 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to the promotion of transparency in nuclear-related export controls.

controls mechanisms in non-proliferation. Most recently, in an attempt to strengthen international export controls standards, the EU has proposed that all nuclear suppliers parties to the NPT follow the understandings of the Zangger Committee and the guidelines of the NSG in their export decisions. However, this idea has been put forward in the framework of the general debate of the Preparatory Committee of the NPT Review Conference<sup>29</sup> and has not (yet) been object of a specific CFSP instrument.

### 3.1.2 Assessment

As a field of the CFSP, the action of the EU in multilateral regimes can be assessed positively. There has been a substantial enhancement in its performance, with the Union acquiring some visibility as an actor even in the NPT forum. It has also perfected its instruments, which contrast with the weakly worded declarations of the beginning of the 1990s.

Above all, it has greatly improved preliminary coordination at international forums. In this respect, the evolution observed suggests that the enhancement of this performance results to a great extent from a process of *apprentissage* in which the EU has been able to identify its shortcomings and has learnt from its past experience.

At the level of the objectives pursued, the instruments do not present serious problems. It is indeed noteworthy that Member States have identified what seems to be a vast common ground, and the contents of the initiatives are sensible.

The primary criticism that can be made to them is their lack of ambition. Many of the objectives are “self-evident”, representing aims whose desirability has long been agreed upon. In this sense, most of the objectives set out in the Common Position on the 2000 NPT Conference reaffirm an uncontroversial agenda. Examples include the Union’s support for the “development of nuclear weapons free zones and establishment of zones free of weapons of mass destruction”, for the “early implementation of a strengthened safeguards system”, or for the “immediate commencement of negotiations on a Treaty banning the production of nuclear material.”<sup>30</sup> The same is true for the Common Position on the CTBT.

The accomplishments of the initiatives have been as modest as their aims. According to their wording, the Common Positions on the NPT and CTBT just aimed at a “successful outcome” of the Conference. This approach seems to suggest that the adoption of a final document by consensus is more important to the Union than the real progress achieved. As for the promotion of the Code, widening the number of the countries participating in the drafting of the Code and subscribing to it can only ameliorate its effectiveness. Transferring the Code to the United Nations would also enhance the palatability of the regime since the MTCR is rather unpopular with non-members.<sup>31</sup> Despite these

29 EU Statement at the Second Cluster of the 2nd Preparatory Committee of the NPT Review Conference, Geneva, 5 May 2003, p.3, paragraph 19.

30 See above, art.2, d, p and b respectively.

31 See Clara Portela, *Transcending MTCR*, PENN (Project on European Nuclear Non-Proliferation) Newsletter no.15, November 2001.

benefits, the Code is nothing more than a weakly worded political document setting out some principles and confidence building measures.<sup>32</sup> Therefore, the significance of this initiative can hardly be overstated. Taken together, the impact of these initiatives on the regime is very limited.

Nevertheless, the main difficulty hampering the effectiveness of the Union's action does not lie with the objectives, but with their implementation.

EU instruments often do not contain any measures to be adopted for the attainment of the stated aims. Neither the Common Position on the CTBT nor that on the Code specify the means through which the Union intends to promote wider adherence to the texts.

In those cases where tools have been singled out, these are very weak. According to the Common Position on the 2000 NPT Conference, its objectives should be promoted through the following means: demarches by the Presidency, submission of Working Papers to the Conference, and statements delivered in the General Debate and in the Main Committees.<sup>33</sup>

While these steps helped in promoting some of the ideas contained in the Common Position's catalogue, it is doubtful how they can, by themselves, convince non-signatories of the NPT, the CTBT, or the IAEA Additional Protocol to accede to the treaties. Equally, states that export sensitive technologies without adequate control are unlikely to be persuaded to change their policy by simply calling on them to do so. Without any concrete proposals to effectively translate these objectives into reality, CFSP Common Positions remain little more than political declarations.

Furthermore, EU action is characterised by its accomplishments as much as by its failures. Some of the most central proliferation issues of recent years have been either completely left out of the agenda or dealt with only tangentially.

Some of the omissions often illustrate the extent to which the EU is reluctant to oppose the US over nuclear issues. It has even led to some inconsistencies in the action of the Union. This has been the case with the renunciation of the Anti-Ballistic Missile (ABM) Treaty by the US in order to allow for the deployment of a national missile defence (NMD) system. Plans to develop such a system had caused dissensions with Russia since early 1999, and remained a matter of international concern due to its expected detrimental effects on the non-proliferation regime. Up until the US unilateral renunciation of the treaty in 2002, the EU remained almost silent on the matter.<sup>34</sup> The only hint at European dissatisfaction with these plans was a short reference to the importance of the ABM Treaty

32 See Mark Smith, *Preparing the ground for modest steps: a progress report on the Hague Code of Conduct, Disarmament Diplomacy* no.72, August/September 2003.

33 See above, art.3.

34 The Parliamentary Assembly of Western European Union (WEU) tabled a resolution calling for the definition of a joint position. See Assembly of Western European Union, *Motion for a Resolution: The United States National Missile Defence programme* (doc. 1702), 5 June 2000. See also Clara Portela/Denise Groves, *Europe's Nuclear Dilemma, European View*, 27 July – 4 August 2000, and Charles Grant, *Europe and Missile Defence, CER (Centre for European Reform) Bulletin* no.11, April/May 2000.

in the Common Position of the 2000 NPT Conference.<sup>35</sup> Nonetheless, no explicit mention of NMD was made, and neither is it stated whether the preference of the Union was that the treaty be renegotiated or preserved unaltered.

Another case in point is the START (Strategic Arms Reduction Treaty) process, i.e. negotiated reductions in strategic nuclear weapons between the US and Russia. The EU repeatedly manifested its support for the commencement of negotiations on START III, stressing the need for verifying the dismantlement of warheads. As we have seen, the Union had also promoted the principle of irreversibility during the 2002 PrepCom for the 2005 Review Conference. Still, when a different kind of treaty (Strategic Offensive Reduction Treaty, or SORT) with no provisions for verification and with the option of renunciation after ten years was concluded in lieu of START III, the Presidency issued a statement welcoming the signing of the Treaty.<sup>36</sup> In subsequent statements, the EU has been careful to mention the principles of irreversibility and transparency when referring to SORT,<sup>37</sup> but it has not gone beyond indicating that these “remain important”.<sup>38</sup>

## 3.2 Regional Approaches

### 3.2.1 Initiatives Aimed at Supporting Regional Nuclear Non-Proliferation Efforts

The EU is also involved in initiatives aimed at supporting non-proliferation efforts in key regions through nuclear-related assistance programmes. These include the whole range of initiatives contributing to the Russian Federation’s efforts towards arms control and disarmament as well as the EU’s participation in KEDO.

#### 1. Russia

The EU has been involved in non-proliferation in Russia in the form of Co-operative Threat Reduction (CTR) efforts. This concept emanates from a US programme designed to help the countries of the former Soviet Union to destroy WMD and associated infrastructure and establish verifiable safeguards. This initiative, originally known under Nunn-Lugar programme after the US Senators who tabled it, was put in place by the Soviet Nuclear Threat Reduction Act of 1991 and later labeled Cooperative Threat Reduction. The rationale for this programme is that by technically and financially assisting Russia to improve the safety of its nuclear material and to abide by its disarmament commitments, the diversion of these materials for illegal trafficking can be prevented.

35 See above, art.2 (1).

36 Presidency of the European Union, Declaration on the new treaty between the United States and the Russian Federation regarding reductions of their strategic nuclear arsenals, Brussels, 24 May 2002.

37 See Matt Rivers, “Fact Sheet: Comparison of U.S.-Russian Nuclear Reduction Treaties”, BASIC (British American Security Information Council) Note, 8 July 2002. See also Ken Loungo/Davis, “Bush – Putin Summit fails to bury the Cold War”, BASIC Note, 22 May 2002.

38 See EU statement at the 2nd Preparatory Committee of the NPT Review Conference, Geneva, 28 April 2003, p.3.

The Union's CTR activities in Russia have developed in three different domains: safeguards and accountancy and control systems, plutonium disposition, and projects for former weapons production staff. The main field of concentration has been in safeguards and material protection, control and accountancy (MPC&A) of nuclear materials. The main instrument utilised has been the TACIS (Technical Assistance to the Commonwealth of Independent States) programme, through which the EU has conducted nuclear safety activities since the beginning of the decade. While its original scope of action was restricted to the civilian field, it has gradually extended to programmes more directly related to CTR, such as measures aimed at enhancing the physical safety and security of nuclear reactors.

CFSP instruments began to be applied in order to allow for the conduct of projects with more obvious defence implications, since they fall outside the purview of the first pillar and required a different legal basis. Therefore, a Joint Action<sup>39</sup> was approved in 1999 shortly after the adoption of the Common Strategy on Russia, which provided a framework for wide-ranging action.<sup>40</sup> A Council Decision complemented this Joint Action, which put in place two EU projects, in 2001, which established five further initiatives.<sup>41</sup> In total, four out of the six projects mentioned fall within the nuclear realm.<sup>42</sup>

Finally, the EU is one of the funding partners of the International Science and Technology Centre (ISTC), a research institute set up to provide employment to scientist who had worked in the WMD and missile programmes of the former Soviet Union. In the period from 1991 and 2001, 1,489 billion were allocated to Russia under the TACIS programme, of which 800 million were destined to nuclear safety.<sup>43</sup> The Joint Actions programmes received 14,96 millions between 1999 and 2001.<sup>44</sup>

- 39 Council Joint Action (1999/878/CFSP) of 17 December 1999 establishing a European Union co-operation programme for non-proliferation and disarmament in the Russian Federation.
- 40 Common Strategy of the European Union (1999/414/CFSP) on Russia, adopted by the Cologne European Council, 4 June 1999. Its duration has been prolonged until the 24 June 2004 by Common Position (2003/471/CFSP) of the European Council of 20 June 2003 amending Common Strategy (1999/414/CFSP) on Russia in order to extend the period of its application.
- 41 Council Decision (2001/493/CFSP) of 25 June 2001 implementing Joint Action 1999/878/CFSP with a view to contributing to the European Union co-operation programme for non-proliferation and disarmament in the Russian Federation. The projects established by the Joint Actions were not newly created by that document, though. They build upon Member States' bilateral initiatives already in place which are now complemented by EU funding, which covers certain elements of the project drawing on the CFSP budget.
- 42 These projects are: a set studies and experimental studies on plutonium transport, storage and disposition (JA 1999/878, art.2); support to the Russian Nuclear Safety Authority for developing the regulatory basis and documents for the disposition of weapons grade plutonium; support for studies and experimental studies for mixed oxides fuel (MOX) demonstration and licensing; and a co-operative feasibility study for immobilisation of Russian waste containing weapons grade plutonium (JA 2001/493/CFSP, art.1).
- 43 European Commission, Nuclear Safety Strategy Paper 2002-2006.
- 44 Kathrin Höhl/Harald Müller/Annette Schaper, EU Co-operative Threat Reduction activities in Russia, Chaillot Paper no.61, Paris (Institute for Security Studies of the European Union) June 2003, p.25.

It is obvious that the EU has commenced its efforts in CTR precisely in the fields in which the Community already has competences and expertise – safeguards, nuclear safety and technological research — rather than in purely military fields.<sup>45</sup> The fact that the EU does not run CTR activities on missiles – a purely military issue unconnected to Community competencies — illustrates this situation

Although collaboration has proved smoother in some areas than in others, on the whole, CTR activities in Russia are functioning well. Nonetheless, the amount of funding destined specifically to disarmament projects is relatively small. While the EU is the largest provider of economic and technical assistance to Russia, in the specific field of CTR European efforts are far below the American level.<sup>46</sup> In view of the geo-strategic importance of this country to the EU, these efforts are still not commensurate with European security interests.<sup>47</sup>

## 2. North Korea

Another country where the Union has devoted large financial contributions to non-proliferation efforts has been the Democratic People's Republic of Korea (DPRK). Since 1997, the EU has been a member of the Executive Board of the Korean Peninsula Energy Development Organisation (KEDO). This organisation was created in 1995 following the signing of the US-North Korean Agreed Framework of 1994 and is entrusted with the construction of two light-water reactors in exchange for North Korean dismantlement of its nuclear programme.<sup>48</sup> The treaty between EURATOM and KEDO, which expired in late 2000, was renewed under somewhat improved conditions; among others, it opened the possibility of participating in contracts in the project for European enterprises.<sup>49</sup> This has addressed one of the main criticisms to European involvement in the KEDO; namely that it entailed an important financial contribution by the Union without rendering any benefits for the European industry.<sup>50</sup> So far, the EU has provided a total of 115 million in funding for the organisation.<sup>51</sup>

45 Ibid.

46 Ibid, p.12 and p.25.

47 See Clara Portela, EU-Russia co-operation in the security domain: Problems and opportunities, BITS (Berlin Information-center for Transatlantic Security) Research Note 01.2, Berlin (BITS) May 2001.

48 Council Joint Action 96/195/CFSP of the 13 March 1996 on the participation by the European Union in the Korean Peninsular Energy Development Organisation (KEDO).

49 Other advantages consisted in the creation of a new high level post at the KEDO Secretariat, another at the construction site in Kuhmo, and the exemption of the EU of any nuclear or financial responsibility in case of accident. See European Parliament, Committee on Foreign Affairs, Human rights, Common Security and Defence Policy (Jas Gawronski), 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), 4 December 2001.

50 See Marie-Hélène Labbé, Y a-t-il une politique européenne de non-prolifération nucléaire?, *Politique Étrangère* no. 3, 1997, pp.307-319.

51 European Commission, The EU's relations with the Democratic Republic of Korea (information available online).

In parallel, since late 2000 the EU has been enhancing its diplomatic role in the Korean peninsula, particularly supporting the peace process. These efforts include the visit of a high-level troika to Pyongyang in May 2001<sup>52</sup>, which established diplomatic relations between the DPRK and the Commission, as well as the commencement of a Human rights dialogue. The visit resulted in North Korean consent to prolong its missile test moratorium.<sup>53</sup> This positive outcome helped to strengthen the case of those within the Bush administration who advocated the preservation of the Agreed Framework at a time where they were being subject to heavy criticism.

Following the revelations that North Korea was developing a clandestine nuclear weapons programme in October 2002, and the subsequent decision by KEDO's Executive Board to interrupt heavy fuel oil deliveries<sup>54</sup>, the Council requested that the Commission and Member States review their technical assistance and trade measures towards North Korea.<sup>55</sup> Thereafter, the Commission has indefinitely suspended its technical assistance programme, to which 75 millions had been allocated.

Notwithstanding this enhanced involvement, the diplomatic handling of the North Korean nuclear problem has been almost entirely left to the US.<sup>56</sup> Despite the fact that the Council has been taking stock of the question regularly, the input of the EU in the negotiations has remained minor. One of the reasons accounting for this reduced input is the intra-European disagreement as to how to react to North Korea's new uranium enrichment programme. While the Council agreed to send a second high-level mission to Pyongyang, this has not taken place due to the lack of interest shown by the DPRK.<sup>57</sup>

Following the disappointing results of the Six-Party-Talks held in August between both Koreas, the US, China and Japan and Russia,<sup>58</sup> as well as the DPRK's repeated statements on the continuation of its nuclear programmes, the Executive Board of KEDO is studying the suspension of the construction of the light water reactors.<sup>59</sup> In case that an agreement with the DPRK on the nuclear question should eventually be reached, KEDO would con-

- 52 The troika was composed by Swedish PM J. Persson, External Relations Commissioner C. Patten and the High Representative for the CFSP J. Solana.
- 53 See Hans-Joachim Schmidt, *Confidence and/or Control: seeking a new relationship between North and South Korea*, PRIF Report No. 62, Frankfurt/M. (PRIF), 2002, p.28.
- 54 KEDO Executive Board, Meeting Conclusions, 14 November 2002.
- 55 Council of the European Union, Conclusions of the 2464th General Affairs and External Relations Council meeting, 19 November 2002, p.9.
- 56 See Camille Grand, *The European Union and the non-proliferation of weapons of mass destruction*, Chaillot Paper no.37, Paris (Institute for Security Studies of Western European Union), January 2000, p.25.
- 57 See Presidency Conclusions, Brussels European Council, 20 and 21 March 2003, p.36. See also the 2482nd External Relations Council meeting, 27 January 2003, which agreed to send a high-level EU Mission to Pyongyang.
- 58 Balbina Y. Hwang, *The Six-Party Talks: Much ado about nothing?*, The Heritage Foundation WebMemo #333, 8 September 2003.
- 59 The Executive Board of KEDO declared during its meeting on 4 November 2003 that a decision on the future of the LWR project would be announced before the 21 November.

sider to put in place a new energy project. Prospects for future EU involvement in KEDO will obviously depend on the nature of that project. In any case, the Union has already indicated its readiness to continue contributing to efforts towards a peaceful solution to the nuclear question.<sup>60</sup>

### 3.2.2 Responses to Nuclear Proliferation Crises

The EU has also responded with varying intensity to nuclear proliferation crises, i.e. situations where a state has developed nuclear weapons or behaved in a way that arose suspicions that it intended to do so. The Union's performance in this field has not been uniform. It is in this domain that the EU's least concerted performance can be identified. Still, some examples constitute an exception to this rule.

#### 1. Ukraine

In the early years of the past decade, the EU made a notable contribution to the resolution of the proliferation crisis in Ukraine. The crisis erupted when the Ukrainian Parliament refused to ratify the Lisbon Protocol to the START-1 Treaty, which foresaw the removal of the nuclear weapons inherited from the Soviet Union from its territory and the country's accession to the NPT as a NNWP. Ukraine's eventual ratification of the Protocol was negotiated primarily with the US. Diverse incentives were provided, including direct financial contributions by the US and security assurances by the five official NWS. For its part, the EU signed with Ukraine a Partnership and Co-operation agreement dealing with the whole spectrum of economic and political relations and made its implementation conditional on the latter's renunciation of nuclear weapons. While this package was not the principal incentive offered to Ukraine for signing of the Protocol, the EU's contribution complemented well US efforts and was instrumental in bringing about success.<sup>61</sup>

#### 2. India and Pakistan

The reaction to the Indian/Pakistani nuclear tests in May 1998 was not homogeneous among Europeans. The sole common EU response to the nuclear tests by India and Pakistan in May 1998 were some declarations condemning the tests and inviting both countries to join the NPT and the CTBT.<sup>62</sup> A Common Position was only released the following October.<sup>63</sup> The Union made a general pledge to support "efforts of the international

60 See 6th EU-China Summit, Joint Press statement, Beijing 30 October 2003.

61 See Harald Müller, European nuclear non-proliferation after the NPT extension: achievements, shortcomings and needs, in: Paul Cornish/Peter Van Ham/Joachim Krause (eds.), *Europe and the challenge of proliferation*, Chaillot Paper no.24, Paris (Institute for Security Studies of Western European Union) May 1996. See also Virginia I. Foran/Leonard S. Spector, *The application of incentives to nuclear proliferation*, in: *The price of peace: Incentives and international conflict prevention*, Lanham (Rowman & Littlefield), 1997, pp.21-53, p.40.

62 The Council adopted Declarations on the Indian and Pakistani nuclear tests on 25 May and 8-9 June 1998 respectively. See Cardiff European Council Conclusions, 15 and 16 June 1998.

63 Common Position (98/606/CFSP) of 26 October 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union on the European Union's contribution to the promotion of non-proliferation and confidence-building in the South Asian region.



community to achieve enhanced confidence-building among India and Pakistan and in the region in general". Although useful, the kind of measures suggested in this document – seminars, links with European think tanks, and technical assistance regarding the implementation of export control regulations — are not effective as reactive measures.

While some Member States — notably Denmark, Germany and Sweden — froze their development aid, other countries like Spain or France abstained from any measures beyond condemnation, because they believed that, as non-signatories to the NPT, these countries were under no obligation to refrain from acquiring nuclear weapons.<sup>64</sup>

Still, the Council took some measures as regards co-operation and trade preferences. Following the Indian tests, in its Declaration of 25 May, it instructed the Commission to reconsider India's eligibility for General System of Preferences (GSP). After Pakistan followed suit, the Commission extended this consideration to this country, and temporarily postponed the conclusion of a Cooperation Agreement with Islamabad, which was impending.<sup>65</sup>

### 3. Iraq

At the lowest end of the EU efficiency we find the lack of a unified stance with regard to the US war on Iraq, which was largely justified on allegations that this country was running an active WMD programme. Well before the US war plans were announced, EU Member States were already divided on how to deal with the Iraqi problem. Following Iraq's refusal to allow UNSCOM<sup>66</sup> inspectors into the country in December 1998, the US, the UK and France started a series of periodical strikes on Iraq without the sanction of the UN Security Council. France eventually stopped its participation; still, the US and Britain continued the bombing campaigns until the diplomatic crisis erupted at the end of 2002. Even though the Iraqi authorities eventually allowed UNMOVIC to conduct inspections in the country, the evidence provided by the country on its weapons programme was judged insufficient by the US and the UK, which launched a military operation at the end of March. Both during the run-up to the war, as well as in the course of the military campaign, efforts to frame a EU common response proved unfruitful. The Council's statements released during the period did not go beyond repeated condemnatory declarations on Iraqi behaviour.<sup>67</sup>

As these statements show, there was a general consensus within the EU on the threat posed by the Iraqi non-compliance with Security Council resolutions. The intra-European

64 For a comprehensive overview of international responses to the Indian and Pakistani tests see Oliver Meier, *Involving India and Pakistan*, BITS Research Report 99.2, Berlin (BITS) 1999.

65 See Council of the European Union, *Conclusions of the 2097th General Affairs Council of 25 May 1999 and Conclusions of the 2104th General Affairs Council meeting of 8 June 1999*.

66 The United Nations Special Commission (UNSCOM) was established by the UN Security Council in 1991 with the mission of monitoring and verifying Iraq's compliance with its undertaking not to use, develop, construct or acquire WMD or its means of delivery.

67 Efforts to frame a compromise included the convening of extraordinary meetings in August 2002 and in the following February. For the most strongly worded EU statement on Iraq, see Council of the European Union, *Conclusions of the 2482nd General Affairs and External Relations Council meeting*.

disagreement over the war centred on the convenience of using force to respond to this country continued lack of co-operation. EU members clustered around two poles. The UK, Denmark, Italy, Portugal and Spain subscribed unreservedly to the operation, although only Britain committed forces to the military operation. The totality of EU acceding states — the Baltic countries, the Czech Republic, Hungary, Poland, Slovakia and Slovenia —, as well the candidate countries Bulgaria and Romania expressed solidarity with the US.<sup>68</sup> For their part, France, Germany and Belgium overtly opposed the intervention on the grounds that Iraq could be disarmed by peaceful means.<sup>69</sup> Also, they expressed concerns over the lack of a Security Council mandate to sanction the use of force, and remained unconvinced by the merits of forcible action as a means of averting proliferation.<sup>70</sup>

It seems clear that divisions over the handling of the Iraq crisis did not reveal a disagreement on the risks posed by WMD proliferation, but rather on the strategic priorities of the EU Member States: while the transatlantic relationship retains the fundamental pre-eminence for some of them, others attached a higher priority to the potentially disruptive consequences that pre-emptive wars can have on the international order.<sup>71</sup>

#### 4. Iran

Following the war on Iraq, international attention has now focused on Iran. There have long been concerns that Iran is seeking to develop a military nuclear programme.<sup>72</sup> Over the last months, the US has sharpened its allegations that this country is secretly building two facilities designed to produce weapons-grade fissile materials.<sup>73</sup> This has been confirmed by recent IAEA findings. The main difficulty has been the Iranian refusal to sign the IAEA Additional Protocol, which entails a strengthened safeguard system whose implementation can provide evidence that the nuclear programme is exclusively civilian.

- 68 See Common Declaration of the Heads of States and Government of the UK, Italy, Spain, Portugal, Hungary, Poland, Czech Republic and Denmark, published in *Handelsblatt*, 30 January 2003. For the rest of states, see statement of the Vilnius-group, *Frankfurter Allgemeine Zeitung*, 7 February 2003.
- 69 France and Germany outlined their position along with Russia in. See Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, Joint Statement by Russia, France and Germany, 17 March 2003.
- 70 For the French position, see de Address of Dominique de Villepin in front of the Security Council, 19 March 2003. For the German position see Presse- und Informationsamt der Bundesregierung, Erklärung der Bundesregierung anlässlich der Kamphandlungen gegen den Irak (Pressemitteilung nr.118), 20 March 2003. See also Speech by Federal Foreign Minister Fischer to the United Nations Security Council, New York, 19 March 2003.
- 71 See Matthias Dembinski/Wolfgang Wagner, *Europäische Kollateralschäden, Zur Zukunft der europäischen Außen-, Sicherheits- und Verteidigungspolitik nach dem Irak-Krieg in: Aus Politik und Zeitgeschichte*, B31-32/2003, pp. 31-38, p.34. See also Volker Perthes, Europe needs its own plan for the Middle East, *Financial Times*, 21 March 2003.
- 72 See chapter on Iran in Joseph Cincirone/Miriam Rajkumar/Jon B. Wolfsthal: *Deadly Arsenals*, Washington (Carnegie Endowment for International Peace), 2002, pp.255-264.
- 73 See references to Iran in US statement on “Regional Issues” at the NPT Preparatory Review Conference, 2 May 2003.

Here, the strategies followed by the US and the EU to address the Iranian issue diverges significantly. The US approach has been to pursue a policy of containment and isolation towards the country that culminated with the inclusion of this country into Bush's "axis of evil" speech.<sup>74</sup> By contrast, the EU has traditionally conducted a policy of "constructive engagement" through which it attempts to exert a positive influence on the regime.<sup>75</sup> This approach has evolved from a "critical dialogue" to the opening of negotiations on a Trade and Cooperation Agreement in December 2002. Although the ongoing political dialogue has focused on Human rights issues, non-proliferation is taking an increasingly prominent place in this context. The EU has repeatedly voiced its concerns over Iran's intention to develop WMD and their systems of delivery, in particular long-range missiles, and has prompted Iran to conclude the strengthened safeguards regime with the IAEA. However, Iran made the conclusion of such a regime dependent on prior removal of international export control measures against its civilian nuclear programme.

As US pressure on Iran mounted, the EU began linking co-operation with compliance with IAEA requirements. Following the explicit references to Iran in the G8 Evian Declaration on non-proliferation of WMD last June,<sup>76</sup> the Council indicated that it would review future co-operation in view of IAEA evaluations and the conclusions of its Board of Governors.<sup>77</sup> When the Board of Governors passed a resolution giving Iran 48 days to provide complete information on its nuclear programme last September,<sup>78</sup> the Union emphasised that "more intense economic relations can be achieved only if progress is reached in the four areas of concern"<sup>79</sup> — which explicitly include non-proliferation —, pledging once again to review co-operation in the light of the next IAEA report. At the same time, and in parallel to this *soft* approach, the UK sided with the US to press for an IAEA resolution declaring Iran in breach of NPT obligations.<sup>80</sup>

What followed has been an outstanding exercise in EU diplomacy conducted by three key Member States — although they acted in their capacity as individual states rather than by a troika delegation acting on behalf of the Union. The Foreign Ministers of the UK, France and Germany visited Teheran at the end of October at the invitation of the Iranian government. The result of this visit was a compromise whereby Teheran agreed to resolve

74 See US White House, The President's State of the Union Address, Washington, 29 January 2002.

75 See Harald Müller, Managing proliferation: A European perspective, in: Frances G. Burwell and Iwo H. Daalder (ed), The United States and Europe in the Global Arena, New York (St. Martin's), 1999, pp.154-176.

76 See G8, Declaration on the Proliferation of WMD, Evian, 2 June 2003.

77 Council of the European Union, Conclusions of the 2522nd External Relations Council, 21 July 2003, p.9.

78 IAEA Board of Governors, Implementation of the NPT Safeguards Agreements in the Islamic Republic of Iran (GOV/2003.69), 12 September 2003. The resolution expressed "grave concern [...] that Tehran has still not enabled the IAEA to provide the assurances required [...] that all nuclear material in Iran is declared and submitted to Agency safeguards".

79 Council of the European Union, 2527th External Relations Council meeting (provisional version), 29 September 2003.

80 See Rebecca Johnson, IAEA adopts critical resolution in deepening crisis over Iran's nuclear programme, Disarmament Diplomacy no. 73, October/November 2003.

all outstanding issues with the IAEA, sign and ratify the Additional Protocol, and even suspend all uranium enrichment and reprocessing activities as defined by this agency. For its part, the European representatives indicated that “once international concerns, including those of the three Governments, are fully resolved, Iran could expect easier access to modern technology and supplies in a range of areas”.<sup>81</sup>

By playing a central role in the peaceful resolution of this crisis, the Union has seized a magnificent opportunity to assert itself as a non-proliferation actor on its own right. In this particular case, it found itself favourably placed to do so. It disposed of open channels of communication, and important incentives to offer to Iran: a package of good political and economic relations in which the current government has shown a great deal of interest.<sup>82</sup> In addition, it is in a position to offer the prospect – although distant – of enhanced access to technology. After all, as one analyst has noted, “Iran and the EU have a shared interest in proving (...) that inspections can be effective.”<sup>83</sup> Although it is fairly unclear to what extent the European demarches were co-ordinated with the US, this case demonstrates how the fundamentally different approaches of both actors can effectively work to serve the same aim.<sup>84</sup>

### 3.2.3 Regional Approaches: Assessment

What is most striking about EU responses to regional proliferation issues is that they have been very uneven. Some issues have hardly been dealt with while others have received substantial attention and resources – depending entirely on the degree of agreement between EU members. This does not mean, though, that the amount of resources allocated correlates to success. The contrast between the CTR and KEDO initiatives illustrates this.

The EU does not perform well when reacting to proliferation crises. In the most central instances of proliferation-motivated crises of recent years, such as the Indian/Pakistani test, the EU has failed to articulate a timely coordinated response. This situation contrast with the relative good performance at international forums described above. In the absence of a pre-agreed agenda, it lacks the capability for spontaneous action.

When responses to proliferation crises have been framed, they tended to be slow and weak. The EU reacted to the nuclear tests by India and Pakistan in May 1998 with a Common Position that was only released in October and which provided for confidence building measures and export control assistance.

81 UK Foreign and Commonwealth Office, Agreed Statement at the end of a visit to the Islamic Republic of Iran by the Foreign Ministers of Britain, France and Germany, 21 October 2003.

82 See European Commission, EU relations with the Islamic Republic of Iran, Communication from the Commission to the European Parliament and the Council, Brussels, 7 February 2001.

83 Steven Everts, Iran will be the test for European Foreign Policy, *Financial Times*, 1 June 2003.

84 See US State Department Briefing by Mr. Ereli, 21 October 2003.

Clearly, the EU is doing much better in CTR. This programme has a preventive effect in the sense that it supports disarmament efforts in the absence of a crisis and in that they prevent nuclear smuggling.

It seems clear that EU action is most effective when it is taken *before* a crisis has occurred. It is therefore striking to find that most of the responses framed by the EU have been predominantly *reactive* as opposed to *preventive*. Where some action was taken, it was only after proliferation had occurred or the crisis had broken out. There are no further examples of preventive measures beyond the CTR activities in the CIS.

It is also noticeable that the level of engagement of the EU is roughly proportional to the geographic proximity of the concerned region to the territory of the Member States. While great attention has been allocated to Ukraine and Russia, the Indo-Pakistani nuclear problem triggered much less European concern.

In view of its policies in the cases described, the EU seems to have an approach to averting regional proliferation that underlies its regional policies and whose objectives go beyond the preservation of the non-proliferation regime. Its most defining characteristic is its *comprehensive* and *broad* nature, in the sense that it does not exclusively focus on the nuclear problem. It does not intend to directly prevent the acquisition of nuclear weapons by the states concerned, but to create a stable security environment for the whole region. To some extent, this strategy is programmatically stated in the Commission's concept of conflict prevention released in April 2001. In this document, the Commission recognised the need to address root causes of conflict, underlining the idea that promoting regional arrangements contributes to ease tensions, therefore strengthening regional security.<sup>85</sup> The EU's diplomatic involvement in both the intra-Korean and Middle East peace processes must be seen in this light. Equally, the means by which it attempts to persuade would-be proliferants to forego nuclear weapons also reveal a comprehensive approach. Both in the cases of Ukraine and Iran, the EU has offered co-operative relations with Europe – rather than direct financial transfers — as an incentive to renounce nuclear weapons.

This point must be seen in connection with the fact that EU regional action has never been framed in overt contradiction to US strategies. To the extent that the US has normally been the first actor in the management of proliferation crisis, the EU has defined policies that display a degree of compatibility with US action. Indeed, there is a tendency to follow US responses to proliferation instead of devising an own approach.

In most cases, the EU responses *endorse* US efforts or *complement* them with other means. In North Korea, the European position has under some an evolution. EU participation was first limited to a financial contribution to KEDO. However, by deciding to actively support the intra-Korean peace process, the EU is making a separate contribution

85 The EU's support of regional integration efforts as well as the interaction with the Union on a regional basis are considered by the Commission to serve conflict prevention objectives. See European Commission, Communication from the Commission on Conflict Prevention, Brussels, 11 April 2001, pp.7-8. It should be noted, though, that the Communication does not mention the concept of WMD proliferation by name.

with a reinforcing effect on KEDO's aims, sometimes in some distance from the more confrontational moves of the Bush administration. The resolution of the Ukrainian crisis and CTR in Russia are examples of a successful "division of labour" with the United States.

In other cases, the question for the Europeans has been whether to contribute to the US non-proliferation policy on a particular region. When Member States have disagreed on the adequacy of the US approach, the EU's response has been particularly weak. Different scenarios have been witnessed. In the case of Iraq, divisions between European resulted in some members lining up with the US, while others held back. Following the Indo-Pakistani nuclear tests, the EU refrained from imposing sanctions like the US, but its response was hardly noticeable altogether.

Only in the case of Iran, the EU is united in pursuing a policy of "constructive engagement" as opposed to the US policy of containment. While the EU and US approaches appear to be *opposed*, they do not necessarily *contradict* each other. Both are following different strategies to attain a shared objective: Iran's full compliance with the NPT and the signing of the IAEA Additional Protocol.

In none of the cases studied the approaches followed by the EU and the US were framed in such a way that they allowed the targeted proliferant to play them off against each other, or that he could misuse to obtain additional advantages without making progress towards the renunciation of nuclear weapons.

Finally, a further feature of EU responses to regional proliferation is that it tends not to develop its own initiatives. In this sense, its approach remarkably lacks creativity.<sup>86</sup>

### 3.3 The EU's Role in Non-Proliferation: How Effective Is It?

As the analysis reveals, there has been a substantial enhancement of EU activity during the last decade. This is clearly visible in the contrast between early declarations at the beginning of the decade and the CFSP acts released over the past few years. While the former were weakly worded and remained declaratory in nature – such as the Dublin Declaration of 1990<sup>87</sup> —, the latter take the form of comprehensive, carefully crafted catalogues of precise objectives – such as the Common Position on the 2000 NPT Conference.

However, an evaluation of the Union's input to the global non-proliferation regime suggests a different diagnosis. The EU is still ineffective as a non-proliferation actor. Its

86 Some analysts have resented the absence of European self-crafted initiatives. See Grand 2000.

87 The "Joint Declaration on Nuclear Non-Proliferation" adopted by the European Council at its Summit in Dublin in 1990 was the first statement by the EC recognising the importance of the NPT. It should not be mistaken for the Dublin Declaration of the New Agenda Coalition (NAC) of June 1998, which served as a basis for the resolution "Towards a Nuclear Weapons Free World: The Need for a New Agenda", subscribed by the governments of Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden.

current action is insufficient to attain its stated objective of enhancing the non-proliferation regime. As a result, the EU remains a marginal actor in non-proliferation.

As discussed above, the EU non-proliferation policy suffers from problems at various levels:

At the level of substance, EU members have been able to find enough common ground to frame a shared approach based on precise, middle-way objectives. However, due to the need for consensus, EU policy has severe omissions. It has sidelined the question of disarmament, and it has failed to frame responses to proliferation issues in key regions, notably in the Middle East.

The reason for the ineffectiveness of EU non-proliferation policies does not lie primarily in the difficulties with the formulation of objectives, but rather in the failure to achieve its implementation. There has been no agreement between Member States on how to persuade third states to adhere to agreements. When it comes to implementing objectives, EU documents remain very general in their provisions and do not specify the means through which the aims should be accomplished. The Common Position for the 2000 NPT Review Conference — as does any EU statement at NPT PrepComs — lists a meaningful and comprehensive catalogue of objectives without giving any indication as to how they should be accomplished.

And it is precisely at the level of means where the most substantial problems of the existing non-proliferation regime can be found. There is a virtually global agreement that all states should adhere to and comply with the provisions of the NPT. What is not clear is how to enforce the Treaty. The EU has not come up with an idea as to how to cope with these issues. By failing to do so, the EU has effectively neglected the most central question in non-proliferation in our days.

Finally, the virtual absence of focused policies directly designed to address proliferation constitutes a further difficulty. The EU approach outlined above directed at promoting regional stability is meaningful insofar as it attempts to deal with the root causes of proliferation, but it remains too general. It can work well when applied preventively, since its effects are noticeable in the long-term. However, when the risk of proliferation is imminent, this “diffused” action is not effective.

It is also striking that, while the EU *already* conducts regional policies in the context of its external relations, it has not yet translated down its non-proliferation objectives stated in high-level documents to the Union’s regional approaches. Non-proliferation objectives are conspicuously absent from Country Strategy Papers for key countries such as India, Pakistan or Iran. In short, what hampers the effectiveness of the Union in non-proliferation is that it does not yet make an effective and concerted use of the instruments at its disposal to achieve implementation.

#### 4. The EU Strategy for Non-Proliferation: Can It Work?

At the Thessaloniki Summit, the European Council adopted a Declaration on the Proliferation of WMD along with a set of “Basic Principles for an EU Strategy against Proliferation of WMD” and its corresponding “Action Plan”.<sup>88</sup> These documents originated in a Council decision dating back to April 2002,<sup>89</sup> which was taken within the framework of the fight against terrorism.<sup>90</sup> The European Council has announced that it intends to further elaborate a coherent EU strategy by the end of the year, and to continue to develop and implement the EU Action Plan “as a matter of priority”.<sup>91</sup> The “Basic Principles” is meant to be a “living document” subject to review and updating.<sup>92</sup> It should be noted that the Strategy is a preliminary and fragmentary document – there is not (yet) a complete Strategy – only the Principles and the Action Plan have been released. Also at a rhetorical level, non-proliferation has increased its importance in the EU agenda. The EU “Security Strategy”, which was adopted on the same occasion in the form of another report by the High Representative for CFSP Javier Solana, unequivocally identifies WMD as “the single most important threat to peace and security”.<sup>93</sup> In its recent address to the 58<sup>th</sup> General Assembly, the Presidency has pointed out the non-proliferation of WMD as a priority.<sup>94</sup> It has also indicated that “the EU is determined to tackle the threat posed by the proliferation of weapons of mass destruction.”<sup>95</sup>

88 For the text of the Declaration, see Annex II to the Presidency Conclusions, Thessaloniki European Council, 20 June 2003. For the other documents, see footnote 3. Hereafter, these documents will be referred to as “Declaration”, “Principles” and “Action Plan”.

89 Council of the European Union, Conclusions of the 2421st General Affairs Council Meeting, 15 April 2002, p. II to VI.

90 The document that launched the fight against terrorism, “Conclusions and Plan of Action” of the Extraordinary European Council meeting on 21 September 2001 did not include non-proliferation as a part of the series of proposed measures. While the Ghent European Council Conclusions first referred to the threats of the use of biological and chemical means in terrorist operations, non-proliferation was first mentioned in the context of dialogue with third countries in the “Declaration by the European Council on the Contribution of the CFSP, including the ESDP, to the fight against terrorism” released at the Seville European Council. See Annex V of the Presidency Conclusions, Seville European Council, 22 June 2003.

91 See Declaration, point 3.

92 See Council of the European Union, Conclusions of the 2518th External Relations Council meeting, 16 June 2003, p.9.

93 High Representative of the CFSP Mr. Javier Solana: “A secure Europe in a better world”, 20 June 2003, p.5. Neither of the strategies mentioned should be mistaken for the CFSP instrument “Common Strategy” according to art. 13(2), Title V of the TEU. Even though they present a similar structure, the adoption of a Common Strategy proper would allow for the Council to make decision derived from its contents by majority voting. In its present form, the document does not exert any influence on the decision-making procedures.

94 Statement by the Prime Minister of Italy H.E. Silvio Berlusconi on behalf of the European Union, 58th session of the General Assembly of the United Nations, New York, 23 September 2003.

95 EU Priorities for the 58th UN General Assembly, 1 July 2003.



Curiously, objectives and means in non-proliferation are interspersed in the “Principles”, “Action Plan” and “Declaration”<sup>96</sup>, and precisely defined objectives can be found alongside vague provisions. The following discussion will simplify the Council documents to facilitate a better understanding.

#### 4.1 Objectives

The importance of this “preliminary strategy” lays primarily in the identification of non-proliferation as a priority for the Union, giving it a strong mandate to mobilise resources to this aim, both internally and in its external activities. Notably, the first measure suggested in the Action Plan is the drafting of a detailed plan of diplomatic action, which effectively compels Member States to improve co-ordination and to search for political agreement.

In essence, the Union will be guided by the following objectives:

- a) universalisation of disarmament and non-proliferation agreements;
- b) enhancing of the effectiveness of inspection/verification mechanisms by improving the detectability of violations;
- c) strengthening of export control policies;
- d) expansion of co-operative threat reduction and assistance programmes.<sup>97</sup>

On the basis of the record presented above, there is little new in these objectives: the EU intends to proceed along its already existing lines of action. The Union has long pursued the universalisation of existing agreements as well as the strengthening of export controls. With its decision to expand CTR efforts, it is also reinforcing an activity that constitutes one of its most successful experiences.

These broad objectives have been translated down to some more precise initiatives. Many of them are intended to have a EU-internal function. Some are institutional measures designed to upgrade the capacity of action of the Union, such as the setting up of a Monitoring Centre on WMD disarmament and non-proliferation, the inclusion of a permanent WMD threat assessment in the tasks of the EU Situation Centre and the creation of a specific Community budget line for non-proliferation and disarmament of WMD. Other measures are intended to strengthen EU internal legislation, such as the adoption of a legal framework for the criminalisation of illegal brokering of WMD-related items. A further group of measures aims at enhancing the efficiency of the Member States’ export controls,<sup>98</sup> most notably through the adoption of a policy of refusing to export nuclear

96 For the sake of simplicity, hereafter the combination of these three documents will be referred to as “the Strategy”.

97 Principles, p.3.

98 Among others, it is suggested that that the channels of communications regarding decisions on denials be enhanced, and that a “peer review” of export control systems be conducted with a view to establish the best practices in the Union.

related materials and equipment to countries not having ratified the IAEA Additional Protocol. Obviously, in order to strengthen the coherence of this policy, the ratification of the Protocol by those member states and acceding countries who have not yet done so is identified in the Plan of Action as a matter of priority.

Finally, a few of the measures listed are effectively proposals for EU external action ripe to be translated into CFSP instruments, such as promoting the negotiation of an agreement on the prohibition of the production of fissile material for nuclear weapons (FMCT), enhancing the financial contribution to IAEA safeguards, promoting catch-all clauses in export control regimes, or renewing the CTR programme in Russia.

On the whole, the Strategy's principal emphasis is placed on enhancing the effectiveness of the existing regimes rather than in suggesting new steps for the non-proliferation agenda. A number of measures are geared towards reinforcing compliance and enhancing the detectability of violations of the treaty.<sup>99</sup> It is suggested that, as a principle, verification mechanisms be fully used and new ones be established. The planned establishment of a programme of technical assistance to states in the field of export control points in the same direction.

## 4.2 Means

It is in the provisions on means to avert proliferation where the draft Strategy becomes most interesting. Beyond the mention of the "classic" instruments — multilateral treaties and export control regimes —, it is possible to identify three basic elements in the EU approach to non-proliferation, which contain both innovative and traditional traits.

A central element of the Strategy is that combating proliferation requires a comprehensive approach, in the sense that the response should take into account its underlying causes and the complex context of the regional security situation. The Union explicitly states that its policy is "to contain proliferation while dealing with its underlying causes", and that "political solutions should be found to the problems which lead (states) to seek WMD". It attempts to address them by "actively foster(ing) the establishment of regional security arrangements and regional arms control and disarmament processes".<sup>100</sup> As explained above, some of these notions were already present in the Communication on Conflict Prevention of 2001.<sup>101</sup> This is also very much in line with the current approach of the Union, notably in the Korean peninsula, in the confidence-building measures contained in the Common Position on the South Asian nuclear tests, as well as in its continued efforts to contribute to the Middle East peace process. While this approach does not constitute much of an innovation in view of the record, its inclusion in the Strategy can reinforce their importance by emphasising its non-proliferation finality.

99 Principles at point 6.

100 Ibid, points 8 and 9.

101 See above.

Secondly, the current approach remains too general. It has been complemented by envisaging efforts especially focused towards averting proliferation, specifically with a provision to mainstreaming non-proliferation policies into the EU's wider relations with third countries. The Strategy explicitly mentions the introduction of non-proliferation issues in the EU dialogue with Mediterranean countries.<sup>102</sup> A policy of "sticks and carrots" shall be linked to non-proliferation commitments "in particular in the context of co-operation agreements or assistance programmes."<sup>103</sup> Political and economic levers are included in the list of instruments available to the Union. Without mentioning it by name, this points in the direction of conditionality.

The introduction of some form of conditionality in the field of non-proliferation is a novelty. Conditionality, i.e. the creation of a linkage between the provision of economic aid or other advantages by the donor entity and the fulfilment of certain conditions by the recipient state is an established practice of the European Union in its external relations. However, the conditions to be met by the government of the recipient state have so far been related to the respect of Human rights and the strengthening of democratic institutions and the rule of law.<sup>104</sup>

Some recent Council Declarations previous to the adoption of the Strategy already hinted at some sort of conditionality link, but only in a tentative manner and *a posteriori*. The Council indicated that it would link future steps of cooperation with Iran to progress in the non-proliferation field.<sup>105</sup> Following the disclosure of North Korean's nuclear programme, it requested that Commission and its Member States review its technical assistance and trade measures towards that country, stating that failure to resolve the nuclear issue would jeopardise the future development of its mutual relations.<sup>106</sup>

Finally, the Union has also envisaged the possibility that its efforts to persuade proliferants to forego its nuclear intentions fail altogether. In this case, it would be prepared to consider taking military action. The reference to the option of using force as a measure of last resort represents an absolute breakthrough. This has been included as a last stage of EU efforts as outlined in the "Principles":

"Political and diplomatic preventative measures (multilateral treaties and export control regimes) and resort to the competent international organisations (IAEA, OPCW, etc.) form the first line of defence. When these measures (including) political dialogue and diplomatic pressure) have failed, coercive measures under Chapter VII of the UN Charter and interna-

102 Action Plan at point 10 and Principles at point 10.

103 Action Plan at point 8.

104 See Pétros N. Stangos, *La conditionnalité politique, en termes de protection des droits de l'homme, de démocratie, et d'état de droit, des relations économiques extérieures de la communauté européenne*, in: Hélène Ruiz Fabri, Linos-Alexandre Sicilianos and Jean Marc Sorel (eds.), *L'effectivité des organisations internationales: mécanismes de suivi et de contrôle*, Athens (Sakkoulas) 2000, pp. 273-321.

105 Council of the European Union, *Conclusions of the 2522nd External Relations Council*, 21 July 2003, p.9.

106 Council of the European Union, *Conclusions of the 2464th General Affairs and External Relations Council Meeting*, 19 November 2002, p.9.

tional law (sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force) could be envisioned. The UN Security Council should play a central role.”<sup>107</sup>

At this point there is a certain problem of imprecision as regards the legal basis for the potential EU interventions to combat proliferation. On the one hand, the numerous references to the UN Charter give the impression that the text is respectful of the provisions under the Charter. The “Principles” document affirms that one of the elements of the Strategy will be “considering, in case political and diplomatic measures have failed, coercive measures, including as a last resort the use of force in accordance with the United Nations Charter”.<sup>108</sup> The Declaration mentions among the instruments available to the Union “coercive measures in accordance with the UN Charter”.<sup>109</sup>

It is noteworthy that the formulation used here has been “in accordance with the UN Charter” rather than “in accordance with the *principles* of the UN Charter”. The first wording presupposes that *every* provision of the Charter will be respected, while the second allows for a wider interpretation. It suggests that action can be taken provided that the principles of the Charter are respected. The principles referred to, which are enumerated in Chapter I (Principles and Purposes), range from the right to self-determination of peoples to sovereign equality. This looser formula has been used in the Treaty on European Union, whose art. 11.1 speaks of preserving peace and strengthening international security “in accordance with the principles of the United Nations Charter”.<sup>110</sup> It has also been noted that the documents establishing the European Rapid Reaction force have not linked action by the Union to a UN Security Council mandate.<sup>111</sup> The formulation employed in the Strategy therefore suggests a stronger binding to the Charter provisions than any other EU text produced so far.<sup>112</sup>

However, when reference to the UN Security Council is made, the language employed has been kept more ambiguous. The provisions referring to the Security Council allocate to it a “central role”<sup>113</sup> instead of a “primary competence” as stipulated in the Charter itself.<sup>114</sup> This formulation does not acknowledge the monopoly of the decision to use force

107 Principles at point 4.

108 Principles at point 13.

109 Declaration at point 4.

110 TEU, Chapter V. In a similar exercise of legal ambiguity, the North Atlantic Treaty sets forth that its members will refrain from the use of force “in any manner inconsistent with the purposes of the United Nations”. See Art. 1, North Atlantic Treaty, Washington D.C, 4 April 1949.

111 See European Parliament, Committee on Foreign Affairs, Human rights, Common Security and Defence Policy (Catherine Lalumière), Report on the establishment of a common European security and defence policy after Cologne and Helsinki, 21 November 2000, at pp. 9, 24, 27 and 39.

112 The international lawyer Ortega has indicated that the combination of the Treaty and CFSP documents of the European Council “allows for the possibility of action to prevent and manage crises [...] without the prior authorisation of the Security Council, even when it is also evident that in any case principles of the UN Charter must be respected.” See Martín Ortega, Military Intervention and the European Union, Chaillot Paper no.45, Paris (Institute for Security Studies of the European Union) March 2001, p.110.

113 Principles at point 4.

114 Art. 24 of the UN Charter. See Clara Portela, Humanitarian Intervention, NATO and International Law, BITS Research Report 00.4, Berlin (BITS) January 2001.

in situations other than self-defence force of the UN Security Council, and seems to suggest that military action without a Security Council authorisation might also be contemplated. It should be pointed out that this monopoly has been openly challenged in recent years. Following the unauthorised intervention in Kosovo by NATO in 1999, a Slovenian representative stated before the Security Council that this had “the primary, but not exclusive, responsibility for maintaining international peace and security”.<sup>115</sup> The formulation chosen by the EU this time is even weaker.

The ambiguity of these provisions is due to a long-standing intra-European debate on the adequacy of binding EU action to a Security Council mandate. While some states such as France, Finland and Sweden strongly advocate the establishment of such requirement, other members, like the UK, prefer to maintain more flexibility. The compromise wordings of EU documents in this domain reflect this disagreement and have so far omitted any explicit and exclusive binding of EU military action to a Security Council mandate.

As far as the subject of WMD is concerned, the current system of International Law does not foresee the use of force as a response to proliferation. The Charter bans the use of force but for two exceptions; one of them is self-defence and the other an operation authorised by the UN Security Council.<sup>116</sup> The resort to force under self-defence only applies after an attack has been perpetrated, therefore it should be excluded here.<sup>117</sup> This leaves the authorisation by the UN Security Council as the only possible lawful option.

In cases of breaches of the NPT, the process should look as follows: Once IAEA inspectors have determined non-compliance, they should report to the Director General of the Agency. The Director General transmits the report to the Board of Governors, who calls upon the state concerned to correct the breach discovered and reports to other members and to the UN Security Council and General Assembly, if the Board views the breach as sufficiently serious.<sup>118</sup> Even in case of a serious violation of the safeguards agreements, it remains entirely at the discretion of the Security Council to authorise forcible action or not. Therefore, legally speaking force can only be resorted to with a Security Council mandate. If force were to be used without such mandate, it would not be in accordance with the UN Charter.

A number of provisions reveal a willingness to modify the current legal situation, underlining the need to strengthen the role of the Security Council in this respect. It is stated that “the role of the UN Security Council, as the final arbiter on the consequences of non-

115 Account of the Security Council debate, UN press release SC/6659, 26 March 1999.

116 See Arts. 2(4), 42 and 51 of the United Nations Charter.

117 The case for “preventive self-defence” made by the British government to justify its intervention in Iraq last spring rests on a very tenuous legal basis. See Nigel D. White, *Self-Defence, Security Council authority and Iraq*, in: Richard Burchill and Justin Morris (eds.), *Essays in honour of Hilaire McCoubrey*, Cambridge (McCoubrey Centre for International Law), 2003.

118 See Statute of the International Atomic Energy Agency, approved on 23 October 1956, Art. XII C. In case that the state concerned fails to remedy the breach, the Board can take some measures such as suspending that state’s membership rights; however, the use of force can only be authorised by the UN Security Council.

compliance (...) needs to be effectively strengthened”.<sup>119</sup> The Action Plan also mentions the “support for a stronger role for the UN Security Council in handling the threat of WMD” as one of its objectives.<sup>120</sup>

However, the document does not state how this should be made. It pledges to explore a resolution in the Security Council to identify the spread of WMD and their means of delivery as a threat to international peace and security. It is unclear, though, how such resolution would significantly bring about more effective responses in acute crises. As far as nuclear weapons are concerned, a resolution would have some more weight than the UN Security Council Declaration adopted in January 1992 to the same effect.<sup>121</sup>

### 4.3 The Strategy: Assessment

The draft EU Strategy against Proliferation of WMD has fulfilled some of the most central requirements necessary for activating the rather weak nuclear non-proliferation policy of the Union. If appropriately developed and implemented, it bears the potential to allow the EU to become a relevant actor in the field.

First of all, its main merit is that it has elevated non-proliferation to one of the main objectives of the external action of the Union. Most importantly, the Strategy contains some measures to ensure that the Union acts *accordingly*. Of particular importance is the fact that some systematic policy planning is envisaged, notably with the drafting of a detailed plan of diplomatic action – significantly, this constitutes the first measure for immediate action listed in the Action Plan. As the above discussion has shown, advanced consultation and co-ordination has proved instrumental in improving the EU overall performance, as it tends to be slow in framing responses.

Secondly, it effectively builds upon its successes in areas where it has done relatively well. It does so by aiming to further enhance its role in multilateral forums through the adoption of CFSP instruments and by expanding its CTR activities. The Union is particularly ambitious in the field of export control regimes, where it aims at becoming a “leading co-operative player”.<sup>122</sup> Nevertheless, a number of provisions are very vague and are likely to remain without effect unless further specified. This is the case with the repeated references to a special focus on WMD proliferation at the Mediterranean level, where it is stated that wider adherence to the relevant treaties should be encouraged. However, as to how this should be accomplished, the Action Plan does not go beyond stating that the issue will be raised in the dialogue with the concerned countries.<sup>123</sup>

119 Principles at point 2.

120 Action Plan at point 13.

121 Besides, it has been pointed out that this proposal appears to undermine European commitment to the Conference of Disarmament. See Gerrard Quille, A European response to WMD: prevention or pre-emption?, European Security Review no.18, July 2003.

122 Action Plan at point 7.

123 Action Plan at point 10.

In addition, it is remarkable that the Strategy also foresees the possibility that its well-intentioned diplomatic action can fail. Reiterated statements by the EU along with the majority of states urging North Korea to dismantle its nuclear programme and come into full compliance with the NPT “immediately and without conditions” have so far remained blatantly ineffective. It is therefore a leap forward that the EU has decided to come up with some answers as to how deal with non-cooperative states, and it is all the more encouraging that it is prepared to make use of the whole variety of means at its disposal.

At this point, it is appropriate to consider the concrete historic moment in which the Strategy was agreed. The Union decided to formalise and boost its role only some months before the admission of new members into the Union. Optimism regarding a future distinctive role of the EU in non-proliferation matters should be qualified in view of the impending enlargement. As we have seen, the current balance in the Union is favourable to those countries accepting the logic of deterrence. Only four out of the current fifteen Member States are active disarmament-minded countries free from alliance obligations. This situation has resulted in the adoption of a “middle-way”, or even conservative line of action in nuclear non-proliferation matters by the EU.

This slight imbalance will be aggravated by the admission of Central and Eastern European members, which are all either NATO members or applicants. As such, they are predominantly sympathetic to nuclear deterrence, and to a great extent also to US non-proliferation policies. Those EU candidate countries that had taken more progressive stances in nuclear question in the past – such as Hungary and Slovenia - eventually adjusted their positions to NATO mainstream stance, which is largely determined by its strategic requirements. It is therefore foreseeable that the intra-community balance in nuclear attitudes will shift further to conservatism and marginalize the already small group of nuclear disarmament-minded countries within the EU. This will predictably accentuate the EU’s reluctance to take steps displaying autonomous features with regard to the US, out of a fear of antagonising this country. Unfortunately, these circumstances will reduce the EU’s scope of action and strategic flexibility. Still, on the basis of the Strategy, and in view of Europe’s relatively high stakes in the field, a real opportunity exists for the Union to counter this tendency to some degree.

## 5. Recommendations

The Strategy offers a vast potential that the EU can exploit in order to make a relevant contribution to the existing non-proliferation regime. In order to do so, the EU should consider a series of issues when elaborating the Strategy, as it has pledged to do before the end of the year.<sup>124</sup>

124 Declaration at point 3.

The following recommendations can be condensed in three main points. In order to enhance the efficiency of the Union's non-proliferation policies in its external relations, "non-proliferation" clauses should be integrated into its external relations. Also, further measures should be adopted to enhance the EU capacity to act, and the framing of a more balanced approach should enable the Union to engage non-Western countries in its endeavours.

## 5.1 Making Non-Proliferation a Priority in the EU's External Relations

### 5.1.1 Concretising the "Sticks and Carrots" Model into a Clear Conditionality Framework with a Non-Proliferation Clause

First and foremost, there is a need for specifying the "sticks and carrots" framework to be applied for averting proliferation. As discussed above, the strategy indicates that this "sticks and carrots" framework will include incentives such as technical assistance and development aid along with sanctions, but it falls short of detailing what concrete shape they will take. So far, the EU has contemplated suspending the provision of aid or co-operation only *after* a crisis erupted. Also, it has left undefined the kind and scope of measures that it would adopt. When it has pledged to review future co-operation – as in the cases of North Korea or Iran – it appeared prepared to use economic relations as a *positive* incentive, but has not made clear whether it considered the reversal of already achieved steps as a *negative* incentive. This flexible approach obviously exerts a much weaker deterrent effect on the target state than the suspension of measures whose nature and scope have been previously determined.

In order to enhance its effectiveness, the EU should adopt a formal conditionality framework. In contrast to the current approach, conditionality implies linking the provision of aid and co-operation to the fulfilment of certain requirements *prior* to the eruption of a crisis.

The EU currently applies different forms of conditionality. One of them is embodied in the so-called "Human rights clauses". They consist in the introduction of a provision in co-operation agreements concluded between the Community and the recipient state that allows for the suspension of the treaty in case that the government perpetrates grave human rights violations in its country.<sup>125</sup> Having their origins in the context of the Lomé Agreements, these clauses have been perfected over time and are now extensively used by the Union in its relations with developing countries as well as Western partners. They have proved a useful instrument for the promotion of human rights, the strengthening of democratic institutions and the rule of law throughout the world.<sup>126</sup>

125 Peter Hilpold, Human rights clauses in EU-Association Agreements, in: Stephan Grille and Birgit Weidel (eds.), *External Economic Relations and Foreign Policy in the European Union*, Vienna (Springer) 2002.

126 European Commission, *The European Union's role in promoting Human rights and Democratisation in Third Countries*, Communication from the Commission to the Council and the Parliament, 8 May 2001.



An analogous mechanism should be introduced in the EU's contractual relations with third countries, taking the shape of a "Non-Proliferation Clause". The Union is already introducing "antiterrorism clauses" in agreements with third countries as part of its action to combat terrorism.<sup>127</sup>

Including a non-proliferation clause in agreements with third countries would translate the benefits of the human rights clauses to the WMD field. It displays a preventive effect on the recipient state because it is made aware of the concrete consequences of non-fulfilment *beforehand*. Therefore, it would deliver *a priori* a powerful message to the Union's partner that co-operation and good relations with the EU depend on full compliance with the existing non-proliferation regime. The Union is the biggest trading partner of many potential transgressors of the NPT, and the world's main donor of development aid. The possibility of being deprived of development assistance and trade advantages weighs heavily in the calculations of many states. Finally, this mechanism has the advantage of being non-military in nature. It is also non-coercive, since the fulfilment of the conditions by the third country always rests on a voluntary basis.

Finally, the EU should also contemplate the use of sanctions in its non-proliferation policies. When the EU has imposed sanctions outside the framework of the UN it has usually been to promote Human rights and democratisation objectives. So far, no cases of EU sanctions motivated by WMD proliferation are known.<sup>128</sup> Since the application of sanctions tends to be less effective than the use of contractual clauses, they should be more selective and limited than the use of "Non-Proliferation Clauses". Nevertheless, in certain cases they can also prove useful.

It would be justified for the EU to take these steps. After all, while the promotion of human rights in third countries is a lofty goal, it does not directly affect the Union's security interests. In contrast, WMD proliferation represents a threat to the European continent as much as a to the rest of the world. Therefore, there is no reason why the EU should pursue non-proliferation less vigorously than the promotion of Human rights.

### 5.1.2 *Mainstreaming Non-Proliferation Objectives into Country and Regional Strategies*

It is central that non-proliferation objectives are thoroughly mainstreamed in the regional policies. The strategy for conflict prevention adopted by the Commission in 2001 foresaw a comprehensive catalogue of measures that should be integrated throughout the external

127 See Declaration by the European Council on the Contribution of the CFSP, including the ESDP, to the fight against terrorism, Annex V of the Presidency Conclusions, Seville European Council, 22 June 2003, p.32. See also Council of the European Union, "Relations with third countries from the point of view of combating terrorism", Conclusions of the External Relations Council, 18/19 February 2002, p.25.

128 See Ian Anthony, Sanctions applied by the European Union and the United Nations, SIPRI (Stockholm International Peace Research Institute) Yearbook 2002: Armaments, Disarmament and International Security, Stockholm (SIPRI) 2002, pp. 599-614.

relations of the Community.<sup>129</sup> In order to facilitate the co-ordination of the whole range of community activities towards this aim, it envisaged the drafting of “Country Strategy Papers”. Two years on, the Council itself has recognised the usefulness of these documents as a programming tool establishing a link between Community aid and related EU policies.<sup>130</sup>

Non-proliferation objectives should be incorporated into the Country Strategy Papers in a similar way. This measure is appropriate despite the fact that development and trade policies belong to the first pillar while non-proliferation corresponds to the second pillar. In its regional strategies, the Union should particularly emphasise preventive activities such as confidence building measures. Experience shows that external influence is more likely to convince states to stop its nuclear programme when it finds itself at an initial rather than at an advanced stage.<sup>131</sup> And as the record demonstrates, the EU is far better equipped to act *preventively* than to respond to crises once they have erupted.

## 5.2 Enhancing the EU’s Capacity to Act

### 5.2.1 Developing a European “Think-Tank” for the Non-Proliferation of WMD

Thirdly, it is important that the Union puts in place its own “internal think tank” to craft ideas about how the EU can contribute to enhance the non-proliferation regime. So far, proposals for EU action have been initiated by individual Member States. The Monitoring Centre envisaged in the Strategy and the conduct of a common threat assessment by the EU Situation Centre are but modest institutional arrangements. The EU should create a “think-tank” within the Council Secretariat composed by selected European experts tasked with framing ideas for further EU action, which would be later submitted to the Council Working Group for discussion. They could take the form of contributions of the CFSP High Representative. The creation of a capacity expressly intended to develop ideas and to search for European “common ground” could remedy the lack of a European proactive agenda resented by analysts.<sup>132</sup> It cannot be sufficiently stressed how advanced policy planning facilitates the action of the Union. Finally, the exchange of intelligence between Member States is already in the process of being enhanced.<sup>133</sup> As foreseen in the Action Plan, this exchange should be particularly intensive in the field of WMD proliferation.

129 European Commission, Communication on Conflict Prevention, Brussels, 11 April 2001. See also Clara Portela, The European Commission’s concept of conflict prevention, PENN Newsletter no.14, May 2001.

130 See Council of the European Union, Common Framework for Country Strategy Papers, Conclusions of the External Relations Council, 18 March 2003, p.3-4.

131 See Foran and Spector 1997.

132 See Perthes 2003. See also Grand 2000.

133 See evidence given by William Shapcott, Head of the Joint Situation Centre in front of the Select Committee on the European Union at the House of Lords of the British Parliament on 2 December 2002, in: Select Committee on the European Union, House of Lords, EU-Effective in a crisis?, (The Stationery Office Limited), 7th report Session 2002-03, (ordered to be printed on 11 February 2003).

### 5.2.2 Finding a Satisfactory “Division of Labour” with the US in the Resolution of Proliferation Crises

Advocating a more pro-active and creative role for the EU in non-proliferation does not mean that the EU should act with complete independence from the US. More often than not, EU action in proliferation crises can benefit much from a joint approach with this country. Although US engagement in the field is currently at a low, it continues to be the most important actor in dealing with proliferation crises. The record shows how the EU approach has always been, to some degree, framed in accordance with the US'. As stated in the Strategy, the EU should collaborate closely with this country. EU-US mechanisms for consultation are already well developed.<sup>134</sup> The Union should try to complement US initiatives with other means – as it did in the case of Ukraine — rather than merely endorsing them financially. This collaboration can be especially fruitful when the EU counts on assets that the US lacks. This is excellently exemplified in the case of Iran discussed above. This should be kept in mind particularly because, since the current US administration took office, it has become more difficult for the EU to exert an influence on US decisions. Efforts should be made to find, wherever possible, a satisfactory “division of labour” in which complementary actions constitute a co-ordinated approach.

### 5.2.3 Explicitly Linking Forcible Action to a UN Security Council Mandate

Even though the references to the UN Charter are less ambiguous in the Strategy than in preceding EU documents, it remains essential to further clarify the conditions under which the Union is ready to resort to force in order to avert proliferation. For the Strategy to be in accordance with current International Law, the Union should make an *explicit* pledge to use force only when the UN Security Council issues a mandate. By failing to do so, it will further weaken the role of the Security Council.

The EU should also specify how exactly it intends to strengthen the UN Security Council's role in the field. The EU might be thinking of pushing for the reform of the Security Council, a long impending task that could gain some impetus from the emerging non-proliferation campaign. In view of France's emphasis on the reform of the UN Security Council during the 58th General Assembly session, an effort could be underway to develop the idea into a EU priority.<sup>135</sup> However, due to the difficulties encountered so far by reform endeavours, the EU would be better advised to search for other solutions.

In addition to that, it could explore ways to modify the legal situation, which is clearly unsatisfactory. In the aftermath of the Iraq war, Germany seems to be supportive of a reform of the international legal regulation of the use of force, although no specific pro-

134 See European Commission, “The New Transatlantic Agenda” and “Joint EU-US Action Plan”, adopted in 1995.

135 See Statement by President Jacques Chirac of France in front of the United Nations General Assembly, 58th session, New York, 23 September 2003.

posal has been put forward as yet.<sup>136</sup> Some experts have suggested suppressing the veto power of the permanent members in cases involving non-compliance with safeguards agreements.<sup>137</sup> This could be done by amending the UN Charter, and reinforced by the drafting of a convention to this aim.

Whatever option it favours, the EU should be careful to take a balanced approach, i.e. one capable of gaining support from non-Western as well as from Western countries. It should at the same time emphasise that force will only be employed on the basis of sufficient evidence of non-compliance so as to avoid the recurrence of experiences like Iraq in future. Therefore, it ought to reaffirm the IAEA's competence to determine violations of the NPT. Some developing countries have resented US direct accusations of non-compliance. The EU could reassure concerned countries by stressing that the Agency retains authority over the identification of breaches, as stipulated in its statute.

#### 5.2.4 *Expanding the Action Plan to Further the Non-Proliferation Agenda*

While the Strategy's current emphasis on strengthening verification mechanisms and compliance is adequate, the Union is also in a good position to pursue aims that will further the non-proliferation agenda. In the Council Conclusions of April 2002, the Union pledged to "fill identified gaps in the current pattern of multilateral instruments in the field of disarmament, arms control and non-proliferation."<sup>138</sup> The following ideas could be translated into EU initiatives without much difficulty.

One of these initiatives could be the further promotion of negotiations on the reduction of non-strategic nuclear weapons. This term is used to describe nuclear weapons not covered by the START-SORT process or by the Intermediate-range Nuclear Forces (INF) Treaty. The fact that these weapons remain outside any arms control arrangement constitutes a loophole in the regime. A US-Russian presidential initiative to reduce these weapons launched in 1991-92 remains informal, and its implementation is therefore neither subject to time schedules nor to the principle of irreversibility nor to verification. The EU has already called for the furthering and formalisation of this process in the Common Position on the 2000 NPT Review Conference, although in a very vague manner.<sup>139</sup>

Also, it could step up its efforts in pressing for a reduction of the operational status of nuclear weapons. During the 2000 NPT Conference, the NWS announced the de-targeting of their strategic systems. Next steps could include the further reduction of the

136 President Rau stated that agreement should be reached in the framework of the United Nations on how international law could be further developed to address situations where international terrorism and weapons of mass destruction are linked. See President Johannes Rau, *Gemeinsam handeln- Deutschlands Verantwortung in der Welt*, Berliner Rede 2003, 19 May 2003, Pressemitteilung, Bundespräsidialamt, p.10.

137 See Ogilvie-White et al. 2000, p.29. This idea was already present in the Baruch Plan of 14 June 1946.

138 See point D.1.

139 See 2(m) of the CP. The EU is also known to have presented a Working Paper to the Conference. See NPT/CONF.2000/MC.I/WP.5.

number of nuclear weapons on high alert status, and in the case of the US and Russia, the removal of the technical mechanisms to launch a nuclear strike immediately.

Finally, the provision of technical assistance in the proliferation related fields of safeguards and export controls is one of the strengths of the Union. Expanding assistance on export controls and related programmes to Central Asian states would deliver an encouraging sign to the recent establishment of a NWFZ in this region.

### 5.3 Adopting a Balanced Approach

The EU should also consider that the introduction of new means, including the use of force, to combat proliferation puts in new terms its relations with the Third World. In order to counterbalance the tough, or possibly aggressive image, that the EU is likely to project by taking more resolute serious action on the subject, it should frame also “Third-World friendly” policies that help to make its action more palatable to non-Western countries, and whenever possible, to gain their support.

#### 5.3.1 *Introducing Disarmament into the Strategy*

It should be reminded that, in the framing of this EU policy, consensus has so far been reached by sidelining the question of disarmament. Therefore, the EU non-proliferation policy remains partial or even “one-sided”.

However, the NPT rests on the basis that NNWS commit to forego the acquisition of nuclear weapons in exchange for the nuclear disarmament of the NWS,<sup>140</sup> which was reaffirmed in one of the political documents adopted at the 1995 Review and Extension Conference, *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*.<sup>141</sup> Little progress, though, has been made in this domain. The fact that the determination to enforce the non-proliferation side of the treaty can go as far as to resort to force contrasts dramatically with the lack of pressure put on NWS to honour their disarmament commitment. This mismatch underlines the unfairness in the implementation of what was meant to be a just deal. Therefore, the Union should also devise a credible strategy to promote nuclear disarmament. In the mid-term, getting serious about non-proliferation

140 Art. VI of the NPT reads: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” See Treaty on the non-proliferation of Nuclear Weapons, signed at Washington, London and Moscow, 1 July 1968.

141 In this document, NWS reaffirm their commitment to Art. VI and point 4 singles out as one of the measures for its full realization and effective implementation “the determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control”. See *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*, adopted by the Extension and Review Conference of the Parties to the Treaty on non-proliferation of nuclear weapons, New York 17 April – 12 May 1995.

while putting disarmament aside will diminish the credibility of the EU and even accentuate the perception of Western “nuclear hypocrisy” among Third World countries.<sup>142</sup> The implementation of disarmament requirement should not be seen as the mere fulfilment of a legal obligation. As the UN Under-Secretary-General for Disarmament Affairs Mr. Abe recently recalled, “working on disarmament in the long run serves non-proliferation causes”<sup>143</sup>.

Obviously, the introduction of disarmament objectives into the Strategy will put particular demands on the EU’s NWS, France and the UK. As a continent that remains “nuclearised” despite being fairly secure, it can become difficult for Europe to defend credibly the goal of disarmament. Therefore, France and Britain’s role will be central in ensuring that the EU’s commitment to the ultimate goal of the NPT is regarded as sincere. In this spirit, they should consider undertaking further cuts in their own arsenals. To do so, they will need to move away from their precondition that the arsenals of the remaining NWS be reduced to the same level as theirs before they undertake further reductions.<sup>144</sup> Last but not least, those EU Member States still hosting Alliance nuclear weapons on their soil should also consider giving them up.<sup>145</sup> The nuclear sharing arrangement has long been resented by non-aligned countries, which have consistently contested their legality at NPT Review Conferences. Further cuts of the European arsenals along with the abandonment of nuclear sharing are gestures that would decisively enhance the credibility of the EU as a non-proliferation actor while finally doing away with the residual nuclear legacy of the Cold War on the continent.

### 5.3.2 *Engaging Third World Interests*

The EU should try to accommodate, whenever possible, the interest and concerns of the Third World to gain its support. In this context, it is particularly important for the EU to maintain its focus on multilateralism. The Union should distance itself from proposals for new UN Security Council resolutions criminalizing proliferation such as that recently put forward by the US.<sup>146</sup> Finally, it ought to maintain its “diplomacy-first” approach. It should be noted that, while the introduction of new instruments – such as economic and

142 See Dan Plesh: *Anarchy in Action: Western Policy on Weapons of Mass Destruction*, BASIC Paper 34, London (BASIC) April 2000.

143 Under-Secretary-General for Disarmament Affairs Nobuyasu Abo, *The non-proliferation regime in the “Second Nuclear Age”*, Forum of the Middle Powers Initiative on Challenges of the Second Nuclear Age: Preserving Multilateralism, Advancing Disarmament, United Nations, New York, 6 October 2003.

144 France’s and Britain’s current stance is that further verified cuts by Russia and the US, as well as China’s participation are preconditions for them to participate in further nuclear arms reductions. See Bruno Tertrais, *Nuclear Policies in Europe*, Adelphi Paper no. 327, London (Institute for International Security Studies) 1999, p.53.

145 Over the years, several proposals have been put forward in this direction. See for instance Otfried Nassauer, *NATO’s Nuclear Posture Review: Should Europe end nuclear sharing?*, BITS Policy Note 02.1, Berlin (BITS) April 2002.

146 Statement by President George Bush, Address to the United Nations General Assembly, 23 September 2003.

political incentives and disincentives — can substantially enhance the leverage of the EU in non-proliferation, the EU has successfully handled the Iranian crisis without their help. Therefore, the new instruments should be best used to complement, rather than supersede, the use of traditional diplomatic tools.

## Acronyms

ABM	Anti-Ballistic Missile
CFSP	Common Foreign and Security Policy
CONOP	Committee on Non-Proliferation
CONUC	Committee on Nuclear Affairs
CTBT	Comprehensive Test Ban Treaty
CTR	Co-operative Treat Reduction
DPRK	Democratic People's Republic of Korea
EC	European Community
EPC	European Political Co-operation
ESDP	European Security and Defence Policy
EU	European Union
EURATOM	European Atomic Energy Community
FMCT	Fissile Material Cut-Off Treaty
IAEA	International Atomic Energy Agency
INF	Intermediate-range Nuclear Forces
ISTC	International Science and Technology Centre
KEDO	Korean Peninsula Energy Development Organisation
MPC&A	Material Protection, Control and Accountancy
MTCR	Missile Technology Control Regime
NAC	New Agenda Coalition
NATO	North Atlantic Treaty Organisation
NMD	National Missile Defence
NNWS	Non Nuclear Weapons States
NPT	Non-Proliferation Treaty
NSG	Nuclear Suppliers Group
NWFZ	Nuclear Weapons Free Zone
NWS	Nuclear Weapons States
PrepComs	Preparatory Committee
SEA	Single European Act
START	Strategic Arms Reduction Treaty
SORT	Strategic Offensive Reduction Treaty
TACIS	Technical Assistance in the Commonwealth of Independent States
TEU	Treaty on European Union
UN	United Nations
UNSCOM	United Nations Special Commission
WMD	Weapons of Mass Destruction