

12. Multilateral military-related export control measures

IAN ANTHONY and THOMAS STOCK

I. Introduction

In 1995 changes occurred in the membership of multilateral military-related export control regimes: the Australia Group, the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG).¹ Romania became the 29th member of the Australia Group, while Brazil, Russia and South Africa became members of the MTCR, bringing its membership to 28 states. New Zealand and South Africa became members of the NSG, increasing its membership to 31 states. In the European Union (EU), the regulation developed to address exports of dual-use technologies entered into force on 1 July 1995. In addition, one new regime—the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies—was established, subject to approval of the member governments, on 18 December 1995 at a meeting of high-level officials of the 28 founding member states in The Hague. This new regime is expected to be established formally in 1996.

With the implementation of the EU Regulation and the creation of the Wassenaar Arrangement, the emphasis of multilateral export regulation has been expanded to include new categories of goods and technologies. Section II discusses the regimes for controls on conventional weapon and dual-use technology transfers, including the framework and terms of reference of the new Wassenaar Arrangement. Section III describes developments in 1995 in the two nuclear regimes, section IV the regime to regulate chemical and biological exports, and section V the MTCR. Appendix 12A discusses the possible impact of multilateral export controls on transfers of one specific dual-use technology—digital telecommunications.

The process of harmonizing membership across the multilateral regimes continued in 1995. In the area of transfers of nuclear materials and technology, during the cold war period the Soviet Union and other members of the Warsaw Treaty Organization (WTO) were involved in development of the Nuclear Suppliers Group. The other regimes, however, were founded around a core

¹ For background information about the structure and terms of reference of 6 multilateral regimes and for developments up to the end of 1994, see Anthony, I. *et al.*, 'Multilateral weapon-related export control measures', *SIPRI Yearbook 1995: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1995), pp. 597–633.

2 NON-PROLIFERATION, ARMS CONTROL, DISARMAMENT, 1995

Table 12.1. Membership of multilateral weapon-related export control regimes, as of 1 January 1996

State	Zangger Committee 1974	NSG ^a 1978	Australia Group ^b 1985	MTCR ^c 1987	EU dual-use regulation 1994	Wassenaar Arrangement ^d 1995
Argentina		X	X	X		
Australia	X	X	X	X		X
Austria	X	X	X	X	X	X
Belgium	X	X	X	X	X	X
Brazil	X			X		
Bulgaria	X	X				
Canada	X	X	X	X		X
Czech Republic	X	X	X			X
Denmark	X	X	X	X	X	X
Finland	X	X	X	X	X	X
France	X	X	X	X	X	X
Germany	X	X	X	X	X	X
Greece	X	X	X	X	X	X
Hungary	X	X	X	X		X
Iceland			X	X		
Ireland	X	X	X	X	X	X
Italy	X	X	X	X	X	X
Japan	X	X	X	X		X
Luxembourg	X	X	X	X	X	X
Netherlands	X	X	X	X	X	X
New Zealand		X	X	X		X
Norway	X	X	X	X		X
Poland	X	X	X			X
Portugal	X	X	X	X	X	X
Romania	X	X	X			
Russia	X	X		X		X
Slovakia	X	X	X			X
South Africa	X	X		X		
Spain	X	X	X	X	X	X
Sweden	X	X	X	X	X	X
Switzerland	X	X	X	X		X
Turkey						X
UK	X	X	X	X	X	X
USA	X	X	X	X		X

Note: The years in the column headings indicate when the regime was created.

^a The Nuclear Suppliers Group.

^b The European Commission is represented in the Australia Group as an observer.

^c The Missile Technology Control Regime.

^d The Wassenaar Arrangement is the only regime listed in this table which has not yet entered into force.

group of states which were associated with the system of alliances and security arrangements led by the United States. Since the end of the cold war, the membership of regimes has gradually been harmonized until, by the end of 1995, most of the former members of the WTO and the European states that were neutral or non-aligned during the cold war had become members of one or more of the multilateral regimes.

At the end of 1995 membership of the regimes had expanded to include Argentina and South Africa—neither traditionally associated with the core group of states engaged in multilateral export regulation. Nevertheless, membership was still confined to a group of 34 countries. Moreover, in recent years members of the regimes have increasingly emphasized those activities that set the terms and conditions on which technology transfer can occur rather than the denial aspects of export controls.

There is no formal link between the NSG and the 1968 Non-Proliferation Treaty (NPT) or between the Australia Group and either the 1972 Biological Weapons Convention (BWC) or the 1993 Chemical Weapons Convention (CWC). International responsibility to prevent proliferation is greatest in the case of chemical and biological weapons because of the universal prohibition of the use, development, production and transfer of these weapons through the BWC and CWC.² The particular status given to nuclear weapon states in the NPT—which has no equivalent in either the CWC or BWC—has made it more difficult to secure comprehensive membership of the NPT.³ There is no multilateral convention or treaty that addresses the issue of ballistic missile possession or use.

As a result of changes in technology and markets, the regulation of international technology transfer is increasingly seen by governments as a collaborative exercise. Regimes provide them with a forum for discussion, exchange of information, lobbying and bargaining in support of national policy objectives. However, even if governments can build a consensus on the conditions for technology transfer, collaboration between government and industry and within companies is necessary to implement these policies.

Approaches to export control

Government objectives can be of a political nature (the US preference), they can be economic, or they can be narrowly focused on non-proliferation concerns.

There is no consensus within any of the regimes that they should attempt to coerce states whose *political* behaviour is considered unacceptable by regime members. However, the USA does use its export regulations in this way and is a central actor in each of the multilateral regimes. In 1995 the USA continued to employ coercive trade and investment policies as an element in its bilateral relations with Iran. On 15 March 1995 President Bill Clinton expanded US

² See chapter 15 in this volume for a discussion of chemical and biological weapon and arms control issues.

³ See chapters 13 and 14 in this volume for a discussion of nuclear weapon and arms control issues.

4 NON-PROLIFERATION, ARMS CONTROL, DISARMAMENT, 1995

sanctions against Iran to include a ban on all trade and investment, including the purchase of Iranian oil by US companies.⁴ The action was explained by Secretary of State Warren Christopher as part of a wider policy ‘to use our diplomatic and economic measures and our military deterrent to contain Iran and to pressure it to cease its unacceptable actions’. These ‘unacceptable actions’ included proliferation concerns but also included actions not related to proliferation; specifically, the charges are that Iran is ‘the foremost sponsor of international terrorism’ and that it ‘seeks to undermine the Middle East peace process’.⁵

From public statements by US officials it is not fully clear whether the removal of the current Iranian Government is considered to be necessary to achieve this change in behaviour. In testimony before the House of Representatives International Relations Committee, Under Secretary of State Peter Tarnoff and Representative Lee Hamilton had the following exchange:

Rep. Hamilton: Secretary Christopher said that we must isolate Iraq and Iran until there is a change in their government, a change in their leadership—that’s a direct quote. Does that mean that our policy is to overthrow the government of Iraq? Of Iran?

Mr Tarnoff: . . . with respect to the government of Iran, we are not seeking to overthrow that government.⁶

While other governments object to aspects of Iran’s behaviour—particularly its opposition to the Middle East peace process—there is a dispute about how to attempt to change it. Some members of the multilateral regimes favour a policy of ‘critical dialogue’ with Iran.⁷

The focus of the regimes on dual-use technologies associated with weapon production as well as on weapons themselves has led to suspicions that the regimes are a form of *economic warfare*.⁸ In 1995, for example, some governments continued to argue that the activities of the Australia Group are not consistent with Article XI of the Chemical Weapons Convention, which relates to economic and technological development. Under Article XI, parties pledge to facilitate the fullest possible exchange of chemical materials and related information for purposes not prohibited by the convention. Several governments argue that, since export controls are a barrier to trade, they cannot be consistent with this commitment.⁹ However, this argument assumes that the alternative to multilateral regimes is free trade. Since export controls are

⁴ These sanctions became effective on 7 May 1995. *Letter from the President to the Speaker of the House of Representatives and the President of the Senate, 6 May 1995* (White House, Office of the Press Secretary: Washington, DC, 8 May 1995).

⁵ Secretary of State Warren Christopher, State Department Press Briefing, 1 May 1995, reproduced in *US Department of State Dispatch*, vol. 6, no. 9 (8 May 1995).

⁶ ‘House hears Tarnoff, Reidel testimony on US policy on Iran’, *Wireless File (Europe)* (United States Information Agency: Washington, DC, 13 Nov. 1995). URL <gopher://pubgopher.srce.hr:70/00/usis/casopisi/wf/european%20WF%2013.11.95>.

⁷ ‘House hears Tarnoff, Reidel testimony on US policy on Iran’ (note 6).

⁸ Anthony *et al.*, *SIPRI Yearbook 1995* (note 1).

⁹ ‘Statement by the representative of Nigeria on behalf of the African Group presented at the opening of the tenth session of the Preparatory Commission for the OPCW on 3 April 1995’, PrepCom document PC-X/14, 3 Apr. 1995.

given expression through national legislation (whose legitimacy is not questioned), the abolition of the regimes could make trade regulation less rather than more efficient, with even greater barriers to technology transfer.¹⁰ Moreover, if there were no regulations that sought to prevent unwanted forms of proliferation, some states—notably the USA—might argue for other measures (perhaps including the use of force) to prevent the spread of nuclear, chemical and biological weapons.

The debate on CWC Article XI reflects the misunderstanding or, alternatively, the lack of trust between ‘North’ and ‘South’. The main question to be resolved is whether current export licensing measures reflect a general way of thinking among the developed countries or whether they are the result of the former weapon procurement programmes of a few countries, most notably Iraq.

It is also argued that extending controls on technology transfer to include dual-use technologies conflicts with obligations accepted in trade-related international negotiations by the governments of countries which are major sources of technology. Negotiations on technology transfer have taken place since the early 1970s, first within the United Nations Conference on Trade and Development (UNCTAD), then within the framework of the General Agreement on Tariffs and Trade (GATT) and most recently within the World Trade Organization. Throughout these discussions it was clear that, while access to technology could be regulated to a greater or lesser degree, neither technology suppliers nor recipients would waive the right to take actions seen as necessary for their national security.¹¹

Consequently, even close allies have not entirely deregulated transfers of dual-use items and technologies. For example, under the simplified licensing procedures announced by President Clinton in October 1995, exports of specified computers to Australia, Canada, Japan, Mexico, New Zealand and Western Europe still required general licences. Licensing requirements were also simplified for exports to South America, South Korea, the Association of South-East Asian Nations (ASEAN), the Czech Republic, Hungary, Poland, Slovakia, Slovenia and South Africa, but more elaborate licensing procedures were required for transfers to other countries.¹²

¹⁰ This argument is made in, e.g., Bertsch, G. K., Cupitt, R. T. and Elliot Gower, S. (eds), *International Cooperation on Nonproliferation Export Controls: Prospects for the 1990s and Beyond* (University of Michigan Press: Ann Arbor, Mich., 1994).

¹¹ This requirement was explicit in the draft UN Code of Conduct and was also written into the text of the Final Act and Agreement Establishing the World Trade Organization, General Agreement on Tariffs and Trade, Uruguay Round (including GATT 1994), Marrakesh, 15 Apr. 1994. URL <http://ananse.irc.vit.no/trade_law/gatt/nav/toc.html>. In Article XXI of the GATT 1994 agreement there is a specific security exception which states that ‘Nothing in this Agreement shall be construed . . . to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests . . . relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment . . .’. See also *Draft International Code of Conduct on the Transfer of Technology: Report and Notes by Experts on the Outstanding Issues*, United Nations Conference on Trade and Development (UNCTAD) document TD/CODE TOT/52, 5 Aug. 1988.

¹² *Export Controls on Computers*, White House Fact Sheet, 6 Oct. 1995. For the members of ASEAN, see the glossary at the front of this volume.

The third rationale for the regimes is that they contribute to *non-proliferation* objectives, preventing proliferation that could have a negative impact on regime member states. In the past, regimes have targeted technologies that are related to the development or production of weapons of mass destruction. However, in the control list associated with the 1994 EU dual-use regulation, one section is reserved for digital telecommunications equipment—a technology which is neither inherently military in character nor directly associated with a weapon system but which could have military applications.¹³ Secure and effective communications are recognized to be an important factor in successful military operations. For this reason digital communications systems dedicated to military application usually require export licences. It is often said that there has been a convergence between military and civil telecommunications technology or that civilian technology is superior to (rather than just different from) military technology in this area. Therefore, the question arises whether a country that would be denied a licence for a military communications system can achieve the same capabilities by purchasing unlicensed civilian technologies.

II. Conventional weapon and dual-use technology export controls

The Wassenaar Arrangement

After over two years of discussions, the representatives of 28 states established the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies at a meeting of high-level officials in the Netherlands on 18 December 1995. It was agreed that the work of the Arrangement would involve both plenary meetings and supporting activities and that a secretariat would be based in Vienna, Austria.¹⁴

Following the decision of November 1993 to lift the embargo implemented through the Coordinating Committee on Multilateral Export Controls (COCOM), a group of 23 states entered into discussion of a follow-on regime.¹⁵ The original intention was to have the regime in place in March 1994, when the lifting of the COCOM embargo was implemented. However, the process of defining a new regime was delayed by unresolved questions about its membership, scope and terms of reference.

The central membership issue was whether or not to invite Russia to participate in the new regime.¹⁶ The United States opposed the membership of Russia in the Wassenaar Arrangement until the Russian Government under-

¹³ See also appendix 12A in this volume.

¹⁴ The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Final Declaration by 28 states, signed at Wassenaar, the Netherlands, 19 Dec. 1995.

¹⁵ The 5 countries which subsequently joined the discussions were the Czech Republic, Hungary, Poland, Russia and Slovakia. For the membership of COCOM as of Mar. 1994, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1), p. 598.

¹⁶ For a discussion of the lifting of the COCOM embargo and the issue of Russian membership of the new forum to replace it, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1).

took not to conclude new arms transfer agreements with Iran and to clarify the scope and content of arms transfers to be made in the framework of a 1989 agreement between the Soviet Union and Iran.¹⁷ Under this agreement it is believed that deliveries of equipment to Iran would continue until 1999.¹⁸

These issues were discussed by Presidents Clinton and Yeltsin on four occasions: in April 1993, January 1994, September 1994 and May 1995, by which time a general agreement had been reached. Under this agreement President Yeltsin agreed to supplement his pledge not to permit new agreements between Russia and Iran by clarifying the extent of previous and pending arms transfers to Iran. The detailed aspects of this issue were to be discussed in the US–Russian Joint Commission on Economic and Technological Cooperation (known as the Gore–Chernomyrdin Commission). On 1 July 1995 the Commission concluded its fifth meeting in Moscow under the joint chairmanship of Russian Prime Minister Viktor Chernomyrdin and US Vice-President Al Gore.¹⁹ At this meeting the USA received the clarification that it had sought, and it was confirmed that Russia would be invited as a founding member of the Arrangement.²⁰

Other countries that are believed to be considering membership of the Wassenaar Arrangement include Argentina, Bulgaria, Romania, South Africa, South Korea and Ukraine. Some of these countries are expected to join soon after it becomes operational. The issue of Chinese membership has been raised periodically, although there has been no formal indication from China about its interest or willingness to join the Arrangement.²¹

As a principle, membership of the Arrangement is not closed but is conditionally open. Any state which meets the conditions of membership is free to apply. In so far as they are known, the conditions for membership are similar to those for other regimes. The state must have national legal and administrative mechanisms that allow it to implement decisions arrived at by the group; it must comply with international non-proliferation treaties and agreements; and, since the Arrangement works by consensus, it must be accepted by the existing members.

At a September 1995 meeting of the 28 states (including Russia) held to discuss the establishment of the regime, they agreed that the Wassenaar

¹⁷ Goldman, S., Katzman, K. and Davis, Z. S., *Russian Nuclear Reactor and Conventional Arms Transfers to Iran*, Congressional Research Service Report 95-641F (Library of Congress, CRS: Washington, DC, 23 May 1995).

¹⁸ *Balkan News and East European Report*, 14–20 May 1995, p. 39.

¹⁹ The Commission was established at the summit meeting of Presidents Clinton and Yeltsin in Vancouver in Apr. 1993. It is oriented towards discussions of cooperation in the fields of energy, space, science and technology and is intended to ensure that bilateral relations between Russia and the USA continue to be addressed at the highest levels. See also chapter 14 in this volume.

²⁰ 'Chernomyrdin–Gore Commission outcome assessed', *Izvestia*, 4 July 1995, p. i (in Russian), in Foreign Broadcast Information Service, *Daily Report–Central Eurasia* (hereafter FBIS-SOV), FBIS-SOV-95-128, 5 July 1995, pp. 4–6; Pushkov, A., 'Success in space, problems on earth', *Moscow News*, 7–13 July 1995, p. 1; and 'Complete understanding with US on arms to Iran', Interfax, 22 July 1995, in FBIS-SOV-95-141, 24 July 1995, p. 5.

²¹ *Arms and Technology Transfers: Security and Economic Considerations Among Importing and Exporting States* (UNIDIR: Geneva, 1995), p. 102.

8 NON-PROLIFERATION, ARMS CONTROL, DISARMAMENT, 1995

Arrangement had five main objectives. The arrangement should enable the participants to:

a) promote greater transparency and responsibility with regard to transfers of armaments and sensitive dual-use goods and technologies;

b) prevent the acquisition of armaments and sensitive dual-use items for military end uses, if the behaviour of a state is, or becomes, a cause for serious concern of the participants;

c) focus on the threats to international peace and security which may arise from transfers of armaments and sensitive dual-use goods and technologies in cases where the risks are judged greatest. However, the new arrangement would:

- not be directed against any state or group of states;
- not impede bona fide civil transactions;
- not interfere with the rights of states to acquire legitimate means with which to defend themselves;

d) provide for an appropriate exchange of information, on a voluntary basis, and assess the scope for co-ordinating national control policies, in order to ensure that trade in arms and dual-use goods and technologies is carried out responsibly;

e) welcome, on a global and non-discriminatory basis, prospective adherents complying with agreed criteria.²²

The undertakings in the Arrangement are to be implemented through national export controls, and it was stressed that the decision to transfer or to deny any item remains the sole responsibility of each government.

The founding member states also discussed whether or not the Arrangement should be directed at a specific group of countries whose behaviour was considered to be of concern. The preference of the United States was to specify target countries. According to Assistant Secretary of State Thomas McNamara, the Arrangement has two major goals: (a) to prevent destabilizing build-ups of weapons in regions of tension such as South Asia and the Middle East 'by establishing a formal process of transparency, consultation, and, where appropriate, adopting common policies of restraint'; and (b) to '[d]eal firmly with states whose behaviour is today a cause of concern, such as Iraq, Iran, North Korea, and Libya'.²³

In the end, the founding members of the Wassenaar Arrangement did not agree on a list of target countries—which could then have been modified only by consensus of the group. Rather than leave the decision about when a specified target country was no longer a cause for concern to a group decision, states preferred to retain the flexibility to modify national export policies and regulations without the need for external consent.

To achieve these goals the regime partners would share intelligence on global trends and threats to peace and stability, consult closely about the dangers they see arising, provide information about trade in arms and sensitive dual-use goods and technologies to countries in regions of conflict, and define

²² 'New multilateral export control arrangement', Press Statement from the High Level Meeting of representatives of 28 states, Wassenaar, the Netherlands, 11–12 Sep. 1995.

²³ "'New Forum' will guard against destabilizing arms buildup", *Wireless File* (United States Information Service, US Embassy: Stockholm, 21 Sep. 1995, p. 16.

common approaches to these countries.²⁴ Information that may be shared will include notification of applications to export controlled goods that have been denied. At the time of writing, final agreement on the lists of controlled items had not been reached. At least at the first stage of its development, the Arrangement does not appear to include prior notification of forthcoming contracts for controlled goods. However, the current terms of reference of the Arrangement are seen as the first step in a process whose outcome is not yet determined.

The European Union Regulation

On 19 December 1994 an EU Regulation on the Control of Exports of Dual-Use Goods was accepted by the EU Council of Ministers. The regulation had been developed by the European Community (EC) Commission in consultation with the competent authorities in the member states as part of the effort to complete the internal market in the framework of the 1986 Single European Act.²⁵

The main arguments for the EU Regulation were practical. With a single, EU-wide regulation, exporting companies would not need to monitor and adapt to a large number of different national practices. In the framework of the Single Market it was hoped that licences could be eliminated for transfers of non-military goods between member states. Moreover, decisions about where to produce goods for export outside the perimeter of the EU could be taken more on the basis of efficiency and cost if potential distortions arising from different export licensing procedures for non-military goods were eliminated.

In practice, both establishing and implementing the EU Regulation proved to be difficult. Negotiations lasted from early 1991 until December 1994, when the Regulation and a joint-action decision taken in the context of Article J.3 of the 1992 Maastricht Treaty were agreed.²⁶

Modifications to the list of destinations and commodities subject to the EU Regulation can only be made by the member states and not by the European Commission, which has an executive role. In addition, there is not total uniformity among the member states about licensing practices and procedures. Some states retain some specific national licensing requirements where certain goods are concerned. The European Commission is tasked with monitoring the impact of implementing the regulation and decision and will report on this to the member states.

²⁴ “‘New Forum’ will guard against destabilizing arms buildup’ (note 23).

²⁵ For a more detailed discussion of the EU Regulation, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1), pp. 616–19.

²⁶ European Union Council Regulation no. 3381/94 and Council Decision 94/9842/CFSP, both of 19 Dec. 1994.

III. Nuclear export controls: the Zangger Committee and Nuclear Suppliers Group

The Zangger Committee and the Nuclear Suppliers Group were established in 1974 and 1978, respectively. The Zangger Committee agreed a list of items which would, if exported to a non-nuclear weapon state that was not a party to the NPT, trigger the application of International Atomic Energy Agency (IAEA) safeguards. The NSG is a forum for discussing and coordinating export control policies with the objective of averting the acquisition of nuclear weapons by non-nuclear weapon states.²⁷

In 1995 modifications were made to the trigger list by the members of the Zangger Committee.²⁸ Two countries joined the NSG during the year—New Zealand and South Africa—bringing its membership to 31 states. Moreover, the members of the NSG made it clear that South Korea was expected to join once the necessary national legal and administrative arrangements were complete. South Korea currently adheres to the NSG guidelines on a voluntary basis.²⁹ Representatives of Ukraine and the EU attended the 1995 NSG plenary meeting as observers. The NSG members also revised the annexes to the Guidelines for Transfers of Nuclear-related Dual-use Equipment, Material and Related Technology.³⁰

After the end of the COCOM embargo in March 1994, the COCOM members agreed to implement the COCOM lists of controlled items (including the International Atomic Energy List) on a global basis, pending the establishment of the new Wassenaar Arrangement. When the Wassenaar Arrangement is formally established, the former members of COCOM will no longer be obliged to implement these lists through national regulations.

IV. Chemical and biological export controls: the Australia Group

The Australia Group was established in 1985 with 15 members, with the goal of preventing or at least hindering further proliferation of chemical weapons (CW), following evidence that Iraq was developing CW capabilities based on trade with international suppliers.³¹ The Group developed lists of chemicals known to be key precursors or precursors for the production of chemical warfare agents. After making certain amendments and changes, in 1992 the Aus-

²⁷ For a more detailed discussion of the Zangger Committee and the NSG, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1), pp. 601–607; and chapter 13 in this volume.

²⁸ The modifications were published as IAEA document INFCIRC/209/Rev.1/Mod.3, Oct. 1995.

²⁹ Nuclear Suppliers Group Plenary Meeting, 5–7 Apr. 1995, Finnish Ministry of Foreign Affairs, Press statement.

³⁰ The revised guidelines were published as IAEA document INFCIRC/254/Rev.2/Part 2, Oct. 1995.

³¹ For a more detailed discussion of the Australia Group, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1), pp. 611–12.

tralia Group arrived at a list consisting of 54 chemicals.³² In 1988 the Group realized that in addition to control of precursor chemicals there was a need to develop a warning list of potential equipment for CW agent production, which was adopted in 1989 and has been further amended since then.

Growing concern about BW proliferation resulted in lists of biological agents, animal pathogens and plant pathogens subject to export control (since 1992) and dual-use biological equipment.³³

At the autumn 1994 meeting of the Australia Group, the members decided to reduce the number of their plenary meetings from two to one each year. Romania participated in the October 1995 meeting in Paris for the first time, increasing the membership to 29 states. At their 1995 meeting, the members also agreed several amendments to the list of biological weapon-relevant materials and equipment.³⁴ The members expressed 'a strong belief that full adherence to the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BTWC) will be the only way to bring about a permanent global ban on CBW'.³⁵ Although by the end of 1995 only 19 of the 29 members had ratified the CWC, the members stated that they all plan to be among the first 65 states to ratify it.³⁶

In taking the necessary legislative steps to ratify the CWC, the members pledged that they would take steps to ensure that 'all relevant national regulations promote the object and purpose of the CWC and will be fully consistent with it upon its entry into force'.³⁷ This statement reflected the ongoing debate about the role of the Australia Group after the entry into force of the CWC.

The Australia Group stresses the importance of Article I of the CWC, which requires that no party should ever 'assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention'.³⁸ The meeting concluded that 'national export licensing policies in the chemical sphere therefore fulfil the obligations established under Article I of the CWC'.³⁹

With respect to Article XI of the CWC (Economic and Technological Development), the Group stated at the 1995 meeting that measures such as national export licensing are 'consistent with the undertaking in Article XI of the CWC to facilitate the fullest possible exchange of chemical materials and

³² For more information, see Mathews, R. J., 'A comparison of the Australia Group list of chemical weapon precursors and the CWC scheduled chemicals', *Chemical Weapons Convention Bulletin*, no. 21 (Sep. 1993), pp. 1–3.

³³ For details, see Anthony *et al.*, *SIPRI Yearbook 1995* (note 1), pp. 614–15.

³⁴ These amendments were made taking into account recent developments, especially the discoveries about the Iraqi BW programme made in 1995.

³⁵ 'Press Release: Australia Group Meeting, October 1995', Australia Group Document AG/Oct95/Press/Chair/16.

³⁶ For the full list of states which have signed or ratified the CWC as of 1 Jan. 1996, see annexe A in this volume.

³⁷ 'Press Release . . .' (note 35).

³⁸ For the text of the Chemical Weapons Convention, see *SIPRI Yearbook 1993: World Armaments and Disarmament* (Oxford University Press: Oxford, 1993), appendix 14A, pp. 735–56.

³⁹ 'Press Release . . .' (note 35).

related information for purposes not prohibited by the Convention, as they are focused solely on preventing assistance to activities banned under the CWC'.⁴⁰

Romania, which ratified the CWC in February 1995, had expressed a desire to join the Australia Group for several years. In 1992 it presented Government Decision No. 594, a new export control regime for the non-proliferation of nuclear, chemical and biological weapons and of missiles carrying such weapons.⁴¹ This decision introduced a licensing requirement, end-use controls and lists of items subject to export control, among them technologies and items related to chemical and biological weapons. Government Decision No. 434 of 1993 established a National Agency for Export Control, renamed the National Agency for Control of Strategic Exports and of the Prohibition of Chemical Weapons in May 1994 after the National Authority for implementing the CWC was created.⁴² Finally, on 29 July 1994, Government Ordinance no. 31 adjusted the structure and responsibilities of the new organization, and when this Ordinance came into force in November 1994 Romania completed its preparations for membership of the Australia Group.

The continuing debate on Article XI of the CWC and the future of the Australia Group is mainly focused on two positions. The first is that Article XI has to ensure the 'free and unhampered transfer of chemicals' and the second is that every state party to the CWC has the right to take national measures (including export controls) in accordance with the obligation under Article I not to assist anyone 'to engage in any activity prohibited to a State Party'. During 1995 this debate continued in the Preparatory Commission (PrepCom) of the Organisation for the Prohibition of Chemical Weapons (OPCW)⁴³ as well as in other forums. In general, countries from the South see the Australia Group (and other regimes such as the MTCR) as an effort to deny technology. They feel that the measures applied 'have discriminatory implications well beyond the military realm'.⁴⁴ At the April 1995 PrepCom Plenary Meeting, the African Group stated:

in the area of development of economic and technological cooperation the Commission has made no significant break-through. The African Group reaffirms its commitment to the implementation of Article XI of the Convention, particularly on the issues relating to the removal of all measures at regional levels and all other arrangements that restrict or impede trade, development and exchange of information,

⁴⁰ 'Press Release . . .' (note 35).

⁴¹ Conference on Disarmament document CD/1178, 15 Jan. 1993.

⁴² 'Romania: an up-date', *Proceedings: Regional Seminar on National Implementation of the Chemical Weapons Convention*, Brno, Czech Republic, 1-2 June 1994, Occasional Paper no. 5, Provisional Technical Secretariat for the Organisation for the Prohibition of Chemical Weapons, pp. 49-52.

⁴³ For information on 1994, see Stock, T., Geissler, E. and Trevan, T., 'Chemical and biological arms control', *SIPRI Yearbook 1995* (note 1), p. 734; and chapter 15 in this volume.

⁴⁴ Moodie, M., 'Beyond proliferation: the challenge of technology diffusion', *Washington Quarterly*, vol. 18, no. 2 (1995), pp. 183-202.

research and transfer of technology for purposes not prohibited under the Convention.⁴⁵

Western Europe and Other Countries (the WEOG countries), a group defined under the future Executive Council of the CWC, responded by stating: ‘The WEOG countries are committed to full and timely implementation of all aspects of the CWC, including Article XI, and to this end, will ensure that their relevant national regulations are consistent with the object and purpose of the CWC at the time of its entry into force for each of them’. In particular, they reiterated ‘their support for free and responsible trade and believe that the use of export licensing will be a critical element in ensuring that the essential goal of the Convention—stemming the proliferation of chemical weapons—will be carried out fully and effectively’.⁴⁶

An important, positive aspect of Article XI is that it facilitates the exchange of information on issues concerning the chemical industry, technology, chemistry, trade and technology transfer. In 1994 it became clear to many states that, if chemical trade among the parties to the CWC is to be facilitated, the implementation of Article XI should be seen from a more practical standpoint:⁴⁷ actual trade barriers between North and South must be identified, and it must be considered whether the existence of export control regimes is really the most significant impediment to trade and technology transfer.

One way to overcome some specific impediments to trade would be for states to inform each other about regulations, investment guidelines, environmental regulations and health guidelines in a timely and efficient manner. With this in mind, it was suggested during PrepCom deliberations that a library or database be established to help ‘promote economic and technological development in the field of chemistry’.⁴⁸ Such a library might include the following subjects: producers and suppliers of chemicals and chemical technology, dangerous properties of chemicals and the handling of chemicals, commercial and technical use of chemicals, sources of standards, and national and international regulations on trade in chemicals and chemical technologies, including transport regulations, customs duties and taxes.

V. The Missile Technology Control Regime

In 1995 three countries joined the MTCR—Brazil, Russia and South Africa—bringing its membership to 28 states.

⁴⁵ ‘Statement by the representative of Nigeria on behalf of the African Group presented at the opening of the tenth session of the Preparatory Commission for the OPCW on 3 April 1995’, PrepCom document PC-X/14, 3 Apr. 1995.

⁴⁶ ‘Statement by the WEOG at the tenth plenary session of the Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons’, PrepCom document PC-X/24, 25 Apr. 1995.

⁴⁷ This was based on the PrepCom’s request for a Permanent Technical Secretariat (PTS) study on that issue (see Note by the Executive Secretary, ‘Request for data on types of information to be contained in a possible database to be established under Article XI’, PC-IX/B/1, 13 Oct. 1994) and a paper submitted by Australia (see ‘Non-paper: Information for Article XI Database’, 6 Nov. 1994).

⁴⁸ ‘Expert Group on Technical Cooperation and Assistance: Seventh Report’, PrepCom document PC-X/B/WP.13, 16 Mar. 1995.

In 1995 the Brazilian Government was in the process of introducing national legislation to enforce controls on exports of missile and related dual-use technologies.⁴⁹ The President of Brazil, Fernando Henrique Cardoso, discussed Brazilian membership of MTCR in a meeting with President Clinton in April 1995. At the Bonn plenary meeting of MTCR partners held on 10–12 October 1995, they agreed to admit Brazil. The Equipment and Technology Annex to the MTCR Guidelines was also amended at this plenary meeting.⁵⁰

The issue of missile transfers has been a significant sub-component of the US–Soviet/Russian bilateral dialogue about strategic weapons.⁵¹ Russian exports of surface-to-surface ballistic missiles were discussed in the Gore–Chernomyrdin Commission. In addition to cooperation in space exploration, environmental monitoring from space and development of new scientific and technical knowledge about future aircraft that could fly close to the limit of or outside the earth’s atmosphere, the commercial exploitation of space is also considered by the Commission. The former ballistic missile production industry in Russia will serve the satellite launch market (in which Russia could be among the market leaders). However, US assistance in this transformation has been conditional on Russian policy towards ballistic missile transfers.

In September 1993 Russia and the USA signed a Memorandum of Understanding which committed Russia to apply the MTCR Guidelines on the sale of missiles and related high-technology goods and services. However, it was not until the July 1995 meeting of the Gore–Chernomyrdin Commission that agreement was reached that Russia would participate in all aspects of the MTCR.⁵²

In 1993 South Africa modified its national export regulations in the Non-proliferation of Weapons of Mass Destruction Act (Act no. 87) to include missiles and related dual-use technologies. On 13 May 1994, in Government Notice no. R888 issued by the Department of Defence, the South African Government introduced a licensing requirement for all items which fall within the limitations of the MTCR.⁵³ With these steps the South African Government acquired the legal authority and administrative capacity to implement its MTCR obligations. On 3 October 1994 South Africa and the USA signed a bilateral missile-related import–export agreement which restated South Africa’s intention to abide by the MTCR Guidelines and included provisions by which South Africa could import space launch vehicles (SLVs) to put satellites into orbit. The two countries issued a joint statement describing mea-

⁴⁹ *Defense News*, 24–30 Apr. 1995, p. 6.

⁵⁰ ‘Missile Technology Control Regime holds plenary meeting in Bonn’, Press Statement by Ministry of Foreign Affairs, FR Germany, 12 Oct. 1995. These amendments were subsequently introduced into the list of items controlled under the EU dual-use regulation.

⁵¹ The US–Soviet dialogue on ballistic missile exports dates back to at least 1990. Shuey, R., *Missile Proliferation: A Discussion of US Objectives and Policy Options*, Congressional Research Service Report 90-120F (Library of Congress, CRS: Washington, DC, 21 Feb. 1990). See also chapter 14 in this volume.

⁵² ‘Talks to focus on missile technology’, *Segodnya*, 27 June 1995, p. 2 (in Russian), in FBIS-SOV-95-123, 27 June 1995, pp. 3–4; ‘Moscow to join export, missile technology bodies’, Interfax, 30 June 1995, in FBIS-SOV-95-127, 3 July 1995, p. 24.

⁵³ Reproduced in [South African] *Government Gazette* (Pretoria), vol. 347, no. 15720 (13 May 1994).

tures that South Africa would take to terminate its own research programme to develop a space launch vehicle.⁵⁴

In 1995 MTCR members implemented a 'no undercut' policy that had been agreed at the plenary meeting in Stockholm in October 1994. According to this policy the MTCR partners will inform one another of cases where a licence for an item contained on the MTCR Equipment and Technology Annex has been denied. Other partners agree not to approve new licences for the same item to the same country. This measure should reduce the possibility that MTCR members can gain competitive advantages over each other in the commercial area by adopting different interpretations of the regime guidelines.

⁵⁴ *US Department of State Dispatch*, vol. 5, no. 42 (17 Oct. 1994), p. 694.