

## **Policy Department External Policies**

# **THE EU'S APPROACH TO TACKLING THE PROLIFERATION OF MATERIALS AND WEAPONS OF MASS DESTRUCTION AND PROSPECTS FOR COOPERATION ON THE EVE OF A NEW US ADMINISTRATION**

**SECURITY AND DEFENCE**



EUROPEAN PARLIAMENT

**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION  
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- POLICY DEPARTMENT -**

**WORKING PAPER**

**The EU's approach to tackling the proliferation of Materials and Weapons of Mass Destruction and prospects for cooperation on the eve of a new US Administration**

This Working Paper surveys the EU's approach to tackling the proliferation of Materials and Weapons of Mass Destruction (WMD) which serves as a basis for preparing ourselves for what is expected to be a US priority for engagement with Europe. This working paper was originally written following a conference in Berlin and will be published as a book chapter (this will become evident when reading below).

This Working Paper will be published as a chapter entitled "A New Transatlantic Approach? A view from Europe" in a forthcoming book edited by Oliver Meier and Christopher Daase and entitled "Coercive Arms Control: the paradigm shift in Arms Control and Non-proliferation". Copyright therefore remains with the requesting publisher.

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## Executive Summary

The tensions that exist between the outgoing US administration and the European Union's Member States in their approach to non-proliferation have been documented. Indeed such tensions also lay at the heart of the European Union's own approach as set out in the 2003 'EU Strategy Against the Proliferation of Materials and Weapons of Mass Destruction'.<sup>1</sup> On the eve of a new US administration we await to see whether this tension will resolve itself and thus enable the deeper integration of European and transatlantic policies in this area *vis-à-vis* the big challenges of the day - namely Iran, India and North Korea - or whether a paradigm shift will occur whereby the US and European approaches will diverge resulting in the pursuit of divisive and competing strategies. Other authors have reflected on whether such a paradigm shift is already underway.<sup>2</sup> This article sets out the EU's fledgling strategy, which may help overcome transatlantic divisions and any paradigmatic tensions by setting out a constructive framework for cooperation between EU member states, the transatlantic community and third countries wanting to cooperate with the EU on non-proliferation and disarmament.

In addition to the incremental development of the EU's strategy on non-proliferation, the EU has also 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 are coming under increasing criticism from within Europe and the United States.<sup>3</sup>

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 Iraq. 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 into an expanded definition of the Petersberg Tasks in the new Headline Goal 2010 and in the Lisbon Treaty.<sup>4</sup> Even with these changes in the definition of the Petersberg Tasks it is expected that the pursuit of the Proliferation Security Initiative (PSI) and counter-proliferation (like counter-terrorism) are more likely to have greater resonance in bilateral EU Member State-US dialogue or within NATO.

To conclude, the EU approach is well suited to cooperation with the US on strengthening the multilateral regimes and on certain new initiatives that emphasise cooperation such as the G8 Global Partnership on Materials and Weapons of Mass Destruction. Should the new US administration follow the direction suggested by the presidential candidates Mr Obama and Mr McCain then the prospects for greater transatlantic cooperation are promising. In addition,

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<sup>1</sup> Quille, G & Pullinger, S., "The European Union: Seeking Common Ground for Tackling Weapons of Mass Destruction", Disarmament Diplomacy No. 74, December 2003.

<sup>2</sup> Meier, O & Dasse, C (ed) "Coercive Arms Control: the paradigm shift in Arms Control and Non-proliferation" (forthcoming), Routledge, 2009. Zaborowski, Marcin "Bush's legacy and America's next foreign policy, Chaillot Paper, EU ISS, September 2008

<sup>3</sup> United States Government Accounting Office (GAO), "Iran Sanctions: impact in furthering US objectives is unclear and should be reviewed", Report to the Ranking Member, Subcommittee on National Security and Foreign Affairs, House Committee on Oversight and Government Reform, December 2007. See also Brzoska in this book.

<sup>4</sup> Quille, G "The Lisbon Treaty and its Implications for CFSP/ESDP", Policy Department, European Parliament, (PE 388.943) April 2008 and see Popielawska, J. & Deuter, J.M., Workshop Summary. The Impact of the Lisbon Treaty on ESDP. Held on 11 February 2008. Brussels, European Parliament, 2008.

the EU could continue to develop its strategy by being a more able actor in the following areas:

- review the 2003 Common Position on the 2005 NPT Review Conference with the objective of outlining priorities for the 2010 Review Conference;
- hold a high level meeting with the new US administration on Transatlantic priorities for non-proliferation and disarmament to build upon recent political momentum (the call by Henry Kissinger *et al* for a greater commitment to nuclear disarmament,) in Europe and North America on this topic.
- through ongoing efforts to maintain visibility of the multilateral regimes and efforts to universalisation and cooperation (including also a discussion linking energy security);
- developing further its non-proliferation clause and in particular backing it up with fully resourced technical assistance programmes to third states;
- reflection on the adequacy of resources across the instruments (in particular under the CFSP and Instrument for Stability);
- review of the need for institutional reform to strengthen the implementation of the EU WMD Strategy;
- review of the expanded Petersburg Tasks and implications for non-proliferation of "joint disarmament operations";
- reflection on the need to review/revisit the EU WMD Strategy following the review of the European Security Strategy at the December 2008 European Council;
- review complementarity with member states' relevant departments responsible for non-proliferation policies;

## 1. Introduction

The tensions that exist between the outgoing US administration and the European Union's Member States in their approach to non-proliferation have been documented. Indeed such tensions also lay at the heart of the European Union's own approach as set out in the 2003 'EU Strategy Against the Proliferation of Materials and Weapons of Mass Destruction'.<sup>5</sup> On the eve of a new US administration we await to see whether this tension will resolve itself and thus enable the deeper integration of European and transatlantic policies in this area *vis-à-vis* the big challenges of the day - namely Iran, India and North Korea - or whether a paradigm shift will occur whereby the US and European approaches will diverge resulting in the pursuit of divisive and competing strategies. Other authors have reflected on whether such a paradigm shift is already underway.<sup>6</sup> This article sets out the EU's fledgling strategy, which may help overcome transatlantic divisions and any paradigmatic tensions by setting out a constructive framework for cooperation between EU member states, the transatlantic community and third countries wanting to cooperate with the EU on non-proliferation and disarmament.

After setting out the EU's approach, based upon a cooperative strategy embedded under the Common Foreign and Security Policy (CFSP), this paper 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. Finally, the paper puts forward some elements that may be useful in taking this policy agenda forward with a new US administration.

## 2. The EU: developing an approach on Non-proliferation and Disarmament

In 2003, the EU made a breakthrough by becoming a new collective voice in arms control matters and entered a policy area previously dominated by its Member States acting alone (or in ad hoc coalitions). 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 the EU's first ever strategic document on security known as the 'European Security Strategy' (ESS).<sup>7</sup> 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 the 'EU Strategy Against the Proliferation of Materials and Weapons of Mass Destruction'.<sup>8</sup>

Discussion about whether the events following September 11, including the invasion of Iraq ostensibly in pursuit of WMD, marked a paradigm shift may be contentious conceptually, but the underlying tensions in balancing non-proliferation and disarmament commitments remain, as can be seen in the ongoing negotiations with Iran or in the debate surrounding the US-India

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<sup>5</sup> Quille, G & Pullinger, S., "The European Union: Seeking Common Ground for Tackling Weapons of Mass Destruction", Disarmament Diplomacy No. 74, December 2003.

<sup>6</sup> Meier, O & Dasse, C (ed) "Coercive Arms Control: the paradigm shift in Arms Control and Non-proliferation" (forthcoming), Routledge, 2009. Zaborowski, Marcin "Bush's legacy and America's next foreign policy, Chaillot Paper, EU ISS, September 2008

<sup>7</sup> European Council, "European Security Strategy: a secure Europe in a better world", 13 December 2003; Quille, G. "The European Security Strategy (ESS): A Framework for European Union Security Interests?", Journal of International Peacekeeping, 2004, London: Frank Cass; Biscop, S. "The European Security Strategy: a global agenda for positive power", Ashgate, 2005; Bailes, A.J.K., "European Security Strategy: an evolutionary history", SIPRI, Policy Paper No. 10, 2005

<sup>8</sup> Meier, O & Quille, G, "Testing Time for EU Non-proliferation Strategy", Arms Control Today, Volume, 35, No. 4, May 2005.

nuclear deal.<sup>9</sup> It has been argued that the future success of the EU's WMD Strategy is to some extent dependent upon its ability to reconcile newer non-proliferation and disarmament initiatives with existing, more traditional ones.<sup>10</sup>

The EU's strategy is implemented through a range of activities which are set out in detail (including objectives, financial resources and timeframe for implementation) in specific CFSP Joint Actions and Common Positions (the key ones are set out in a table below).<sup>11</sup> 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.<sup>12</sup> In the ESS this approach has been coined one of pursuing "effective multilateralism".<sup>13</sup>

The Joint Actions, Common Positions, Council Decisions and Action Plans detail the EU contribution to specific activities and programmes. There are also programmes funded by the European Commission, 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.<sup>14</sup> These activities are reviewed every 6-months in the form of a "Progress Report" from the Office of the Personal Representative, of the High Representative for CFSP, Ms Annalisa Giannella.<sup>15</sup> This process of drawing up a progress report has contributed to a useful mechanism to benchmark the implementation of the EU WMD Strategy. On the other hand, the ESS has suffered to some extent because it does not have such a monitoring mechanism.<sup>16</sup>

The emphasis upon *multilateralism* reflects the inherent nature of the EU itself, whereby its own development has depended upon effective cooperation amongst its Member States.<sup>17</sup> Externally, the EU is 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-*

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<sup>9</sup> Kubigg, B. W., "Iran and the Nuclear Non-proliferation Treaty", Policy Department Briefing Paper, European Parliament, August 2006; Quille, G. & Keane, R. "The EU and Iran: Towards a New Political Security Dialogue", in Shannon N. Kile (ed) "Europe and Iran Perspectives on Non-Proliferation", SIPRI Research Report, No. 21, Oxford University Press, 2005

<sup>10</sup> Quille & Pullinger, op. cit. See also The WMD Commission, "Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms", Stockholm, 2006

<sup>11</sup> 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 confirm with the approach.

<sup>12</sup> For an up-to-date critical analysis of EU efforts see: Meier, O "The EU's Nonproliferation Efforts: Limited Success", Arms Control Today, May 2008

<sup>13</sup> See: for instance Grevi, G. & de Vasconcelos, A. (ed) "Partnerships for effective multilateralism", EU ISS, Chaillot Paper No. 109, June 2008. On selective multilateralism see Martinelli, M., Helping Transition: the EU Police Mission in the DRC (EUPOL Kinshasa) in the Framework of EU Policies in the Great Lakes, in European Foreign Affairs Review, vol. 11, Issue 3, Autumn 2006, p. 379-400.

<sup>14</sup> For an overview see Walker, P.F. Looking Back: Kananaskis at Five: Assessing the Global Partnership, Arms Control Today, September 2007; the CSIS project Strengthening the Global Partnership at: <http://www.csis.org/isp/sgp/>.

<sup>15</sup> 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#Bookmark4>

<sup>16</sup> The weakness of the latter is expected to be addressed at the 2008 European Council which is expected to conclude that a review of the ESS confirms its relevance (with additional recognition of a changed security environment - such as climate change, energy security, migration and cyber-security) but emphasises a new focus upon developing implementation/action plans.

proliferation Clauses or *coercive* sanctions.<sup>18</sup> Cooperation is a working method of European integration and embedded at the heart of the CFSP - introduced in the Maastricht Treaty and with specific reference to the Helsinki Final Act and Paris Charter.<sup>19</sup>

#### Joint Actions<sup>20</sup>

World Health Organisation	Council Joint Action 2008/307/CFSP of 14 April 2008
Biological and Toxin Weapons Convention	Council Joint Action 2006/184/CFSP of 27 February 2006
Comprehensive Test Ban Treaty Organisation	Council Joint Action 2008/588/CFSP of 15 July 2008 Council Joint Action 2007/468/CFSP of 28 June 2007 Council Joint Action 2006/243/CFSP of 20 March 2006
International Atomic Energy Agency	Council Joint Action 2008/314/CFSP of 14 April 2008 Council Joint Action 2007/753/CFSP of 19 November 2007 Council Joint Action 2006/418/CFSP of 12 June 2006 Council Joint Action 2005/574/CFSP of 18 July 2005 Council Joint Action 2004/495/CFSP of 17 May 2004
Organisation for the Prohibition of Chemical Weapons	Council Joint Action 2007/185/CFSP of 19 March 2007 Council Joint Action 2005/913/CFSP of 12 December 2005 Council Joint Action 2004/797/CFSP of 22 November 2004
Russian Federation	Council Joint Action 2007/178/CFSP of 19 March 2007 Council Joint Action 2004/796/CFSP of 22 November 2004 Council Joint Action 2003/472/CFSP of 24 June 2003 Council Joint Action 1999/878/CFSP of 17 December 1999
UN Security Council Resolution 1540	Council Joint Action 2008/368/CFSP of 14 May 2008 Council Joint Action 2006/419/CFSP of 12 June 2006

#### Common Positions<sup>21</sup>

Council Common Position 2007/762/CFSP of 22 November 2007 on participation by the European Union in the Korean Peninsula Energy Development Organisation (KEDO)
Council Common Position 2007/469/CFSP of 28 June 2007 relating to the 2008 Review Conference of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)
Council Common Position 2007/246/CFSP of 23 April 2007 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran
Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran
Council Common Position 2006/242/CFSP of 20 March 2006 relating to the 2006 Review Conference of the Biological and Toxin Weapons Convention (BTWC)
Council Common Position 2005/329/CFSP of 25 April 2005 relating to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons
Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery

<sup>18</sup> On Non-proliferation Clauses see below. On sanctions see Michael Brzoska's chapter in this book. Brzoska's conclusions remain relevant also for the EU in particular the importance of *consistency of application, monitoring and implementation of sanctions*.

<sup>19</sup> For an overview of the development of CFSP and ESDP see Nickel, D. & Quille, G., "In the shadow of the Constitution: Common Foreign and Security Policy - European Security and Defence Policy adapting to a changing external environment", Jean Monnet Working Paper Series, New York University School of Law, 2007.

<sup>20</sup> Source Council of the European Union at <http://consilium.europa.eu/showPage.asp?id=718&lang=en&mode=g>

<sup>21</sup> Ibid.

## Council Decisions<sup>22</sup>

COUNCIL REGULATION (EC) No 618/2007 of 5 June 2007 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran
COUNCIL REGULATION (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran
Commission Regulation (EC) No 441/2007 of 20 April 2007 amending Council Regulation (EC) No 423/2007 concerning restrictive measures against Iran
COUNCIL DECISION of 23 April 2007 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran - (2007/242/EC)
Council Decision 2003/874/CFSP of 8 December 2003 implementing Joint Action 2003/472/CFSP with a view to contributing to the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation
Council Decision 2003/567/CFSP of 21 July 2003 implementing Common Position 1999/533/CFSP relating to the European Union's contribution to the promotion of the early entry into force of the Comprehensive Nuclear Test-Ban Treaty (CTBT)
Council Decision 2001/493/CFSP of 25 June 2001 implementing Joint Action 1999/878/CFSP with a view to contributing to the European Union Cooperation Programme for Non-proliferation and Disarmament in the Russian Federation

## Action Plans<sup>23</sup>

EU Action Plan on biological and toxin weapons, complementary to the EU Joint Action in support of the BTWC
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### 2.1 Iran: testing the EU approach to non-proliferation and the unity of EU-US relations

The first major test for the EU's WMD Strategy came in August 2002 with the revelation that Iran possessed clandestine uranium-enrichment and heavy-water production facilities. This led to an International Atomic Energy Agency (IAEA) investigation and concerns, particularly on the part of the United States, that Iran might be developing 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 on behalf of the UN Security Council, to persuade Iran to provide reassurances on the peaceful intentions of its nuclear programme. The international community remains dissatisfied 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.<sup>24</sup>

Talks between the foreign ministers of France, Germany, and the United Kingdom (the EU-3) and Tehran began in October 2003 as a crisis management exercise. They then deepened under the November 2004 Paris Agreement and August 2005 EU-led offer of a Framework for a Long-term Agreement. The essential demand of the international community has been full cooperation with the IAEA to remedy Iran's non-compliance with its Safeguards Agreements and the provision of "objective guarantees" on the civilian nature of Iran's nuclear programme, including by abandoning enrichment and reprocessing activities. These efforts were to no avail, with Tehran rejecting the incentives and resuming its enrichment activities in January 2006. As an incentive the EU has offered specific political and economic inducements, including the resumption of talks on a Trade and Cooperation Agreement. In addition, the duration of suspension was more clearly defined: "while negotiations proceed on a mutually acceptable agreement on long-term arrangements". The international community stepped up its pressure with UN Security Council Resolutions in 2006 (1696 and 1737) and again in 2007 (UNSC resolution 1747) paving the way for increased sanctions. In addition,

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> For an overview and chronology of events see Kubigg, Op cit.

Javier Solana went to Tehran on 14 June 2008 with a letter written in English and Farsi and personally signed by himself and the foreign ministers of China, France, Germany, Russia, the United Kingdom, and the United States of America offering a "generous and comprehensive" deal. It also stated:

"...we are ready to fully recognise Iran's rights to have nuclear energy for peaceful purposes. We are ready to cooperate with Iran in the development of a modern nuclear energy programme based on the most modern generation of light water reactors. We offer legally binding fuel supply guarantees, or to work together in designing a system to provide these fuel guarantees. We can help Iran with the management of nuclear waste. We can support Iranian research and development, including in the nuclear field once confidence is being restored. If we can settle the core issue, the nuclear programme, the door would be open to cooperation in many other areas."<sup>25</sup>

The agreement was received coldly by the Iranians and subsequently no progress has been made on following up on the proposal. Iran continues to enrich uranium, with the latest meeting of the IAEA Board of Governors receiving a statement from its Director-General, Mohammed ElBaradei, confirming no progress since the last meeting and specifically that:

"The Agency has been able to continue to verify the non-diversion of declared nuclear material in Iran. Regrettably, the Agency has not been able to make substantive progress on the alleged studies and associated questions relevant to possible military dimensions to Iran's nuclear programme. These remain of serious concern."

He then called on Iran to "show full transparency and to implement all measures required to build confidence in the exclusively peaceful nature of its nuclear programme at the earliest possible date".<sup>26</sup>

The Iranian episode highlights a number of aspects of the EU approach to non-proliferation and disarmament. First, its intervention helped tame initial fears of a broader conflict in the region following the invasion of Iraq in 2003. In the same year, EU engagement also raised its visibility as a global security actor following the adoption its new Security Strategy. It has also had considerable success in presenting a credible negotiation position, while maintaining US support (this has remained sceptical but steady since February 2005). More widely, it has demonstrated that there is a multilateral route towards addressing the international community's concerns vis-à-vis Iran. Nevertheless, 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.

As mentioned previously, a key element of the EU strategy is the use of economic incentives to achieve the political objective of non-proliferation. The importance of combining economic incentives for non-proliferation objectives is a feature of the EU's growing role in non-proliferation as will be discussed in more detail below in the form of the so-called Non-proliferation Clauses.

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<sup>25</sup> S211/08 Council of the European Union, "Summary of remarks by Javier Solana, EU High Representative for the CFSP, at the press conference in Tehran", 14 June 2008. The full details of the proposal with 9 concrete areas of cooperation are set out in the following document (which was also distributed in Farsi): "Proposal to Iran by China, France, Germany, the United Kingdom, the United States of America and the European Union", Presented to the Iranian authorities on 14 June 2008, Tehran. The proposal was accompanied by a letter dated 12 June 2008 and addressed to HE Manuchehr Mottaki, Minister of Foreign affairs of the Islamic Republic of Iran.

<sup>26</sup> IAEA Board Begins September Deliberations, Director General Briefs 35-member Board on Nuclear Safeguards, other topics, Staff Report, 22 September 2008 at <http://www.iaea.org/NewsCenter/News/2008/board220908.html>

### 3. Coercive or Cooperative: 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: it is too early to assess the effectiveness of this approach or indeed to understand whether these clauses are perceived more as *coercive* or *cooperative* instruments. This will require further analysis, but the initial declaratory intention by the Union is to seek the introduction of more such clauses in cooperation with third states.<sup>27</sup>

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.<sup>28</sup> 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."

This element of the non-proliferation clause is a *declaratory* commitment by all parties to non-proliferation policies that they have already signed, but it does not include any verification procedures or commit a state to sign, ratify and implement through national legislation any Treaties it has not already signed e.g. 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 has two further elements, which include 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'. These elements clearly put additional demands upon the signatories to the agreement e.g. should Syria or Egypt agree to such an additional element they would be required to sign and ratify the Chemical Weapons Convention and ratify the Biological and Toxin Weapons Convention.<sup>29</sup> When read in conjunction with the WMD Strategy it is expected that states agreeing to such a clause (i.e.

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<sup>27</sup> Although only anecdotal, the reaction by one of the participants to the authors presentation of this chapter at a conference in Berlin suggests that some third state perceptions may be of a more coercive than cooperative instrument. This was only the reaction of one expert, but nevertheless it is an important example of the need for the EU not to take for granted the perceptions of its partners. On this issue of perceptions see the innovative work at the EU Institute for Security Studies, such as Grevi & de Vasconcelos op. cit.

<sup>28</sup> Model text is set out in the Council of the EU document entitled "Mainstreaming non-proliferation policies into the EU's wider relations with third countries", 19 November 2003, Document No. 14997/03. See also the "Fight against the proliferation of weapons of mass destruction - EU strategy against proliferation of Weapons of Mass Destruction", Council of the EU, Document No. 15708/03, 10 December 2003.

<sup>29</sup> A more challenging example would arise if such additional elements were part of a clause signed by India, Pakistan and Israel, these countries would have to sign and ratify the NPT (although this would create an immediate debate on whether they would have to give up their nuclear weapons or whether the Treaty would be modified to recognise their nuclear status alongside the five recognised *de jure* nuclear states).

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 the Stability Instrument following instructions from the European Parliament to examine what specific role EU assistance programmes could play in this area.<sup>30</sup>

### **3.1 An early case study in applying the clause: the Syrian experience**

Following the 1995 Barcelona Declaration, the Commission started negotiating with 12 and – since 2004 - 35 Euro-Mediterranean Partners towards the establishment of a Euro-Mediterranean Free Trade Area (EMFTA) by the target date of 2010. This has been pursued through individual Euro-Mediterranean Association Agreements (EMAA) with each state.<sup>31</sup> Whilst a EMAA with Syria pre-dated the non-proliferation clause, the Syrians had shown a willingness to talk about such issues as part of wider discussions on the Middle East, under the Barcelona process.

The Commission, therefore, anticipated the adoption of the non-proliferation clause and from October 2003 informed the Syrians that it would have to be included in the EMAA. Therefore, the Syrian negotiations included language on non-proliferation before the adoption of the final clause by the Council of the European Union. In December 2003, when the negotiations with Syria were approaching their conclusion, the Member States were presented with the negotiated text. There was a mixed response from the Member States, with some unhappy that the language was not close enough to the final text of the non-proliferation clause. The Commission negotiators were asked to revise the text in alignment with the clause but to their avail the agreement remains unsigned.<sup>32</sup>

### **3.2 Some early lessons learned**

The Member States' difficulties in achieving a text with Syria essentially stem from the desire of some of them to push beyond the basic statement of the first part (essential element) of the clause and towards the non-essential elements that would include a commitment by Syria to sign up to additional international non-proliferation agreements (i.e. to sign and ratify the Chemical Weapons Convention and ratify the Biological and Toxin Weapons Convention) and move towards establishing export control system and an end-user licensing system. The Syrian text on non-proliferation is based upon the 'essential element' but some Member States would like to see references very similar to that on export controls in the non-essential element of the clause.

The Syrian case is an interesting early example of how the European Union, and in particular the Commission, has quickly moved to include non-proliferation within its relations with third states as promised in the EU WMD Strategy and specified in the non-proliferation clause. Syria is also a difficult case because it is a country of concern that has engaged in suspicious activities in this regard e.g. it is suspected of developing chemical weapons. This has made some states nervous about not demanding the adoption of a full clause with both elements. The Commission is also concerned about a) the process of dealing with the clause in the future, i.e. avoiding a repeat of disrupting and even jeopardizing negotiations (as happened

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<sup>30</sup> European Parliament resolution on non-proliferation of weapons of mass destruction: A role for the European Parliament (2005/2139(INI)), Strasbourg, Thursday 17 November 2005.

<sup>31</sup> See: [http://ec.europa.eu/external\\_relations/syria/intro/index.htm](http://ec.europa.eu/external_relations/syria/intro/index.htm)

<sup>32</sup> Quille, G. & Keane, R. "The EU and Iran: Towards a New Political Security Dialogue", in Shannon N. Kile (ed) "Europe and Iran Perspectives on Non-Proliferation", SIPRI Research Report, No. 21, Oxford University Press, 2005

with Syria), and b) consistency in knowing when to expect a full clause (with all elements) and when to be satisfied with the weaker essential element.

At present there are mixed agreements (political and economic) *with a clause* and Community agreements (economic e.g. Free Trade Agreements or Trade and Cooperation Agreements) that *do not* require a clause. But what would the EU do if a country, such as Pakistan, with a sensitive proliferation track record is seeking a Community-only agreement? In such cases a non-proliferation clause is not legally required (i.e. because it is a Community only agreement) but what does this do for the political force of the EU's message externally when being viewed from contexts that are less sensitive to the legal nuances of the Union?

#### **4. Towards a Non-proliferation Clause with India?**

More recently 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 non-proliferation clause. However, in the same decision the Council requested the Commission to engage 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. We await to see whether the EU decides to take the easy option of a FTA-only or additionally to apply political conditionality through the clauses in a PCA.

This is a serious issue which has been discussed at length within the Commission especially when reviewing lessons learned from early experience with the clause (including Syria, Tajikistan and in the revised Cotonou Agreement - although not yet in force - with the African Caribbean and Pacific (ACP) states). 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. The Commission's regular review is a good first response to getting this balance right and in speeding up discussions on identifying which states will be subject to the more demanding or weaker clause. Such a discussion needs 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.

The introduction of non-proliferation clauses in mixed agreements with third states is an indication that the policy area is being taken seriously by the European Union in support of its new security and non-proliferation strategies. However, the challenge remains in applying the clause consistently and deciding in advance which states merit the full clause or just the essential element. This will raise questions about the European Union's standards in its relations with certain countries and not others. Nevertheless, the issue of non-proliferation is clearly becoming an important conditional element in the Union's external relations that has an impact across external relations including economic, development and foreign policies. In this respect Iran might take some comfort in that it is not being singled out, because even without the current nuclear controversy of recent years the clause issue would have resurfaced in the future in the context of a renewed dialogue on a Partnership and Cooperation Agreement.

#### **5. Prospects for Transatlantic cooperation**

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. In addition the EU has begun to define its own approach to non-proliferation which commits political and financial support (in specific Joint Actions) to the multilateral disarmament and non-proliferation regimes.

The EU like the UN has endorsed the new initiatives as complementary to multilateral regimes. The former UN Secretary-General Kofi Annan articulated this approach (in preparation for the Millennium plus 5 Summit) as one whereby "the Treaty on the Non-proliferation of Nuclear Weapons remains the foundation of the non-proliferation regime, we should welcome recent efforts to supplement it. These include Security Council resolution 1540 (2004)...and the voluntary Proliferation Security Initiative...".<sup>33</sup> However, the acceptance of the new initiatives as necessary to stimulate a commitment to arms control is sometimes looked upon with scepticism or even as a necessary evil to the detriment of a commitment to the multilateral system and disarmament. It often seems that Europeans and the EU (where it can) provide legitimacy but not leadership and conviction for the new initiatives. The European Parliament has added its support (including budgetary support, 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 which endorsed the EU Strategy, the approach outlined by Kofi Anan, as well as encouraging the further strengthening of the multilateral non-proliferation regimes.<sup>34</sup> The European Parliament's support is ongoing: for instance, there is currently a proposal before the Foreign Affairs Committee of the European Parliament to begin the process to adopt a Recommendation to the European Council ahead of the 2010 Non-Proliferation Treaty Review Conference.

Whilst the EU has developed its political profile on non-proliferation matters, it has not yet managed to transform its conviction for multilateral approaches into convincing others to reinvigorate multilateralism, such as at the last NPT Review Conference. More recently Ireland, Austria and Netherlands were joined by three non-EU member states insisting on additional reassurances from India (including on maintaining a moratorium on nuclear testing) before agreeing to changes in the Nuclear Suppliers Group guidelines to facilitate civilian nuclear cooperation. Other EU member states preferred to emphasise the benefits to fighting climate change and promoting economic and development objectives when justifying their support of a modification to the Nuclear Suppliers Group guidelines.<sup>35</sup> Further work is obviously needed. Solana himself stepped in to provide more support with an initiative to organize a ministerial level conference to discuss non-proliferation and cooperation under the title "Addressing strategic challenges together". The event, should it happen, aims to "uphold the multilateral non-proliferation and disarmament treaty system in all its components and to build trust in order to cooperate in modern technology fields, including energy". With prospects of a new US administration and positive signals being sent by both Democrat and Republican candidates, now would seem an opportune moment for Europe to prepare for engaging with its new transatlantic partner.<sup>36</sup>

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<sup>33</sup> Annan, K., "In larger Freedom: towards development, security and human rights for all", Secretary General of the United Nations, New York, September 2005, p38, para. 100.

<sup>34</sup> P6\_TA(2005)0439, "European Parliament resolution on non-proliferation of weapons of mass destruction: A role for the European Parliament" (2005/2139(INI)), 17 November 2005 and P6\_TA(2006)0493 "European Parliament resolution on the Convention on the Prohibition of Biological and Toxin Weapons (BTWC), cluster bombs and conventional arms", 16 November 2007

<sup>35</sup> For a comprehensive overview on the US-India nuclear deal see Arms Control Association: <http://legacy.armscontrol.org/projects/india/>

<sup>36</sup> For a more detailed examination of the candidates approach to the 2008 US Presidential elections see Arms Control Association at <http://www.armscontrol.org/taxonomy/term/105>

Other economic strategies are being developed, such as on energy security - which includes an international dimension that also emphasises cooperation on civilian nuclear energy. President in Office of the European Council, Mr Sarkozy has made further work in this area a priority of the French Presidency but there is still need for the EU to deepen its debate on the relationship between energy promotion and non-proliferation. This need is highlighted in the divisions at the Nuclear Suppliers Group and in the statement by the President in Office of the European Council following the recent EU-India summit which neglects to mention non-proliferation but instead the President emphasises "I can't see how we can tell India to participate in fighting climate change without civilian nuclear energy when we know it is the cleanest form of energy - it makes no sense".<sup>37</sup>

## 6. Conclusions

In addition to the incremental development of the EU's strategy on non-proliferation, the EU has also 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 are coming under increasing criticism from within Europe and the United States.<sup>38</sup>

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 Iraq. 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 into an expanded definition of the Petersberg Tasks in the new Headline Goal 2010 and in the Lisbon Treaty.<sup>39</sup> Even with these changes in the definition of the Petersberg Tasks it is expected that the pursuit of the Proliferation Security Initiative (PSI) and counter-proliferation (like counter-terrorism) are more likely to have greater resonance in bilateral EU Member State-US dialogue or within NATO.

To conclude, the EU approach is well suited to cooperation with the US on strengthening the multilateral regimes and on certain new initiatives that emphasise cooperation such as the G8 Global Partnership on Materials and Weapons of Mass Destruction. Should the new US administration follow the direction suggested by the presidential candidates Mr Obama and Mr McCain then the prospects for greater transatlantic cooperation are promising. In addition, the EU could continue to develop its strategy by being a more able actor in the following areas:

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<sup>37</sup> President Sarkozy was quoted by Valentina Pop in "EU extends nuclear co-operation with India", EU Observer, 29 September 2008 ([www.euobserver.com](http://www.euobserver.com) posted on 29 September 2008 at 18.17 ECT). The main framework for discussing the EU's energy policy follows up on the 2007 European Council's adoption of an Energy Policy for Europe. See Presidency Conclusions of the Brussels European Council, 8 & 9 March 2007. Energy security has become a priority policy issue for the European Union, rising in political importance after a row between Ukraine and Russia (over the price of Russian gas) led Russia to turn off supplies to Ukraine on 1 January 2006. Similarly, in January 2007 supplies were cut as a result of another dispute over the price of oil supplied by Russia to Belarus. Europe imports approx 40% of its gas supply, with approx 25% of the total supply coming from Russia, mostly via Ukraine. The dependency on Russian gas is set to grow further and "energy security" fears have taken an upward surge following the August 2008 summer war between Russia and Georgia.

<sup>38</sup> United States Government Accounting Office (GAO), "Iran Sanctions: impact in furthering US objectives is unclear and should be reviewed", Report to the Ranking Member, Subcommittee on National Security and Foreign Affairs, House Committee on Oversight and Government Reform, December 2007. See also Brzoska in this book.

<sup>39</sup> Quille, G "The Lisbon Treaty and its Implications for CFSP/ESDP", Policy Department, European Parliament, (PE 388.943) April 2008 and see Popielawska, J. & Deuter, J.M., Workshop Summary. The Impact of the Lisbon Treaty on ESDP. Held on 11 February 2008. Brussels, European Parliament, 2008.

- review the 2003 Common Position on the 2005 NPT Review Conference with the objective of outlining priorities for the 2010 Review Conference;
- hold a high level meeting with the new US administration on Transatlantic priorities for non-proliferation and disarmament to build upon recent political momentum (the call by Henry Kissinger *et al* for a greater commitment to nuclear disarmament,) in Europe and North America on this topic.
- through ongoing efforts to maintain visibility of the multilateral regimes and efforts to universalisation and cooperation (including also a discussion linking energy security);
- developing further its non-proliferation clause and in particular backing it up with fully resourced technical assistance programmes to third states;
- reflection on the adequacy of resources across the instruments (in particular under the CFSP and Instrument for Stability);
- review of the need for institutional reform to strengthen the implementation of the EU WMD Strategy;
- review of the expanded Petersburg Tasks and implications for non-proliferation of "joint disarmament operations";
- reflection on the need to review/revisit the EU WMD Strategy following the review of the European Security Strategy at the December 2008 European Council;
- review complementarity with member states' relevant departments responsible for non-proliferation policies;