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THE EUROPEAN UNION'S WEAPONS OF MASS DESTRUCTION NON-PROLIFERATION CLAUSE: A 10-YEAR ASSESSMENT

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I. INTRODUCTION

In November 2003 the Council of the European Union (EU) adopted the 'Fight against the proliferation of weapons of mass destruction: mainstreaming non-proliferation policies into the EU's wider relations with third countries', which detailed a new EU policy on non-proliferation under the EU Common Foreign and Security Policy (CFSP).[1] In the text the Council announced that a weapon of mass destruction (WMD) non-proliferation 'clause' would be introduced into all new or amended EU agreements under the CFSP in order to make cooperation with the EU conditional on national compliance with international non-proliferation regimes. Without singling out individual states, the Council stressed that non-proliferation would become one of the benchmarks used by the EU when deciding whether to maintain or develop closer relations with a state outside the EU (a so-called third country). It noted 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 assesses the advisability of progressing towards a contractual relationship.'[2]

The non-proliferation clause (also known as the WMD clause) consists of three elements (see the full text of in box 1). Both EU member states and partner states must adhere to the first element while the second and third elements are considered on a case-by-case basis.

[1] Council of the European Union, 'Fight against the proliferation of weapons of mass destruction–mainstreaming non-proliferation policies into the EU's wider relations with third countries', 14997/03, 19 Nov. 2003, <http://ue.eu.int/uedocs/cmsUpload/st14997.en03.pdf>, annex, p. 4.

[2] Council of the European Union (note 1), p. 2.

SUMMARY

In the past two decades the European Union (EU) has developed a diverse set of policy instruments to promote the non-proliferation of weapons of mass destruction (WMD). One of the tools created by the EU is the non-proliferation clause (also known as the WMD clause), which has been in effect since November 2003. The purpose of the clause is to raise the profile of non-proliferation in the EU; to use the EU's standing in trade and bilateral cooperation to make it a more credible partner in non-proliferation; and to ultimately enhance participation and compliance with non-proliferation regimes. This paper discusses the value of the non-proliferation clause measured against these objectives and concludes that its value and impact have been very limited.

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Box 1. The non-proliferation clause

'Non-proliferation clause' to be included in agreements with third countries

Countering proliferation of weapons of mass destruction

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. The parties agree that this provision constitutes an essential element of this agreement.

The parties furthermore agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:

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

The Parties agree to establish a regular political dialogue that will accompany and consolidate these elements.

* These two elements might be considered as essential elements on a case by case basis.

Source: Council of the European Union, 'Fight against the proliferation of weapons of mass destruction–mainstreaming non-proliferation policies into the EU's wider relations with third countries', 14997/03, 19 Nov. 2003 <http://ue.eu.int/uedocs/cmsUpload/st14997.en03.pdf>, p. 4.

This paper analyses the clause based on its record of adoption in 2003–13. Section II provides a context for understanding the clause, while section III offers an overview of the adoption record so far and gives examples of agreements from different aspects of the EU's external relations. Section IV analyses the use of the clause in relations with countries that, by EU definition, present a risk of proliferation. Section V discusses the role of the European Parliament, and section VI provides conclusions.

II. UNDERSTANDING THE WMD CLAUSE

The clause was adopted during preparatory work in the Council on the first-ever European Security Strategy and the EU Strategy against Proliferation of Weapons of Mass Destruction (WMD Strategy), which began in April 2003.[3] At the height of the Iraq war the EU carried out intense work to develop a European position on regional security, non-proliferation and counterterrorism, mainly to present a common EU front vis-à-vis the United States in the short-term.

The day after adoption of the clause the Council adopted a common position on the 'universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and their delivery systems'. The common position firmly stated the EU's strategic objective to work towards universalization of the 1968 Non-Proliferation Treaty (NPT) and the entry into force of the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT), among other objectives, in order to strengthen the multilateral non-proliferation regime.[4] The clause was meant to be one instrument at the EU's disposal to achieve these goals.

[3] For the 2003 strategy see 'A secure Europe in a better world: European security strategy', Brussels, 12 Dec. 2003, <http://www.eeas.europa.eu/csdp/about-csdp/european-security-strategy/>; and Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction', 15708/03, 10 Dec. 2003, <http://europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/l33234_en.htm>.

[4] 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, *Official Journal of the European Union*, L302, 20 Nov. 2003. Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature 1 July 1968; entered into force 5 Mar. 1970. Comprehensive Nuclear-Test-Ban Treaty (CTBT), opened for signature at New York on 24 Sep. 1996.

The adoption of the non-proliferation clause marked the first time that the EU opted to use non-proliferation as a general criterion to assess existing and new partnerships with states outside the EU. The clause was to be included 'as a general rule' in all new or amended mixed agreements under the CFSP. So-called mixed agreements are agreements between the EU and external countries concerning issues of EU and member state competence. They overlap the now-abandoned 'Community' competence (e.g. trade) with that of member states (under the CFSP). Importantly, given the nature of the European Atomic Energy Community (Euratom), which is a separate legal entity, bilateral agreements concluded by Euratom (using the 1957 Treaty Establishing the European Atomic Energy Community, the Euratom Treaty, as the legal basis) would not include a non-proliferation clause. Following the entry into force of the 2007 Lisbon Treaty in 2009, the pillar structure formally ended, although the Community procedure for trade was maintained and the Euratom Treaty remains in force.[5]

Although the clause was foreseen as a general policy, the Council foresaw that extra measures could be taken in cases of 'specific WMD related concerns'. Even in cases where no revision of existing contracts was expected, the European Commission and the EU member states could:

> propose an amendment of the agreement to the third party if specific WMD related concerns warranted such action. If no agreement can be reached on such proposed amendment, the EC and its Member States should examine the opportunity of appropriate measures which could include denunciation of the agreement.[6]

The result of such discussions could be either an amendment of the agreement in question or the creation of a separate legally binding instrument between the parties that could include a link to the overall agreement.[7] Hence, in certain cases specific WMD-related behaviour could lead to the termination of the agreement, even if a non-proliferation clause had not been included. Notably, this same 'extra' measure was recommended for EU development assistance agreements:

> As concerns wider EU conditionality, including EU assistance programs, the Council invites the Commission to study the possibility to establish a link between the non-compliance by a given country with its engagements as regards non-proliferation and suspension of Community assistance. This question would be taken forward as part of the annual GAERC [General Affairs and External Relations Council] debate on the coherence of the EU external action.[8]

In order to assess the nature of existing agreements and the prospects for including a non-proliferation clause in them, the clause policy recommended 'A complete examination of existing mixed agreements . . . with a view to generalising as far as possible the essential clause and determining the way to do so.'[9] The European Council endorsed the clause policy in December 2003 through the adoption of the EU WMD Strategy.

III. THE RECORD OF ADOPTION OF THE WMD CLAUSE

The WMD clause has been inserted into numerous agreements since its adoption in November 2003, including with the African, Caribbean, and Pacific Group of States (ACP) and with Central American states. Many agreements have been signed but have not entered into force, and it is common that the time between signature and ratification takes several years. Bilateral agreements with, for example, Indonesia and South Africa (both signed in 2009) and Russia (signed in 2008) are not yet in force.[10] In some cases, transitions in the political environment have occurred during the course of negotiations, rendering a signed agreement obsolete before it reaches the stage of ratification. Negotiations were stopped before signature in the case of Ukraine, as well as during negotiations with Libya, Syria and others.[11] No agreement has yet been

[5] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <http://ec.europa.eu/archives/lisbon_treaty/full_text/index_en.htm>.

[6] Council of the European Union (note 1), p. 2.

[7] Council of the European Union (note 1), p. 2.

[8] Council of the European Union (note 1), p. 3.

[9] Council of the European Union (note 1), p. 2.

[10] European Commission, 'EU–Indonesia Partnership and Cooperation Agreement: a wider framework for cooperation', Press Release MEMO/10/206, 21 May 2010, <http://europa.eu/rapid/press-release_MEMO-10-206_en.htm?locale=en>.

[11] European External Action Service, 'Ukraine', <http://eeas.europa.eu/ukraine/index_en.htm>.

signed with China or with India, despite many years of negtiations.[12]

Like-minded states

There are various examples where political conditionality, including the non-proliferation clause, has been difficult to integrate into EU agreements with so-called like-minded states. Two examples of such bilateral negotiations are the EU's comprehensive trade agreements with South Korea and Canada. South Korea joined the Group of Eight Global Partnership against the Spread of Weapons and Materials of Mass Destruction (G8 Global Partnership) in 2004 and has been an EU 'strategic partner' since 2010. While South Korea is a state party to all key non-proliferation treaties, when negotiations began on a new trade agreement with the EU in 2007, South Korea did not want a comprehensive mixed agreement. Instead, on South Korea's initiative, the Council gave the Commission a mandate to negotiate two separate agreements with South Korea: one free trade agreement and one framework agreement. The EU's ambition was to create a firm legal link between the two agreements in order to 'bridge' their content and thus create a degree of conditionality. In practice, however, the legal division of intergovernmental and supranational competences could make it difficult to impose conditionality on a free trade agreement by means of a parallel political agreement.[13] Despite the separate agreement, South Korea challenged the non-proliferation clause related to export controls. In the final draft of the agreement, control of the transit of WMD-related goods was deleted. The EU–South Korea Framework Agreement was signed in 2010, but it has yet to be ratified by all EU member states.[14]

The EU WMD Strategy identified Canada as one of four 'key partners' to the EU and 'necessary to ensure a successful outcome of the global fight against proliferation'.[15] In 2013–14 the negotiation of a Comprehensive Economic and Trade Agreement and a Strategic Partnership Agreement deepened Canada–EU relations.[16] Canada and the EU cooperate in the area of non-proliferation in the G8 Global Partnership, while Canada, the EU and the USA hold regular trilateral talks on Iran.[17] In October 2013 Canada and the EU concluded negotiation of a Comprehensive Economic and Trade Agreement.[18] The agreement is the biggest trade agreement that Canada has ever adopted and the EU is Canada's second largest trading partner after the USA.[19] Since the trade agreement does not address political issues, a Strategic Partnership Agreement that covers the non-proliferation clause and other political obligations began to be negotiated simultaneously, but the negotiations allegedly encountered difficulties and the agreement has not yet been concluded.[20] Although it might be difficult to imagine why Canada would oppose general language on non-proliferation in the agreement, one possible explanation could be related to its agreement to supply India with uranium. In theory, this would be a breach of the first provision of the EU non-proliferation clause (the commitment by states parties to the NPT to ensure that they do not support a nuclear weapon programme). In practice, the Canada–India deal is unlikely to cause tension in Canada's relations with the EU given the fact that France also supplies uranium and nuclear technology to India.[21] The European External Action Service (EEAS) confirms that the issue of uranium supply is not a concern in the negotiations, but that Canada had raised questions with regard to firearms. Firearms fall under the small arms and light weapons

[12] European External Action Service (EEAS), 'China', <http://eeas.europa.eu/china/index_en.htm>; and EEAS, 'India', <http://ec.europa.eu/trade/policy/countries-and-regions/countries/india/>.

[13] Grip, L., 'The EU non-proliferation clause: a preliminary assessment', SIPRI Background Paper, Nov. 2009, <http://books.sipri.org/product_info?c_product_id=394>, p. 4.

[14] Framework Agreement Between the European Union and its member states, on the one part, and the Republic of Korea, on the other part, 2012, <http://eeas.europa.eu/korea_south/docs/framework_agreement_final_en.pdf>, p. 16.

[15] Council of the European Union, (note 3), p. 8.

[16] European External Action Service, 'Canada', <http://eeas.europa.eu/canada/index_en.htm>.

[17] Renard, T., 'Partnering for a nuclear-safe world: the EU, its strategic partners and nuclear non-proliferation', European Strategic Partnerships Observatory (ESPO), no. 3, Oct. 2013, p. 11 and p. 14, <http://www.egmontinstitute.be/papers/13/sec-gov/ESPO-WP3.pdf>.

[18] European Commission, 'Facts and figures of the EU–Canada free trade deal', Press Release MEMO/13/911, 18 Oct. 2013, <http://europa.eu/rapid/press-release_MEMO-13-911_en.htm>.

[19] 'Canada and European Union agree free-trade deal', BBC News, 18 Oct. 2013, <http://www.bbc.co.uk/news/business-24583745>.

[20] Blanchfield, M., 'EU–Canada trade talks hit snag over wording of human rights clause', CTV News, 8 Oct. 2013, <http://www.ctvnews.ca/business/eu-canada-trade-talks-hit-snag-over-wording-of-human-rights-clause-1.1488967>.

[21] Mohan, A., 'Canada to supply uranium to India', StratPost, 19 Oct. 2013, <http://www.stratpost.com/canada-to-supply-uranium-to-india>; and Areva, 'India', Areva.com, [n.d.], <http://www.areva.com/EN/group-1476/india-demand-continues-to-grow.html>.

clause that was also negotiated as part of the Strategic Partnership Agreement.[22]

Extended conditionality for developing states

When designing the clause, the Council built some flexibility into the instrument by making the second and third provisions essential elements of agreements on a case-by-case basis (see box 1). Specifically, the clause policy implied stricter conditionality in some cases—namely, in cases of proliferation risk and in agreements linked to the EU's development aid. However, in cases where the non-proliferation clause was inserted into agreements that have entered into force, there are additional differences in the wording of the provisions of the clause. This flexibility enables the EU to cover issues that are specific to a region or a country and, according to the EEAS, in negotiations it has developed as an important feature of the clause.[23] In the Cotonou Agreement and in the EU–Central America association agreement, only the first part of the clause is essential to the agreements.[24] In both agreements, the third part of the cause (on export control) was expanded from the clause used in relation to South Korea to also include the transit of dual-use goods and end-use control on dual-use technologies and contains effective sanctions for breaches of export controls. Moreover, in the case of a breach of the clause's first provision, in the Cotonou Agreement the EU holds the right to access all 'relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties' unless the breach is considered an urgent matter, in which case the EU can end the contract without consultation.[25] In theory the provisions establish mutual rights and obligations for both sides of the agreement, but it is hard to imagine a scenario where an EU member state would provide sensitive information to an ACP state following the non-compliance by an EU member state with international non-proliferation law. The extended conditionality on developing states could be perceived as outright discrimination against poorer states by the EU. On the other hand it cannot be ruled out that ACP states prefer to include a 'middle step' between (perceived or unintentional) breaches of existing obligations and an end to the agreement with the EU, when faced with extensive conditionality in a policy area to which limited national resources are typically allocated. To balance the situation, the 2010 revised Cotonou Agreement included an assurance from the EU that financial and technical assistance for non-proliferation cooperation in the ACP states will be 'financed by specific instruments other than those intended for the financing of ACP–EC cooperation'. The intent of the revision was to link the new obligations of the Cotonou Agreement to the budget for capacity building provided under the EU Instrument for Stability.[26]

Non-proliferation clauses with like-minded and developing states: embedded issues

Several embedded issues relate to seeking the inclusion of non-proliferation clauses in agreements with like-minded states, which may explain the resistance that the EU has met in negotiations. While it is not openly confrontational, the opening sentence of the clause can be viewed as problematic. It states that the parties to the agreement consider the proliferation of WMD and their means of delivery, both to state and non-state actors, to represent 'one of the most serious threats to international stability and security'. However, states are likely to desire to make independent decisions on their national threat perceptions, not to import statements on international stability and security from the EU. Currently, it can be questioned if even the EU still agrees with its statement of 10 years ago, or whether the largest security threats are specific rather than general (e.g. flooding in Pakistan or civil war in Syria, which are discussed in the next section).

Additionally, partner states may interpret the EU's inclusion of a non-proliferation clause as a sign of distrust. The start of the sentence 'The Parties therefore agree to co-operate' may state the main

[22] European External Action Service official, Interview with author, 27 Nov. 2013.

[23] European External Action Service official, Interview with author, 27 Nov. 2013.

[24] 'Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other', CENTR-AM/EU/en, signed 29 June 2012, <http://www.consilium.europa.eu/policies/agreements/search-the-agreements-database?command=details&lang=en&aid=2012001&doclang=en>, p. 26; and Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States of the Other Part (Cotonou Agreement), signed 23 June 2000, entered into force 1 Apr. 2003, revised 25 June 2005 and 22 June 2010, <http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/>, p. 25.

[25] Cotonou Agreement (note 24), p. 25.

[26] Cotonou Agreement (note 24), p. 25.

thrust of the clause but it is probably undervalued because it is embedded in the highly sensitive context of fulfilling national obligations. It could be interpreted to mean that cooperation *is* the fulfilling of each of the parties national obligations. Partner states may ask, if the EU does not see them as a proliferation risk, why it would want to make implementation of non-proliferation commitments obligatory.

Finally, 'the parties agree that this provision constitutes an essential element of this agreement'. A common issue that has been raised recurrently in negotiations with like-minded states is the problem of legally committing to non-proliferation obligations that are not legally binding in the first place. The multilateral export control regimes are the cases in point. For some partners, this is a constitutional problem.[27] With the clause the EU attempts to strengthen the international non-proliferation regime by adding yet another legally binding element—alternatively, introducing a new legal dimension—to existing agreement. A prevailing liberal view in arms control is that legal regimes enjoy a higher degree of compliance than politically binding agreements.[28] However, there is general agreement that greater compliance is caused by increased clarity regarding the obligations and that non-compliance with international law is at least partially fuelled by ambiguity in agreements and limits on a state's capacity to comply.[29] In itself, the EU non-proliferation clause provides neither clarity in its obligations nor additional resources to assist in implementation of commitments; these important aspects must be added to the negotiations.

The potential value of agreeing non-proliferation clauses with like-minded and developing states

Although there are issues embedded within the clause, the clause may be of value in contract negotiations with states that are of little proliferation concern (states of proliferation concern are considered in the next section). According to the EEAS, the non-proliferation clause has raised awareness about the objectives of the EU non-proliferation policy and has benefited multilateral regimes in terms of outreach. To fully benefit from this outreach, however, the non-proliferation clause would have to be linked to other EU instruments. The possible benefits could be explained by a three-steps model.

1. *The non-proliferation clause can raise awareness about the EU's non-proliferation policy objectives and outreach for the benefit of the multilateral regimes*. It would be fair to acknowledge that the rest of the world may not be fully up-to-date on EU non-proliferation policy. When a general agreement with the EU is sought, the first step of the process therefore includes briefing, at the working level, of the partner state on EU non-proliferation commitments, including EU export control regulation. The EU may seek to underline its financial and technical support to verification instruments and thereby conduct outreach to benefit the multilateral regimes. This aspect makes the non-proliferation clause an important outreach and awareness-raising tool.

2. *It can create a platform to discuss issues of non-proliferation and explore areas of common interest or concern*. Having the non-proliferation clause as a necessary part of political agreements ensures that non-proliferation issues are brought to the negotiating table. This could de facto create a platform for discussion of non-proliferation issues and lead to exploration of areas of common interest or concern. Such discussions could still be fairly generic, although negotiations should include officials from both sides who possess a full understanding of national policy and programmes.

3. *Based on the discussions, joint cooperation projects funded by various budget instruments could be identified*. In the third step of the process, the discussions would become more targeted to specific aspects. Based on the discussions carried out in step 2, the partners could move to identify the joint cooperation projects to be funded by various budget instruments. The process would require that parties on both sides involve relevant stakeholders in the negotiations. The EU could be proactive and present opportunities for cooperation projects under the various EU budget instruments, which would require the Commission's involvement in the process.

[27] European External Action Service official, Interview with author, 27 Nov. 2013.

[28] Goldstein, J. O. et al., 'Introduction: legalization and world politics', *International Organization*, vol. 54, no. 3 (2000), p. 386.

[29] Chayes, A. and Chayes, A. H., *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press: Cambridge, MA, 1995), p. 16, quoted in Guzman, A. T., How International Law Works: A Rational Choice Theory (Oxford University Press: New York, 2008), p. 14.

IV. CASES OF PROLIFERATION CONCERN

The Council's 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems', adopted in 2008, states that: 'Weapons of mass destruction which may be in the hands of *states of concern* or terrorists/non state actors constitute one of the greatest security challenges which Europeans may ever face'.[30] The WMD Strategy explains that states of concern are those states that are non-compliant with the main multilateral legally binding treaties on non-proliferation (the NPT, the 1972 Biological and Toxin Weapons Convention and the 1993 Chemical Weapons Convention), whether or not the state in question is a party to the relevant treaty. According to the WMD Strategy, 'The possession of nuclear weapons by States outside the NPT and non-compliance with the Treaty's provisions by states party to the Treaty, risk undermining non-proliferation and disarmament efforts'.[31] While extensive stockpiles of chemical weapons in CWC states parties was considered an issue of concern so was 'The possible existence of chemical weapons in States not party to the Chemical Weapons Convention'.[32]

Since 2003 the EU has been in contractual negotiations with 'states of concern' on several occasions. It attempted to use the WMD clause in negotiations with India, Iran and Syria, and it withheld from doing so in two agreements each with Pakistan and Israel. This section lays out the EU approach in these cases. The renewed agreement concluded between Euratom and the Korean Peninsula Energy Development Organization (KEDO) in 2001 is not considered as it was concluded before the adoption of the non-proliferation clause policy, and because KEDO is no longer operational. It can be noted, however, that if the EU–KEDO agreement were renewed today, the non-proliferation clause would not apply since Euratom is separate from the CFSP.[33]

Iran's comprehensive trade and cooperation agreement

The biggest challenge to the policy of enforcing non-proliferation policy in wider external agreements has probably been the case of Iran. In 2001, after several years of deliberation, the Council of the EU adopted a mandate to negotiate a comprehensive trade and cooperation agreement as well as a political dialogue agreement with Iran. However, the negotiations reversed direction following the release of an International Atomic Energy Agency (IAEA) report that revealed Iran had undeclared nuclear sites at Natanz and Arak.[34] Between 2002 and 2005 the EU sought to moderate Iran's behaviour in various political fields by including economic incentives as essential political clauses in a comprehensive trade and cooperation agreement.[35] Following Iran's rejection of the EU's offer and the resumption of Iran's uranium conversion and enrichment, negotiations on the agreement are currently on hold.[36] Today, the question can be asked whether or not the Iran case can really be viewed as a failed case as regards the WMD non-proliferation clause (and if the answer is yes, if that can be held against the clause). It is important to remember the ambitious thinking behind the adoption of the non-proliferation clause in the Council in 2003. In a letter to the British House of Lords (the upper house of the British Parliament), the non-proliferation clause is described in the following way: 'An "essential element" means that its presence in the Agreement is non-negotiable and that breach of the clause by either party

[30] Council of the European Union, 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems', 17078/10, 16 Dec. 2008 (emphasis added).

[31] Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction' (note 3).

[32] Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction' (note 3), p. 3.

[33] Agreement between the European Atomic Energy Agency and the Korean Peninsula Energy Development Organisation, 18 Dec. 2001, <http://www.kedo.org/pdfs/EURenewal.pdf>.

[34] European External Action Service, 'European Union and Iran', <http://eeas.europa.eu/top_stories/2012/130412_iran_en.htm>; Posch, W., 'Iran and the European Union', United States Institute of Peace, [n.d.], <http://iranprimer.usip.org/resource/iran-and-european-union>.

[35] Harnisch, S., 'Minilateral cooperation and transatlantic coalition-building: the E3/EU-3 Iran initiative', *European Security*, vol. 16, no. 1 (2007), p. 8.

[36] Negotiations with Iran were lead by France, Germany, the UK and the High Representative, Javier Solana, representing the entire EU, and were joined after 2 years by China, Russia and the USA. European Commission, Trade, 'Iran', <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/iran/>; and Hanau Santini, R., 'European Union discourses and practices on the Iranian nuclear programme', *European Security*, vol. 19, no. 3 (Sep. 2010), p. 477.

would trigger intensified dialogue on non-proliferation issues and could eventually lead to the suspension of the whole Agreement. The clause is based on the wording in the EU's draft Trade and Co-operation Agreement with Iran.'[37]

While Iran was the case that laid the basis for the non-proliferation clause design and adoption, prior to any EU sanctions against Iran, the non-proliferation clause is not considered a policy option in the current context. It is possible to imagine that some form of the non-proliferation clause would be inserted into future agreements between the EU and Iran, as a conditionality tool short of sanctions. However, linking the standard clause to the case of Iran—and including the same provisions—would definitely have a negative impact on other states with which the EU is seeking an agreement, and would challenge the EU's use of a 'one-tool-fits-all' approach in a standout case like that of Iran. The case of Iran is also interesting since Iran argues that it is indeed in compliance with existing obligations, and, according to Iran's view, would be in compliance with the EU non-proliferation clause, should such a clause exist.

Amendments to the Euro-Mediterranean Association Agreement with Israel

In 2000 the EU and Israel concluded an association agreement within the framework of the Euro-Mediterranean partnership. The agreement is primarily a trade liberalization agreement but also contains articles on political dialogue, although it does not include any political conditionality provisions.[38] In 2005 the Council authorized the Commission to conduct negotiations in the framework of the EU–Israel Association Agreement in order to enhance trade liberalization between the EU and Israel in the areas of agricultural products, processed agricultural products, and fish and fishery products. Negotiations concluded in 2009 and resulted in several amendments to the association agreement in the parts related to trade measures. No changes where made to the article on political dialogue. The amended agreement entered into force in January 2010.[39] In November 2012 the EU and Israel further expanded the agreement by adding a protocol on conformity assessment and acceptance of industrial products to the existing association agreement but, again, the negotiations concluded without any reference to CFSP issues.[40]

In July 2007 the EU and Israel signed their fourth agreement for scientific and technical cooperation giving Israeli researchers, universities and companies full access to the EU's Seventh Framework Programme (FP7) on equal terms with EU member states entities. The agreement, which is not a mixed agreement but a community only agreement, was decided without reference to the non-proliferation clause or a 'bridging' to the association agreement.[41] During 2007–2009, 700 Israeli research entities received a total of €243 million from the FP7 that benefited Israeli universities, research institutes and private companies in developing products, services, technology and scientific knowledge in cooperation with the EU. Israel's engagement in the FP7 Security surpasses that of the majority of EU member states. As of 2011, in the area of security, Israel led seven projects and took part in another 20; three of the projects were on chemical, biological, nuclear and radiological issues, of which Israel led two.[42]

The Syria Association Agreement 2003–11

In 2004 the European Commission concluded negotiations with Syria on an association agreement

[37] British House of Lords, Select Committee on European Union, Letter from Denis MacShane, Minister for Europe, to the Chairman, 5 Nov. 2003, <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldeucom/71/71we81.htm>.

[38] 'Euro-Mediterranean agreement establishing an association between the European Communities and their member states, of the one part, and the state of Israel, of the other part', *Official Journal of the European Communities*, L147, 21 June 2000.

[39] Council Decision of 20 October 2009 on the signing and conclusion of an agreement in the form of an exchange of letters between the European Community and the state of Israel concerning reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products, the replacement of Protocols 1 and 2 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, *Official Journal of the European Union*, L313, 28 Nov. 2009.

[40] Council Decision of 20 November 2012 on the conclusion of a Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their member states, of the one part, and the state of Israel, of the other part, on conformity assessment and acceptance of industrial products (CAA), *Official Journal of the European Union*, L1, 4 Jan. 2013.

[41] Agreement on scientific and technical cooperation between the European Community and the state of Israel, Final Act, Joint Declaration, *Official Journal of the European Union*, L 220, 25 Aug. 2007, pp. 5–21.

[42] Grip, L., 'Assessing selected European Union external assistance and cooperation projects on WMD non-proliferation', Non-proliferation papers no. 6, EU Non-proliferation Consortium, Nov. 2011, <http://www.nonproliferation.eu/activities/activities.php>, pp. 17–18.

that was signed in 2009 but never entered into force. The Commission initially found it difficult to produce a text that was acceptable to all EU member states, due in part to differing positions on how far to push Syria regarding the non-proliferation clause.[43] Syria, which was not a party to the BTWC or the CWC, had particular reservations over the second section of the clause. Eventually it was agreed that the full standard non-proliferation clause should be included, with minor alterations, but with only the fulfilment of existing obligations (and, in a variation from the model WMD clause, compliance with relevant Security Council resolutions) having essential element status.[44] Negotiations on an Association Agreement were frozen in May 2011, while bilateral cooperation programmes under the European Neighbourhood Policy were suspended after the Syrian Government began its brutal suppression of the opposition and thus triggered the civil war. Subsequently, the EU also suspended the EU–Syria Cooperation Agreement that had been signed in 1977.[45] This development took place when Syria had acceded to the CWC and the transparency of Syria's chemical weapon arsenal had increased (both in terms of information and inspections) and the disarmament of Syria's chemical weapons had started.

The Pakistan Cooperation Agreement and Emergency Autonomous Trade Preferences

The Cooperation Agreement between the EU and Pakistan, which was ratified on 29 April 2004, does not include the WMD clause, or any other language on non-proliferation, despite the inclusion of articles on cooperation in science and technology, energy and the like.[46] The timing of the agreement was special: only months before, Pakistani scientist Abdul Qadeer Khan had confessed his participation in a clandestine international network of nuclear weapon technology proliferation from Pakistan to Iran, North Korea and Libya. The news caused international debate on the role of non-state actors in WMD proliferation and also shed light on gaps in Pakistani export controls. On 28 April 2004 the United Nations Security Council adopted Resolution 1540 as a response to the discovery of activities of the A. Q. Khan network; it obliges all states to adopt effective measures to control dual-use technologies, including measures such as physical protection of materials and border controls.[47] While this intense work was conducted at the international level, initiated by the United Kingdom and led by the USA, the EU did not implement its own new clause policy in talks with Pakistan. The EEAS explained the omission by stating that 'Given the lengthy and complex process and preparation that it requires to agree on a negotiating mandate [in the Council] before the start of the proper negotiations of any cooperation agreements and then all the subsequent steps involved, this was simply not an option.'[48]

Following flooding in Pakistan in July and August 2010 that severely affected 20 per cent of the country, the European Council adopted a declaration to expand the EU's support to Pakistan in two areas: through increased humanitarian assistance and through support to the Pakistani economy in the form of an exemption from customs duties for EU imports and lower tariff quotas for Pakistan's exports to the EU from core sectors.[49] Subsequently, in October 2012 the EU adopted a regulation introducing emergency autonomous trade preferences for Pakistan. Although it falls into the category of 'mixed agreements', the regulation does not include language on non-proliferation in any form. The proposal for a regulation was at first exempted from all political conditionality due to the specific context of a humanitarian crisis in Pakistan and the nature of the EU's policy on humanitarian assistance as free from all (other) political objectives. However, the European Parliament's Subcommittee on Human Rights pushed to make the assistance conditional on: 'Pakistan not engaging in serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law'.[50] This text was later approved and inserted into the agreement.

[43] Quille, G., 'A new transatlantic approach? A view from Europe', eds O. Meier and C. Daase, *Arms Control in the 21st Century: Between Coercion and Cooperation* (Routledge Global Security Studies: Abingdon, 2013), p. 198.

[44] Grip (note 13), p. 7.

[45] European External Action Service, 'Syria', <http://eeas.europa.eu/syria/index_en.htm>.

[46] Cooperation Agreement between the European Community and the Islamic Republic of Pakistan relating to the partnership and to development, *Official Journal of the European Union*, L378, 23 Dec. 2004.

[47] UN Security Council Resolution 1540, 28 Apr. 2004, pp. 2–3.

[48] EEAS official, Communication with the author, 12 Dec. 2013.

[49] Regulation (EU) no. 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan, *Official Journal of the European Union*, L316, 14 Nov. 2012, p. 1, para. 7.

[50] European Parliament, Position of the European Parliament adopted at first reading on 13 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and

Several reasons may be cited to explain why conditions for non-proliferation should not be part of the EU's humanitarian assistance. First, the recipients of humanitarian assistance are civilian, while non-proliferation obligations rest solely with states. Second, humanitarian assistance requires swift action and delays cannot occur due to disagreements on political clauses. Third, humanitarian assistance is sometimes required *because of* the government in the third country; hence, the host government is not always a partner to which the EU would want to commit itself. Nonetheless, it seems theoretically possible to label trade preferences or development assistance as 'humanitarian' and circumvent political dialogue on other issues. Moreover, although the regulation was adopted during a humanitarian disaster in Pakistan, it is a trade agreement with no basis in humanitarian assistance; thus, there was no legal reason not to insert the clause.

More puzzling are the political references in the regulation's opening passage that make reference to the 2004 cooperation agreement in which respect for human rights, including core labour rights, and democratic principles are essential elements. The agreement also makes the following point:

> The severity of this natural disaster demands an immediate and substantial response, which would take into account the geostrategic importance of Pakistan's partnership with the Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region.[51]

The language is strikingly contradictory to the opening statement of the non-proliferation clause, where 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'. Pakistan has been responsible for spreading such technology first to non-state actors and then indirectly to several states and is, according to the EU, responsible for one of the most serious threats to international stability and security, not 'overall development, security and stability'. This conflicting approach makes it extremely difficult to identify the EU's view on Pakistan and the reason not to include the non-proliferation clause in the agreement.

The India Free Trade Agreement

Whether or not India is a state of proliferation concern is a contested issue. In the 2003 EU WMD Strategy, India certainly falls into that category of states. As the strategy has not been revised, the EU policy remains that all nuclear weapon states outside the NPT undermine the non-proliferation regime. India is therefore a state of concern and warrants special action on the part of the EU. In practice, this view changed dramatically in the context of the adoption in 2008 by the Nuclear Suppliers Group (NSG) of an exception for India, and a few EU member states now have bilateral agreements on nuclear civilian cooperation with India. While EU policy may have changed informally, formally the 2003 WMD Strategy is still the guiding document for EU foreign policy on WMD non-proliferation.

In contrast to the EU's relationship with Israel and Pakistan, the EU and India have not concluded or amended a mixed agreement since the entry into force of the non-proliferation clause or the WMD Strategy. In 2004, however, India became a strategic partner to the EU, making it the only EU strategic partner that has not signed the NPT. India is one of the states that needs to ratify the CTBT in order for it to enter into force, but it has not done so. Nevertheless, the 2005 EU–India Strategic Partnership Joint Action Plan states that: 'India and the EU, as the largest democracies in the world, share common values and beliefs that make them natural partners as well as factors of stability in the present world order'.[52]

In 2007, before the NSG exemption, the EU and India started to negotiate a new bilateral agreement. India consistently refused any inclusion of political conditionality linked to the EU–India agreement throughout the negotiations, a position that the EU accepted.[53] According to Gauri Khandekar, India rejected the non-proliferation clause as 'Western moral preaching'. The EU's efforts were undermined by internal disagreement among the EU member states, where some smaller states pushed for the inclusion

of the Council introducing emergency autonomous trade preferences for Pakistan, EP-PE_TC1-COD(2010)0289, 13 Sep. 2012, p. 11.

[51] Regulation (EU) no. 1029/2012 (note 49), p. 1, para. 5.

[52] European External Action Service , 'The India–EU Strategic Partnership Joint Action Plan', 7 Sep. 2005, <http://eeas.europa.eu/india/docs/joint_action_plan_060905_en.pdf>.

[53] Grip (note 13), pp. 10–11.

of political conditionality while others argued for relaxing the conditions.[54] Negotiations on a free trade agreement between the EU and India are ongoing, but it is clear that the non-proliferation clause will not be part of the agreement. The language in the 2005 EU–India action plan is a far cry from the conditionality placed in, for example, the Cotonou Agreement. India's power vis-à-vis the EU is clearly illustrated in India's ability to modify the text in its interest:

> India and the EU have a shared interest in working towards achieving the goals and objectives of universal disarmament and non-proliferation of weapons of mass destruction and their means of delivery. . . .
>
> In this context, we resolve to enhance collective action to fight the proliferation of WMD as well as their means of delivery. We believe that our response to proliferation challenges *requires strengthened multilateral consultations and the pooling of all efforts and resources*. We agree that effective export control measures for dual use goods *can* play an important role in preventing proliferation, and at the same time, *such measures should not hamper international co-operation in materials, equipment and technology* for peaceful purposes.
>
> We will establish a bilateral India-EU Security Dialogue at Senior Official level which will include regular consultations on global and regional security issues, disarmament and non-proliferation to increase mutual understanding and identify possible areas of cooperation.[55]

In 2008 the Council adopted a new action plan for the implementation of the WMD Strategy. The 'New lines for action' reinforced the universality of the NPT and the entry into force of the CTBT as core objectives of the EU's non-proliferation policy.[56] The EU still does not see the EU–India agreement as an exception from the non-proliferation clause policy, a position that is difficult to reconcile with the clause policy in principle.[57]

[54] Khandekar, G., 'The EU and India: a loveless arranged marriage', FRIDE Policy Brief no. 90, Aug. 2011, <http://www.fride.org/download/pb_90_eu_and_india.pdf>, pp. 1–2.

[55] European External Action Service (note 52), p. 5 (emphasis added).

[56] Council of the European Union, New lines for action by the European Union (note 30), p. 4.

[57] European External Action Service official, Interview with author, 27 Nov. 2013.

Non-proliferation clauses with states of concern: embedded issues

The cases of Iran and Syria shows that one embedded problem with the non-proliferation clause is that use of the clause policy is contingent on existing contractual relations. The assumption that the EU would have established or successfully maintained contractual relations with states of proliferation concern is a severe limit on the function of the EU non-proliferation clause. The fact is that once a state is in non-compliance with its commitments to non-proliferation treaties, or makes any other serious breach of international law, the EU is not likely to remain in close contractual ties with that state, as in the cases of North Korea and Syria. Euratom may be in a better position than the EU to conclude agreements with so-called sensitive countries, as in the case of KEDO, but in those cases the clause would not apply. Hence, the clause is obsolete in cases of current proliferation concern.

With regard to states of more moderate concern, namely states that are not parties to regimes but are not necessarily proliferators, the EU has faced a number of challenges. The key challenges could be categorized as 'competing policy interests' between key policies managed by the Commission and the CFSP. In the case of Israel, trade integration and scientific cooperation clashed with non-proliferation. Israel has now been given benefits that are designed for EU member states, while issues of non-proliferation are excluded. In the case of India, the non-proliferation clause has been omitted in trade negotiations and, although the joint action plan does cover non-proliferation as a topic, it does not include any legally binding element and cannot be seen as an equal substitute to the non-proliferation clause. According to the Commission, any political conditionality on the part of the EU runs contrary to the EU's policy on humanitarian assistance. In the case of Pakistan, the non-proliferation clause was not considered as part of the EU package on preferential trade. Although not mainstreaming non-proliferation into all policy areas may be the correct approach, the non-proliferation clause does not mention any exception for trade or humanitarian assistance agreements where it would be inappropriate to seek inclusion of the clause. On the contrary, the decision adopted by the Council clearly states that the clause policy will be inserted into all mixed agreements. If this objective has changed since 2003, it should be clearly stated in a revised

Council Decision. Considering possible areas where the non-proliferation clause would be inappropriate is an exercise that has not yet been carried out, but one that could provide useful guidance for EU institutions that conduct negotiations with third countries. Furthermore, the lack of definitions of legitimate and illegitimate behaviour poses a significant challenge to the effectiveness of the clause as a policy instrument in non-proliferation. If the EU's views on India, the NPT, the CTBT and nuclear trade have changed, this alone would be reason enough to revise the EU WMD Strategy.

V. THE ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has expressed strong support for the non-proliferation clause. In a 2005 report on WMD non-proliferation it stated that it

> Welcomes the inclusion of clauses concerning non-proliferation of WMD in the latest European Union agreements with third countries and action plans; points out, however, that such measures must be strictly implemented by all the Union's partners without exception; therefore calls for a speedy revision of existing agreements and action plans that lack such a clause.[58]

The Lisbon Treaty introduced a requirement for the consent of the European Parliament in adopting trade agreements. The enhanced role of the European Parliament opens up the possibility of having non-economic objectives included in future trade agreements and 'may therefore contribute to increased politicization of future trade negotiations leading to uncertainties and possible delays in getting a trade agreement through'.[59] The Commission must however report to the European Parliament's International Trade Committee (INTA) on the progress of negotiations (Article 207.3), which ought to reduce the likelihood of a trade agreement being rejected by the European Parliament at the last moment. Another change which is potential important for WMD non-proliferation is that trade in goods and services, commercial aspects of intellectual property and foreign direct investment (FDI) all fall under the exclusive competence of the EU (previously shared with the member states). This effectively means that there will no longer be so-called 'mixed agreements' in EU external trade policy. Mixed agreements automatically require the inclusion of various political clauses, including on WMD non-proliferation. Previously, FDI for example, was a member state competence, making it a powerful incentive for the inclusion and acceptance of the non-proliferation clause for both sides of a mixed agreement. The European Parliament now has equal responsibility with the Council and the Commission to ensure that all EU external trade agreements include a non-proliferation clause, not just for the sake of implementing the EU's non-proliferation policy, but also for the broader implementation of the Lisbon Treaty, which demands coherence in all EU actions and policies. The exclusive competence of the EU in trade agreements means that these agreements no longer have to be ratified by the member states; hence, external trade agreements are no longer under the scrutiny of national parliaments. This puts additional responsibility on the European Parliament in terms of effective oversight.

It is important to note that the European Parliament has used its powers to insert political clauses into trade agreements. The initial opinion of the European Parliament on the EU–Gulf Cooperation Council free trade agreement negotiations in 2011 did not mention the WMD clause, but noted that the Parliament

> Recalls that, under the Lisbon Treaty, international trade policy is one of the EU's foreign policy tools and that as such, for the Union, respect for democratic principles and fundamental human rights, together with the social and environmental dimensions, are absolutely essential in all its international agreements; calls, therefore, for any future free trade agreement to include an effective and enforceable human rights clause.[60]

[58] European Parliament, Committee on Foreign Affairs, 'Report on non-proliferation of weapons of mass destruction: a role for the European Parliament', A6-0297/2005, 12 Oct. 2005, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0297+0+DOC+PDF+V0//EN>, p. 7.

[59] EU Centre in Singapore, 'Implications of the Lisbon Treaty on EU external trade policy', Mar. 2010, <http://www.eucentre.sg/wp-content/uploads/2013/06/LisbonImpactonTrade-rev6Mar.pdf>, p. 3.

[60] 'European Parliament resolution of 24 March 2011 on European Union relations with the Gulf Cooperation Council', 24 Mar. 2011, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0109>, Article 39.

As noted in section IV above, in 2011 the European Parliament amended the Commission's proposed autonomous trade agreement with Pakistan in several articles by incorporating respect for human rights and democratic principles (e.g. Article 1 and Article 8a).[61] The Parliament further proposed a new article to the trade agreement, in which it added counterterrorism among the political aspects of the agreement: 'If Pakistan . . . provides terrorist organisations of any kind with backing or support, the Commission shall immediately propose to repeal this Regulation'.[62] The amendments were the opinion of the Committee on Foreign Affaires, which argued that

> it cannot be excluded that the decision to grant autonomous trade preferences for flood-stricken Pakistan may be followed by other similar initiatives in the future. Furthermore, there is a risk that adopting autonomous trade preferences decoupled from any kind of human rights conditionality would in fact undermine the current system of EU preferences based on the respect of a set of fundamental rights and values.
>
> On a more general level, article 207 of the Lisbon Treaty stipulates that the EU commercial policy must be conducted in the context of the principles and objectives of the Union's external action. Consolidating and supporting democracy, rule of law and human rights figure prominently among the EU's objectives according to article 21(2) of the Treaty.[63]

Although human rights has a much more prominent role in the EU treaties than non-proliferation (the Lisbon Treaty does not mention non-proliferation) the verification of the human right clause appears at least equally challenging for most states to adhere to and implementation is probably more difficult to measure. While it is relatively straightforward to identify a breach of a state's WMD non-proliferation commitments under multilateral regimes (given that the information is known), the same cannot be said about violations of fundamental human rights since, for example, no agreed definition of which human rights are 'fundamental' yet exists.

In addition to ensuring the inclusion of a non-proliferation clause, the European Parliament can demand comprehensive information on bilateral dialogues and non-proliferation programmes with specific countries. The European Parliament has a special delegation for promoting bilateral parliamentary relations with India. However, according to Khandekar, India's relations with the European Parliament remain poor, due to a lack of engagement from the Indian Parliament.[64]

VI. CONCLUSIONS

Many of the issues related to the non-proliferation clause are embedded in its design. These differ to some extent depending on the nature of the bilateral relationship and the targeted state, although some overlap. The most basic issue is that use of the clause is contingent on contractual relations. As regards countries that are a proliferation risk, the clause has no or very limited value since it assumes that the EU would have established or successfully maintained contractual relations with such states.

Another significant shortcoming is that the contractual relations that do exist with a number of states, including trade, scientific and humanitarian agreements, may fall outside the mainstream and into areas where the clause does not apply. In at least a few cases, the EU has taken an active decision not to steer negotiations in a way that would require negotiations on the non-proliferation clause. In many cases political conditionality has slowed negotiations, and the EU may have chosen to sidestep the issue of non-proliferation in order to obtain a swift amendment to an agreement. Failure to implement the clause is related to its direct conflict with the EU's paramount interests. The Commission has not delivered on several of the objectives that the Council sought to achieve through the clause policy, including complete examination of existing mixed agreements, and initiation of amendments to existing agreements with states of proliferation concern in order to add non-proliferation as a condition of those agreements. Instead, the EU has lost sight of which states warrant as EU concerns

[61] European Parliament, 'Report on the proposal for a regulation of the European Parliament and of the Council introducing emergency autonomous trade preferences for Pakistan', A7-0069/2011, 21 Mar. 2011, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0069+0+DOC+PDF+V0//EN>, p. 9.

[62] European Parliament (note 61), Article 2 (new) Amendment, p. 16.

[63] European Parliament (note 61), p. 25.

[64] 'Global partners for global challenges: the EU–India Joint Action Plan (JAP)', EU–India Summit, Marseille, 29 Sep. 2008, <http://eeas.europa.eu/india/sum09_08/joint_action_plan_2008_en.pdf>; and Khandekar (note 54), p. 4.

by sending a mixed message in its policies towards, for example India, Israel and Pakistan, by praising the role of those countries in regional security and stability.

The approach to general implementation of the clause policy with states of limited concern is also questionable. As regards developing states, the clause has applied additional conditionality on states of no or little proliferation concern, but with no real positive incentives for states that decide to increase their commitment to non-proliferation by accepting the EU non-proliferation clause. The main function of the clause has been as an outreach and awareness tool to third states to inform them about the EU non-proliferation commitments—a far cry from the initial purpose of the clause. This aspect could nevertheless be strengthened if it were more closely linked to the EU's non-proliferation-related assistance and cooperation programmes. However, the EEAS is reluctant to state that the clause has ever translated into actual bilateral cooperation programmes.[65] On the contrary, there are cases where the nature and structure of the clause have even hindered outreach efforts to like-minded states. The European Parliament has clearly expressed its commitment to the insertion of WMD non-proliferation clauses in agreements with all third countries. However, despite the ability of the European Parliament to amend external trade agreements, it has not pushed for the inclusion of the non-proliferation clause in several important instances.

To breath life into the non-proliferation clause, at least three options may be considered. First, in the light of experiences from the past 10 years, the EU should rethink the purpose of the clause. Reflecting on the purpose of the clause will help guide negotiations as well as underline how the clause fits into broader EU external and internal policies. As it stands now, the implementation and impact of the clause as a tool for 'mainstreaming' is not impressive. Integration of the policies of the CFSP and the Commission appear to be much more difficult than was perceived by the Council in 2003. However, if thinking about the actual purpose of the clause changes, the benchmark for success also changes. In general it can be said that EU non-proliferation clause should adapt in line with the changes in multilateralism in the past decade. This means moving away from a foreign policy that builds on the EU setting the rules and asking others to follow. At a minimum, the EU should be able to integrate the EU non-proliferation clause into broader EU non-proliferation policy and programmes.

Second, based on the outcome of the discussions, the EEAS should redraft the 2003 document, which is de facto obsolete. Since 2004 the non-proliferation clause seems to have been set on 'survival mood', forcing EU negotiators to bend its language and status to something which no one is any longer expecting to have effect. Mere policy survival is not the same as policy effectiveness. When reconsidering the clause policy, the result is likely to be a move away from generic standards to a more context-based approach. The clause is an example of a situation where the EU changes a policy without revising the legal document or notifying the public. The third recommendation for consideration is therefore to enhance transparency around the clause, including on failed negotiations—that is, agreements in which a clause should have been included according to the strategy, but was not. The future success of the non-proliferation clause as a policy instrument will depend on a greater degree of transparency, clarity of purpose and adjustment on the part of the EU rather than on a behavioural change in partner states.

[65] European External Action Service (note 57); European External Action Service official, communication with author, 9 Dec. 2013.

ABBREVIATIONS

ACP	African, Caribbean, and Pacific Group of States
CFSP	Common Foreign and Security Policy
CTBT	Comprehensive Nuclear-Test-Ban Treaty
EEAS	European External Action Service
EU	European Union
FDI	Foreign direct investment
FP7	Seventh Framework Programme
G8	Group of Eight
KEDO	Korean Peninsula Energy Development Organization
NPT	Non-Proliferation Treaty
NSG	Nuclear Suppliers Group
WMD	Weapons of mass destruction

EU Non-Proliferation Consortium

The European network of independent non-proliferation think tanks

A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

http://www.nonproliferation.eu

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