The EU and the NPT: Testing the new European Nonproliferation strategy

Clara PORTELA
Singapore Management University, claraportela@smu.edu.sg

Follow this and additional works at: http://ink.library.smu.edu.sg/soss_research_all

Part of the Eastern European Studies Commons, and the Political Science Commons

Citation
Research Collection School of Social Sciences.
Available at: http://ink.library.smu.edu.sg/soss_research_all/14
THE EU AND THE NPT: TESTING THE NEW EUROPEAN NONPROLIFERATION STRATEGY

Clara Portela

Only a few years ago, the idea that the European Union (EU) could become a significant actor in the nuclear nonproliferation regime would have met with great scepticism. An organisation comprising nuclear weapon states (NWS) along with non-nuclear weapons states (NNWS) - some of who are disarmament-minded - would have been considered incapable of framing any common response to nuclear proliferation. And yet, today we find that the EU is establishing itself as an actor in the field of nonproliferation of weapons of mass destruction (WMD), and that it has even developed a Strategy to guide its endeavours.

This article will first analyse the EU Strategy against the proliferation of WMD and its rationale. It will then look at the consequences for the EU as an actor in nonproliferation, particularly vis-à-vis the Non-Proliferation Treaty (NPT), and consider the prospective role of the EU at the next Review Conference, to be held in May 2005.

Background

Over the past few years, the European Union has been slowly upgrading its role in nuclear nonproliferation. With one of the founding treaties of the European Communities responsible for nuclear energy (EURATOM), coordination on nuclear energy issues started within the European Political Co-operation (EPC). This was the predecessor of the Common Foreign and Security Policy (CFSP). After the end of the Cold War, due both to external impulses and to institutional improvements in its foreign policy, the EU increased coordination on these issues. This has been noticeable in the EU's action in multilateral fora and, to a lesser
degree, in its involvement in international responses to regional proliferation issues. Specifically in the nuclear field, the EU has established a tradition of coordinating positions and delivering joint statements at multilateral fora, such as the First Committee of the UN General Assembly or the NPT Review Conferences. Beyond that, it has conducted diplomatic campaigns to promote the indefinite extension of the NPT at the 1995 Review and Extension Conference and the entry into force of the Comprehensive Test Ban Treaty (CTBT), which was opened for signature in 1996.² The Union has also been very active on promoting the adoption of the Hague Code of Conduct on ballistic missiles.³ On a more practical level, it runs Cooperative Threat Reduction (CTR) activities in support of disarmament and nonproliferation in Russia, and it also contributes to the North Korean Energy Development Organisation (KEDO).⁴ Taken together, these activities show how the EU was already in the process of developing a role in nonproliferation prior to the adoption of a strategy in 2003.

**Mobilising the EU Against Proliferation**

After some years of undertaking dispersed non-proliferation efforts almost by stealth, the EU decided to publish an "EU Strategy against the Proliferation of WMD". This was adopted in a preliminary form in June 2003, and in its definitive version at the European Council six months later.⁵ This is a *sui generis* document. It does not correspond to any of the formal instruments of the CFSP - it is neither a Common Position, nor a Joint Action, nor a Common Strategy. While not legally binding, it features one peculiarity normally absent from political declarations: it foresees a constant revision and updating process as well as the regular production of progress reports. Even though the Member States preferred not to formalise the Strategy as a "Common Strategy", the provision for a review mechanism points to a determination to give appropriate follow up to the measures agreed.

The Strategy was adopted simultaneously with the European Security Strategy (ESS) at the European Council meeting in December 2003, thereby emphasising the linkage between both documents.⁶ It is structured in three chapters: the first describes the threat posed by the proliferation of WMD; the second sets out three general principles that will guide the EU’s response; and the third constitutes a plan of concrete measures.

Chapter II outlines the EU approach for confronting the threats, including the pledge to mainstream nonproliferation in its overall policies "drawing upon all resources and instruments available to the Union". It also names these tools and sets out the order in which they will be used through a metaphor reminiscent of battlefield tactics: "Political and diplomatic preventative measures (multilateral treaties and export control regimes) and resort to the competent international organisations form the first line of defence against proliferation. When these measures (including political dialogue and diplomatic pressure) have failed, coercive measures under Chapter VII of the UN Charter and international law
(sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force) could be envisioned."

Following that, three main principles are presented: "effective multilateralism", "promoting a stable international and regional environment" and "cooperation with partners". The first emphasises the EU's commitment to the multilateral treaty system, whose implementation and universalisation it pledges to pursue. It is nevertheless conceded that "if the multilateral treaty regime is to remain credible, it must be made more effective". Clearly, if tactfully, intended to offer an alternative to the Bush administration's unilateralist policies, this is the idea that seems to be encapsulated in the EU-coined term "effective multilateralism". It then lists a number of improvements to be made to the existing regime, such as reinforcing compliance, perfecting verification mechanisms, and strengthening export controls.

The section on "promoting a stable regional environment" states that the EU will pursue efforts to foster regional security arrangements. It intends to do so on the assumption that "the best solution to the problem of proliferation of WMD is that countries should no longer feel they need them". It is however acknowledged that problems of regional instability will not be easy to resolve in the short term; therefore, the policy of the EU will be to prevent proliferation while dealing with the underlying causes. Finally, a third section calls for close co-operation with key partners.

Chapter III then presents an "action plan" of concrete measures through which the EU intends to put into practice the principles spelled out in the previous chapter. These measures correspond to the headings of Chapter II. For example, "effective multilateralism" incorporates the following themes: promoting the universalisation of multilateral treaties; enhancing the expertise of the UN Security Council; providing financial and technical support to verification regimes; strengthening export controls; enhancing the security of proliferation-sensitive material; and strengthening the interception of illegal trafficking.

The rubric corresponding to "promoting a stable international and regional environment" includes the expansion of CTR programmes and the integration of nonproliferation concerns into the EU’s external relations. This section foresees the introduction of a nonproliferation clause in agreements with third countries. Finally, a brief additional heading on the development of new structures within the EU follows a short section on cooperation with other partners - among which the United States is singled out.

The vast majority of the measures suggested in Chapter III are geared towards the improvement of legislation, practices and coordination between Member States, the establishment of external assistance programmes, as well as some proposals to be put forward in international forums. Depending on whether the proposals are purely of EU-internal nature, bilateral or multilateral, they would be implemented
by means of legislation, the release of financial resources, diplomatic means, or a mix of all three.

It should be noted that the new members of the EU were required to adopt some practices of the Member States that had not yet been formalised - notably in the field of export controls - constituting, therefore, some sort of unspoken *acquis communautaire*.

**The Strategy's Rationale**

In order to understand why the Strategy came about at this particular time and with these specific elements, it is essential to consider the circumstances surrounding its emergence.

First, the WMD regimes found themselves in a period of serious crisis, largely due to the neglect and effective relinquishment of arms control by the current US administration. At the core of US policy in the aftermath of September 11 2001, was an increased concern that terrorist organisations could gain access to WMD, combined with the perception that the existing regimes were ill-equipped to prevent proliferation threats, which were thought to require a more forcible response. As a consequence, the WMD nonproliferation regimes were deprived of the leadership of the major international player.

Secondly, the United States was intent on promoting a doctrine of "preventive defence". This was employed to justify the use of force against one country, Iraq, largely on the basis of its alleged possession of WMD. US policy provoked a profound disagreement over the necessity of conducting a military campaign against Iraq, dividing Europeans amongst themselves and causing serious rifts in the transatlantic partnership represented by NATO.

It was in this context that Sweden proposed that the EU should articulate a common approach for dealing with the threat of proliferation. The initiative met with acceptance in the Council of the EU, which perceived a pressing need to find some common understanding in order to avoid the recurrence of a *débâcle* of the proportions of that witnessed over the Iraq war. The framing of an EU Strategy thus arose primarily from the need to restore both a transatlantic and an intra-European consensus on security issues. The question at stake here is whether proliferation can be averted through the multilateral regimes, or whether they need to be replaced by other tools. With the adoption of the Strategy, the EU positioned itself clearly in favour of the multilateral treaty system: the core message of the document is that the regimes can be effective if properly implemented. The measures proposed by the Strategy are therefore geared to improving the effectiveness of the regimes by stopping up the loopholes. By volunteering to strengthen the regimes, the EU is hoping to convince the US that they can work. Since the well functioning of the regimes is highly unlikely without the
participation of the main world power, however, the ultimate objective of the EU appears to be to re-engage the US in this process.

**Novelty and Continuity in the Strategy**

The Strategy presents important new approaches. It provides for what was missing so far, i.e. the political *prise de conscience* that nonproliferation should be prioritised within the EU agenda. Remarkably, it pledges to utilise the entire range of instruments at its disposal to pursue this goal. Non-proliferation had never ranked so high in the EU's agenda before, and, needless to say, the Union has never totally mobilised its tools in pursuance of such an objective.

Notably, the Strategy mentions two coercive measures that the EU has not previously employed in nonproliferation: sanctions and the use of force. While it may be considered a breakthrough for the EU to contemplate the use of force to address proliferation, it is important to note that this is conditioned on the exhaustion of all other possible means, and on its conformity with international law. As for sanctions, the recently adopted "Principles on the use of restrictive measures (sanctions)" does little more than reiterate the EU's willingness to impose sanctions always in compliance with international law and the UN Charter principles. The third coercive measure envisioned, the interception of illegal shipments, is identified with the US-launched Proliferation Security Initiative (PSI).

Finally, a central novelty is the introduction of conditionality in the form of a *Nonproliferation clause*, or *WMD clause*, whose modalities were decided in November. Modelled on the EU’s "Human Rights clause", which makes Community development aid conditional on respect for human rights by the recipient state, this provision is to be inserted as an essential element in contractual agreements between the EU and third countries. The principle of conditionality is that that the provision of development aid by one party is made dependent on the fulfilment of a number of conditions by the other. In the case of the nonproliferation clause, these conditions have been defined as an agreement by the parties to cooperate and to contribute to countering the proliferation of WMD and their means of delivery through full compliance with and national implementation of their existing international treaty obligations. In addition, on a case by case basis, the accession to new treaties and the establishment of export controls and criminal sanctions against breaches can be also considered subject to conditionality. A regular political dialogue on these topics is also foreseen when making agreements with third countries.

The EU has indeed a long experience in implementing conditionality in the field of human rights. As a tool for influencing the behaviour of target countries such conditionality has been shown to display a deterrent effect. Additionally, it is a fairly flexible instrument as it remains within the discretion of the Council to
determine whether progress made in a particular field can be considered satisfactory or not. However, the use of conditionality to advance nonproliferation in the EU’s relations with developing countries is likely to be more controversial. Whereas the link between development and human rights is evident, no such link has been established between development and the non-acquisition or nonproliferation of WMD.13

In general, the Strategy contains measures that build on the previous experience of the EU, either expanding or reinforcing activities and practices that were already in place. This is the case with the CTR programme in the Russian Federation. In the same vein, diplomatic campaigns have been previously used as a tool for promoting the signing of the CTBT and the extension of the NPT, and will now be used to promote adherence to the IAEA Additional Protocol. Where new measures have been proposed, they link up in most cases with the existing ones. Building upon the wealth of experience that the EU has in its programmes of technical assistance to third countries, assistance will now be provided to enhance the effectiveness of their export controls.

At first sight, it looks like measures geared towards strengthening the multilateral treaty system predominate in Chapter III, given the length of this section. However, a substantial part of the measures listed under the rubric "multilateralism" do not correspond to the multilateral treaty regime stricto senso. This is the case for the provisions on strengthening export controls, which feature prominently in the document, as well as the measures on interception of illegal shipments of nuclear materials. Such measures are not universally agreed, and it must be recalled that EU proposals to acknowledge their role in the nonproliferation regime met with resistance at the last NPT Review Conference.

Interestingly, in some cases the EU has opted for advancing the same objective through both the multilateral track and by non-multilateral means. It attempts to organise a global diplomatic campaign to promote the signing of the IAEA Additional Protocol, while at the same time it will make adherence to the Protocol a condition for supply for nuclear materials. In conjunction with the United States, it also plans to propose to the Nuclear Supplier Group (NSG) to adopt the same policy once agreement has been reached on the modalities.

**Implementing the Strategy**

Only one year after the adoption of the draft Strategy, it is noticeable that it has given rise to an amazing level of activity within the EU, and is being implemented at a surprisingly high speed. Action has been taken on virtually all measures suggested, although progress has taken place more smoothly in some areas than in others. Some approaches have been translated into legal instruments. These include a Council Directive on the control of high-activity sealed radioactive sources and orphan sources, a Joint Action on support for IAEA activities under its Nuclear
Security Programme, as well as a Common Position on the universalisation and reinforcement of multilateral agreements in the field of WMD.\textsuperscript{15} In addition, the Common Position on the promotion of the CTBT and the Joint Action on the CTR programme in the Russian Federation have been extended.\textsuperscript{16} A number of initiatives in the pipeline can be expected to be finalised soon, including a global démarche on the universalisation of the IAEA Additional Protocol.

It must be noted, though, that the vagueness of some provisions makes it possible to report some kind of progress, even if this is only marginal to the stated goal. Take, for instance, the pledge to foster the role of the Security Council: it is debatable to what extent this is fulfilled just by passing Resolution 1540 prohibiting the transfer of WMD materials to non-state actors.\textsuperscript{17}

In a remarkable exercise of transparency, the Progress Report produced by the Council Secretariat even points to specific areas where implementation is unsatisfactory or slow.\textsuperscript{18} These include the impending creation of a Community budget line for nonproliferation and disarmament of WMD, the establishment of a Monitoring Centre for overseeing the implementation of the Strategy, and the failure of some Member States to communicate denial information to new EU members.

In any case, progress has been most spectacular in the field of export controls. Among others, the EU has successfully promoted the inclusion of catch-all mechanisms in all regimes as well as the acceptance of all new EU Member States in the NSG, and it plans to propose modernising the regime's outreach activities. Internally, it has agreed a peer review process to disseminate "best practices" among Member States. It also plans to put in place an assistance programme on export controls for Russia and is already discussing one for China.

Interestingly, it appears that it has been the US-launched initiatives which are being implemented most swiftly. This is true for PSI, which was recently endorsed by the EU in a press release,\textsuperscript{19} and the introduction of national legislation criminalising the illicit trafficking of nuclear materials.\textsuperscript{20} Other US-initiated proposals are also being adopted into the transatlantic agenda. These include support for stopping the transfer of enrichment and reprocessing technology to countries that do not yet have these plants, the creation of a special committee of the IAEA Board of Governors to focus on compliance, and the suspension of IAEA membership for states undergoing investigation.\textsuperscript{21}

A comparison of this year's joint statement on the proliferation of WMD with that issued at last year's EU-US summit shows how co-operation has increased and confirms that when EU and US interest converge, action is taken expeditiously. The straightforward character of their means of implementation - national legislation or the mere consent of the government concerned - facilitate their early adoption. In the case of the establishment of criminal sanctions against the illicit
trafficking of WMD sensitive material, it even proved easy to translate the initiative into Security Council Resolution 1540. Beyond these favourable conditions, though, the wealth of the joint initiatives also manifests how the Union is prioritising cooperation with the US.

**The EU and the 2005 NPT Conference**

On the basis of the above analysis, how does the newly upgraded role of the EU in nonproliferation position it with regard to next year's NPT Review Conference? In order to assess the prospective contribution of the EU to the Conference, it is worth having a look at those measures contained in the Strategy that are relevant for the NPT, as well as at the statement delivered at the general debate in the last Preparatory Committee (PrepCom). Prior to the 2000 Review Conference, the EU adopted a Common Position with a comprehensive catalogue of measures aimed at promoting the "successful outcome" of the meeting by "help[ing] to build consensus on substantive issues". On the basis of that document, the EU was indeed able to play a notable role in the eventually successful Conference. A similar instrument will probably be agreed soon for 2005, especially since the European Parliament, in its attempt to acquire an ever more prominent profile in security issues, has encouraged the Council to increase its efforts to promote a positive outcome at the next Review Conference.

In essence, the EU statement at the last PrepCom consisted of a review of recent developments relevant to the nuclear nonproliferation regime, along with some substantive points taken directly from the Strategy. Following the EU's usual practice in drafting statements, the text of the statement was almost identical to that of the previous year.

Accordingly, the EU emphasises its commitment to the preservation of integrity of the NPT, reiterates its support for the final document of the 2000 Review Conference and Decisions and Resolution of the 1995 Extension and Review Conference. The statement singles out five issues that the EU intends to advance at the Conference. The first is the promotion of the signature and ratification of the CTBT. In fact, the EU has been lobbying for this objective for some years now, as formalised in consecutive Common Positions. As a result of the Common Position on the promotion of multilateral agreements adopted last November, it looks as if the Union has intensified its campaign over the last months, for which it credits itself in the statement.

A second measure to be pursued is the negotiation of a Treaty banning the production of fissile material (FMCT), which is mentioned in connection with the continuing stalemate in the Conference on Disarmament (CD). However, to the surprise of some, language on the CD's impasse has been relaxed in comparison to last year, perhaps out of deference to the United States, which is equivocating on the issue. Reference is also made to the importance of the principles of
irreversibility and transparency, but this paragraph remains fairly vague, with no specific proposal made as to how or where exactly the EU expects these principles to be implemented.

There are two further topics on the EU's list that are likely to occupy a central place in next year's discussions: the issue of non-strategic nuclear weapons and security assurances. As far as security assurances are concerned, the EU emphasises that they "can play an important role", since they can serve both as an "incentive to forego the acquisition of WMD and as a deterrent". The Strategy does not go beyond pledging to promote their "further consideration". Indeed, this wording is less concrete than the reference in the 1995 "Principles and Objectives" NPT document, which suggested that "steps...to assure non-nuclear-weapon States party to the Treaty" could take the form of an "internationally legally binding instrument". The lack of a concrete proposal might signal that the EU, still lacking internal consensus on the question, will be satisfied with the mere inclusion of this issue on the agenda.

Concerning the reduction of non-strategic nuclear weapons, there has been some evolution in the EU's language. Previous to the adoption of the final document of the 2000 NPT Review Conference, the EU Common Position merely underlined "the importance of non-strategic nuclear weapons in the framework of nuclear arms reduction efforts". The clearer reference eventually included in the "13 Steps" combined an earlier Finnish position that came to be included in an EU working paper in 1999-2000 with a long-standing demand from the New Agenda Coalition of seven non-nuclear weapon states, including two EU members: Ireland and Sweden. In its statement before the 2004 PrepCom, the EU encouraged the "states concerned" to start negotiations on an effectively verifiable agreement to best achieve the greatest reductions of this weapons. Following that, the relevance of the principles of irreversibility and transparency is repeated.

Here, the EU is applying a most discrete diplomatic and rhetorical device in which the paragraph following a particular provision is meant to qualify what has been asserted immediately before, even though it does not refer to it explicitly. The emphasis on the need for transparency and irreversibility insinuates that the EU would like the reductions of non-strategic weapons to be irreversible and transparent, as well as verifiable. The sensitivity on this issue arises primarily from the EU's ambiguous situation, since some countries still host or possess tactical nuclear weapons. The fact that several EU states site this type of weapons on their soil under NATO's nuclear sharing arrangement, and that they form part of France's arsenal is no doubt the main reason preventing the EU from making this vague formulation more concrete. This sensitivity also explains the fact that the EU mentioned the reduction of tactical weapons in the PrepCom general debate, but not in the Strategy.
Notably, the EU's list does not present anything to challenge last year's statements or the priorities set for the 2005 Review Conference. All five measures identified for EU action were part of the Common Position prepared for the 2000 Review Conference, and they had been included in the Final Document and the "13 Steps" adopted by consensus at the time. In the case of the CTBT and the FMCT, consensus on their desirability was already achieved at the 1995 Review Conference. All these issues are taken from a pre-agreed agenda, and it appears that the EU is limiting itself to facilitating their implementation, rather than moving ahead with crafting new measures.

**Implications of the EU's Expanded Role**

Through the inclusion of non-proliferation on its agenda, the EU has now allocated itself an issue area that would formerly have been regarded as falling within the realm of NATO. As outlined above, there is a strong transatlantic significance to the Strategy: it positions Europe vis-à-vis the United States as an advocate of multilateral approaches to tackle the WMD proliferation. As such it signals not only to the current administration, but to the US leadership that will emerge after the November presidential elections.

There is a risk, though, that the WMD issue is approached primarily as a transatlantic issue rather than for its own sake. When confronted with the necessity to frame a stance for the upcoming NPT Review Conference, it appears that the Strategy contains hardly anything new to put forward in an NPT context. The Strategy's comprehensiveness is only apparent. It concentrates heavily on non-multilateral issues such as PSI and export controls, which are unpopular with many NPT parties, while it contains very few measures on disarmament. Its bias is, after all, clear in its name - a Strategy against proliferation. This can be explained by the fact that while everybody agrees that non-proliferation should be avoided, the necessity of disarmament, and especially how exactly to carry it forward, is far more contentious. Here, the fact that two key EU members are NWS is crucial. In addition, the marginalisation of disarmament is partly due to the fact that the Strategy was designed with a transatlantic objective in mind. To avoid internal conflict over disarmament measures, the EU has resorted to the catalogue that it prepared for the last Review Conference.

**The need for a more balanced approach**

In conclusion, despite the fanfare, the Strategy provides the EU with a rather meagre basis on which to contribute to the success of the upcoming NPT Review Conference. This is not to say that, with the short catalogue of proposals it intends to put forward, prospects for the EU to play a substantial role in building consensus in the upcoming conference are necessarily bad. The recent activities of the EU do include some commendable initiatives such as those involving the release of funding to verification regimes and enhancing the protection of proliferation-
sensitive materials, and the measures it intends to advance at the Conference already enjoy overwhelming support.

Yet most of the initiatives taken so far, especially together with the United States, have had the effect of placing increasing obligations on the NNWS, with much less attention devoted to disarmament, a fundamental element of the nonproliferation exchange.\textsuperscript{29} In the NPT context, though, the bulk of the interlocutors are NNWS, whose concern about decades of inadequate progress in implementing the disarmament commitments by NWS ought also to be addressed. For a Union whose stated objective is "to preserve the integrity of the Treaty", there is a need to tackle this fundamental imbalance.

It is regrettable, therefore, that one year after the drafting of the Strategy, the EU has made such poor progress in firming up and expanding its initiatives for disarmament. There is an ironic aspect to this modest progress, especially since the document was drafted with the intention of promoting a US move towards multilateralism. When implementing the Strategy, the EU has concentrated so heavily on ways of working together with the United States that it seems to have lost the focus on strengthening multilateralism.

In the run up to the 2005 Review Conference, the EU should harness its mechanisms for coordination and devote greater efforts to identifying ways to make practical progress on the disarmament commitments agreed in 2000. The two issues mentioned above - the framing of legally binding negative security assurances and the elimination of non-strategic nuclear weapons - offer interesting opportunities for Europe to play a central role in building consensus at the upcoming conference while furthering disarmament objectives.

Notes


2. Council Common Position 1999/533/CFSP, July 29, 1999. All members of the EU, including Britain and France, have signed and ratified the CTBT.


7. See Strategy at point 15.

8. The inclusion of "co-operation with partners" as a guiding principle is somewhat confusing, since this is best characterised as a tool rather than as an objective in itself.


10. See Proliferation Security Initiative, Disarmament Diplomacy 74 (December 2003), pp 61-63.


13. The Lomé Convention recognises that the respect for Human Rights is both a "prerequisite" and a "final end" of development, which does not apply to the possession of WMD.


27. This subtle insinuation had been used before when referring to the conclusion of the Moscow Treaty. The importance of these principles is mentioned, even though the parties are not directly called upon to implement them. In this case, the reticence is probably also due to a desire not to be regarded as intrusive in a matter bound to be agreed on a bilateral basis between the US and Russia. See 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, May 24, 2002.


29. See Tom Sauer, "Vers un nouvel ordre nucléaire?" Le Débat Stratégique n.73, March 2004

Clara Portela is Marie-Curie Fellow at the Centre for International Co-operation and Security at the University of Bradford, West Yorkshire (UK). The author acknowledges the financial support provided through the European Community's Human Potential Programme under contract HPRN-CT-2000-00070, ESDP democracy.