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Non-proliferation through International Norms: A European Preference?

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Dealing with non-proliferation in a European perspective requires two preliminary qualifications.

First of all, this paper deals with military nuclear proliferation primarily because the 4th article of the main document of international law treating this issue, the Non-proliferation Treaty of 1968, guarantees “*the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.*” (Art. IV.1) Because the European Atomic Energy Community (Euratom), has no explicit non-proliferation goal¹, it will not enter in this study. Dating back to March 25th 1957, it aims at establishing a European free zone for nuclear fuel and controlling the fuel cycle in the six member states via quickly building and developing nuclear industries. The military aspect of the problem only appears with French nuclear tests in Reggane (1960).

Secondly, the paper focuses on nuclear matters even if the European strategy evokes the larger category of “weapons of mass destruction”, stating that “*proliferation of Weapons of Mass Destruction is potentially the greatest threat to our security.*”²

Introduction: from a pacifist mirage to a preference for international norms

Europe, as a guarantor of peace within its borders for fifty years, is sometimes associated with a radical aversion towards the use of force. Such an assumption, already debatable regarding conventional interventions³, is deeply confusing when you consider non-proliferation.

First, the so-called aversion towards the use of force may justify both proliferation and non-proliferation. For instance, since the beginning of the eighties, Kenneth Waltz has continued to state that “*more [nuclear states] may be better*”⁴. In his view, the fear of escalation with mutual destruction as a possibility would prevent any kind of conflict. More accurately, the probability of a major conflict between nuclear-weapon states is close to zero.⁵ This lethal perspective is supposed to reduce misperceptions of the adversary’s intentions. Of course, the entire argument stands on the idea that the atomic bomb is the only weapon that reaches its target when it is not used. The

¹ Bertrand Goldschmidt, “Proliferation and non-proliferation in Europa” in Harald Müller (ed.), *A European non-proliferation policy, prospects and problems*, New York, Oxford University Press, 1987, p.9.

² <http://ue.eu.int/uedocs/cmsUpload/78367.pdf> p.3.

³ Bastian Giegerich, William Wallace, “Not such a Soft Power: The External Deployment of European Forces”, *Survival*, vol.46 n°2, summer 2004, pp.163-182.

⁴ For the more up to date reappraisal of this statement, see Kenneth N. Waltz, in Kenneth N. Waltz & Scott D. Sagan, *The Spread of Nuclear Weapons, a Debate Renewed*. W. W. Norton & Company, 2003, chap.1, 3 et 4.

⁵ K. N. Waltz, “The origins of war in neo-realist theory” in R.I. Rotberg, T.K. Rabb (dir.), *The Origins and Preventions of Major Wars*, Cambridge, Cambridge University Press, 1988.

opposite argument, which suggests that non-proliferation is advocated when there is an aversion to any use of military force, will not be developed.

Second, the use of force is not totally excluded from the European Security Strategy. It is considered as a means of last resort in the struggle against proliferation of weapons of mass destruction and must be approved by the UN Security Council.⁶

For these two reasons, it is neither relevant to talk about intransigent pacifism⁷ nor to invoke weakness. That is why this paper questions the notion of a specific European preference, which would stand between strict power politics and weak moral pacifism.

Defining the European Preference in 2006: Multilateral Treaty-Based Governance of Non-proliferation

It is not only a preference for non-proliferation, but a specific way of striving towards this goal. It can be described as treaty-based governance, at least partly compatible with state sovereignty.

Governance based on international legislation lies at the core of the European approach: the 6th paragraph of the European Strategy against the proliferation of weapons of mass destruction (WMD) specifies that “*The Treaty on the Non-proliferation of Nuclear Weapons (NPT) [1968; 1970]*⁸ *must be preserved in its integrity*”⁹ (chapter I.6). However, the broader notion of governance is all the more accurate as many corollary treaties or agreements are concerned: the Comprehensive Test Ban Treaty (CTBT; 1996), the pursuit of negotiations to establish a Fissile Material Cut-Off Treaty FMCT (Chapter II.16), and the additional protocol of the International Atomic Energy Agency (IAEA).¹⁰ Indeed, the 25 UE-members have all signed and ratified these treaties. As well,

⁶ I have to admit, following Clara Portela – “The Role of the EU in the Non-proliferation of Weapons of Mass Destruction. The Way to Thessaloniki and Beyond”, *PRIF Report 65* (Frankfurt: Peace Research Institute Frankfurt, 2003, p.27” – that the reference to the UN Security Council is not totally clear in the *European Strategy against the Proliferation of Weapons of Mass Destruction* even if it is clearer than in the previous EU documents. The text is the following: “*When these measures (including diplomatic dialogue and political pressure), coercive measures under chapter VII of the UN Charter and international law (sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force, could be envisioned. The UN Security Council should play a central role.*” (Chapter II, 15). The original document can be found at the following address:

http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/misc/78340.pdf

⁷ For a distinction between political pacifism and its integral and intransigent form, see Raymond Aron, *Paix et guerre entre les nations*, Paris, Calmann-Lévy, 1962, p.693.

⁸ The first date is the year during which the treaty was opened to signature; the second is the year of its entry into force.

⁹ This posture was confirmed by common position of the European Council 2005/329/PESC on April 25th 2005, stating that: “*The European Union continues to regard the Treaty on the Non-proliferation of Nuclear Weapons (NPT) as the cornerstone of the global non-proliferation regime, the essential foundation for the pursuit of nuclear disarmament in accordance with article VI of the NPT and an important element in the further development of nuclear energy applications for peaceful purposes*”.

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_106/l_10620050427en00320035.pdf

¹⁰ They can be considered as a part of the international regime in compliance with article III.1 of the NPT stating that “*Each non-nuclear-weapon state Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the*

so have the five states that are attempting to join the Union: Bulgaria, Cyprus, Croatia, Romania and Turkey. In addition, the two European nuclear states, France and Great Britain, were the first two nuclear states to ratify the NPT and CTBT.¹¹ By the same token, this group of states (25 members plus five candidates) has implemented the additional protocol of the IAEA¹². Furthermore, since the last wave of enlargement, this implementation of the most stringent non-proliferation control is a pre-requisite for joining the Union.

The term *governance* can be used because this international norm or regime¹³ aims at regulating state behaviors without negating their sovereignty. Indeed, in the many different fields of foreign policy, the military nuclear policy remains the most intimately linked with national sovereignty and independence.

First, state adhesion and implementation of the above treaties as tools of governance through norms lie on the sovereign dimension of the nuclear weapon.¹⁴ The NPT clearly distinguishes two categories of member states, those who possess nuclear-weapon and those who do not, each of them implying specific commitments and rewards. It falls to the first category to become partners to the second, and share their knowledge and technology for peaceful purposes. The second category would benefit from this technology if they refrain from building nuclear weapons. Insofar as sovereign states sign this treaty which gives them responsibilities, sovereignty appears as a condition of self-restraint. Likewise, the additional protocol of the IAEA can only be applied to states that have implemented them. However, once implemented, they allow the inspectors not only to control the declared material but also to initiate investigations based on their own suspicion.

In a nutshell, the EU concept of governance in the field of non-proliferation is a norm negotiated within a multilateral framework, which makes it more legitimate and opposable to any member¹⁵.

International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices."

¹¹ Both have ratified on April 6th 1998.

¹² Since December 2005 if we include Slovakia and Estonia. Otherwise, since 30th April 2004, the Vice President of the European Commission, Loyola de Palacio informed the director of IAEA, Mohamed ElBaradei of the readiness of all the Euratom member states to apply additional protocol to the NPT. "Through this commitment, the EU has shown itself to be in the vanguard of states seeking universal coverage of these agreements and consequently the strengthening of the international community's efforts to halt the spread of nuclear weapons", said Loyola de Palacio. http://ec.europa.eu/comm/external_relations/cfsp/npd/ip04_602.htm

¹³ For a debate about the qualification of the NPT system as an international regime, see Trevor McMorris Tate, "Regime Building in the Non-proliferation System", *Journal of Peace Research*, vol.27 n°4, November 1990, pp.319-414 and Michael Brzoska, "Is the Nuclear Non-proliferation System a Regime? A Comment on Trevor McMorris Tate", *Journal of Peace Research*, vol.29 n°2, May, 1992, pp. 215-220.

¹⁴ The temporal delimitation included in the NPT constitutes a strong limit to this argument. Being opened to signatures in 1968, it only considers as nuclear-weapon states those which have tested their weapons before June 1st 1967.

¹⁵ See Zaki Laïdi, *La norme sans la force, l'énigme de la puissance européenne*, Paris, Presses de Sciences Po, 2005, p.61.

This begins to give us a picture of the European posture regarding non-proliferation issues in 2006. Nevertheless, what makes it a collective preference?

Assessing the European preference as a source of normative power: a methodological framework.

Three constitutive features of a preference will be proposed and they will be used as means to assess the European stance as pictured above.

First, a preference has to *last* for a minimal period of time. Otherwise, it would be a mere adaptation to circumstances or to the evolution of power politics. On the one hand, preferences are fluid and reactive to the context. On the other, if the concept of collective preference claims any scientific validity, one needs to recognize converging general objectives, orientations and ideas of what the actors involved believe the world ought to be like in a best case scenario. In other words, a genuine European preference requires a convergence of member states preferences. Indeed, one has to keep in mind that the Common Foreign and Security Policy/European Security and Defense Policy (CFSP/ESDP) is mainly intergovernmental, even if community institutions participate in its activities. Unanimity between member states has been the only decision-making system so far.¹⁶

Second, a preference must *distinguish* a European actor from other major actors on the international scene.¹⁷ A demonstration that there has in fact been a cleavage between EU and non-EU members positions adopted throughout history is therefore required.¹⁸ This criterion might seem relatively benign. However, the specificity of this preference is inescapable and critical to assessing its normative power¹⁹. In fact, the NPT is today the most ratified treaty by states, with only a few exceptions: India, Pakistan, Israel and North Korea since it withdrew in January 2003; 137 states have so far ratified the CTBT²⁰ and the additional protocol of the IAEA is in force in 78 states²¹. Such figures raise a basic question: is another clear preference supported by major actors on the

¹⁶ Since the Amsterdam Treaty, member states have the possibility to choose abstention. In the case, these states are not bound by the decision made but recognize that it engages the EU. The decision can be rejected if “qualified abstention” represents more than one third of the regular ponderation of votes. (art.23 § 1 of the EU Treaty)

¹⁷ This point is closely akin to a definition of globalization as a confrontation of distinct preferences.

¹⁸ Other possible cleavages could be nuclear-weapon states/ non nuclear-weapon states or neutral states/non neutral states; UN Security Council member states / non member states; Nuclear Suppliers Group members / non members; G8 members / non-members.

¹⁹ Shaping the preferences of the others is obviously a means of power, which supposes distinctiveness. That is how an EU developing a specific preference could still be powerful. This explanation could be linked with Joseph Nye’s concept of soft power. Nye writes that “*soft power rests on the ability to shape the preferences of others*” (J.S. Nye Jr., *Soft Power: the Means to Success in World Politics*, New York, Public Affairs, 2004, p.5.) On the limits of the characterization of the EU as a soft power only, see Zaki Laïdi, *op. cit.*, pp. 26-35.

²⁰ <http://www.ctbto.org/> This figure is valid on November 13th, 2006, the day when Montenegro ratified the Treaty.

²¹ http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html This figure is from the October 23rd 2006 report, the latest when this paper is written.

international scene?²² These alternative preferences will be defined mainly in reference to this series of treaties but a political look at the nuclear doctrines and policies may be useful to confirm the consistency of these preferences. If there are only a few states outside of the NPT, even fewer publicly recognize that they want to break its rules.

Third, as a normative power asset, this preference should be *effective*²³, at least politically and judicially. This point may seem contradictory to the second, insofar as the preference for governance through norms aims at a goal of being widely, if not universally, shared²⁴. As a consequence, the criteria of *efficacy* and *distinctiveness* seem incompatible. Nevertheless, the difficulty disappears as soon as one considers that a powerful alternative suffices to constitute a distinctive subject in international politics and, at the same time, an objective for a normative power in Europe. This is why it is necessary to determine the preferences of four great powers: the United States, Brazil, India and Japan.

These three dimensions, durability, distinctiveness and efficacy constitute the three parts of the paper.

A. A minimal but durable preference for it has endlessly been renegotiated between members

As characterized above, the European preference for non-proliferation as an international norm seems obvious. However, it progressively emerged in the 1980s and always had to be renegotiated. It had to cope with the strategic imperatives of two nuclear-weapons states and of the rise of anti-nuclear feelings clamoring for disarmament rather than non-proliferation. Even as a compromise, this common preference must be assessed in comparison with the growing diversity of member states it had to reconcile.

Some signs of what would become a preference emerged even before the Common Foreign and Security Policy (CFSP).²⁵

²² This basic question could receive a basic philosophical answer: one distinctive self fully exists when he is aware of what makes it different and manages to be recognized as such by the others. Constituting the EU as an actor of the international game thanks to specific preferences requires this type of method.

²³ Of course, assessing the efficiency of an actor in the international area may be very difficult. Some scholars even assume that it is strictly impossible, given the multiplicity of causal chains leading to an action. In other words, the EU may do its best and even be persuasive but fail at the end of the day because the actor it wanted to influence faced stronger constraints that led him to act in different way. Whatever, my notion of efficiency is rather stringent and does not deal with intentions or good will. It stands on the idea that being efficient implies two aspects : reinforcing the basis of one's preference in the international area (for example the NPT in the European case) and spreading this preference. Another limit of this approach would be the long term effects of secret negotiations that do not immediately come to fruition (see the Libyan negotiations with the US and UK). I thank Christian Burckhardt for useful insights on this point.

²⁴ See Ian Manners, "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies*, vol.40 n°2, pp.235-258, above all pp.238-240 and 244-245. That is how the entity that adopts a preference for governance through norms can still be powerful and influent internationally. See also footnote 20.

²⁵ For a deeper and more detailed historical account of European Non-proliferation Policy, see Harald Müller (dir.), *A European Non-proliferation Policy*, Oxford, Clarendon Press, 1987, *A Survey of European Nuclear Policy 1985-1987*, Londres, MacMillan, 1989, *European Non-proliferation Policy 1988-1992*, Bruxelles, European Interuniversity Press, 1993, *European non-proliferation policy 1993-1995*, Bruxelles, European Interuniversity Press, 1996.

Until the 1980s, disarmament was mainly bilateral and the European member states did not even share any ground on which to build a common vision. At that time, France and Spain were not even parties to the NPT and were opposed to its logic²⁶; while both France and Germany, among others, continued exporting sensitive facilities.

One important step was taken in 1981 when the Europeans decided to deal with the non-proliferation issue inside the European Political Cooperation framework. This led to a joint statement by the European Community in the IAEA Secretary General's Annual Report in 1983.²⁷ Then, cooperation increased significantly between 1985 and 1990. The first diplomatic coming together of the European member states dates back to November 20th, 1984 when the London directives on nuclear exportations were jointly adopted.²⁸ Then, in 1987, the EU-12 made its first common declaration at the UN conference on pacific uses of atomic energy. Subsequently, it made another at the 33rd General conference of the IAEA two years later.

Significant steps were made just after the end of the Cold War: the Gulf War put nuclear proliferation on the international agenda through a German initiative at the Special UN Security Council in January 1992²⁹ and the main tools of the just-born CFSP, presidential declarations, common positions and common strategies and action plans would be used to make public a rising European preference. Above all, France seemed to make a move towards a convergence of European preferences. Previously, it had neither signed the Partial test Ban Treaty in 1963 nor was involved in the Zangger Committee, the first nuclear export-control regime. Moreover, it had been opposed to a common European position at the fourth Review Conference of the NPT in 1990. On August 3rd, 1992, France signed this treaty³⁰ and, in 1994, the EU started to promote widespread its prorogation³¹.

However, on June 13th, 1995, French president Jacques Chirac announced that his country would start a last series of nuclear tests. He was met with strong opposition within Europe. On December 12th, 1995, a UN General Assembly resolution condemned the tests: the UK was opposed to it while Germany and Spain chose abstention. All the other European member states approved of the resolution condemning the tests. The two nuclear states then seemed to maintain a specific

²⁶ Camille Grand, *The European Union and the Non-proliferation of Nuclear Weapons*, Chaillot Paper n°37, Paris, 2000, p.19. <http://www.iss-eu.org/chaillot/cha37e.pdf>.

²⁷ Tom Sauer, "How "Common" is European Non-proliferation Policy?", Paper presented at the Joint Sessions of Workshops of the European Consortium for Political Research (ECPR), 2003, p. 8. <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/edinburgh/ws12/Tom%20Sauer.pdf>

²⁸ These directives date back to 1975 and aimed at framing a common export control policy between party States. The text of the complete 1984 declaration can be found in Harald Müller (ed.), *Blocking the Spread of Nuclear Weapons*, New York, Council on Foreign Relations, 1986, pp.127-129.

²⁹ On January 31st, 1992, the UN Security Council identifies nuclear proliferation as "a threat for peace and international security". This assessment is referred to in UNSC resolution 1540.

³⁰ As for the United Kingdom, the other nuclear-weapon state in the Union, it was a party to the NPT since its opening to signature on July 1st, 1968.

³¹ The decision of a joint action was adopted at the Corfu summit, June 24-25th, 1994.

preference so as to be distinguished from the rest of the Union. However, France adopted a rather transparent stance and, after its tests, led the coalition of the signatories of the CTBT and developed programs of simulation instead of real tests, strengthening the European view. But the nuclear-weapon state's specificity would soon reappear.

In the second half of the 1990s, “*The lack of any search for a European policy and a dynamic consensus that produces new initiatives [was] particularly striking.*”³² A limited number of actions have been taken during this period: a joint action on transparency of export control in the nuclear field was passed on April 29th, 1997³³; and common positions were adopted on nuclear and ballistic non-proliferation in South Asia after the Indian and Pakistani tests of 1998 (October 26th)³⁴ on the Comprehensive Test Ban Treaty (July, 29th, 1999³⁵). This last position was renewed in 2003 and accompanied by an action plan³⁶. In 2000, at the NPT Review Conference, the EU talked with one single voice.³⁷

Then the September 11th 2001 terrorist attacks occurred and, in 2003, the preference was formalized. After the second Iraqi war, the EU, successful in its assistance to Russian disarmament, released two main doctrinal documents: the *strategy against the proliferation of weapons of mass destruction* and the *European Security Strategy*.³⁸ It was followed, in 2004, by a common position for the universalization and reinforcement of multilateral agreements on the field of weapons of mass destruction. Finally, the EU stated a common position in 2005, with an interesting proposal to reform article X of the NPT so that withdrawal would become harder.³⁹

Nevertheless, this unity was torn apart and most EU states did not reiterate this posture in their separate national interventions⁴⁰. France followed the US position on disarmament; Sweden

³² Camille Grand, *The European Union and the Non-proliferation of Nuclear Weapons*, op. cit., p.29.

³³ Joint action 1997/288/CFSP of April 29th, 1997

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997E0288:EN:HTML>

³⁴ Council Common Position 1998/606/CFSP of October, 26th, 1998

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998E0606:EN:HTML>

³⁵ Council Common Position 1999/533/CFSP of July 29th, 1999

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999E0533:EN:HTML>

³⁶ See Council Decisions 2003/567/CFSP of July 21th, 2003

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_099/l_09920010410en00030003.pdf

and 2001/286/CFSP of April 9th, 2001

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_192/l_19220030731en00530053.pdf

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)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999E0533:EN:HTML>

³⁷ Bruno Tertrais, “The European Union and Nuclear Non-proliferation: Does Soft Power Work?”, *International Spectator*, vol.40 n°3, July-September 2005, pp.45-57, p.47.

³⁸ It is worth noting that a personal representative of the high representative on Non-proliferation of Weapons of Mass Destruction, Mrs Annalisa Giannella, was appointed on October 10th 2003.

³⁹ Harald Müller, “A Treaty in Troubled Waters: Reflections on the Failed NPT Review Conference”, *International Spectator*, vol.40 n°3, July-September 2005, pp.33-44, p.43.

⁴⁰ William C. Potter, “The NPT Review Conference: 188 states in Search of Consensus” *International Spectator*, vol.40 n°3, July-September 2005, pp.19-31, p.24.

and Ireland⁴¹ worked with the New Agenda Coalition and the Netherlands acted in three different groupings: the EU, the G-10 and a “NATO-7 group” of his own making.⁴² This clearly exemplifies that some European member states remain members of other groups dealing with non-proliferation with different agendas. This last element tends to nuance the picture that appeared before, and seemed slightly teleological. Present-day European non-proliferation policy is not a historical necessity and has been built through years of political struggle. It is still today an achievement which needs to be reaffirmed and deepened by all member states. This preference has emerged as a compromise between two radical views and illustrates the decision-making process of an intergovernmental European Security and Defense Policy (ESDP).

Indeed, the last two waves of European Union enlargement (1995 and 2004) included countries with deeply anti-nuclear public opinions. Then, defending the NPT appeared as a middle ground, a *modus vivendi*, one of whose merits is to avoid the question of disarmament. Between proliferation and disarmament, reaching a compromise is possible. But a preference for governance through norms still exists since the *status quo* is not EU policy. It aims at strengthening the international non-proliferation regime. Thus, it introduces a commitment towards irreversibility in disarmament matters⁴³ and still favors the reinforcement of multilateral agreements. Moreover, a look into the future gives some clues about the strengthening of this preference, given the fact that the five candidates have been committed to the same treaties and obligations as present-day members.

While dealing with disarmament, one could contemplate the renouncement of France or the UK to its nuclear capability for Europe as a disarmament measure.⁴⁴ With this said, the perspective seems rather distant. The two European nuclear powers have actively worked together in the field of military nuclear technology since 1992. In July 1993, a common commission was even created to elaborate joint nuclear policy and doctrine. Both France and the UK (in a much more timid fashion) have publicly proposed and stated that their deterrent power could work for the whole Union. The *White Book* of 1972 already read that “*France lives in a net of interests that go beyond its borders. It is not isolated. Western Europe as a whole cannot but benefit, even indirectly, from the French*

⁴¹ Remember that in 1959, Ireland introduced a UN General Assembly resolution that would lead to negotiations on a Non-proliferation Treaty.

⁴² Harald Müller, “A Treaty in Troubled Waters: Reflections on the Failed NPT Review Conference”, *International Spectator*, vol.40 n°3, July-September 2005, pp.33-44, p.43.

⁴³ Bruno Tertrais, “Nuclear Disarmament: How to Make Progress” in Burkard Schmitt (ed.), *Effective non proliferation, the European Union and the 2005 Review Conference*, Chaillot Paper n°77, April 2005, pp.27-42, p.34. http://www.mcis.soton.ac.uk/Site_Files/pdf/Chaillot-Paper-77-NPT-2005-Issues.pdf

⁴⁴ This was the “European option” that the anti-nuclear movement defended at the moment when the NPT was being negotiated. They feared that the Americans would make the Treaty incompatible with a European deterrent capability once the Union has become a federation. Moreover, this could change radically the relation Europe has to the concept of power. Indeed, as underlines Zaki Laïdi, (*La norme sans la force, l'énigme de la puissance européenne, op. cit.*) it is not the guarantor of its own security. That is why it cannot have a zero-sum game vision of international relations. A European deterrent would make the EU responsible of its own security and, therefore, may change its vision of power. But, as we shall see, this scenario is highly improbable.

strategy, which constitutes a stable and determining feature for European security.” On June 8th 1996, President Chirac proposed a *rapprochement*[0]: “Considering [0]the existence of different sensibilities towards the nuclear weapon in Europe, we do not propose a finished concept, but a progressive process, open to partners who wish to participate[0].” In his address on June 8th, 2001 at the *Institut des Hautes Études de Défense Nationale* (IHEDN), he came back to the enlarged deterrent: “It comes to the President of the Republic to appreciate, in a given situation, to what extent our vital interests would be affected. This appreciation would take into account the growing solidarity among the countries of the European Union.”⁴⁵ In the UK, Sir Christophe Mallaby used these words in 1996: “The idea that Briton nuclear weapons do not only serve to defend the national territory but also to defend Europe is at the heart of the strategy we have applied since we have had access to nuclear weapon.”⁴⁶ However, neither of them is ready to renounce to its nuclear capability for Europe.⁴⁷

This panorama needs to be interpreted through the lens of the original situation and differences between member states. It is worth reminding the reader that among the 15 member states (between 1995 and 2004), two are nuclear-weapon states (France and the UK), three states categorically reject any kind of nuclear technology regardless of its posited peaceful uses (Ireland, Austria, Sweden), one of the three having renounced nuclear weaponry.⁴⁸ In four of the states, nuclear energy remains highly unpopular (Spain, Greece, Ireland and Denmark)⁴⁹ and four other states hold US nuclear warheads on their territory in spite of nuclear weapons being domestically

⁴⁵ I translate. In France, the idea reaches a broad consensus beyond political parties In Paris, this idea has existed since 1963; it was even shared by the opponents to deterrence like Maurice Faure. (See. Yves Boyer, « Quelle place pour le nucléaire dans l’Union Européenne ? », *Annuaire stratégique et militaire* 2005, Paris, Odile Jacob, 2005, pp.71-85.) . The latest presidential speech on the French deterrent, given on January 19th, 2006 did not mention any new element regarding the Europeanization of deterrence.

⁴⁶ Sir Christophe Mallaby, « Dissuasion britannique et dissuasion européenne », *Relations internationales et stratégiques*, n°21, spring 1996, p.115. Our translation.

⁴⁷ The UK is very dependent on the US as far as nuclear technology is concerned. As a result, it does not wish to envisage any operational concertation outside the NATO framework. See Bernardo Ribeiro, « le rôle de l’arme nucléaire dans la mise en œuvre d’une PECSA » in Jean Klein, Patrice Buffotot, Nicole Vilboux (dir.), *Vers une politique européenne de sécurité et de défense, défis et opportunités*, Paris, Economica, 2003, pp.155-169.

⁴⁸ On the Swedish case, see Paul M. Cole, *Sweden Without the Bomb: the Conduct of a Nuclear Capable Nation Without Nuclear Weapons*, Santa Monica, California: RAND MR-40, 1994, and his Ph. D. dissertation: *Neutralité du jour: The Conduct of Sweden’s Security Policy Since 1945*, Washington D. C.: The Johns Hopkins Nitze School of Advanced International Studies, 1990.

⁴⁹ Ireland and Denmark have signed the NPT at the right moment when it was open to signature; even before joining the EU.

unpopular (Germany, Belgium, the Netherlands, Italy)⁵⁰. And this leaves aside other cleavages, concerning for example civilian electronuclear production.⁵¹

Some convergence has been achieved but a collective preference reveals itself to be very fragile. It appears as a minimal middle ground, unable to remove definitely deep antagonisms between nuclear-weapon and non nuclear-weapon states or to supplant previous allegiances.

After establishing to what extent a European preference is consistent, its second main feature, namely distinctiveness, has to be considered.

B. A distinctive preference in comparison to other major powers in the international arena.

Various criticisms of treaty based non-proliferation may be distinguished.⁵² The treaty does not constitute an effective protection against proliferation, because one can always withdraw thanks to article X (as demonstrated by North Korea, 2003), or because an extensive interpretation of article IV.1 can perfectly lead to the building nuclear weapons. This treaty is a pact of confidence between its members and this trust has suffered from the successive revealed violations (Libya, Iraq before 1991, North Korea); sanctions do not exist – article III of the Treaty implies that member states conclude guarantee agreements with the IAEA – or are rarely enforced (China selling nuclear technology to Pakistan just after signing the NPT, North Korea again until 2003). When they do, they imply the UN Security Council and are not directly linked with the implementation of the NPT, as in the case of Iraqi disarmament by UNSCOM after a military defeat in 1991. Above all, the treaty maintains a rigid inequality between nuclear-weapon states, which do not comply with their commitment to disarmament, and non-nuclear-weapon states, which only have to restrain

⁵⁰ Marie-Hélène Labbé, « Y a-t-il une politique européenne de non-prolifération nucléaire ? », *Politique étrangère*, 3/1997, pp.307-319. Germany is a good example of the difficulties faced during the writing of the NPT. It required measures of disarmament and détente, security insurance and equal treatment in a memorandum. R. Barzel, head of the Christian-democrat parliamentary group, took the opponents' parole to New Delhi to build a front of refusal. Germany finally became a party state on November 28th 1969. See Georges Fischer, *La non prolifération des armes nucléaires*, Paris, LGDJ, 1969, pp.76-79.

⁵¹ Apart from these considerations on preferences regarding the governance of nuclear world order, some geopolitical trends tend to suggest that this posture could last for long. In 2005, Europe was not threatened yet by Iranian missiles. But, since then, progress has been made and the threat has appeared. The debate on the integration of Turkey in the Union seems crucial in that matter. Indeed, a nuclear Iran and a Europe including Turkey would mean a nuclear frontier for Europe. Bruno Tertrais, "The European Union and Nuclear Non-proliferation: Does Soft Power Work?", *op. cit.* p.46.

⁵² See Serge Sur, "Non-proliferation and the NPT Review", *International Spectator*, vol.40 n°3, July-September 2005, pp.7-18 et Bruno Tertrais, « Forces et faiblesses du traité sur la non-prolifération des armes nucléaires », *Questions internationales* n°13, May-June 2005, pp.46-54.

themselves⁵³. This inequality is all the more unbearable as several nuclear-weapon states remain out of the NPT (Israel, India, and Pakistan).

From these criticisms, one could distinguish three alternative preferences about the future of nuclear world order and the way to deal with this issue and one ambiguous position. I do not aim at assessing concurrent policies but rather at showing that they reveal different preferences.

- The first one would be a *preference for deproliferation and disarmament*. The states sharing this preference are committed to the same treaty bodies as the Europeans but their stance is more stringent and impatient. This sometimes leads to an opposition to present-day non-proliferation regime. Brazil looks as a case in point of this group. From this stance, one can derive *ambiguous positions*. If a national nuclear posture cannot in itself be a preference in my meaning of the term, it can be contradictory to the publicly stated preference. Japan is a puzzling case that will be exposed in further details. It shares the commitments and wishes suggested below but underlines that it could easily build nuclear weapons if national security considerations forced it to. What could one think of such a preference, which can be contradicted if necessary?
- The second clear preference advocates *counter-proliferation rather than non-proliferation*. More accurately, it advocates non-proliferation as a *status quo* objective of power politics. It implies the refusal to be bound by the NPT disarmament obligations and the IAEA safeguard agreements. The US is the case in point.
- The third preference could be labeled *preference for bilateral rather than multilateral commitment* regarding proliferation. Such a stance is close to the US position but even more radical: being part of this category implies to sign none of the treaties related to non-proliferation. These features fit the Indian preference.

Brazil: preference for deproliferation and disarmament

Brazil renounced a military clandestine nuclear program, perhaps only alleged, with the “Buenos Aires declaration” on November 28th 1990. Then, it ratified the NPT and the CTBT⁵⁴, and became a party state to the Tlatelolco treaty. It has even adopted a new constitution that underlines these commitments. Advocating compliance with the commitments to disarmament (art. VI of the NPT), and noticing that no significant move occurred in the world since 1996, Brazil does not put

⁵³ Such a criticism hides a classical bias concerning proliferation. It suggests that any state technologically capable of developing nuclear weapons is willing to do so. Beyond the South African case of a voluntary renouncement to a nuclear arsenal, recent developments in research on the causes of proliferation reject this assumption. See Jacques E. C. Hymans, *Psychology of Nuclear Proliferation*, Cambridge, Cambridge University Press, 2006.

⁵⁴ Annex 2 State, it signed the CTBT on September 24th 1996 and ratified it on July 24th 1998.

much trust in the present-day non-proliferation regime. Thus, it never signed the IAEA additional protocol. During the 2000 Review Conference, it was one of the most important members of the New Agenda Coalition, which also included Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden. This coalition tended to over-interpret the US *Nuclear Posture Review* of 2002, suspecting that the US would effectively start a new campaign of nuclear tests soon. Notice that two EU member states, namely Ireland and Sweden, participate in this coalition.⁵⁵ The final hours of negotiations in the 2000 Review Conference strongly opposed the New Agenda Coalition (NAC) and the nuclear-weapon states. The NAC members wanted everybody to agree on the fact that existing norms had not brought about the abolishment nuclear weapons.⁵⁶ And, in 2000, such a group was able to forge a consensus⁵⁷.

Once again, teleology is a very tempting trap. One must not forget that states may reconsider their nuclear choices. Indeed, a uranium enrichment plant at Resende, Brazil was recently suspected of hiding proliferation intentions.⁵⁸ This ambiguity leads us to the second case.

Ambiguous Japan: Virtual Deterrence and the choice of the edge.

Japanese ambiguity deserves to be underlined. At first sight, Japan shares the preference of the New Agenda Coalition (and Brazil as exposed above). Especially since the mid 1990s, it is favorable to complete nuclear disarmament and advocates the creation of a nuclear free zone in South Asia. It has ratified the NPT and CTBT, and has implemented the additional protocol of the IAEA; it participates in the “group of 21”, that clamors for nuclear disarmament and the creation of a special committee at the UN to deal with disarmament⁵⁹; it supports any treaty establishing a nuclear free zone and agreements on limitation and reduction of strategic weapons. Last but not least, it made a proposal that would allow the IAEA to submit a matter of proliferation to the Security Council. This proposal included the option of invoking Chapter VII of the United Nations

⁵⁵ It can be taken as another example of the achievement joint actions and common positions represent.

⁵⁶ Harald Müller, *op. cit.*, p. 40.

⁵⁷ William C. Potter, *op. cit.*, p. 21. On the contrary, the coalition itself was highly divided at the 2005 Review Conference between its members that also participate in the non aligned movement and those who do not.

⁵⁸ Liz Palmer and Gary Milhollin, “Brazil’s Nuclear Puzzle”, *Science*, October 22nd, 2004 <http://www.wisconsinproject.org/pubs/articles/2004/BrazilsNuclearPuzzle.htm> and Claire Applegarth, “Brazil: IAEA reach inspection agreement”, *Arms Control Today*, January-February 2005. http://www.armscontrol.org/act/2005_01-02/Brazil.asp

⁵⁹ The booklets from the Ministry of Foreign Affairs provide various good examples of Japanese commitments towards non-proliferation, nuclear disarmament, his struggle against the production of fissile materials and his involvement in denuclearization in Russia. See for example Directorate General, Arms Control and Scientific Affairs, Ministry of Foreign Affairs, *Japan’s Disarmament and Non-proliferation Policy*, April 2004, especially pp.24-30; 102-106; 109-111; 116-126. The reader must keep in mind the strategic implications of such an objective. If ever the world were back to a pre-nuclear era (a dream that died with the Baruch Plan in 1946), Japan would appear as the main military power in its area. Anyway, such a stance improves its reputation, diverts from its plutonium programme and hides its virtual deterrent capacity without weakening it.

Charter, triggering the possibility of military action against the offending proliferators.⁶⁰ If it is sometimes close to European positions, it has more to do with a traditional “constitutional pacifism”⁶¹ than with any shared preference.⁶² Indeed, from the beginning, Japan – like some other non-nuclear weapon states and in particular the New Agenda Coalition– distrusted the NPT. That is why it kept its massive plutonium stockpile and asked for a review of the NPT and renewal of its membership every five years.

However, since 1994, the official Japanese authorities have publicly admitted that they do not want to build nuclear weapons but have the technical capability to do so. It suggests that a bomb could be assembled in a very short period of time if needed.⁶³ It is in this way that its virtual deterrence works without any breach of its international commitments.⁶⁴

Consequently, Japan maintains a rather schizophrenic and opportunistic stance which mixes a radical commitment towards disarmament, close to the one advocated by the New Agenda Coalition, and at the very same time a position as a virtual proliferator. This is why, politically speaking, it has never moved closer to the New Agenda Coalition, while supporting almost its entire agenda.⁶⁵ However, Japan has had many opportunities to go nuclear and has not chosen to do so. The fact that it is the only country in history to have suffered from nuclear strikes makes it highly unlikely that it decides to go nuclear explicitly. Indeed, even if the atomic bomb is a “no use weapon”, the credibility of a deterrent posture implies that you are ready for nuclear retaliation if necessary. It is not less true in the case of a “weak-against-the-strong” deterrence posture like the one Japan would adopt. I do not think that Japanese culture is ready to such a change. In 1995, the Japanese Defense Agency restated in a secret report that developing nuclear weapons would damage Japan’s national and regional security interests.⁶⁶ Japanese public opinion is still radically

⁶⁰ Jean-Paul Joubert, David Cumin, *Le Japon : puissance nucléaire ?*, Paris, L’Harmattan, 2003, p.190.

⁶¹ Japanese pacifism is heavily armed: since the end of the eighties, while defence spending has been downsized all over the world, including in the US (a new increase will occur in the mid 90s), Japan only has only slowed its increase. *Ibid.*, p.175.

⁶² Masaru Tamamoto, “Is the Rise of China Detracting from Japan as a Normative Power ?”, presentation given at the conference “*Are European Preferences Shared by Others? The Fate of European Norms in a Globalized World*” at CERJ, Paris, June 24th, 2006. He pertinently adds that if Japan sometimes shares political views and even preferences with the Europeans, it does not consider the origin of such preferences as coming from Europe.

⁶³ Jean-Paul Joubert, David Cumin, *op. cit.*, pp.10-12 ; 77-88. See also Kurt M. Campbell and Tsuyoshi Sunohara, “Japan: Thinking the Unthinkable” in Kurt M. Campbell, Robert J. Einhorn, and Mitchell B. Reiss, (eds.), *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices*, Washington, D.C.: Brookings Institution Press, 2004, pp. 218-253.

⁶⁴ Of course, traditional deterrence with delayed retaliation would be meaningless. It works because it warns potential aggressors or failing defenders that they could face not a nuclear retaliation but another nuclear power in the area.

⁶⁵ See Anthony Difilippo, “Japanese Security Policy and the New Agenda Coalition – Tokyo’s Nuclear Disarmament Dilemma”, paper prepared for the 2002 International Studies Association Convention, New Orleans, March 23-27, 2002. <http://www.isanet.org/noarchive/difilippo.html>

⁶⁶ For a more accurate of 2004 doctrine revision, rejecting once again the possibility of a national deterrent, see <http://www.globalsecurity.org/wmd/world/japan/nuke.htm> For an opposite view, considering that this posture is compatible with Japanese culture, see Jean-François Daguzan, “La dissuasion et le maître du sabre”, *Stratégie*, 49, 1, 1991, pp.185-201.

opposed to any kind of nuclear device.⁶⁷ This posture of virtual deterrent only suggests that Japanese authorities feel more insecure and are not sure about an American nuclear retaliation in case of a strike against them. Nevertheless, every power in the area except Russia has adopted a “no first use” doctrine. So, the diplomatic costs of a nuclear turn, the absence of a clear and present military threat and the possibility to rely on future anti-missile devices enable one to think that Japan will maintain its preference for the nuclear edge.

If the Japanese were to perceive North Korea as an hostile power, things could change. In February 2003 outgoing South Korean President Kim Dae-jung warned that the North’s activities could force South Korea and Japan to reconsider their stances on nuclear weapons. After North Korea launched seven missiles above the Sea of Japan on July 5th, 2006 local time and did not abide by the UNSC resolution condemning it, the Japanese government threatened to freeze any North Korean assets in its banking system. In spite of the North Korean nuclear test of October 2006, Japan followed the USA and South Korea in not considering North Korea as a nuclear power.⁶⁸ No sooner had Minister of Foreign Affairs Taro Aso called for a debate on the possibility of a Japanese deterrent than all the political opponents unanimously asked for his dismissal. The opposition remains as well in the public opinion as among the politicians, even if the Prime Minister refused to fire his Foreign Affairs Minister.

Japan remains on the edge, always maintaining a stance that is perfectly compatible with “constitutional pacifism”.⁶⁹ In cases like this, national nuclear policy weakens the preference it displays internationally. The recent evolution of the strategic partnership with the US and the rise of a military nationalism in the country have questioned the future of the fifty-year-old “constitutional pacifism”. What looked like a useful US nuclear umbrella now seems mainly to deter Japan itself from going nuclear, so that the US still has a say in its foreign policy. This leads us to the third case.

⁶⁷ On November 20th, *Agence France Presse* reported that 80% of the 3000 Japanese that had been surveyed the week before were opposed to a national deterrent

<http://www.cyberpresse.ca/article/20061120/CPMONDE/61120215/1033/CPMONDE>

⁶⁸ Associated Press, <http://permanent.nouvelobs.com/etranger/20061107.FAP2733.html?1533>

⁶⁹ This preference was called “asymptotic strategy” by G. Quester during the Cold War. See G. Quester, “Some Conceptual Problems in Nuclear Proliferation”, *American Political Science Review* n°66, 2, 1972, pp.490-497. It consisted in owning and dispersing all elements of a ballistic and atomic capability except the warheads.

The United States: a recent preference for counter-proliferation

As the founding father of arms control⁷⁰, at least as responsible as the EU for the indefinite prorogation of the NPT in 1995, the US keeps cooperating with the EU as shown in the European summit of June 20th 2005. It concluded various shared initiatives perfectly compatible with European preferences⁷¹. There were four common objectives : building a common consensus favorable to nuclear non-proliferation ; strengthening the NPT – by jointly supporting the respect of commitments and the universalization of the Treaty –; strengthening the IAEA; promoting the implementation of the UN Security Council resolution 1540 on the proliferation of weapons of mass destruction.⁷²

However, this picture hides a major shift in the US non-proliferation policy. With the rise of the Republicans, since the legislative election of 1994, the US has adopted a counter-proliferation policy which upsets the system of arms control in many dimensions. It quasi-exclusively consists of unilateral or bilateral initiatives⁷³, whereas the European preference supports “effective multilateralism” through treaty law and the United Nations system.⁷⁴ The US administration interprets the non-proliferation regime so as to justify a selective interventionism, while at the same time neglecting its obligations. Besides, the failure of the NPT Review Conference of 2005 is likely to reinforce its conviction that “coalitions of the willing” are the best way to achieve non-proliferation goals. This policy shift has at least three founding acts⁷⁵. First, on December 16th, 1998, English and US governments initiated operation *Desert Fox* without the approval of the UN Security Council and bombed Iraqi sites that were suspected of containing weapons of mass destruction. This time, the “special relationship” appeared as a rival to a European common preference. Second, in July 1999, the US Congress passed the *National Missile Defense Act* which could upset existing deterrent equilibriums, and to introduce weapons in space, contrary to previous

⁷⁰ I do not have space enough to insist on the active role of the US regarding the non-proliferation policy during and after the Cold War. In 1992, they decide a moratorium on nuclear tests; after the fall of the Eastern bloc, they offer alternatively promises of economic aid and security insurances to Belarus, Kazakhstan and Ukraine so that they give back to Russia ex-soviet arsenal remaining on their territory and sign the NPT. In the 1990s, they downsize their strategic arsenal within the framework of agreements with Moscow.

⁷¹ <http://www.whitehouse.gov/news/releases/2005/06/20050620.html>

⁷² See also the second pillar “non proliferation” in the *National Security to Combat Weapons of Mass Destruction*, December 2002. <http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>

⁷³ See the first pillar of the *National Security to Combat Weapons of Mass Destruction*, “counter-proliferation” that paves the way for “preemptive measures [...] to detect and destroy an adversary’s WMD assets before these weapons are used.” (p.3) See also Ghassan Salamé, « mort de l’*arms control*, apogée de la contre-prolifération » in *Quand l’Amérique refait le monde*, Paris, Fayard, 2005, pp.303-311.

⁷⁴ See the *European Strategy against the proliferation of weapons of mass destruction* chapter II.A. Note that many observers have blamed this opposition between the EU and the US for gearing the development of an integrated non-proliferation policy, the Europeans often only reacting critically to what Washington does. See Bruno Tertrais, “The EU and Nuclear Non-proliferation: Does Soft Power Work?”, *op. cit.*, p.55 and Tom Sauer, *op. cit.*, p.13.

⁷⁵ William Walker, *Weapons of Mass Destruction and International Order*, Adelphi Paper n°370, London, IISS, Oxford University Press, 2004, pp.50-51.

treaties.⁷⁶ Third, on October 13th, 1999, the US Senate rejected the CTBT and the Bush administration has clearly stated that it would not put it forward for ratification once again, even if it was one of the political conditions of the indefinite extension of the NPT in 1995⁷⁷. Similarly, the additional protocol of the IAEA has been signed but is not in force yet.

Further decisions of the current administration reveal a restrictive vision of the NPT that only takes into account its non-proliferation side and neglects the commitment to disarmament. In February 2004, the US restricted the right to have access to nuclear technology for civilian purposes requiring that all non-nuclear-weapon states that do not yet dispose of reprocessing or enrichment technology should only be offered fuel guarantees by present technology holders.⁷⁸ This is a clear denial of the right guaranteed by article IV of the NPT.⁷⁹ This makes the treaty a *status quo* framework, freezing existing distribution of power in nuclear matters instead of a framework of evolution towards a more equal distribution of nuclear energy in the way it was originally conceived. The obligation of disarmament included in article VI was also explicitly denied by the US Undersecretary of State for Arms Control and International Security. In his “Statement to the Third Session of the Preparatory Committee for the 2005 NPT Review Conference”, John R. Bolton said: “*We cannot divert attention from the violation we face by focusing on article VI issues that do not exist.*”⁸⁰ Arms control does not seem to be on the US agenda anymore since December 13th, 2001, when the government unilaterally denounced the Anti-Ballistic Missile Treaty that had been signed with the Soviet Union in 1972 to develop their National Missile Defense.⁸¹ This bilateral treaty, which is not part of the non-proliferation regime, was considered as a “pillar of international stability” in the final declaration of the 2000 Review Conference of the NPT.⁸²

While the EU associates its preference for governance through norms with a commitment to non-reversal in disarmament, the US shifts from the Strategic Arms Limitation Talks (SALT) to a

⁷⁶ The Space Preservation Act was introduced for the second time to the United States House of Representatives by Congressman Dennis Kucinich on December 8th, 2003. But the US representatives are still reluctant to support the ban of weapons in space. However, the United States signed the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies in 1967. Its fourth article exclusively limits the use of the Moon and other celestial bodies to peaceful purposes and expressly prohibits their use for testing weapons of any kind, conducting military maneuvers, or establishing military bases, installations, and fortifications. If the National Missile Defense came to be enforced, this would take away the US preference from the EU even more. For a European view, see Isabelle Sourbès-Verger, “La militarisation de l’espace : perspective européenne”, *Annals of Air and Space Law*, vol.XXIV, 2004, pp.357-376. For a recent assessment of the US missile defense, see Nicolas de Boisgrollier, “La défense antimissile américaine : science ou fiction?”, *Questions internationales* n°20, July-August 2006, pp.97-103.

⁷⁷ Harald Müller, *op. cit.*, p.39. The Clinton administration promised to ratify it as a commitment to disarmament.

⁷⁸ *Ibid.*, p.41.

⁷⁹ On March 7th, 2005, President Bush openly declared that he distrusted powers that pretend to develop civil nuclear activities, what is strictly contradictory with article IV of the NPT.

⁸⁰ Quoted in Bruno Tertrais, “Nuclear Disarmament: How to Make Progress” in Burkard Schmitt (ed.), *Effective non-proliferation, the European Union and the 2005 Review Conference*, Chaillot Paper n°77, April 2005, pp.27-42, p.31.

⁸¹ <http://www.whitehouse.gov/news/releases/2001/12/images/20011213-4.html>

⁸² Harald Müller, *op. cit.*, p.39. However, Thérèse Delpech questions its efficiency in terms of limitation of weapons. See Thérèse Delpech, « Les défenses anti-missiles et la sécurité internationale au XXI^{ème} siècle », *note de l’Institut Français des Relations Internationales* n°32, mars 2001.

Strategic Offensive Reductions Treaty (SORT), signed on May 24th, 2002, which does not imply such a commitment. Also of significant importance, the SORT does not include any verification provisions.

Even the Proliferation Security Initiative⁸³ (PSI) launched by President Bush on May 31st 2003, functioning as a coalition of the willing, remains outside the NPT and therefore reinforces doubts about its effectiveness. This remains true even if its legitimacy seems to grow.⁸⁴ More generally, there is no mention of multilateral initiatives in the *Nuclear Posture Review* of 2002 and the US and Iran can be held responsible for the failure of the Review Conference of 2005.⁸⁵

US unilateralism, or classical power politics, that lies under the preference for counter-proliferation also appears in its *ad hoc* positions towards the demands for nuclear technology. Iran, Iraq and Libya, would-be proliferators, have been stigmatized as an “axis of evil” by the US President in January 2002 or by John Bolton four months later.⁸⁶ On the contrary, the US has never raised the issue of the Israeli arsenal⁸⁷. John Bolton even publicly contemplated preventive strikes against Bushehr plants in Iran⁸⁸ before Condoleeza Rice denied these intentions⁸⁹.

In the *National Security Strategy* of September 2002, the US declared that it wanted to build “a strong relationship with India”⁹⁰. Therefore, the administration negotiated⁹¹ and signed on March 2nd 2006 an agreement on privileged civilian nuclear cooperation.⁹² Of course, India has not signed the NPT, so it cannot violate it. There is no need to exaggerate the risks of proliferation in South

⁸³ Andrew C. Winner, “Proliferation Security Initiative: the New Face of Interdiction”, *The Washington Quarterly*, spring 2005, pp.129-143.

⁸⁴ It has been endorsed by the G8 global partnership and accepted by the UN Secretary General’s High-Level Panel on Threats, Challenge and Change in its report entitled *A more Secure World : Our Shared Responsibility* (New York : United Nations, 2004), p.45.

⁸⁵ William C. Potter, *op. cit.*, pp.26-28.

⁸⁶ They all have ratified the NPT and violated it

⁸⁷ Of course, Tel Aviv has not signed the NPT, therefore has not violated it. Nonetheless, its silence remains ambiguous. The official doctrine, dating back to 1965, still stipulates that Israel does not possess any nuclear weapons and will not be the first country to introduce them in the Middle East. In 1986, an engineer named Vanunu revealed to the *Sunday Times* the existence of an Israeli nuclear programme for which he himself had worked.

⁸⁸ *The Times*, July 17th and 27th, 2004, quoted in Eileen Denza, “Non-proliferation of Nuclear Weapons: The European Union and Iran”, *European Foreign Affairs Review*, n°10, 2005, pp.289-311, footnotes 52 and 53.

⁸⁹ “Flirting with Armageddon”, *The Observer*, February 20th, 2005.

⁹⁰ *National Security Strategy of the United States of America*, September 2002, p.27.

<http://www.whitehouse.gov/nsc/nss.pdf>

⁹¹ The negotiations started on July 18th, 2005.

⁹² This agreement has been approved by the House of Representatives on July 26th 2006 by 369 voices against 68. It stipulates that the US administration is going to work with New Delhi in the field of civilian nuclear energy. In return for it, Delhi agrees to place 14 of its 22 plants under the monitoring of the IAEA. Of course, the agreement implies that India does not export nuclear technology susceptible to enter in the building of an atomic bomb. It also has to maintain the moratorium it decided. The US Senate still has to approve the agreement. On October 3rd, 2006, the White House announced it adjourned without doing so, but still hopes that it will pass during the November session. Sources: interview between Thérèse Delpech and Sumit Ganguly, Paris, CERI, May 16th, 2006 and Olivier Guillard (entretien avec), “Le lobby pro-indien a réussi à convaincre Bush”, *Le Nouvel Obs.com*, July 27th, 2006. Henry Sokolski even suggests that if one sticks to the letter of the NPT, concluding this deal with India is violating the US commitment to article I of the treaty: not to provide nuclear assistance to a state that is not considered as a nuclear-weapon state. And the treaty does not recognize India as such.

http://www.cfr.org/publication/10731/usindia_nuclear_deal.html

Asia to understand that this agreement rewards a state that chose not to sign the NPT⁹³. Moreover, such an agreement even further weakens the normative power of the NPT by lowering the incentive to stick to one's commitments. Indeed, cooperation in civilian nuclear matters appears as a reward for effective non-proliferation of non-nuclear-weapon states (art. IV.2). India has not violated the treaty since it never signed it, but India has not made any effort to contribute to its further implementation either, as will be discussed later in this article. Nevertheless, the current US administration signed an agreement that would give India what is supposed to be a reward for state parties to the NPT who have met their obligations. And the US is not in a good position to formulate any requirement regarding the signature of the CTBT for instance. All this goes against the efforts the Europeans made during the 2005 Review Conference to limit free riding. The Europeans proposed to define strict rules about the eventual withdrawal from the treaty, so that those willing to use this right could not benefit from international cooperation anymore, although none of their proposals were accepted⁹⁴. This US-India deal leads to the last case.

India: bilateral and selective commitment

The efforts of New Delhi regarding the spread of nuclear technology and know-how are widely recognized⁹⁵, and it does not want to appear as a maverick in this matter. As a result, in September 2005, it voted for the IAEA resolution condemning Iran and, in February 2006, also for the one that asked the Director General of the Agency to transmit the Iranian file to the IAEA. Even if some observers argue that the conditions of the deal with the US are going to strengthen nuclear safety in India, it reiterated its refusal to include the complete test ban in its agreement with the United States on April 17th 2006.

Indeed, India has not ratified the CTBT, and it is one of only three states not to have signed nor ratified the NPT, the other two being North Korea and Pakistan. The reason for this is well-known: the treaty recognized China as a nuclear power, but not India. New Delhi even confessed that it had no interest in a death of the NPT.⁹⁶ However, it has not signed the IAEA additional protocol.

⁹³ Sumit Ganguly lays emphasis on the "robust export regime" of India. Sumit Ganguly, "A New Chapter in Indo-US Relations ?", *IDDS Commentaries*, March 21st, 2006, <http://www.ntu.edu.sg/idss/publications/Perspective/IDSS0182006.pdf> That is one of the reasons why he does not recognize the critics of a double standard policy that come from Iran or Pakistan. Indeed, when general Musharraf asked for a similar agreement between the US and his own country, President Bush clearly refused.

⁹⁴ Jean Klein, « prolifération », *Ramsès 2006*, Paris, Dunod, 2006, pp.255-257.

⁹⁵ Even Strobe Talbott, president of the *Brookings Institution* and opponent to the US-India deal, does so. See Strobe Talbott, "Good day for India, Bad Day for Non-Proliferation", *YaleGlobal*, July 21st 2005, <http://www.brookings.edu/views/articles/talbott/20050721.htm>

⁹⁶ Thérèse Delpéch, *L'Iran, la bombe et l'impuissance des nations*, Paris, CERI/Autrement, 2006, p.74. On India, see pp.71-77.

Be that as it may, non-proliferation in India is considered in a significantly different way than in Europe. India chose to participate in treaties or conventions that are outside the non-proliferation regime as defined below. For example, it is a part of the Convention on the Physical Protection of Nuclear Material⁹⁷. Besides, in a dialogue organized by the *European Policy Center* on June 30th 2006, Annalisa Giannella, personal representative of the High Representative on Non-proliferation of weapons of mass destruction, stated that: “*There is a trend of convergence between EU and Indian approach but still some open questions.*” He added that unlike India, all EU member states support the nuclear non-proliferation treaty and want stronger export controls on nuclear equipment and technology.⁹⁸ Moreover, India has made no promises to end its production of nuclear weapons material, contrary to the five official nuclear weapons states.⁹⁹ This production is still possible in the eight plants that are not submitted to the IAEA control. That is why Ms Giannella added “*The EU wants to see what kind of safeguard agreement India will conclude with the IAEA. It is also important for the EU that civilian nuclear cooperation does not free up further capability for nuclear military programmes. A moratorium on fissile material production for military purposes would therefore be very useful.*” Beyond the so-called trend of convergence, this reveals a very distinct preference. Satisfying the IAEA requirements does not equate to being part of the whole non-proliferation regime. Thus, the Europeans statement that they share with India a worldview based on multilateralism is a sham.¹⁰⁰ The *rapprochement* between New-Delhi and Washington means a reaffirmation of bilateralism and power politics, at the expense of both the EU and treaty-based non-proliferation.¹⁰¹ Above all, the non-ratification of the CTBT by India, China, Pakistan and also the United States is very noxious for it. Indeed, the four of them are what is called “Annex 2 States”. That is to say the treaty will not enter into force¹⁰² without their ratifications.¹⁰³

At least three alternative existing preferences on the international scene reveal the specificity of the European project of treaty-based multilateral governance of non-proliferation. However,

⁹⁷ This IAEA convention discussed in the end of the 1970s is not yet in force. Most present-day member states of the EU or candidates for joining the Union had already signed it.

<http://www.iaea.org/Publications/Documents/Infcircs/Others/inf274r1.shtml>

⁹⁸ <http://www.theepc.be/en/er.asp?TYP=ER&LV=293&see=y&t=2&PG=ER/EN/detail&l=&AI=591>

⁹⁹ Michael A. Levi and Charles D. Ferguson, “U.S.-India Nuclear Cooperation. A Strategy for Moving Forward”, Council Special Report, *Council on Foreign Relations*, June 2006, p.4.

¹⁰⁰ This statement is the basis of the EU-India strategic partnership of 2004 even if Non-proliferation is not considered in the same section as multilateralism in the Commission Staff Working Document entitled “An EU-India Strategic Partnership”, Brussels, June 16th, 2004.

http://www.delind.cec.eu.int/en/political_dialogue/official_documents/2004_communication.pdf

¹⁰¹ See Christophe Jaffrelot, « Pari américain pour l’Inde », *Le Monde diplomatique*, September 2006, p.7.

¹⁰² Article XIV.1.

¹⁰³ 10 states out of 44 still have to ratify it since Vietnam has just done so on March 10th 2006. China, India but also the USA, Iran, and the three states that are not party to the NPT: Israel, Pakistan and North Korea. Colombia, Egypt, Indonesia are considered as easier cases.

many European member states maintain two allegiances, blurring their effective preference (France, the UK, Sweden and Ireland)¹⁰⁴

International commitments regarding nuclear non-proliferation

	NPT	CTBT ¹⁰⁵	Additional protocol of the IAEA ¹⁰⁶
EU (25)	Ratified	Ratified	In force
Candidates for joining the Union ¹⁰⁷	Ratified	Ratified	In force
Brazil	Ratified	Ratified	Not signed
Japan	Ratified	Ratified	In force
The United States	Ratified	Signed but not ratified	Signed but not in force
India	Not signed	Not Signed	Not signed

What is now left to be determined is to what extent the European policies have been useful to the non-proliferation project considered as a collective preference. Even if the cohesion of the Europeans on that subject is irregular and weakens the collective statements of the EU, its ability to strengthen the international non-proliferation regime would reveal a collective preference through its effects.

C. Some effective policies, but a blurred preference

A balance of the European non-proliferation policy as an implementation of its preference has to take into account at least four elements: its juridical consequences for the nuclear non-proliferation regime, the budgetary provisions that are devoted to such a policy, the shaping of other’s preferences it operated and the political co-operations it could initiate in the perspective the NPT advocates (non-proliferation and nuclear disarmament).

European achievements: juridical evolutions, conditionality regarding non-proliferation and disarmament assistance

¹⁰⁴ The preference of Canada should be examined in further research. It ratified the NPT, the CTBT, actually implements the IAEA Safeguard Agreements and has rejected the US proposal to participate in their National Missile Defense despite the fact that the whole Canadian territory would have been covered by this device. It is also a party state to the Convention on the Physical Protection of Nuclear Material. In 2003, his pledges to global partnership on weapons of mass destruction reach nearly 0.8% of its military expenditures, *i.e.* 0.3% more than the most generous European states. http://www.sgpproject.org/publications/GPUupdates/GP_update_2_&Supplemental.pdf

¹⁰⁵ http://www.ctbto.org/s_r/sigrat.dhtml?rat=NA&sig=NA&wcstate=ALL&showsig=YES&showrat=YES®ion=AL

¹⁰⁶ http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html. October 23rd, 2006 report.

¹⁰⁷ Turkey, Romania, Bulgaria, Cyprus, Croatia.

Two main legal effects can be noticed. First, the indefinite prorogation of the NPT on May 11th 1995¹⁰⁸ owes much to the EU. This may be one example of a normative power that Europe possesses since the member states lobbied those outside the EU – with a strong help from the US – and succeeded. Ireland, Italy, Belgium and Sweden – involved in the EU preparation as it was becoming a member on January 1st 1995 – were at first opposed to the prorogation but gave up in front of the tenacity of France, Germany and the UK¹⁰⁹. This can be viewed as a success in the framing of common positions. But this event also has its downside: “*The focus on the extension issue and the great toll the diplomatic campaign took on the limited time and resources of the handful of diplomats in each capital charged with this area of policy, prevented any preparation on substance, even under two fairly potent presidencies. As a consequence, the Fifteen entered the Conference with their national positions only.*”¹¹⁰ Second, The Europeans proposed the strengthening of the IAEA’s capacity to control through program (93+2). This evolution is also made possible thanks to EU budgetary provisions. In 2004, non-proliferation activities represented one quarter of the CFSP budget¹¹¹; the Union adopted a Joint Action for support to the International Atomic Energy Agency and included a financial contribution of €10 million for 3 years in its nuclear security program.¹¹² One of the later similar actions was taken by the EU Council on June 12th 2006. It decided to devote an amount of 6,995,000 euros (article 3) to strengthen the IAEA efforts in nuclear security and verification¹¹³. As well, more discrete effects must not go unnoticed. Thus, “*The language contained in [The EU] common position formed the basis for significant elements of the text of the Final Document. Despite its low profile on the conference floor, the influence of the EU on both the text of the Final Document and the outcome of the [2000 NPT Review] conference should therefore not be underestimated.*”¹¹⁴

Other major effects of this policy come from conditionality, which is not only related with joining the Union. For instance, in 1991, European Foreign Ministers adopted guidelines for the recognition of new states in Eastern Europe and the Soviet Union. It required “*acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation*”¹¹⁵. For example,

¹⁰⁸ The joint action favorable to this outcome dates back to July 25, 1994. See decision 94/509/PESC of the Council <http://europa.eu/bulletin/fr/9407/p103004.htm>

¹⁰⁹ Tom Sauer, “How “Common” is European Non-proliferation Policy?”, *op. cit.*, p.15.

¹¹⁰ Harald Müller, “European nuclear non-proliferation after the NPT extension: achievements, shortcomings and needs” in Yves Boyer *et alii*, *Europe and the Challenge of proliferation*, Chaillot Paper n°24, 1996, p.49.

¹¹¹ Non-proliferation provisions amount to €15 millions out of a total budget of €62.6 millions. Figures from the House of Lords, quoted in Bruno Tertrais, “The EU and Nuclear Non-proliferation: Does Soft Power Work?”, *op. cit.*, p.51

¹¹² Council of the European Union, “Implementation of the WMD strategy – annex B: list of priorities for a coherent implementation”, December 3rd, 2004, p.39, quoted in *Ibid.*, p.49.

¹¹³ Council Joint Action 2006/418/CFSP of June 12th, 2006.

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_165/l_16520060617en00200029.pdf

¹¹⁴ John Simpson, “The 2000 NPT Review Conference”, in *SIPRI Yearbook*, London, Oxford University Press, 2001, pp.500-501.

¹¹⁵ (1992) 31 ILM, pp.1486-1487, quoted in Eileen Denza, *op. cit.* pp.292-293.

the cooperation agreement with Ukraine had not been concluded before the country signed the NPT.¹¹⁶ The same procedure has been used since 1992 with North Korea. On the contrary, the Europeans removed their sanctions against Libya which exceeded those decided by the UN Security Council after Libya ratified the CTBT and concluded agreements to dismantle its illegal capabilities.¹¹⁷ Slovakia and Estonia, members of the EU since 2004, did not implement the additional protocol of the IAEA. It has been done since December 1st 2005 inside a group of non nuclear European states. Implementing the additional protocol is now a condition for joining the Union. It was noticed earlier as an illustration of a preference, but, considered in a historical perspective, it also shows European normative power.

The EU has proved itself rather successful since the end of the Cold War, particularly in the field of non-proliferation and disarmament assistance. It includes three different aspects: facilitating the dismantlement and destruction of weapons, securing the weapons and other elements by preventing theft, demilitarization and conversion of projects.¹¹⁸ They not only concern nuclear weapons, but also chemical and biological ones and long-range missiles. The main operations of this kind have been carried out in Russia, under the Technical Assistance to the Commonwealth of Independent States (TACIS) program but others are being implemented in Ukraine, Belarus, and Uzbekistan. On December 17th 1999, the EU adopted a joint action establishing a cooperation program for non-proliferation and the disarmament of the Russian Federation.¹¹⁹

When the quest for efficacy blurs the preference

This efficacy must not hide the fact that these programs mix national initiatives and large partnerships extended to non-EU States, the European Strategy itself including “*Co-operation with key partners such as the Russian Federation, Japan and Canada is necessary to ensure a successful*

¹¹⁶“Although Brussels has not applied overt economic coercion, EC officials have nevertheless tried to exert pressure on Kiev to ratify START 1 and accede to the NPT [...].The President-in-Office of the EC Council, Niels Helveg, declared in June 1993 that it would be difficult to conclude an agreement with a nuclear Ukraine. The final declaration of the Copenhagen European Council of June 1993 explicitly refers to Ukraine's international commitments, and argues that compliance `is essential for Ukraine's full integration into the international community and would promote the development of its relations with the Community and its Member States.” Peter van Ham, *Ukraine, Russia and European Security*, Chaillot Paper n°13, 1994, part II. <http://aei.pitt.edu/465/01/chai13e.html#chap3>

¹¹⁷ Ratification was done in January; sanctions removed in October. Those particular sanctions do not reveal divergent preferences towards the condemnation of proliferators but a particular sensitivity to terrorism. For more about the Libyan case, see Wyn Q. Bowen, *Libya and Nuclear Proliferation. Stepping back from the Brink*, Adelphi Paper n°380, London, IISS, Oxford University Press, 2006.

¹¹⁸ Marc Finaud and Ian Anthony, “The Role of European Union in International Non-proliferation and Disarmament Assistance”, *Geneva Centre for Security Policy, Occasional Paper Series*, n°50, April 2006. They remark that despite joint actions, “there is no single overall framework for delivering EU activities. Each of the EU member states that has an [International Non-proliferation and Disarmament Assistance] programme maintains its own national control over project development, financing and implementation. The European Commission is responsible for financing and implementing other relevant programmes, in particular in Russia.” p.12-13.

¹¹⁹ http://ec.europa.eu/comm/external_relations/cfsp/npd/cja99.pdf It was initially adopted for the period 1999-2003, but it was prolonged until June 24th, 2004.

outcome of the global fight against proliferation.”¹²⁰ This could be considered as another form of normative power but it rather reaffirms cleavages between European member states and favors new strategic coalitions.

For instance, in 1999, negotiations with Russia took place in a more bilateral framework: the G8 Global partnership on weapons of mass destruction in which the EU pledged one billion euros for the years 2002-2012¹²¹. Similarly, the Proliferation Security Initiative, however effective it could be, somehow blurs a distinctive European stance. Indeed, 8 member states are among the 11 initial signatories:¹²² Germany, Spain, France, Italy, The Netherlands, Poland, Portugal, and the UK. In a joint declaration on June 20th 2005, the EU collectively takes over this participation. “*PSI activities will be consistent with national legal authorities and international law and frameworks, many of which, in turn, implement existing non-proliferation structures. The PSI will build on existing non-proliferation export control regime efforts to identify and prevent the export of certain commodities to WMD and missile programs of proliferation concern. In this regard, the Initiative complements and works within the limits of established national and international law, including non-proliferation treaties.*”¹²³ This is a general formulation, apparently compatible with a European preference. And this initiative was indeed successful: in October 2003, it was permitted to inspect the *BBC China*, which was on its way to Libya, carrying nuclear material. Two months later, the country announced its renunciation of nuclear weapons and, later on, accepted international inspections¹²⁴. Nonetheless, a close cooperation between the UK and the US was much more decisive than any European initiative. Anyway, one must not forget that this initiative is outside the NPT, which has proved to be the core of the EU preference and, as such, appears as a remedy to its inefficiency.¹²⁵

Consequently with its complete endorsement of the PSI, the EU can take advantage of its achievements, but blurs what was considered as a common preference. This dilemma may be resolved by articulating this initiative with international treaties. At the core of this difficulty lies the fundamental problem of reforming the nuclear non-proliferation regime.

¹²⁰ *European Strategy against the Proliferation of Weapons of Mass Destruction*, chapter II, section 26. This also raises the issue of the compatibility between the different elements of the EU strategy, but I cannot go into it here.

¹²¹ Bruno Tertrais, “The EU and Nuclear Non-proliferation: Does Soft Power Work?”, *op. cit.*, p.50. See also Daniil Kobayakov et Vladimir Orlov, “The G8 Global Partnership on Weapons of Mass Destruction: What’s Next”, *Geneva Centre for Security Policy Occasional Papers Series n°47*, June 2005.

¹²² Germany, Spain, France, Italy, the Netherlands, Poland, Portugal, the United Kingdom.

¹²³ Official statement on the web page dedicated to the PSI <http://www.state.gov/t/np/rls/fs/46839.htm>

¹²⁴ This statement needs to be qualified, the most recent research assessing that neither the PSI nor the war in Iraq were responsible for the Libyan decision to renounce to its nuclear weapons even if they may have accelerated it. See Wyn Q. Bowen, *op. cit.*, chap.3. See also Bruce W. Jentleson et Christopher A. Whytok, “Who won Libya? The Force-Diplomacy Debate and its Implications for Theory and Policy”, *International Security*, vol.30 n°3, winter 2005/2006, pp.47-86. A process of secret negotiations between the US, the UK and Libya had started in May 1999, was suspended during the 2000 presidential campaign in the United States and resumed in October 2001. It mainly focused on Lockerbie bombing settlement and Libyan support to terrorism but made clear that US unilateral sanctions would not be lifted without a WMD agreement.

¹²⁵ I do not enter in the debate to know if this assertion is true or not.

European crisis-management: North Korea and Iran

Finally, assessing the efficacy of the EU action regarding its preference requires a closer look at two difficult cases: North Korea and Iran. The central question remains the following one: in its way of dealing with them, has the EU managed to strengthen the non-proliferation regime or to spread its will to do so? In this perspective, the failure of others is beside the point.

Euratom has participated in the negotiations with North Korea since September, 19th 1997 and has mainly been critical about the US case-management, which it considered as rewards given to proliferators (A total of US\$ 2.4 billion given to North Korea through KEDO from 1994 to 2004¹²⁶). This stance seemed consistent but the crisis has almost exclusively been managed by Washington. In May 2001, while the Bush administration had interrupted the dialogue with Pyongyang, the EU struck up a new dialogue based upon Sweden initiative.¹²⁷ However, the European intervention did not prevent North Korea from withdrawing the Non-proliferation Treaty in 2003.¹²⁸ The fact that the Korean withdrawal set a precedent and limited the normative power of the treaty must be underlined. Indeed, this power comes from two main elements, the *credibility* of the treaty, that is to say its ability to produce incentives to compliance and sanctions in case of violation¹²⁹, and its *universality*. Recent North Korean behavior has damaged both sides. On the one hand, the North Korean regime suggested that it had violated its commitments regarding non-proliferation while it was still a party state. On the other hand, article X, which enables a withdrawal with a three months advance notice, had never been used before. As mentioned earlier, the EU reformation proposals at the 2005 Review Conference were not accepted. Hence, Iran can use this same threat if there is a denial of its “right to enrich uranium”, as clearly stipulated in a letter addressed to the UN Secretary General in May 2006.¹³⁰ The EU actions did not manage either to prevent the nuclear test of last October 9th. The EU supported Kim Dae Jung’s “Sunshine Policy” and intra-Korean rapprochement but after the breakdown of the Agreed Framework in 2003, it only

¹²⁶ Tiphaine de Champchesnel, *Observatoire de la Non Prolifération* n°6, April 2006.

¹²⁷ Bruno Tertrais, “The EU and Nuclear Non-proliferation: Does Soft Power Work?”, *op. cit.*, p.51.

¹²⁸ Either has it prevented it from announcing that it possessed nuclear weapons in February 2005. But one cannot check this statement as long as North Korea has not tested its weapons.

¹²⁹ This supposes that violation has been noticed. It is another problem related to the action of the IAEA, which failures were revealed by what was found in Irak in 1991 and by the revelations of A. Q. Khan.

¹³⁰ Associated Press, Teheran, May, 7th, 2006. <http://fr.news.yahoo.com/07052006/5/l-iran-menace-de-se-retirer-du-ntp.html> The letter of the NPT does not explicitly mention a right to enrich uranium but rather a right to use peacefully nuclear technology.

blamed North Korea for its behaviour – as did the USA – and went on supporting Seoul.¹³¹ It is difficult to say whether what happened after the test corresponded to the European preference. Indeed, the unanimity of the UN Security Council voting the resolution 1718¹³² on October 14th 2006, imposing sanctions on the regime, asking the Democratic and Popular Republic of Korea to renounce its withdrawal of the NPT and not to initiate anymore tests owes much to a general rejection of nuclear proliferation and fear of the regime. One could say that it is a multilateral treatment of the crisis. However, this test has damaged the credibility of the NPT much too deeply for any unanimity of the UNSC to restore it. Afterwards, the Finnish EU President expressed his satisfaction after North Korea had announced that it would go back to the negotiation table.¹³³

The Iranian case is all the more important as it was one of the first states to sign the NPT and to plead for a nuclear weapon free zone in the Middle East.¹³⁴ It is worth mentioning that the Europeans had taken the initiative, even though there was no formal mandate for the *troika*, namely France, Germany and the UK. They went to Teheran for the first time in October 2003, while the USA was dealing with the initial aftermath of the war in Iraq and the IAEA was at a dead end, Iran having rejected the resolution of the Board of governors of September. An agreement was concluded on October 21st 2003. However, it was almost immediately violated and denounced on June 22nd 2004 in a letter addressed to the three Foreign Ministers. November 14th 2004 put an end to a second wave of negotiations through which Iran considerably downsized the stringency of its commitments¹³⁵. But this agreement was also violated. The High Representative for European CFSP Javier Solana has stood next to the *troika* since 2005¹³⁶. Thanks to his implication, the negotiations with Iran have taken a more formalized European form. One has to notice the unity of the three European delegations during the three years of negotiation, a cohesion being reinforced by the election of a new German chancellor.¹³⁷ However, this cannot hide the fact that France rejected Mohamed El Baradei's proposal of a five-year moratorium against the building of new structures

¹³¹ Wade L. Huntley, "Rebels without a cause: North Korea, Iran and the NPT", *International Affairs*, 82: 4, 2006, pp.723-742, pp.727-728.

¹³² <http://daccessdds.un.org/doc/UNDOC/GEN/N06/572/07/PDF/N0657207.pdf>

¹³³ *Agence France Presse*, November 1st, 2006.

<http://www.cyberpresse.ca/article/20061101/CPACTUALITES/611010980/0/CPSPORTS01>

¹³⁴ This proposal was originally made by Iran, in July 1974, in front of the UN General Assembly. Egypt finally co-sponsored the initiative. The resolution 31/71 was finally adopted in 1976 with 130 votes against none and one abstention: Israel. The same resolution 32/82 was adopted in 1977 (131 votes for, none against, one abstention) and a third time in 1980 (136 votes for, 0 against, one abstention). At the meeting of 2 December 1993, Iran proposed it once again. Nader Barzin, *L'Iran nucléaire*, Paris, L'Harmattan, 2005, pp.201-202. This being said, one of course has to keep in mind the political implications of such a demand.

¹³⁵ For an account of this first period, see Thérèse Delpech, « Trois européens à Téhéran », *Politique internationale*, n°106, hiver 2004-2005, pp.129-143 and « Trois européens à Téhéran (suite et fin ?) », *Politique internationale* n°109, automne 2005, pp.165-176. For a complete chronology, Thérèse Delpech, *L'Iran, la bombe et l'impuissance des nations*, *op. cit.*, pp.119-133.

¹³⁶ See the article "Iran requires a collective answer" by French, British, German Ministers of Foreign Relations and Javier Solana, High Representative of CFSP, published in the *Wall Street Journal* on September 22nd, 2005. http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/articles/86360.pdf

¹³⁷ Thérèse Delpech underlines this point in *L'Iran, la bombe et l'impuissance des nations*, *op. cit.*, p.37.

able to produce fissile material of military quality jointly with the USA and Iran at the 2005 Review Conference of the NPT.¹³⁸ Europe has protected Iran from a transfer of its case to the UN three times: in November 2003, November 2004 and September 2005¹³⁹. In February 2006, when the Iranian file was transmitted to the UN Security Council, the Europeans found it very hard to agree on what was nothing more than a presidential declaration. The different ultimatums have never been respected and no sanctions followed. In other words, every negotiation with Teheran has failed so far.¹⁴⁰ On June 6th 2006, China, Russia and the United States joined the EU3 to make another proposal to Teheran. Then on July 31st 2006, after the director of the IAEA reported that Iran had not stopped its enrichment activities, the UN Security Council voted, by fourteen against one, Resolution 1696¹⁴¹ stating that the Islamic Republic had to stop these activities by August 31st. Otherwise, sanctions may be contemplated under article 40 of chapter VII of the UN charter. Iran has not complied with the resolution yet. Of course, this policy may not be assessed definitely before 2008 or 2009, when Iran is supposed to build its own nuclear capabilities¹⁴². Nonetheless, one can already make some statements about the efficacy of the European strategy. Some analysts suggest that the initial dialogue was biased insofar as all that Iran wanted was to enrich uranium on its own territory whereas the EU, recognizing this legal right, wanted the Iranians to renounce to it.¹⁴³ Even if it does not cross the nuclear threshold¹⁴⁴, a resolution from the Board of Governors of the IAEA on September 24th 2005 recognized that the Islamic republic already violated its obligations to the agency.¹⁴⁵ As a result, the non-proliferation regime is weakened by the Iranian behavior and the European policy has not prevented this evolution so far. The argument stating that the Europeans have prevented or should prevent the US from waging a war against Iran implies that

¹³⁸ François Heisbourg reminds us of this fact in his text : « Iran : ce que l'Europe peut encore faire », *Telos*, May 7th 2006 http://www.telos-eu.com/2006/05/iran_ce_que_peut_encore_faire.php

¹³⁹ Thérèse Delpech, *L'Iran, la bombe et l'impuissance des nations*, *op. cit.*, p.40.

¹⁴⁰ One could soften this conclusion noticing that the same can be said about the Russians. That is true but has no influence in my perspective. See Thérèse Delpech, « L'Iran et la bombe : options de fin de partie », *Politique internationale* n°110, spring 2006, pp.177-186, p.178.

¹⁴¹ <http://daccessdds.un.org/doc/UNDOC/GEN/N06/450/22/PDF/N0645022.pdf?OpenElement>

¹⁴² On these previsions, see Bruno Tertrais, « Iran: la bombe fin 2008? », *Note de la FRS*, May 15, 2006 <http://www.frstrategie.org/barreCompetences/prolifDissuasionDefenses/20060315.pdf> and David Albright, "When could Iran get the bomb? What we know and what we don't know about Iran's nuclear programme", *Bulletin of the Atomic Scientists*, vol.62 n°4, July-August 2006, pp.26-33. The IAEA reports always remain ambiguous. On the one hand, even the one released on March 6, 2006 underlines that three years one inspection cannot prove the existence of a clandestine nuclear programme. On the other hand, it cannot either guarantee that these activities are totally pacific.

¹⁴³ François Géré, *L'Iran et le nucléaire, les tourments perses*, Paris, lignes de repères, 2006, pp.106-107.

¹⁴⁴ See Bruno Tertrais in *Libération*, May 13-14th, 2006. Similarly, Nader Barzin concludes his historical investigation on Iranian nuclear programme since the 1970s stating that it will not cross the threshold. See Nader Barzin, *op. cit.* The same diagnosis can be found in François Géré, *op. cit.*, p.141. For a statement that the Iranian want to develop nuclear weapons, Thérèse Delpech, *op. cit.*, pp.12-32.

¹⁴⁵ <http://www.iaea.org/Publications/Documents/Board/2005/gov2005-77.pdf> An earlier resolution, dating back to November 26, 2003, denounces Iran for hiding its nuclear activities for 18 years and for failing its obligations regarding safeguard agreements. <http://www.iaea.org/Publications/Documents/Board/2003/gov2003-81.pdf>

the EU actor is condemned to be reactive and not to have its own non-proliferation policy.¹⁴⁶ However, the next round of negotiations may change things...

Conclusion: when the norm vacillates, preference for governance through norms cannot imply normative power anymore.

A shared commitment to the same series of treaties dealing with non-proliferation can shape a common European preference for multilateral governance. It can be opposed to three alternative preferences and will remain valid after the 2007 enlargement. In other words, it seems distinctive and rather long lasting, even if it appears as the smallest common denominator. It has been successful in disarmament assistance and shaping the policies of states willing to join it.

However, it has not yet proved successful in managing recent proliferation cases.

Moreover, member states behavior has to be distinguished from the European level. The common preference has not solved the conflicting interests of nuclear-weapon states and non-nuclear-weapon states inside the EU, reminding us that the CFSP/ESDP remains intergovernmental. While it initiated the European presence at KEDO to negotiate with North Korea, France¹⁴⁷, followed by the UK, contributed to the failure of the Review Conference of May 2005, which compromises the European preference and, in doing so, devalued its normative power.

And the non-proliferation regime actually faces a deep crisis, which endangers the credibility of the norm and reveals the failure of those who supported it. Therefore, institutional and political factors go together to strongly limit the effective common character of a non-proliferation policy. An autonomous actor finds it hard to emerge for two main reasons. Persisting cleavages between member states maintaining multiple allegiances and imperatives of broader coalitions including the US put Europe in a secondary position.

If it wants to emerge as a strong global actor, the EU has to preserve above all the basis of its international action, *i.e.* the NPT, which needs deep support. With the eventuality of WMD terrorism considered as a major threat by both the US and the EU¹⁴⁸, the existing framework does not fit anymore insofar as it does not take into account non-state threats. And the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General

¹⁴⁶ Jean-François Bayart suggests such a view in his article «Et si l'Europe faisait fausse route dans la crise iranienne? », *Esprit*, juin 2006, pp.19-36.

¹⁴⁷ The USA and also, to a lesser extent, the French, refused to accept the results of the 2000 Review Conference. Harald Müller, *op. cit.*, pp.34-35.

¹⁴⁸ See the *National Security to Combat Weapons of Mass Destruction*, *op. cit.*, p.1 and the *European Strategy against the Proliferation of Weapons of Mass Destruction*, p.1.

Assembly on April 13th, 2005, signed by the EU25+5 has no explicit link with it.¹⁴⁹ Neither does one of the latest initiatives, the Global Initiative to struggle against nuclear terrorism, jointly taken by Presidents Bush and Putin at the G8 summit of July 2006.¹⁵⁰ More generally, current terrorist threats are often conceived as unprecedented realities, what suggests the inadequacy of current laws.¹⁵¹

Keeping the European preference powerful would then imply to show that the NPT can still be a framework for present-day action. It requires being able to reform it and to connect as many initiatives as possible to it. Otherwise, this failure will probably be interpreted in two ways: either Europe, as an integrated actor, is weak and does not manage to affirm and support its preferences, or European integration, as far as non-proliferation is concerned, will appear as a mirage hiding classical power politics.

A further depreciated NPT would entail an important part of the European rising strategic identity in its fall.

¹⁴⁹ <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty20.asp> The convention is not in force yet.

¹⁵⁰ It counts 13 members, including France, the UK, Germany, Italy and Turkey, candidate to join the EU and the USA, Japan, China, Russia, Australia, Canada, Kazakhstan, and Morocco. Their first meeting took place in Rabat during the first week of November 2006.

¹⁵¹ See Andrea Bianchi, "Enforcing International Law Norms against Terrorism: Achievements and Prospects" in Andrea Bianchi (ed.), *Enforcing International Law Norms against Terrorism*, Oxford, Hart Publishing, 2004, pp.491-534, mainly his first part.