

Harald Müller:

## The NPT after the 2010 Review Conference - Implications for the EU

### 1. The 2010 Review Conference: A brief assessment

The 8th Review Conference of the NPT ended on May 28 with a consensus final document. A further deepening of the non-proliferation regime's crisis was avoided. The more cooperative policy of the Obama-Administration was a main reason for this partial success which was also assisted by the pragmatic negotiation posture of a group of moderate non-aligned states. However, the result represents a compromise on the least common denominator: Neither did the parties agree on bold steps towards nuclear disarmament, nor did the Conference strengthen the toolbox for non-proliferation. In the end, the most outstanding result was the plan for a conference on ways and means to foster a Middle East WMD Weapon Free Zone, and the call on the UN Secretary General to appoint a special facilitator for that meeting.

### 2. The EU Common Position and the Conference's outcome

#### 2.1. The Common Position: An Overview

The EU laid the basis for its common approach to the NPT Review late in the game: The Council adopted a Common Position on March 29, 2010 (Council Decision 2010/212/CFSP). It was the result of difficult negotiations among the member states, reflecting the deep

divergences in positions on two of the three “pillars of the Treaty”, disarmament and peaceful uses of nuclear energy. Nevertheless, it was a substantial document that showed a certain balance among the three pillars, addressed some other important aspects of the Treaty such as the Middle East and nuclear terrorism, and contained a series of practical proposals for moving the Treaty forward.

This said, the mentioned divergences left their mark. The part on non-proliferation was strong and detailed, reflecting the far-reaching consensus among the members. It included a harsh condemnation of Iranian and North Korean non-compliance, an endorsement of the enforcing role of the Security Council, substantial proposals for dealing with withdrawal from the NPT, language on the Additional Protocol as part of the current verification standard, on export controls and nuclear terrorism. The part on nuclear disarmament contained relatively little that was not already in the books. Exceptions were the clear language on substrategic nuclear weapons and on the Fissile Material Cut-Off, where the closure or conversion of nuclear weapon related production facilities was requested. It included language praising past achievements in nuclear disarmament, and some elaboration on framework conditions for nuclear disarmament. The part on peaceful nuclear uses was weak, reflecting the strong aversion of some member states against nuclear power, as a consequence of which any language on promoting of nuclear energy was lacking. Security and safety were strong concerns. The overriding issue was an explicit endorsement of multilateral fuel cycle arrangements, filling no

less than three out of eight paragraphs in this section. The Middle East was addressed without explicitly naming Israel, but endorsing practical steps towards a Middle Eastern zone free of nuclear weapons and other weapons of mass destruction.

## 2.2. How does the REVCON's Final Document compare to the Common Position?

A comparison with the action plan contained in the 2010 Review Conference's final declaration shows that the EU was, measured by results, successful to a certain, but not overwhelming degree. Of the total of 56 specific aims named under Article 3 of the Council Decision, 34 made it into the Declaration in some form, but many of them in weakened one.

Looking at the issue areas, many proposals from the strongest part of the EU's Common Position, non-proliferation, were maimed by the NAM juggernaut against strengthening the toolbox for preventing the spread of nuclear weapons. The bottom line of the NAM position was that without farther-reaching concessions by the nuclear weapon states – concessions that would go beyond what the P-5 were willing to concede in the Conference – no further demands on the non-nuclear weapon states were legitimate. Consequently, EU suggestions for enforcement, response to withdrawal, the Additional Protocol as verification standard, export controls, preventive measures against nuclear terrorism fell by the wayside. That a condemnation of Iran

was not achievable was no surprise, as the Conference rules require unanimity for the final declaration, and Iran could not be expected to vote against itself. The degree to which the NAM was sheltering Iran, however, betrays the resentment by the leaders of the developing world against what they see as the one-sided implementation of the bargain.

On disarmament, a lot of what the EU had to say found its way into the Declaration (inter alia on further reductions with special obligations for the US and Russia, on the CTBT and a FMCT). However, most of the action proposals in the NPT final document were presented in a stronger language than the EU had suggested, notably on transparency and regular and formalized reporting, constraints on technical improvements of nuclear weapons and renouncing the development of new types of warheads. The mention of a nuclear weapons convention, of the humanitarian consequences of nuclear war, and of the possibility to negotiate a legal instrument for negative security assurances went beyond the content of the Common Position. The most original European proposals in the disarmament, on substrategic nuclear weapons and the closing of production facilities for fissile material destined for weapons use went different ways. The language on sub-strategic nuclear weapons was largely diluted and put in the much more general form of “nuclear weapons of all types notwithstanding their location”, while the closing of the facilities was integrated into the document, surprisingly, because of the unexpected acquiescence of China. Since the consensus-based part

of the final document was forward-looking, most of the applause for past disarmament efforts which the EU had proposed went nowhere, and even the Presidential notes on the “Review” part of the Conference’s work contained such language only in a minimalist tone of enthusiasm. Very significantly, the efforts by the EU to emphasize the framework conditions of nuclear disarmament met with resistance among the non-aligned states and were largely deleted from the final document. One exception was the notion of “stability and equal security for all” (even though Brazil led an attack against this language), because it drew strong support from Russia and China who view this formulation as a veiled reservation against US missile defense plans.

The section on peaceful uses had more to say about the inalienable rights (notably of developing countries) and the duty to cooperate and avoid undue constraints on the transfer of nuclear technology than the lean eight paragraphs in the EU Common Position. The point, on which the EU Position on peaceful uses centred, multilateral fuel arrangements, was condensed into a single paragraph in the Final Document, which is full of caveats. This reflects the deep distrust of the NAM that MFA was the newest ploy by the North to prevent the South from acquiring technology for development.

The Middle East section went beyond the EU language in terms of comprehensiveness and specificity of the steps to be taken (facilitator, UN-Conference on the Middle East by 2012). At least the offer to

hold another EU seminar on the issue was included in the text, even though it was originally not contained in the EU Common Position, but created as an option during the negotiations. The mention of Israel, which had not found its way into the Common Position because of the closeness of several EU members to that country, was the inevitable price to be paid for Egypt's readiness to lead the NAM towards compromise.

### 3. The EU at the 2010 NPT Review Conference

The 2010 NPT Review Conference outcome, only a moderate success for EU diplomacy, cannot be understood without a look at the procedural work of the Union at the Conference. With 27 members having different preferences, negotiation possibilities are restricted in principle. For this reason, the EU confined itself to reading texts proposed for the Committee reports or for the final document, or tabling such language even without taking the floor. There are substantial and procedural reasons for this restrictive mode of operation which have to be overcome lest the EU perform far below its significance as a Union of 27 member states, the first economic and the second military power in the world as an aggregate.

The substantial problem is, of course, caused by the divergences in interests of the member states. On nuclear disarmament, the EU accommodates two nuclear weapon states, a majority of NATO non-nuclear weapon states whose commitment to nuclear disarmament varies, while alliance loyalty binds them all, and half a dozen neutral

countries some of which feel very strongly about nuclear disarmament. The EU, nevertheless, has managed repeatedly, and this time once more, to find a common language on disarmament which it could promote. However, listening to the performance on the floor, the strong language on substrategic nuclear weapons was actively pursued only by a minority, while the majority kept silent (most conspicuously the two European nuclear weapon states). When the Russian delegate attacked the German head of mission – the leader on this issue – support from fellow Europeans was lukewarm. Vice versa, France, engaged in the attempt to attract praise for past disarmament measures, was even attacked on the floor by another EU country on an issue on which the French delegation promoted language contained in the EU Common Position (on the closing of test areas and fissile material production facilities). France pushed through the latter issue gallantly, but almost single-handedly. The EU fight for other disarmament issues such as transparency and irreversibility was hardly recognizable.

On non-proliferation issues, France was almost a lonely leader, pushing the tough line which the EU members had agreed upon in the Common Position. Otherwise, measures strengthening the non-proliferation tool attracted only sporadic European interventions on the floor, signalling, possibly, some discomfort of many EU members with this tough line. The decisive part of the Middle East negotiations took place behind the scenes between the Americans and the Egyptians, while Irish Amb. Kelly chaired the formal meetings of

Subs. Body II on this issue. Finally, concerning peaceful uses, the European performance on the floor documented the known divisions even though the final document reflects a lot of common European concerns on nuclear safety and physical security.

#### 4. Possibilities for improvement

Is it possible to do better in the future? First of all, it might be advisable to settle two or three main issues per NPT “pillar” which the Union places the highest emphasis on internally. Emphasis might be allotted because of the gravity of the issue, or because of a broad and deep agreement among the members. On these issues, minimum and maximum positions might be defined informally, and the EU leadership (see below) might be given the authority to negotiate within these limits, and, if the limits are to be exceeded, to negotiate ad referendum, pending the agreement of the EU members in ensuing consultations. Such priorities might be decided upon by consensus, or by qualified majority as would be principally admissible under the Lisbon Treaty, once the position as such has been agreed upon. In support of the EU leadership, delegations of member states would take the floor. Alternatively (if members believe this to be too time-consuming for floor debates, enervating for the rest of the treaty members and thereby counterproductive), the EU could designate a group of members for each issue (maybe those which indicate they feel strongest about it) to support the leadership on the floor.

On other issues agreed-upon within the EU, EU members would be at liberty, as ever, to take the floor or not in support of the Common Position. Beyond that, EU members would of course remain free to submit or support proposals beyond those agreed in a Common Position as long as these do not contradict the EU aquis. This slight correction of the substantial part of the EU preparation could definitely enhance the weight of the Union on review conferences without assuming a dramatic convergence of the interests of member states beyond the status quo.

On procedure, the above-mentioned suggestion already contained an important proposal, the “negotiation corridor” for the EU leader. Even after repeated readings of the Lisbon Treaty, it is unclear to this author whether in the future EU delegations to NPT Reviews will be led by the EEAS or still by a member state holding the more ceremonial Presidency. It appears more plausible, and probably more sensible, to have the EEAS in that position (because of the supposed neutrality). However, the EEAS might not have enough staff to present the EU in all the various meetings, formal and informal, which NPT Reviews conduct simultaneously. Working through a “friends of the chair” format, by which the EEAS delegation leader nominates appropriate diplomats from member states to act as EU speaker in the various fora would probably be the best way to close the gap. Of course, “friends of the chair” would be bound by the minimum/maximum position corridor for their own negotiation roles in the same way as the EU leadership. Finally, all member states should have the obligation to

think twice before they take the floor on distinctly and exclusively national interests and positions. There is, of course, no way, and no legal rule, to prevent members from doing so. Nevertheless, there should be a norm of restraint before diplomatic energy is spent on questions in which the rest of the EU takes little interest in or which might even be controversial.

## 5. Final thoughts

We can do better as Europeans than in 2010,, even if we did not do outrageously badly. I would like to add a few final thoughts on substance which came to my mind while watching us Europeans perform in New York last May.

- First, I wonder whether one point on which France insisted throughout does not hold a lot of interest for all of us: The “conditions for a non-nuclear world”. This is a valid point. Nuclear disarmament will only occur under particular circumstances, and there is a lacuna of knowledge and thinking what these circumstances might be. I suggest the EU do common work on this issue.
- Second, there is the issue of irreversibility, a term that has been part and parcel of official NPT documents since 2000, but about which no one knows very much. Why should the EU not invest some work in that issue?
- Lastly, withdrawal and enforcement (closely linked to the issue of “conditions for disarmament”), remains a theme on whose

continuing saliency the EU should insist and which it should push for during the preparatory process for the next NPT Review, including intense consultations with the moderate NAM leadership.