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FUTURE OF DISARMAMENT AND NON-PROLIFERATION UNDER THE LISBON TREATY

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Introduction

With the EU Reform Treaty (Lisbon Treaty) having come into force the 1st December 2009, the European Union (EU) has acquired the capacity to speak with a single voice on matters of disarmament and non-proliferation. In particular, the new European External Action Service (EEAS) will enable a higher degree of continuity in policies than possible under the earlier system of rotating six-monthly Presidencies.

EU involvement in disarmament and non-proliferation can be traced back to the European Political Cooperation during the 1970s and 1980s, which sought to enhance political consultation among Member States on foreign affairs. Maastricht Treaty in 1992 established the Common and Foreign Security Policy (CFSP), which was to be based on the principles of the Charter of the United Nations and sought to promote international cooperation as a core aspect of the European vision on international security. Amsterdam Treaty in 1997 (which amended the Maastricht Treaty) defined new principles and responsibilities under the CFSP and created the position of the High Representative for the CFSP. Javier Solana occupied this position until December 2009, when the Lisbon Treaty entered into force. As a coordinator, he acted together with the six-monthly rotating EU Presidencies, but also came to symbolise the continuity in the EU's external affairs. Further modifications were carried out in the Treaty of Nice in 2001, allowing an enhanced cooperation relating to the implementation of a joint action or a common position¹.

Policies on disarmament, arms control and non-proliferation of non-conventional weapons essentially moved in the shadows of regional security policies (still a dominant characteristic of the EEAS today). The breakup of the Warsaw Treaty Organisation, the democratic transition of the East European countries and their induction into the North Atlantic Treaty Organisation (NATO) and the EU preoccupied West European leaders at the time. The war in the Former Yugoslavia and the resulting political and social instability in the Balkans also profoundly shaped the EU's security agenda. Integration of security with political dialogue and the promotion of common economic interests molded regional initiatives and strategic

¹ For an overview of the EU's growing role in disarmament and non-proliferation, see: Jean Pascal Zanders, 'The European Union and the 6th Review Conference', in Gustav Lindstrom (ed.) *Enforcing Non-Proliferation: The European Union and the 2006 BTWC Review Conference*, Chaillot Paper no. 93 (EU Institute for Security Studies: Paris, November 2006), pp. 94–96.

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partnerships, including the initiation in 1995 of the so-called Barcelona Process with the Mediterranean partners. Less visibly, in the 1990s and early 2000s EU Member States began adopting joint positions in preparation of major meetings of states parties to weapon control conventions, such as review conferences. Three developments increased the prominence of disarmament and non-proliferation after the turn of the century: the terrorist strikes of 11 September 2001 against the United States and the subsequent anthrax letter attacks; the brusque abandonment by the USA of the process to negotiate a legally binding protocol to the 1972 Biological and Toxin Weapons Convention (BTWC) and diplomatic moves that led to the failure of the 5th Review Conference without any consultation of its EU partners in 2001; and the 2003 invasion of Iraq over its presumed possession of non-conventional weapons, which sharply divided the EU.

EU policies in support of disarmament and non-proliferation

As a consequence, in 2003 the EU members embarked on the development of a coherent strategy to deal with the security challenges posed by non-conventional weapons. This resulted in adoption in December of the European Security Strategy and the more specific 'Fight against the proliferation of weapons of mass destruction – EU strategy against proliferation of Weapons of Mass Destruction'.² The strategy places the multilateral disarmament and non-proliferation treaty regimes at its heart. The EU seeks both their universalisation and enhanced effectiveness through best use of existing verification mechanisms and the development of additional ones where possible. Those treaties, together with export control arrangements, form a first line of defence. In line with this view, it has adopted several joint actions to support specific tasks of specialised international organisations, such as the Organisation for the Prohibition of Chemical Weapons (OPCW) and the International Atomic Energy Agency (IAEA), and in support of threat reduction activities. If political dialogue and diplomatic pressure fail, then the EU will consider coercive measures under Chapter VII of the UN Charter and international laws (sanctions, interception of shipments and, if appropriate, the use of force). The adoption of enhanced sanctions against Iran in July 2010 in response to a UN Security Council Resolution denouncing its lack of cooperation with the IAEA illustrates the escalatory decision process. The EU also introduced the so-called non-proliferation clause in bilateral agreements, requiring third countries to establish an effective system of national exports and transit controls, which includes end-use control on dual use technologies and effective sanctions for violations.³ Every six months the EU evaluates the implementation of the strategy, thus ensuring continued attention by the highest EU decision-making levels.⁴

In the area of non-conventional weapons—chemical, biological, radiological and nuclear (CBRN)—all the EU members are party of the relevant treaties, and candidate members must have joined those agreements in order to qualify for EU membership. The EU as a collectivity also exerts strong internal pressure on individual member states to be in full compliance with their legal and political obligations under the respective treaties. This may vary from adopting national implementation legislation to filing annual reports under the confidence building measures of the BTWC.

2. 'Fight against the proliferation of weapons of mass destruction - EU strategy against proliferation of Weapons of Mass Destruction', Council of the European Union, 10 December 2003.
3. 'Fight against Proliferation of Weapons of Mass Destruction - Mainstreaming non-proliferation policies into the EU's wider relations with third countries', Note from the General Secretariat of the EU to Delegations, Council of the European Union document no. 14997/03, 19 November 2003.
4. The six-monthly progress reports on the implementation of the EU's WMD strategy are available from the EU Council web site at URL <<http://www.consilium.europa.eu/showPage.aspx?id=718&lang=EN>>.

Changes on the ground

Since the entry into force of the Lisbon Treaty, the EU has entered a new phase in the organisation of its foreign policy and external representation in general, and its involvement in matters of disarmament and non-proliferation in particular. The most visible immediate change has been the creation of the position of the High Representative of the Union for Foreign Affairs and Security Policy/Vice President of the European Commission and the establishment of the EEAS. Through 2010, however, the institutional skirmishes among the European Commission, European Parliament and the EEAS and between the EU and national capitals, significantly delayed the appointment of senior staff, the reassignment of EU staff to their new responsibilities, and the ability of the EEAS to project itself as an effective actor on the world scene. In the context of disarmament and non-proliferation, the first signs of life emerged in the second half of the year as Belgium took a step back from the Presidency in order to let the EEAS take the lead in the preparation and execution of decisions relating to meetings of states parties to treaties. For instance, with respect to the 2011 Review Conference of the BTWC, Belgium has placed the point of gravity for the preparations squarely with the EEAS Directorate for Disarmament and Non-proliferation.

The representation of the EU as a unified actor in international forums remains a delicate matter and its position in future meetings remains uncertain, not just because of the response of other countries, but also because of the way some Member States wish to exert their EU Presidency. Initial optimism about EU representation received a serious blow when the UN General Assembly postponed a vote on enhancing the observer status for the EU in September 2010 in the light of opposition from members of other regional groupings, thus denying EU Council President Herman Van Rompuy and High Representative/Vice President Catherine Ashton the ability to directly address the forum.⁵ Whether the setback will prove permanent or a compromise allowing other regional institutions similar privileges—even though they do not have the same degree of political or policy integration—remains to be seen.

For the time being, EU presence in UN institutions or bodies working under UN auspices remains delicate. For example, at the BTWC Meeting of Experts in August 2010 (thus prior to the UN General Assembly postponement) a representative of the EU Mission to UN in Geneva for the first time read out the formal EU statement from the desk of the (Belgian) Presidency. Previously, the Presidency presented the statement on behalf of the Union and the EU officials either sat among the observers or were integrated in the Presidency delegation. The EU representative also led the bilateral discussions on preparations for the 2011 Review Conference with other states. Documents presented to the Expert Meeting were no longer national documents submitted on behalf of the Union, but rather EU documents prepared by a specific EU Member. At the December Meeting of the States Parties to the BTWC, the EU plaque was placed next to the Belgian one and the EU Ambassador directly addressed the forum. However, this step was only possible because no state objected and when requesting the floor both the Belgian and EU plaques had to be raised, before the Chairman of the meeting would recognise the request to speak.

The European Security Strategy places the multilateral disarmament and non-proliferation treaty regimes at its heart

5. Toby Vogel, 'UN General Assembly postpones vote on special status for the EU', *EuropeanVoice.com*, 14 September 2010.

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In November, Annalisa Giannella, Director for Disarmament and Non-Proliferation in the EEAS addressed the Conference of States Parties to the Chemical Weapons Convention (CWC) in The Hague from the desk of the Belgian Presidency, but the EU was not independently recognised. The EU has no mission to the OPCW, nor does it have observer status. EU officials therefore join the Presidency delegation. A second decision-making body in the OPCW is the Executive Council. It consists of a subset of States Parties represented according to regional groupings. States Parties serve for a term of two years and are nominated by their respective regional groupings. Consequently, it is not always possible that the Presidency sits on the Executive Council, but as all State Parties can participate as observers in the meetings and have speaking rights, the Presidency can therefore intervene on behalf of the EU.

Towards the future

The two examples of the BTWC and the CWC illustrate that for the present formal EU representation will differ considerably depending on the governance model of a specific arms control or disarmament treaty. Enhanced observer status at the UN, if obtained, will not fundamentally alter this picture as treaty-dedicated international organisations are not necessarily UN bodies. A radical change will occur only if and when the EU can contract an international disarmament or arms control treaty as an autonomous party.

Until such time, the way in which the EEAS is represented at weapon control forums will likely also depend on how a particular EU Member views its Presidency role. Belgium, which favours strong EU integration and the primacy of EU institutions, let the fledgeling EEAS assume its role as fully as possible under the Lisbon Treaty. Future Presidencies, however, may prefer more restrictive interpretations.

Treaty participation in the Mediterranean space

Table 1 lists the participation in four major global treaties and one regional agreement controlling non-conventional weapons. It groups the countries of relevancy to the question of disarmament, arms control and non-proliferation in the Mediterranean basin. They include all coastal states, as well as states that participate in the dialogues on Mediterranean security or have (had) a major impact on security policies of coastal states.

The 1968 Nuclear Non-Proliferation Treaty (NPT) presently has the largest number of States Parties. Of the 193 states recognised by the United Nations, only three remain outside the regime (India, Israel and Pakistan), while North Korea withdrew in 2003.⁶ The BTWC numbers 163 States Parties. Thirteen states have signed, but not yet ratified the treaty, while 19 countries have neither signed nor ratified it. The 1993 CWC totals 188 States Parties. Two countries have signed the document, while five remain wholly outside the treaty. The most recent

6. Taiwan has also accepted safeguards administered by the International Atomic Energy Agency.

global arms control agreement is the 1996 Comprehensive Test Ban Treaty (CTBT). Despite having attracted 153 ratifications, it is yet to enter into force because the agreement requires a list of specific countries to become a party. Thirteen states did not sign the document.

With respect to the Mediterranean basin, treaty participation is on the whole high. All northern coastal states are party to the four global treaties. In particular, the European Union exerts strong peer pressure among its members to join arms control and disarmament treaties at the earliest possible moment and to effectively implement their provisions. This forms an integral part of the soft power capital the EU wishes to wield in dealing with other regions and strategic partners. Countries that aspire to become EU members must be party to the relevant treaties governing non-conventional weapons.

No ambiguity with respect to chemical and biological weapons (CBW) exists on the European continent. The nuclear area presents a more complex picture. Two EU members—France and the United Kingdom—are recognised nuclear weapon states under the NPT. Furthermore, more than 20 years after the end of the Cold War, five states host US tactical nuclear bombs as part of their commitments to the North Atlantic Treaty Organisation (NATO): Belgium, Germany, Italy, The Netherlands and Turkey. Even though the nuclear weapons in Europe have no role in the security dynamics in the Mediterranean basin, their retention has been argued to deter proliferators, including Iran.⁷ France in particular has linked its nuclear arsenal to so-called 'rogue' states brandishing nuclear weapons, with President Nicolas Sarkozy singling out Iran to justify continued French nuclear deterrence.⁸

The North African states generally participate in the global disarmament and arms control treaties with the exception of Egypt, which since the entry into force of the NPT has made any further treaty ratification or accession conditional on Israel's joining the NPT. Egypt has systematically pushed regional organisations, particularly the Arab League, to adopt resolutions calling on the Arab countries not to join multilateral weapon control agreements unless Israel abandons its nuclear weapon programme. However, it has met with very limited success. Modern arms control and disarmament treaties have a significant impact on non-military development and international trade. Consequently, those states that are geographically far removed from the Israeli-Arab cleavage preferred to safeguard their economic interests. The defections from the common position were pronounced in the case of the CWC, whose provisions could have adversely affected the oil and natural gas-based economies.⁹ While Egypt has signed the BTWC and more recent multilateral nuclear weapon agreements, thus signalling its intent not to undertake any activity contrary to the purposes of those treaties, it has not done so with regard to the CWC. In the final negotiating stages in 1992, it invoked vital national and security interests.¹⁰ Israel may have been one factor; inter-Arab conflicts and rivalries may also have informed the position. At the time, Libya was widely viewed as having embarked on a major chemical weapon programme and had been reported (although never formally confirmed) to have used CW in the 1988 war in Chad. Egypt is no stranger to chemical warfare, having used poison agents in the Yemen war in the 1960s.

7. For discussion, see Christos Katsioulis and Christoph Pilfer, 'Nuclear Weapons in NATO's New Strategic Concept', Friedrich-Ebert-Stiftung, Berlin, May 2008, URL <<http://library.fes.de/pdf-files/id/ipa/05425.pdf>>; Richard L. Kugler, *An Extended Deterrence Regime to Counter Iranian Nuclear Weapons: Issues and Options* (Center for Technology and National Security Policy, National Defense University: Washington, DC, September 2009), URL <<http://www.ndu.edu/CTNSP/docUploaded/DTP%2067%20Deterring%20Iran.pdf>>; and Klaus Naumann et al., *Towards a Grand Strategy for an Uncertain World: Renewing Transatlantic Partnership* (Noaber Foundation: Lunteren, NL, 2007), URL <http://csis.org/files/media/csis/events/080110_grand_strategy.pdf>.
8. Presentation of SSBM "Le Terrible" – Speech by M. Nicolas Sarkozy, President of the Republic, Cherbourg, 21 March 2008, Embassy of France to the United Kingdom, URL <<http://www.ambafrance-uk.org/President-Sarkozy-s-speech-at,10430.html>>.
9. Jean Pascal Zanders and Elisabeth M. French, 'Article XI of the Chemical Weapons Convention: Between Irrelevance and Indispensability', *Contemporary Security Policy*, vol. 20, no. 1 (1999), pp. 73–74.
10. Statement by Mr. Zahran, Egypt, Conference on Disarmament document CD/PV.634 (22 August 1992), p. 19.

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The 1996 Treaty of Pelindaba entered into force in 2009 and established a Nuclear weapon-Free Zone (NWFZ) in Africa and it is the only such agreement to affect the Mediterranean basin today. The ratification process has been very slow and over twenty members of the African Union as well as Morocco are not yet party. Nuclear weapon activities took place on the territory of the two Mediterranean countries that have joined the treaty.

Deep cleavages cut through the eastern part of the Mediterranean, which are exacerbated by the accumulation of weaponry, over-the-horizon threats, and interference by outside global and regional powers. Despite its policy of opacity, Israel is a quasi certain possessor of nuclear weapons. It also maintains extensive defensive chemical and biological warfare programmes, and organises regular civil defence exercises to mitigate the consequences of CBW attacks and signal to potential attackers the limited advantages they might gain from resorting to such weapons. A potential offensive dimension to Israel's CBW activities cannot be entirely excluded.

Table 1: Regional actors impacting the arms control debate in the Mediterranean

	NPT	BTWC	CWC	CTBT	NWFZ
Europe					
Albania	x	x	x	x	
Bosnia & Herzegovina	x	x	x	x	
Croatia	x	x	x	x	
Cyprus	x	x	x	x	
France	x	x	x	x	
Greece	x	x	x	x	
Italy	x	x	x	x	
Malta	x	x	x	x	
Monaco	x	x	x	x	
Montenegro	x	x	x	x	
Portugal	x	x	x	x	
Slovenia	x	x	x	x	
Spain	x	x	x	x	
Turkey	x	x	x	x	
Africa					
Algeria	x	x	x	x	x
Egypt	x	Signatory		Signatory	Signatory
Libya	x	x	x	x	x
Morocco	x	x	x	x	Signatory
Tunisia	x	x	x	x	Signatory
Asia					
Iran	x	x	x	Signatory	
Iraq	x	x	x	Signatory	
Israel			Signatory	Signatory	
Jordan	x	x	x	x	
Lebanon	x	x	x	x	
Syria	x	Signatory			