

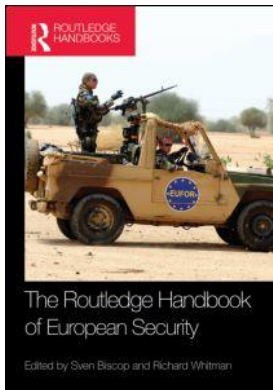
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Sven Biscop, Richard G. Whitman

The EU and Non-Proliferation of Weapons of Mass Destruction

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Gerrard Quille

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THE EU AND NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Gerrard Quille

This chapter sets out the EU's approach to non-proliferation based upon a cooperative strategy embedded under the Common Foreign and Security Policy (CFSP). The chapter will then look in more detail at the so-called non-proliferation clauses which illustrate how the EU is trying to combine political cooperation with economic incentives to achieve its non-proliferation objectives. The paper argues that the EU has demonstrated a real potential to promote non-proliferation through bilateral economic agreements and promoting universal membership of multilateral non-proliferation regimes. However, for the EU to enhance its effectiveness in this area it will have to take full advantage of the innovations in the Lisbon Treaty and engage with key actors (including through strategic partnerships and multilateral regimes) in pressing ahead with important EU foreign policy matters such as non-proliferation and disarmament.

Finding a place for non-proliferation in the emerging EU foreign policy system

With the Lisbon Treaty expectations are growing for the EU to have a more strategic, coherent and effective approach to EU foreign policy. Other chapters (Whitman, etc.) in this book have set out the new innovations following the Lisbon Treaty that are essentially based around a permanent President of the Council, a new upgraded High Representative for Foreign Affairs and Security Policy, who is at the same time double-hatted as a Vice President of the Commission (i.e. HR/VP), and supported by a new 'foreign ministry' known as the European External Action Service (EEAS). The latter brings together the external relations elements of the former Council and Commission services, which helps to pursue a more integrated use of the EU's external relations instruments and thereby achieve a more coherent approach to key policy areas such as non-proliferation and disarmament.

Not only does the Lisbon Treaty introduce important institutional innovations in the area of EU external action, but it creates a 'once in a generation opportunity' to create a new EU foreign and security policy. This system is built around the new upgraded HR/VP and the

EEAS; a more strategic approach to foreign policy formulation; a more coherent application of EU instruments (including diplomacy, development, trade and CSDP); as well as strengthening the role of EU Member States throughout the policy planning, policy formulation and implementation stages of foreign and security policy.

In the process of creating a new EU foreign policy, one of the earliest and most important developments will be a shift to a more strategic definition of foreign and security policy objectives. Early examples of this approach can be seen in the EEAS-led review of the EU's approach to the Arab Spring; the recent Security and Development Strategy for the Sahel; and the Strategic Framework for the Horn of Africa. In addition, despite an initial setback the EU has achieved enhanced status in the UN General Assembly and the HR/VP continues to lead the international community's response towards Iran and, more recently, in efforts to relaunch the Middle East peace process. The latter will lead to re-establishing an EU Special Representative for the Middle East.

The EEAS will be instrumental in supporting the HR/VP to develop further strategies and (with its network of EU Delegations) to implement these policies. The EEAS will also include actors who previously sat separately in the Council or in the Commission or even in Member States' capitals and who all worked on different documents (for the Council, Commission or Member State) for the same region or thematic policy issue. They will now work together within the EEAS to review the individual (Commission and Council) policy documents as a basis for developing a new comprehensive strategy for these regions. In the area of non-proliferation, the EEAS can build upon the 2003 EU Strategy against the proliferation of materials and weapons of mass destruction and its six-monthly review of the implementation of the strategy in order to support Council Decisions on specific actions or prepare the strategic guidelines for Commission financial instruments to be used (including the Instrument for Stability and the other geographic instruments). Within the EEAS the Managing Director for Global and Multilateral Issues, Maria Marinaki, and her Directorates for Non-proliferation and Disarmament and the Unit for security policy will be providing the key support to the HR/VP. In addition, EU financial resources identified to support the non-proliferation strategy will be managed by a service (for Foreign Policy Instruments) directly attached to the HR/VP. Beyond EU external relations instruments there will also be a need to cooperate closely with other Commission Directorates General that have an important bearing on EU foreign policy objectives in this area, such as *inter alia* DG for Enlargement, DG for EuropeAid and Development Cooperation, DG for Trade, DG Home Affairs, DG health and Consumers and DG energy (Grip, 2011). Finally, the European Parliament will be using its powers across the range of political oversight, budgetary actor and legislator to monitor the implementation of the new strategies and assert its views on the direction that they take.

It will be important for the new High Representative to show that the Union can meet its political and security ambitions and set the agenda in dialogue with important third countries in addition to its traditional economic role. Furthermore, it has been argued that the EU can do more in this area if it deepens its analysis of third countries, in particular the emerging powers and strategic partners, when implementing its non-proliferation strategy (Sauer, 2011).

Finally, the new permanent President of the European Council, Herman Van Rompuy, has also demonstrated the importance of this policy area to the EU. When President Obama convened a Nuclear Security Summit in Washington in April 2010 to reflect on the future of nuclear security and in particular to make new commitment to securing nuclear materials

around the world building on and going beyond the G8 Global Partnership, Van Rompuy reiterated the EU's commitment to nuclear security, underlining the importance of a cooperative approach by stating that:

Nuclear terrorism, with terrorists getting access to nuclear materials or to radioactive sources, represents a most serious threat to international security with potentially devastating consequences to our societies. This is a common threat that requires a common response ... Today's Summit will be the starting point of a joint effort that will require participation on an even broader basis. Reaching out to all players and involving all countries will allow us to advance our shared goal to strengthen nuclear security. Today's meeting sets an ambitious goal of securing all vulnerable nuclear material in four years. We can only achieve it in full co-operation with all UN members. The European Union will extend its co-operation to all members of the international community united in this joint endeavor.

(Van Rompuy, 2010a)

The EU: developing an approach on non-proliferation and disarmament

It was in 2003, that the EU made a breakthrough by becoming a new voice in arms control and entering a policy area previously dominated by its Member States. In that year, the EU's Member States, shaken by their divisions over the Iraq War, decided to overcome their differences through a process that led to the adoption of its first ever strategic document on security, the European Security Strategy (ESS) (Bailes, 2005; Biscop, 2005; Quille, 2004). At the same time and in recognition of the specific differences that were raised over the existence of weapons of mass destruction (WMD) in the prelude to that conflict, a separate strategy was adopted entitled 'EU Strategy against the Proliferation of Materials and Weapons of Mass Destruction' (Meier and Quille, 2005).

Discussion about whether the events following 11 September 2001, including the invasion of Iraq in *pursuit* of WMD, marked a paradigm shift may be contentious conceptually, nevertheless the underlying tensions in balancing non-proliferation and disarmament commitments in the NPT and between EU Member States (which include 2 nuclear weapon states and 25 non-nuclear weapon states) remains, as can be seen in the ongoing negotiations with Iran or in the debate surrounding the USA–India nuclear deal (Kubigg, 2006). It has been argued that the future success of the EU's WMD Strategy is to some extent dependent upon maintaining that balance between its nuclear and non-nuclear weapon states and the consensus in the EU Strategy to reconcile new and old non-proliferation and disarmament objectives.

The EU's strategy is implemented through a range of activities which are set out in detail (including objectives, financial resources and a time frame for implementation) in specific Common Foreign and Security Policy (CFSP) Joint Actions and Common Positions (henceforth, with the adoption of the Lisbon Treaty, all future actions will be called Council Decisions).¹ Initially, the EU has prioritized non-proliferation with a particular commitment to multilateral treaties and bodies that underpin the non-proliferation regimes, e.g. support to the Organisation for the Prohibition of Chemical Weapons, the Comprehensive Test Ban Treaty Organisation, the Biological and Toxins Weapons Convention, the International Atomic Energy Agency and to the implementation of UN Security Council 1540 (Meier,

2008). This approach has been termed one of pursuing *effective multilateralism* in the ESS (Martinelli, 2006; Grevi and de Vasconcelos, 2008).

The Joint Actions, Common Positions, Council Decisions and Action Plans detail the EU contribution to specific activities and programmes. There are also European Commission-funded programmes such as its contribution in recent years to the G8 Global Partnership against the Proliferation of Materials and Weapons of Mass Destruction and emerging proposals under the Instrument for Stability.² These activities are reviewed every six months in the form of a 'Progress Report'.³ This process of drawing up a progress report has contributed to a useful mechanism to benchmark the implementation of the EU WMD Strategy. To some extent the European Security Strategy has suffered because of the absence of such a monitoring mechanism.

The emphasis upon *multilateralism* reflects the inherent nature of the EU, where its own development has depended upon effective and peaceful cooperation amongst its Member States (Nickel and Quille, 2007). The EU is, therefore, developing an approach that emphasizes non-proliferation and disarmament initiatives that pursue *cooperative, consultative and confidence-building strategies*. A strategy based upon these three Cs is bolstered by a fourth 'C', i.e. *commerce*, whereby the EU's longer-standing economic weight is used as leverage to pursue non-proliferation and disarmament objectives such as in the form of *cooperative* non-proliferation clauses or *coercive* sanctions.

The EU's approach to the Iranian nuclear crisis

The first major test for the EU's WMD Strategy followed on from the August 2002 revelation that Iran was secretly constructing uranium-enrichment and heavy-water production facilities. This led to an International Atomic Energy Agency (IAEA) investigation and concerns that Iran might be pursuing nuclear weapons. The resulting IAEA investigation revealed other serious breaches of Iran's safeguards obligations and set in motion a process, led by the EU and encouraged by the UN Security Council, to persuade Iran to provide reassurances on the peaceful intentions of its nuclear programme.⁴ The Security Council and the IAEA remain unsatisfied with Iran's cooperation and this process continues today with periodic rounds of negotiations, IAEA Board of Governors assessments, UN Security Council resolutions and the incremental application of sanctions (Kubigg, 2006).

This position was once again reiterated recently by the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, when she stated on 21 September 2011 that:

[W]e [the P5 + 2] have reaffirmed our determination and commitment to seek a diplomatic solution to this issue ... we noted with grave concern Iran's installation of centrifuges in its facility near Qom as part of plans to increase the capacity to enrich uranium to 20% and the IAEA's increasing concern about the possible military dimension to Iran's nuclear programme ... we remained determined and united in our efforts to work towards a comprehensive, negotiated, long-term solution – involving the full implementation by Iran of UNSC and IAEA Board of Governors Resolutions – which restores international confidence in the exclusively peaceful nature of Iran's nuclear programme, while respecting Iran's legitimate right to the peaceful use of nuclear energy consistent with the NPT. ... We reaffirm our offer of June 2008 and the proposals we made to Iran in Istanbul in January. ... [I]f Iran is prepared to engage more seriously in concrete discussions aimed at resolving

international concerns about its nuclear programme, we would be willing to agree on a next meeting with the Iranian side.⁵

Whilst the Iranian episode highlights the role of EU in first taming initial fears of a broader conflict in the region following the invasion of Iraq in 2003, the process has also raised the visibility of the EU as a security actor committed to pursuing a multilateral path and able to build a diplomatic consensus from the initial EU 3 (France, Germany and the UK) to include the USA (from February 2005), China and Russia, i.e. P5 + 1. Iran's resistance remains problematic, and whether the process will result in a long-term solution of the dispute remains to be seen. Iran still insists it will not give up its capacity for enrichment and reprocessing completely.

The EU non-proliferation clauses

The use of the Union's economic leverage to pursue political objectives in the form of the non-proliferation clauses is very recent and so the jury is still out on their full potential. The initial declaratory intention by the Union is to seek the introduction of such clauses in cooperation with third states (Grevi and de Vasconcelos, 2008). The EU non-proliferation clause was adopted in November 2003 as part of the implementation of the EU WMD Strategy and is designed to mainstream non-proliferation policies into the EU's wider relations with third countries.⁶ The clause has two main parts, the first constitutes an 'essential element' that must be included in all third party mixed agreements and specifies that:

The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to co-operate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations.⁷

This element of the non-proliferation clause is a *declaratory* commitment by all parties to non-proliferation agreements that they have already entered into, but it does not include any verification procedures or commit a state to sign, ratify and implement through national legislation any additional treaties. Thus, India, Pakistan and Israel, who are de facto nuclear states, would not be obliged to sign and ratify the Nuclear Non-Proliferation Treaty (NPT).

However, the second part of the clause adds additional commitments for a third state to:

- take steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments;
- establish an effective system of national export controls, controlling the export as well as transit of WMD related goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls.

The Member States have stated in the clause that these two further elements might be considered as *essential* 'on a case-by-case basis'. but it does not state what criteria would be used

for deciding to apply all these additional demands. These elements clearly put additional demands upon the signatories to the agreement, e.g. if such additional elements were part of a clause signed by India, Pakistan and Israel, the implication would be that they would be asked to sign and ratify the NPT. When read in conjunction with the WMD Strategy it is expected that states agreeing to such a clause (i.e. with the further elements in the second part of the clause) would receive support, should they wish, from the European Union to set up export control and end-user licence systems. Such export control technical assistance programmes are being looked at by the European Commission under its community instruments such as the Instrument for Stability.⁸

Towards a non-proliferation clause with India?

On 23 April 2007 the Council approved a mandate for the negotiation of a Free Trade Agreement (FTA) with India, i.e. an agreement that does not require a clause. However, in the same decision the Council requested the Commission to engage with India in exploratory talks for the possible negotiation of a Partnership and Cooperation Agreement (PCA), which would replace the 1994 agreement. Such a PCA would notably include the so-called standard EU political clauses, i.e. require a non-proliferation clause. The exploratory talks were launched on 4 September 2007. However, at the time of writing, although negotiations have stalled, it has become clear that the EU has been unable to convince the Indians on the importance of putting political issues on the table alongside a trade agreement, therefore the option of an FTA-only agreement is being pursued that does not include additional political conditionality (or a 'parallel instrument') (Khandekar, 2011).⁹

The inability of the Union to press for a political agreement with India on non-proliferation highlights a growing challenge for the Union in moving beyond its traditional role as an economic partner and power, to becoming a global power with political (and security) responsibilities. Can the EU be satisfied with an FTA that is not accompanied by a 'parallel instrument' that meets its own declared ambition that 'Non-proliferation of WMD is a major concern for the EU and constitutes a fundamental element for the EU when it considers the decision of entering into negotiations with a third country or assess the advisability if progressing towards a contractual relationship.'¹⁰ With the adoption of the Lisbon Treaty and expectations for a more strategic and coherent EU foreign policy, it will be important for the new High Representative to show that the Union can meet its political and security ambitions and set the agenda in dialogue with important third countries like India in addition to its traditional economic role.

Moreover, the adoption of the new Lisbon Treaty and the establishment of the Union's new external relations instruments and structures provide another opportunity to take stock of the early experience of initiatives such as the non-proliferation clause. Some lessons learned have already been carried out including Syria, Tajikistan and in the revised Cotonou Agreement – although not yet in force – with the African Caribbean and Pacific (ACP) states.¹¹ Getting the balance right is also an important part of the successful handling of the clause, whereby conditionality on non-proliferation does not become an obstacle to the objectives of achieving development, economic or other political objectives. A regular review of the clause provides an important opportunity to get the balance right and speed up discussions on identifying which states will be subject to the more demanding or weaker clause. Such discussions need to be jointly conducted between the Member States, through the Council's Working Group on Non-Proliferation (CONOP) and the Commission and in full transparency with the European Parliament (Grip, 2009).

Conclusion

The EU's early role in the security policy area has prioritized non-proliferation. But it has also shown a willingness to cooperate with the United States on new initiatives (such as UN Security Council Resolution 1540, G8 Global Partnership against the Proliferation of Materials and Weapons of Destruction and the Proliferation Security Initiative) as well as pursuing its own approach to non-proliferation that commits political and financial support (in specific Joint Actions) to the multilateral disarmament and non-proliferation regimes. The European Parliament has added its support, including budgetary through the CFSP budget and Instrument for Stability, to the development of the EU's approach to tackling materials and weapons of mass destruction. In particular the European Parliament set out its position in a comprehensive resolution adopted in 2005 and a specific resolution ahead of the 2010 NPT Review Conference that endorsed the EU Strategy and encouraged the further strengthening of the multilateral non-proliferation regimes (European Parliament, 2005).

In addition to the incremental development of the EU's strategy on non-proliferation, the EU has played a much more visible political role in leading negotiations on behalf of the UN Security Council with Iran. It has also sought to back up this role with economic and political incentives as well as the application of coercive economic sanctions, although the efficacy of such sanctions is coming under increasing criticism from within Europe and the United States (United States Government Accounting Office, 2007).¹²

To conclude, the EU approach is well suited to cooperation with the USA on strengthening the multilateral regimes and on certain new initiatives that emphasize cooperation, such as the G8 Global Partnership on Materials and Weapons of Mass Destruction. The EU has been less visible in the field of applying military coercive initiatives, i.e. it does not have a policy on counter-proliferation. Having a public debate on counter-proliferation is made more difficult due to the scepticism generated by the use of force in the Iraq War. More fundamentally, the Member States have decided to limit their military cooperation in the framework of the EU to concentrate on crisis management and stabilization missions. This will remain a difficult subject even if language on 'joint disarmament operations' has been introduced with the new Lisbon Treaty (Popielawska and Deuter, 2008; Quille, 2008a).

Finally, the EU will need to reflect on the criticisms raised at the 2005 and 2010 NPT Review Conferences. Although the 2010 meeting proved to be a 'success' in comparison with the 2005 meeting, many countries still looked to the EU for leadership behind its declaratory posture on disarmament. This will remain an issue for the European Union: in focusing upon non-proliferation it has avoided the divisions between its nuclear weapons states and, majority, non-nuclear weapons states. While this approach is holding and the nuclear weapons states make good on their commitment to nuclear reductions and eventually disarmament, the Union's strategy will continue to have success. However, the lack of activity in nuclear disarmament will no doubt be back in the spotlight, especially if the nuclear weapons states are perceived to be back-tracking on their commitments and as the Lisbon Treaty results in raising expectations for a more coherent and visible EU on the world stage, including in the area of disarmament as well as non-proliferation. The perceived success of the 2010 review conference came on the back of a major diplomatic and policy impetus of President Obama (in his 2009 Prague speech, followed by his successful negotiations for nuclear reductions with Russia under START, and by his Nuclear Security Summit in April 2010). The European Union and others will need to think how they can capitalize on the progress inspired by the US president in a period when he will be managing withdrawal from Afghanistan and a weakened mandate in Congress.

Nevertheless, the 2010 review conference is an important benchmark in the process of strengthening ‘multilateral’ approaches to non-proliferation and disarmament and thereby getting the ‘grand bargain’ back on track between nuclear states and non-nuclear states (this is very important politically in regional disputes, including the Middle East, Iran, etc.). However, there are possible tensions along the way, not least over Iran, but also arising from the fact that despite President Obama’s strong commitments and successful negotiations with Russia on START and a follow-up process, the USA will ‘almost certainly’ not have ratified the Comprehensive Test Ban Treaty (which Congress rejected in 1999) before 2011. It will therefore be important for the EU, US and like-minded countries to reflect on their strategies to ensure that such tensions are not used by ‘spoilers’ who want to undermine the significant momentum represented by the above developments in this area.

Notes

- 1 A Joint Action (Article 14 TEU) provides the legal basis for operational action by the EU and which sets out the objectives, scope and means (financial) to be made available to the Union. As well as defining a common approach to a particular issue, Common Positions (Article 15 TEU) also demand that Member States ensure their national policies are aligned to conform with the approach.
- 2 For an overview see Walker, 2007, and the CSIS project Strengthening the Global Partnership at <<http://www.csis.org/isp/sgp/>>.
- 3 The latest progress report was the ninth in the series. For more information and details on the activities see: <<http://consilium.europa.eu/showPage.asp?id=718&lang=en&mode=g#Bookmark>>.
- 4 For the UNSC support to EU-led diplomacy see for instance 1737 (2006); para. 10 UNSC Resolution 1747 (2007); para 16 UNSC Resolution 1803 (2008).
- 5 Ashton, 2011b
- 6 Model text is set out in Council of the EU, 2003d. See also Council of the EU, 2003e.
- 7 Council of the EU, 2003d.
- 8 The Instrument for Stability was established in 2007 in order to respond across the spectrum of conflict prevention, crisis response and peace-building activities (European Parliament, 2005).
- 9 Foreign Affairs/Trade Council Conclusions (2011: 9).
- 10 Council of the EU, 2003d.
- 11 Statement by Annalisa Giannella at the Sub-Committee on Security and Defence, European Parliament, September 2009.
- 12 United States Government Accounting Office, 2007.