18. Transfer controls and destruction programmes

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I. Introduction

A number of states, including the United States and the European Union (EU) member states, have identified the proliferation of nuclear, biological and chemical (NBC) weapons and their delivery systems as a major threat and a growing danger. The leaders of the Group of Eight (G8) industrialized nations have defined the 'pre-eminent threat to international security' as a situation in which these weapons are acquired by or become available to groups planning mass-impact terrorist attacks.[1]

They have all stated that the response to these threats ought to be multi-faceted, involving actions by individual states and by states acting together both informally and in international organizations. The G8 leaders observed that a range of instruments, all of which are necessary but none of which is sufficient by itself, are available to tackle identified threats. These instruments include export and transfer controls and practical measures to enhance the security of dangerous materials, jointly implemented and with consent on the territory of one state by a coalition of parties that may include states, international organizations, local and regional governments, non-governmental organizations (NGOs) and the private sector.

The invasion, in March 2003, and subsequent occupation of Iraq further reminded states of the importance of developing effective preventive measures, including export controls, that can help to check the proliferation of weapons and thereby perhaps prevent such crises.

This chapter surveys the main developments in multilateral export control cooperation in 2003, including informal arrangements and measures taken by the EU.[2] Section II focuses on the Australia Group (AG), the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG).[3] Section III examines the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), whose participating states conducted a review of its activities in 2003. Supply-side measures in the EU are discussed in section IV. Section V examines two

[1] 'Non-Proliferation of Weapons of Mass Destruction: A G8 Declaration', 2003 G8 Summit, Evian, France, 1–3 June 2003, URL <http://www.g8.fr/evian/english/home.html>. The members of the G8 are listed in the glossary in this volume.

[2] See also chapters 1 and 14 in this volume.

[3] The NSG is discussed in chapter 15 in this volume.

Table 18.1. Membership of multilateral weapon and technology transfer control regimes, as of 1 January 2004

State	Zangger Committee[a] 1974	NSG[b] 1978	Australia Group[a] 1985	MTCR[c] 1987	Wassenaar Arrangement 1996
Argentina	x	x	x	x	x
Australia	x	x	x	x	x
Austria	x	x	x	x	x
Belarus		x			
Belgium	x	x	x	x	x
Brazil		x		x	
Bulgaria	x	x	x		x
Canada	x	x	x	x	x
China	x				
Cyprus		x	x		
Czech Republic	x	x	x	x	x
Denmark	x	x	x	x	x
Finland	x	x	x	x	x
France	x	x	x	x	x
Germany	x	x	x	x	x
Greece	x	x	x	x	x
Hungary	x	x	x	x	x
Iceland			x	x	
Ireland	x	x	x	x	x
Italy	x	x	x	x	x
Japan	x	x	x	x	x
Kazakhstan		x			
Korea, South	x	x	x	x	x
Latvia		x			
Luxembourg	x	x	x	x	x
Netherlands	x	x	x	x	x
New Zealand		x	x	x	x
Norway	x	x	x	x	x
Poland	x	x	x	x	x
Portugal	x	x	x	x	x
Romania	x	x	x		x
Russia	x	x		x	x
Slovakia	x	x	x		x
Slovenia	x	x			
South Africa	x	x		x	
Spain	x	x	x	x	x
Sweden	x	x	x	x	x
Switzerland	x	x	x	x	x
Turkey	x	x	x	x	x
UK	x	x	x	x	x
Ukraine	x	x		x	x
USA	x	x	x	x	x
Total	**35**	**40**	**33**	**33**	**33**

Note: The years in the column headings indicate when the export control regime was formally established, although the groups may have met on an informal basis before then.

[a] The European Commission participates in this regime.

[b] The Nuclear Suppliers Group. The European Commission is an observer in this regime.

[c] The Missile Technology Control Regime.

policy areas in which important new export control-related initiatives were taken in 2003: the international discussion of controls on brokering arms transactions, and the efforts to put in place effective controls on man-portable air defence systems (MANPADS).

While states are responsible for managing weapons and dangerous materials on their territory and in their possession, experience has shown that they do not always have adequate human, technical or financial capacities to do so effectively. The war in Iraq demonstrated the difficulty of securing conventional weapons and dangerous materials after the invasion as well as the vulnerability of the occupying forces to attack. The problem of locating and liquidating weapon stockpiles also underlined the potential importance for states of developing the capacity to carry out practical measures in a range of locations. Section VI examines cooperative arrangements to secure and destroy weapons, including those not subject to arms control agreements. The conclusions are presented in section VII.

II. The main developments in multilateral transfer control regimes in 2003

A number of themes can be identified that are currently being addressed by the informal multilateral regimes in which participating states meet to discuss and improve their national export controls: the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement. The participating states in these regimes as well as the Zangger Committee are identified in table 18.1.[4]

In the 1990s discussions among these states helped governments to identify the main elements of effective export control legislation. While such talks continue, the states have begun to carry out more intensive discussions in the various multilateral regimes about how the legislation that has been developed can be enforced more effectively.

Two features of export controls are critical to increasing the effectiveness of national measures: comprehensive, up-to-date lists of items that need to be controlled, and current information about end-users of potential concern. Reviewing agreed control lists, and exchanging information that helps licensing officers to evaluate specific end-users when assessing applications to export controlled items, are two central activities in the four regimes. In their work the regimes are beginning to emphasize the importance of robust enforcement capabilities and, in particular, to stress the role of industry in effective enforcement. The participating states use all of the regimes as a forum in which to discuss the question of how export controls can contribute to combating terrorism.

[4] The Zangger Committee is an informal group of states that meet to discuss how to interpret their obligations under Article 3.2 of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). It is not a part of the NPT regime. For additional information see URL <http://projects.sipri.se/expcon/NSG_documents.html>.

The Australia Group

The Australia Group was established in 1985 in response to international concern about the use of chemical weapons (CW) in the 1980–88 Iraq–Iran War. The states participating in this informal group initially cooperated to maintain and develop their national export controls in order to prevent the further spread of chemicals that may be used for, or diverted to, CW programmes. The participating states seek to prevent the intentional or inadvertent supply by their nationals of materials or equipment to CW or biological weapon (BW) programmes. Currently, the AG is also developing measures to prevent the acquisition of BW or CW by non-state actors, with a particular focus on measures aimed at individuals or groups planning to carry out terrorist attacks.

The AG has agreed a series of lists that define dual-use precursor chemicals, biological agents, chemical and biological equipment, and related technology. The participating states are informally committed to ensure that these items are subject to national export controls, and they have agreed a set of guidelines that they will consider when assessing export licence applications. At the annual plenary meeting, held in Paris on 2–5 June 2003, the AG added 14 human pathogens that could potentially be used in weapons of mass destruction (WMD) programmes to its Biological Control List.[5]

In 2003 the AG discussed three main sets of issues. First, the expansion and development of the chemical and biotechnology industries have meant that an increasing number of countries now have the technical capacity to supply controlled items. As a result, the AG has expanded its outreach and practical assistance programmes to ensure that as many of these countries as possible adopt national control lists based on the work carried out in the AG and adhere to the AG agreed guidelines. The 2003 plenary session of the AG approved a new plan for targeted outreach activity focused on the Asia–Pacific region.

Second, the AG continued its work to strengthen the barrier against the acquisition of BW or CW by groups planning terrorist acts. It is recognized that such groups might try to obtain items domestically rather than through international transfers. The AG participating states have discussed how to contribute their collective knowledge and expertise to processes carried out within states. Through their cooperation to develop effective export controls states have gained expertise in product classification, regulation and tracking as well as in risk management.

The AG has discussed how programmes to raise awareness and provide guidance for industry could be implemented through the mechanisms developed to carry out dialogue with industry on export control-related issues. The AG has considered the creation of ‘watch lists’ of items, tailored to the industrial base of each country, that could be of particular interest to groups planning to carry out terrorist acts. These lists would not be public but would provide the basis for discussions with industry. The agencies and authorities

[5] Australia Group, ‘Strengthening measures to prevent the spread of weapons of mass destruction’, Press Release, June 2003, URL <http://www.australiagroup.net/en/releases/press_2003_06.htm>.

charged with export control enforcement might also be supplied with these watch lists and might play a role in monitoring domestic procurement of dual-use items.

Third, at the 2003 plenary meeting the AG participating states also approved a practical guide for compliance and enforcement officers to help them detect, identify and prevent illegal transfers of items controlled by the AG. New procedures for improving transparency and enhancing information-sharing among participating states were also developed.

The Missile Technology Control Regime

The Missile Technology Control Regime is an informal arrangement in which countries that share the goal of non-proliferation of unmanned delivery systems for NBC weapons cooperate to exchange information and coordinate their national export licensing processes.[6]

The MTCR was formed in 1987. While it has always included other unmanned air vehicles (UAVs) in its scope of application, the initial primary focus of its activities was on ballistic missiles that can be used to deliver a payload weighing 500 kilograms to a range of 300 kilometres. These technical parameters were considered to be consistent with missiles likely to be used to deliver first-generation nuclear weapons.

The MTCR participating states have subsequently focused their efforts on UAVs that can be used to deliver NBC weapons, a change in emphasis that reflected increased concern about the scale of weapon proliferation and the growing concern that not only states, but also non-state actors might seek to use unmanned aircraft to carry out attacks. At their plenary meeting in Buenos Aires in September 2003 the participating states observed that the MTCR 'will continue to contribute to the fight against terrorism by limiting the risk of controlled items and their technology falling into the hands of terrorist groups and individuals and calls upon all states to take similar action'.[7]

The effect of this change has been to increase the attention paid to controlling cruise missiles as well as items that might be used to manufacture UAVs or adapt civilian UAVs for use as weapons. Increasing attention has also been paid to the possibility that UAVs could be constructed by non-state actors or that civilian aircraft could be modified to deliver NBC weapons.[8]

Controlling technologies that could be used to construct UAVs or adapt them for use as weapons is complicated by the widespread availability of relevant items with civilian uses—such as airframe materials like fibreglass or Kevlar, navigation systems such as the Global Positioning System (GPS) and small turbofan engines. The widespread availability of such items means that

[6] Information on the MTCR is available at URL <http://WWW.MTCR.INFO/english/index.html>.

[7] Ministry of Foreign Affairs of Argentina, 'Plenary Meeting of the Missile Technology Control Regime, Buenos Aires, 19–26 September 2003', Press Statement, 26 Sep. 2003 available at URL <http://www.mtcr.info/english/press/buenosaires.html>.

[8] Gormley, D., 'New developments in unmanned air vehicles and land-attack cruise missiles', *SIPRI Yearbook 2003: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2003), pp. 409–32.

controls based on technical specifications alone would extend licensing to many aircraft and aerospace technologies, greatly increasing the impact (and cost) of the export control system on legitimate civilian trade.

In an effort to resolve this problem, the participating states decided to include national catch-all requirements as an element of the MTCR Guidelines in order to ensure that all participating states have 'a legal basis to control the export of items that are not on a control list, when such items are destined for missile programs'.[9]

At the plenary meeting in Buenos Aires the participating states also agreed to apply controls to so-called intangible technology transfers (ITTs), which might include the sending of missile blueprints via email or facsimile. As with catch-all provisions, many of the MTCR participating states had already incorporated controls on ITT into their national control regulations. These controls will now become an MTCR-wide requirement.

The MTCR has been conducting a more systematic outreach to other states that have agreed to apply its guidelines and control list without participating in the regime. China has been the focus of such efforts, and prior to the September 2003 plenary meeting the Chinese Government sent a letter to the chairman of the MTCR indicating that China would have no difficulty participating in the regime in the light of recent changes in its national export control regulations.[10] The letter might be interpreted as an application to join the MTCR, and this idea has subsequently been discussed.[11] Consultations among technical experts from the MTCR participating states took place in February 2004 to evaluate whether China's national export controls meet the standards required to participate in the MTCR.

The Nuclear Suppliers Group

The Nuclear Suppliers Group was established in 1978 following three years of discussion among seven nuclear supplier countries (Canada, France, the Federal Republic of Germany, Japan, the Soviet Union, the United Kingdom and the United States). It is an informal arrangement of nuclear supplier states that seek to prevent the acquisition of nuclear weapons by states other than those recognized as nuclear weapon states in the framework of the 1968 Non-Proliferation Treaty (NPT).

[9] Ministry of Foreign Affairs of Argentina (note 7).

[10] In Aug. 2002 China introduced strengthened regulations on export control of missiles and missile-related items and technologies as well as an updated control list. The regulations and the control list conform closely to the MTCR documents. In Dec. 2003 the State Council of the People's Republic of China published a White Paper which stated that China 'adopts a positive and open attitude toward all international proposals for strengthening the missile non-proliferation regime'. Information Office of the State Council of the People's Republic of China, 'China's non-proliferation policy and measures', Beijing, 3 Dec. 2003, p. 7, URL <http://www.fas.org/nuke/guide/china/doctrine/wpnp1203.html>.

[11] The MTCR Guidelines and control lists are public documents and any state may apply them through its national export control system. In the past, China has stated that it has been adhering to MTCR Guidelines. As an informal regime, it is not clear what 'membership' of MTCR entails, but here it is considered to mean participation in plenary and expert meetings, including the information exchange among participating states.

The NSG has developed the Guidelines for the Export of Nuclear Material, Equipment and Technology and the Guidelines for Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology, which the participating states apply in making national decisions about what exports to authorize. It has also drawn up lists of items to which these guidelines apply. The International Atomic Energy Agency (IAEA) publishes these guidelines and lists as INFCIRC/254.[12]

The annual plenary meeting of the NSG participating states took place on 22–23 May 2003 in Busan, South Korea.[13] It focused on addressing the challenges to the NPT regime posed by Iran and North Korea, developing dialogue with countries outside the NSG on their involvement in non-proliferation procedures, and refining the NSG control lists and internal guidelines. The meeting also considered, but did not reach consensus on, a number of issues. The participating states considered whether to apply catch-all control provisions in the Dual-Use Guidelines.[14] In addition, the relationship between export controls and the safeguards applied by the IAEA was discussed. This discussion included both the question of how to increase the transparency of the existing NSG full-scope safeguards supply policy and the question of whether to require the application of the IAEA Additional Protocol by the importing state as a condition of supply.[15]

Following the Busan meeting, Russia raised the issue of applying the Additional Protocol as a condition of supply for nuclear technology, arguing that NSG activities should not create obstacles for international nuclear cooperation.[16] In 2003 the Russian Ministry for Atomic Energy (Minatom) pushed for a lifting of international restrictions on the flow of nuclear technology to India.[17]

In February 2004 US President George W. Bush proposed that 'only states that have signed the Additional Protocol should be allowed to import equipment for their civilian nuclear programmes' and that NSG participating states 'should refuse to sell enrichment and reprocessing equipment and technologies to any state that does not already possess full-scale, functioning enrichment

[12] IAEA, 'Communications received from certain member states regarding guidelines for the export of nuclear material, equipment and technology', INFCIRC/254/Rev.6/Part 1, 16 May 2003; and IAEA, 'Communications received from certain member states regarding guidelines for transfers of nuclear-related dual-use equipment, materials, software and related technology', INFCIRC/254/Rev.5/Part 2, 16 May 2003. Most INFCIRCs and IAEA documents are available at URL <http://www.iaea.org/Publications/Documents/index.html>.

[13] NSG, 'Confronting the challenge of nuclear proliferation', Press Statement issued at the Nuclear Suppliers Group Plenary Meeting, Busan, South Korea, 22–23 May 2003, URL <http://www.nsg-online.org/PRESS/2003-07-press-busan.pdf>.

[14] Most countries already have domestic controls that allow the licensing of otherwise non-controlled items if the export is destined to an end-user or end-use of concern. The NSG participating states have shared the denial of exports under the catch-all controls on a voluntary basis for a number of years.

[15] US Department of State, Bureau of Nonproliferation, 'Fact sheet: the Nuclear Suppliers Group', 10 Sep. 2003, URL <http://www.state.gov/t/np/rls/fs/3053pf.htm>. See also chapter 15 in this volume.

[16] Russian Ministry of Foreign Affairs, 'On the plenary session of the Group of Nuclear Suppliers', Press Release (unofficial translation from Russian), 27 May 2003, URL <http://www.ln.mid.ru/brp_4.nsf/0/df075067648f4a1043256d3400388f61?OpenDocument>.

[17] Radyuhin, V., 'Russia for lifting ban on nuclear deals with India', *The Hindu* (Internet edn), 3 Nov. 2003, URL <http://www.hindu.com/2003/11/03/stories/2003110304141200.htm>.

and reprocessing plants' regardless of whether or not it has signed the Additional Protocol.[18]

According to Zhang Yan, permanent representative to the IAEA Atomic Energy Agency in Vienna, China submitted an application to participate in the NSG at the end of January 2004. Prior to its application China held talks with the NSG and adopted policies and mechanisms similar to those of the group.[19]

III. The Wassenaar Arrangement

The Wassenaar Arrangement was established in July 1996. Its objective is to promote transparency, exchange of information and exchange of views on transfers of an agreed range of items with a view to promoting responsibility in transfers of conventional arms and dual-use goods and technologies and to preventing destabilizing accumulations of such items.

The 33 participating states held the second WA assessment in 2003.[20] While the 1999 assessment had produced few tangible results,[21] the 2003 process brought about the first substantial changes in the way the WA functions. The plenary agreed to a number of proposals that had failed to be accepted earlier. Given the consensus principle governing decisions, the progress achieved indicates that individual states' resistance to change has given way to a more constructive approach. To some extent this can be attributed to the fading of policy patterns that were previously characterized by cold war antagonism: the *raison d'être* of the predecessor of the WA, the Coordinating Committee on Multilateral Export Controls (COCOM).[22] In addition, a coalition of interests has been forged by threat perceptions that focus on terrorism. The adopted documents highlight the contribution which export controls have made to tackling the terrorist threat, in particular regarding MANPADS.

A new working method may also have affected the results achieved. The plenary was prepared by 11 task forces composed of several participating states, of which one or more acted as chairman. The task forces covered issues such as general information exchange, terrorism, MANPADS, specific information exchange on *inter alia* small arms and light weapons (SALW), the control lists and the 'catch-all' requirements, arms brokering, ITT, export con-

[18] White House, 'President announces new measures to counter the threat of WMD: remarks by the President on weapons of mass destruction proliferation', Fact Sheet, Washington, DC, 11 Feb. 2004, URL <http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>.

[19] 'China filed to join NSG', *Nuclear News*, Mar. 2004.

[20] At its creation the participating states recognized that the WA would need to develop additional elements if it was to achieve its stated objectives. This was reflected in the decision to call the founding document 'Initial Elements' and to conduct a review of the arrangement in 1999. Following the second assessment in 2003, the participating states decided to review activities regularly through a quadrennial process. WA, 'Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: Initial Elements', 12 July 1996, URL <http://www.wassenaar.org/docs/IE96.html>.

[21] See Anthony, I., 'Multilateral weapon and technology export controls', *SIPRI Yearbook 2000: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2000), pp. 672–80.

[22] See Anthony, I. (ed.), SIPRI, *Arms Export Regulations* (Oxford University Press: Oxford, 1991); and Davis, I., SIPRI, *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK* (Oxford University Press: Oxford, 2002).

trol documents, outreach and participation as well as administrative and procedural issues. The results of their work were discussed at a general working group meeting in October 2003 and, subsequently, presented to the plenary, the executive body. New task forces and informal groups for specific issues, such as outreach, and chaired by various nationalities, will also operate in 2004. Outreach activities are aimed at *inter alia* Brazil, China and South Africa—all countries currently outside the WA but which export significant quantities of controlled items on the WA control lists.

At the Assessment Plenary of 10–12 December 2003, the participating states agreed on major revisions of the founding document ('The Initial Elements') and adopted three documents aimed at tightening export controls in the area of MANPADS, brokering and unlisted equipment (discussed in section V). As a matter of routine, the WA control lists were amended to take into account technical developments. For the first time, a Ministerial Statement affirmed the commitment of the participating states to the WA. It refers to the WA as 'one of the pillars of multilateral efforts towards peace and stability'.[23]

The agreement on substantial changes in the founding document was a major breakthrough. Its title—the Initial Elements—had become outdated, but a change to it had previously been blocked. It was now updated and renamed 'Purposes, Guidelines & Procedures, including the Initial Elements'.[24] Previously, apart from minor revisions of the categories for information exchange on arms detailed in Annex 3, the only significant change had been the insertion, in 2001, of a paragraph on efforts to prevent terrorists' access to arms and dual-use goods and technologies.

In 2003 a new reporting category for the specific information exchange was created: 'small arms and light weapons—man-portable weapons made or modified to military specifications for use as lethal instruments of war'.[25] The participating states agreed to exchange information on transfers of SALW and MANPADS to non-participating states every six months. For all categories, the information should include the quantity, recipient country and (except for missiles and missile launchers) details of model and type. With the addition of this eighth category, the reporting scope of the WA now goes beyond that of

[23] WA, 'Ministerial Statement', Vienna, 12 Dec. 2003. All public documents adopted by the plenary are available on the Wassenaar Internet site at URL <http://www.wassenaar.org/2003Plenary/2003PlenaryDocs.htm>.

[24] WA, 'Purposes, Guidelines & Procedures, including the Initial Elements, as adopted and amended by the Plenary of December 2003', URL <http://www.wassenaar.org/2003Plenary/2003PlenaryDocs.htm>.

[25] They are defined as follows: '8.1 Small Arms—broadly categorised for reporting purposes as: those weapons intended for use by individual members of armed forces or security forces, including revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. 8.2 Light Weapons—broadly categorised for reporting purposes as: those weapons intended for use by individual or several members of armed or security forces serving as a crew and delivering primarily direct fire. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; and mortars of calibre less than 75 mm. 8.3 Man-Portable Air-Defence Systems—broadly categorised for reporting purposes as: surface-to-air missile systems intended for use by an individual or several members of armed forces serving as a crew.' 'Purposes, Guidelines & Procedures, including the Initial Elements (note 24), pp. 11–12. It would appear that this definition requires further clarification and refinement to avoid inconsistencies in national reporting.

the United Nations Register of Conventional Arms (UNROCA).[26] As in previous years, governments also made minor changes to definitions of the existing seven categories of major conventional weapons:[27] the reporting threshold for large-calibre artillery systems was lowered to 75 millimetres. The participating states also agreed to exchange regional views in the context of the general exchange of information and views which they consider relevant to the purposes of the WA. Regional views should be 'based on, but not limited to' section 2 of the 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons', which refers to 'Regional Balance of Forces and the General Situation in the Region'.[28]

The Purposes, Guidelines & Procedures document makes reference to three documents agreed since 1998: 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons' (1998),[29] 'Statement of Understanding on Intangible Transfers of Software and Technology' (2001),[30] and 'Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)' (2002).[31] Under the heading 'scope' it also refers to three documents agreed in 2003: 'Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)',[32] 'Elements for Effective Legislation on Arms Brokering'[33] and a 'Statement of Understanding on Control of Non-Listed Dual-Use Items'.[34] The Statement of Understanding introduces a catch-all requirement to enhance end-use controls, a proposal which had failed in 1999. The participating states agreed that governmental authorization should be required for transfers of non-listed dual-use items to recipients subject to a binding UN Security Council arms embargo or regional arms embargo, whether binding or voluntarily adhered to. 'If the exporter is aware that the items in question are intended, entirely or in part, for a military end-use', the exporter is obliged to notify the relevant authorities, who will decide whether the export should be subject to a licensing requirement.[35] A 'List of Advisory Questions for Industry' was also agreed, which addresses industry needs by outlining indicators for identifying undesirable

[26] On the UN Register, see Wezeman, S. T., *The Future of the United Nations Register of Conventional Arms*, SIPRI Policy Paper no. 4 (SIPRI: Stockholm, Aug. 2003), available at URL <http://editors.sipri.se/recpubs.html>.

[27] The seven categories are battle tanks, armoured combat vehicles, large calibre artillery, military aircraft/unmanned air vehicles, military and attack helicopters, warships, and missiles or missile systems.

[28] 'Purposes, Guidelines & Procedures, including the Initial Elements' (note 24), p. 4.

[29] WA, 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons', 3 Dec. 1998, URL <http://www.wassenaar.org/docs/criteria.html>.

[30] WA, 'Statement of Understanding on Intangible Transfers of Software and Technology', 6–7 Dec. 2001, available at URL <http://www.wassenaar.org/docs/docindex.html>.

[31] WA, 'Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)', 11–12 Dec. 2002, URL http://www.wassenaar.org/docs/best_practice_salw.htm>.

[32] WA, 'Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS), adopted by 10–12 Dec. 2003 Plenary Meeting of the Wassenaar Arrangement', URL <http://www.wassenaar.org/2003Plenary/MANPADS_2003.htm>.

[33] WA, 'Elements for Effective Legislation on Arms Brokering adopted by 10–12 Dec. 2003 Plenary Meeting of the Wassenaar Arrangement', URL <http://www.wassenaar.org/2003Plenary/Brokering_2003.htm>.

[34] 'Statement of Understanding on Control of Non-Listed Dual-Use Items (agreed at the 2003 plenary meeting)', available at URL <http://www.wassenaar.org/2003Plenary/SOU_CatchALL.htm>.

[35] See 'Statement of Understanding' (note 34).

end-users, such as *inter alia* customers offering to pay in cash, and unusual shipping routes or packing and labelling requests.[36]

While a number of documents were adopted by the plenary, some proposals failed to achieve consensus. Importantly, the plenary did not extend membership to Croatia and the EU acceding countries Cyprus, Estonia, Latvia, Lithuania, Malta and Slovenia. Their applications will instead be considered in 2004 on a case-by-case basis, assessing them against the criteria for participation outlined in the Initial Elements. Admitting countries purely on the basis of their EU membership might have created a precedent for other regional groupings such as the former Soviet republics.

The incomplete nature of the EU member states' participation in export control regimes (only the Czech Republic, Hungary and Poland are members of all four export control regimes) could be detrimental to their effectiveness after May 2004, when all EU acceding countries will be part of the EU Single Market. The new EU member states that are not members of the regimes will not participate in the denial notification procedures, the technical discussions updating the lists of controlled items, the exchange of views and information considered relevant to the purposes of the regimes and the informal networking between officials at meetings.

The involvement of non-participating EU members is a key question to be addressed in 2004. This issue will form part of the implementation of the EU's June 2003 'Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction',[37] which also stresses the need to strengthen EU coordination in export control regimes.

IV. Supply-side measures in the European Union

The June 2003 EU Action Plan contains a number of action points in the area of export controls. Some measures were identified for immediate action: ensuring coordinated EU positions *inter alia* on the items to be placed on the control lists developed by the export control cooperation regimes; supporting the membership of acceding countries and considering the involvement of the European Commission in the regimes; promoting end-user oriented export control of non-listed items in the export control regimes when appropriate; and promoting a further strengthening of the information exchange in the regimes, in particular with respect to sensitive destinations, sensitive end-users and procurement patterns.[38] Points for medium-term action included the adoption by member states of common policies related to criminal sanctions for illegal export or brokering of WMD-related material; the introduction of a policy not to export nuclear-related materials and equipment to countries that have not

[36] The 'List of Advisory Questions for Industry' is available at URL <http://www.wassenaar.org/2003Plenary/2003PlenaryDocs.htm>.

[37] Council of the European Union, 'Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction', Council of the European Union document 10354/1/03 REV 1, 13 June 2003, pp. 5–6. See also chapter 14 in this volume.

[38] Council of the European Union (note 37), pp. 5–6.

ratified the IAEA Additional Protocol; reinforcement of the efficiency of export controls in an enlarged Europe by strengthening cooperation and communication between export licensing authorities and customs and border control authorities and between export licensing and exporters; review of the export control systems of member states and acceding countries; and establishment of a programme to assist states in need of technical knowledge in the field of export control.

Progress has been made on several of these actions points, the most visible being the role of the EU in the export control regimes. In addition, a number of the European Commission and Council of the European Union suggestions for strengthening the efficiency of export controls in an enlarged Europe are under consideration in the relevant Council working groups. For example, the Commission Services have suggested that a peer review should be conducted on export control of dual-use items in EU member states and acceding countries. The peer review aims to strengthen the coordination of member states' dual-use export control activities and provide opportunities for mutual learning in order to enhance the effectiveness of implementation of Council (EC) Regulation 1334/2000[39] in an enlarged EU. The review will occur in several phases, the first of which is scheduled for the first half of 2004. The process will be organized around clusters of countries, comprising two member states and one acceding country. For example, the Netherlands, and Sweden, member states, and the acceding country Estonia are grouped together. Some member states are represented in more than one cluster. Experts from member states will visit the acceding country, which in turn will make return visits. Issues to be addressed include licensing, enforcement and industry awareness. Future activities in the context of the peer review will be based on the results of these visits.

Adoption of a Council regulation on trade in torture equipment, which has been under negotiation for a number of years, is not expected before the spring of 2004. In December 2002 the Commission presented a draft Council Regulation on trade in equipment related to torture and capital punishment, which proposes to ban the import and export of controlled equipment that could be used exclusively for torture or capital punishment.[40] In addition, it would introduce a licensing system for equipment that also has uses that are considered legitimate. While agreement on the principle of a ban on torture equipment has been secured, a number of issues are unresolved, including legal questions, the involvement of the Commission in licensing decisions and the types of equipment to be listed.[41]

[39] Council of the European Union, 'Council Regulation (EC) no. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use goods and technologies', *Official Journal of the European Communities*, no. L159, 30 June 2000, pp. 1–215.

[40] European Commission, 'Proposal for a Council Regulation concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment', European Commission document COM (2002) 707 final, 30 Dec. 2002.

[41] The objections raised by the British Government are explained on the Internet site of the Department on Trade and Industry (DTI) at URL <http://www.dti.gov.uk/export.control/policy/tortureria.htm>.

These decisions are likely to lead to major developments in EU export controls on dual-use goods in the future, but in 2003 most changes in supply-side measures were in the context of the EU Code of Conduct on Arms Exports.[42]

The European Union Code of Conduct on Arms Exports

The EU Code of Conduct on Arms Exports was adopted in June 1998. The acceding countries, the European Free Trade Association (EFTA) countries that are members of the European Economic Area (EEA)—Iceland, Liechtenstein and Norway—and Bulgaria, Canada, Croatia, Romania and Turkey have aligned themselves with the principles of the EU Code. The Code document, which contains political commitments but is not legally binding, contains eight criteria for export licensing. The operative provisions outline reporting procedures as well as intergovernmental denial notification and consultation mechanisms. In 2000 the EU member states agreed a list of military equipment to which the Code of Conduct is applied.

The annual report on implementation of the Code of Conduct has become more comprehensive and consistent in terms of statistical data, and more user-friendly regarding decisions taken to clarify and interpret the 1998 document. Since 2002 the report has included a compendium of decisions taken each year, organized by issue area. In addition, a User's Guide to the EU Code was published in November 2003, which further defines and interprets the terms and procedures outlined in the 1998 Code of Conduct.[43] As a result, the Code has developed into an export control instrument considerably beyond its original scope, although the text of the agreement has not been modified.

A key decision taken in 2003 was the establishment of a central database of denial notifications. This will include both notifications of export licence denials and of brokering licence denials when these exist (see the section on brokering below).[44] The database will be located at the Council Secretariat in Brussels, thereby giving the coordinating body a role in the licensing process for the first time, albeit limited to the storing of information. Until a secure network to access data has been established, member states will receive such information on a monthly basis via their representatives in Brussels.

The Council also decided to publish the first revised EU list of military equipment, which uses the same numbering system as the Wassenaar Munitions List.[45] Future changes to the Wassenaar list will not automatically be

[42] Council of the European Union (note 37), pp. 7, 8–11.

[43] Council of the European Union, 'User's Guide to the European Union Code of Conduct on Arms Exports', Council of the European Union document 1428/03, 6 Nov. 2003.

[44] Council of the European Union, 'Fifth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Union*, no. C 320, 31 Dec. 2003, pp. 1–42.

[45] Council of the European Union, 'Common Military List of the European Union (equipment covered by the European Union code of Conduct on Arms Exports) adopted by the Council on 17 November 2003 (updating and replacing the Common List of military equipment covered by the European Union Code of Conduct on Arms Exports adopted by the Council on 13 June 2000)', *Official Journal of the European Union*, no. C 314, 23 Dec. 2003, pp. 1–26.

incorporated into the EU list, however, thus allowing the EU list to be 'independent with regard to future developments'.[46]

Priorities for the future include the provision of practical and technical assistance for the EU acceding countries on request, the development of dialogue with the European Parliament and review of the Code of Conduct.

The 14-page User's Guide to the EU Code effectively presents an interpretation of the Code criteria, closes loopholes and narrows the scope of national interpretation. It defines key terms (thus clarifying cases in which a denial should be circulated) and the steps to follow to comply fully with the notification and consultation requirement. It also specifies the information to be circulated and the procedures to be used for either the issuance or the revocation of a denial. The secure network for the dissemination of Common Foreign and Security Policy (CFSP) documents, COREU,[47] will normally be used for denial notifications and revocations, although member states can also use verbal notes or email messages to initiate consultations. The User's Guide also establishes a new category of denial notifications for brokering.

Both a formal review of the EU Code of Conduct and an enlargement of the geographical scope of the EU will occur in 2004.[48] The review process will coincide with full integration of the 10 new EU states into the information and consultation procedures of the Code of Conduct. In 2003, these 10 countries received aggregate information about denial notifications for the two previous years. Since May 2003, they have also attended meetings of the Council's Conventional Arms Exports Working Group (COARM).[49] However, only EU membership will grant them the right to vote.

Parallel to the growing European dimension of export control policy, in the spring of 2003 an EU precedent was created by the Belgian Government's transfer of licensing competence from the federal government to the three regional governments (Wallonia, Flanders and Brussels). For the first time in the EU a regional government will be involved in implementing the Code of Conduct. Consequently, both the Foreign Ministry and the regions can represent Belgium in COARM meetings. This reduces the federal export control unit to an advisory capacity for regional licensing decisions and an intermediary between the regions and Belgian embassies abroad, which are involved in verifying the validity of end-user certificates.

[46] Council of the European Union, 'Fifth annual report' (note 44), p. 2

[47] COREU is the French abbreviation for European Correspondence, a telex network linking the foreign ministries of the EU member states.

[48] Jones, S. A. 'EU enlargement: implications for EU and multilateral export controls,' *Nonproliferation Review*, vol. 10, no. 2 (summer 2003), pp. 80–89.

[49] On COARM, see SIPRI Export Control Project, URLs <http://projects.sipri.se/expcon/euframe/coarm.htm> and <http://projects.sipri.se/expcon/euframe/eufframe.htm>.

V. Transfer control issues

Controls on arms brokering

In the 1990s the activities of 'arms brokers' were alleged by UN sanctions investigation teams, among others, to have played an important role in arms supplies to conflicts in Africa. International organizations (including the EU, the Organization for Security and Co-operation in Europe, OSCE, and the UN) subsequently investigated whether and how the activity of 'brokering' military items could be defined and controlled.[50] In 2003 a number of decisions were taken that reflect the increased concern about and debate on the concept generally referred to as arms brokering.

At the 2003 plenary meeting, the WA participating states agreed on 'Elements for Effective Legislation on Arms Brokering'. It states that participating states should require a licence or written authorization where exporters are 'negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country'.[51]

In 2003 the OSCE produced a Handbook of Best Practices on Small Arms and Light Weapons (hereafter OSCE Best Practice Guide) which included a chapter covering national control of brokering activities.[52] On 23 June 2003, the European Union agreed a Council Common Position on the control of arms brokering in which member states agreed to take all the necessary measures to control brokering activities 'taking place within their territory and to consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory'.[53] No timetable was established for the implementation of these measures.

The discussions in these various forums revealed a number of obstacles to agreement. First, there is no agreed definition of 'brokering' or 'broker'. Second, because of structural differences between the national export control systems of the countries that are examining the issue of how to control brokering and brokers, it has not been possible to identify a common approach.

[50] E.g., the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects encourages states 'to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. Such legislation or procedures should include measures such as registration of brokers, licensing or authorization'. UN document A/CONF.192/15, 21 June 2001, available at URL <http://disarmament2.un.org/cab/poa.html>.

[51] 'Elements for Effective Legislation on Arms Brokering' (note 33). This decision built on the 'Statement of Understanding on arms brokerage adopted by 11–12 Dec. 2002 Plenary Meeting of the Wassenaar Arrangement', URL <http://www.wassenaar.org/docs/sou_arms_brokerage.htm>.

[52] The elements of the Handbook related to brokering were agreed in OSCE, 'Best Practice Guide on National Controls of Arms Brokering', OSCE document FSC. GAL/63/03/Rev. 2, 19 Sep. 2003. It is available at URL <http://www.osce.org/events/mc/netherlands2003/handbook/>. The members of the OSCE are listed in the glossary in this volume.

[53] 'Council Common Position on the control of arms brokering', *Official Journal of the European Union*, no. L 156, 25 June 2003, p. 79.

The OSCE Best Practice Guide stresses the need to agree on the definition of brokering because the discussion of controls is motivated by the need to tackle problems of illicit arms trafficking. It notes that:

> the primary aim of brokering controls is to allow States to identify the activities of persons who operate in grey areas or in the illegal sector, and to provide them with the means to both prevent and penalize these activities. Definitions of the activities to be controlled should therefore satisfy the criminal law dictates of legal clarity, specificity and recognizability. States should make clear, within their national systems, which activities are included in the category of brokering, and therefore are subject to screening; which actors could be considered brokers; which types of behaviour could be considered illicit, and what kinds of sanctions are available against such behaviour.[54]

In the financial and commercial sector a broker is usually defined as an individual or firm that acts as an intermediary between a buyer and seller, usually charging a commission. The broker possesses information that is valuable for helping the buyer and the seller find one another. Brokering is not the same as trading (dealing), shipping or financing. Although the same legal person might perform all these functions, the functions are separate. The broker does not take ownership of or title to the goods involved in the particular transaction and the goods are never in the physical possession or control of the broker.

Under this definition brokering occurs prior to the conclusion of an agreement or contract and, at the time it is carried out, it is not known if there will be any outcome from the activity. The means by which brokering could be conducted include meetings, exchanges of documents and information (either on paper or in electronic form), and the provision of access to databases.

The EU Common Position and the OSCE Best Practice Guide both recommend extending this definition to include the acquisition by a national or permanent resident of items located in one foreign country for the purpose of transfer to another foreign country (i.e., when the goods do not enter the territory of the state in which the agent carrying out the brokering activity is located). This type of activity might now be understood to be a core element in the definition of brokering activities.

A number of countries apply comprehensive controls on every stage of transactions involving either trade in military goods or military–technical cooperation. The definition of an export under this approach includes not only the physical shipment of goods but any economic or associated activity (including brokerage) related to the trade in goods designated for military purposes. Other countries have applied controls to particular, discrete phases of the overall transaction related to a given controlled item (with licensing most often required prior to the point at which goods are physically shipped outside the customs boundary). In these countries the activity of brokering cannot be assumed to be licensable unless there are specific provisions written into

[54] 'Best Practice Guide on National Controls of Arms Brokering' (note 52), p. 2.

legislation.[55] The various approaches to control of brokering have led to wide divergences in practice.

First, there are countries in which brokering can only legally be carried out by state entities. In Russia and Ukraine, for example, all matters related to military–technical cooperation with foreign states, including brokerage, are under the exclusive authority of state institutions (Rosoboroneksport in Russia, and Ukrspetstekeksport in Ukraine).[56]

Second, there are countries (e.g., Bulgaria, Hungary, Poland, Romania and the USA) in which legal persons are required to register with a national authority and receive a permit before they can engage in brokering activities. In addition to the permit to carry out the activity, in these countries a licence is required for each individual transaction.

Third, although some countries do not require registration, they do require a licence in cases in which any legal person carries out brokering activities. This is the case in a number of EU countries.[57]

Fourth, in another category of country brokering activities are not currently licensable. Only seven of the states that were members of the EU on 1 January 2004 have brokering controls. Moreover, in Italy and Sweden these controls are exercised under general provisions of the export control law and the definition of brokering is not precise. In the context of the Common Position adopted in June 2003 a number of EU countries will probably need to modify their legislation to include more precise control over brokering activities.

In summary, although there is no requirement for countries to control the activity of brokering there is a growing political pressure on states to introduce such controls. However, the lack of consensus on a definition of a broker and brokering is an obstacle to a harmonized approach. Discussions in the EU, the OSCE and the WA are leading European countries, in particular, to consider how to introduce effective national controls and how to harmonize them. Effective legal controls on brokering should target persons operating in grey areas or in the illegal sector, but this should not lead to a situation in which the same transaction is assessed multiple times.

Controls on man-portable air defence systems

Since they were first developed and produced in the late 1950s, portable, short-range, lightweight surface-to-air missiles have proved an effective threat to fixed-wing military aircraft and, perhaps particularly, to military helicopters.[58] While skilled operators have used MANPADS effectively against

[55] Without specific provisions, national authorities would be vulnerable to exporters who challenge the legal basis for denial in cases where the national authorities prevented a transaction or imposed sanctions after discovering an unlicensed transaction.

[56] In both countries there are provisions for limited exceptions to this rule by which a small number of enterprises may carry out foreign military–technical cooperation and trade in certain of their own products.

[57] Information on brokering is available at URL <http://projects.sipri.se/expcon/db1.htm>.

[58] According to one source, MANPADS of different kinds accounted for 269 ‘kills’ of Soviet military aircraft in the period 1979–88 when Soviet forces occupied Afghanistan. According to the same source,

military aircraft, including fast jets and aircraft carrying countermeasures, these weapons are considered to be even more effective when used against slow-flying, unprotected civilian aircraft.

MANPADS have been used to attack civilian aircraft on a number of occasions. Most of these incidents have occurred in conflict areas in south-eastern Europe and in Africa.[59] After the September 2001 terrorist attacks on the USA, concern about the possible use of MANPADS in terrorist attacks was heightened because large numbers of them are available internationally (some are known to be in the inventories of non-state armed groups). Currently, perimeter security measures at many international airports also permit potential attackers to move within range of aircraft during take-off or landing.[60]

There were at least two unsuccessful attempts in November 2002 to destroy civilian aircraft: a chartered Boeing 757 taking off from Mombasa, Kenya; and a commercial helicopter en route from Sanaa to Marib, Yemen. On both occasions the attempt was made with an SA-7 Grail, the first-generation and least sophisticated MANPADS system developed by the Soviet Union.

International discussion of the need to take more effective action to control stocks of MANPADS pre-dates the September 2001 attacks. In 1998 the participating states in the Wassenaar Arrangement agreed that MANPADS posed a threat to civil aviation and decided to consider guidelines to strengthen their national controls on MANPADS in order to avoid their unauthorized possession and use.[61] In 2000 the WA agreed a document containing elements for the export controls of MANPADS.[62]

In 2003 the need to devote more attention and resources to the effective control of MANPADS was discussed in various forums. At the United Nations a group of governmental experts on the continuing operation and further development of UNROCA adopted a consensus report on 1 August. It recommended modifying the definition of Category VII in the Register reporting categories entitled 'Missiles and Missile Launchers' to include MANPADS as an item that should be reported under this category.[63]

The G8 leaders agreed an Action Plan to enhance the control of MANPADS at their June 2003 summit meeting in Evian, France.[64] The plan was one elem-

weapons with infra-red seekers (which were probably MANPADS) accounted for 56% of aircraft 'kills' and 79% of aircraft damaged during Operation Desert Storm in Iraq in 1991. See 'Man Portable Air Defense System (MANPADS)', URL <http://www.globalsecurity.org/military/intro/manpads.htm>.

[59] Recorded incidents include attacks on UN aircraft in Bosnia and Herzegovina, and at least 35 attacks since 1978, the majority of them in Africa. Matthews, W., 'Defending airliners from portable missiles', *Defense News*, 1 Dec. 2003, p. 22.

[60] Around 25–30 non-state groups are believed to possess MANPADS. Bolkcom, C., Elias, B. and Feickert, A. *Homeland Security: Protecting Airliners from Terrorist Missiles*, CRS Report for Congress (Library of Congress: Washington, DC, 3 Nov. 2003), pp. 5–6, available at URL <http://www.fas.org/irp/crs/RL31741.pdf >.

[61] WA, 'Public statement', 3 Dec. 1998, URL <http://www.wassenaar.org/docs/press_4.html>.

[62] WA, 'Elements for Export Controls of Man-Portable Air Defense Systems (MANPADS)', Dec. 2000, URL <http://www.wassenaar.org/docs/oth_manpads.pdf>.

[63] 'Report on the continuing operation of the United Nations Register of Conventional Arms and its further development', in 'Continuing operation of the United Nations Register of Conventional Arms and its further development', UN document A/58/274, 13 Aug. 2003. See also Wezeman (note 26).

[64] 'Enhance transport security and control of man-portable air defence systems (MANPADS): a G8 Action Plan', 2 June 2003, available at URL <http://www.g8.fr/evian/extras/502.html>.

ent of a programme to enhance transport security that had been drafted in the G8 Counter-Terrorism Experts Group (CTEG). The G8 agreed to work actively to promote the elements for the export controls of MANPADS and to implement seven measures on a national basis: (*a*) to provide assistance and technical expertise for the collection, secure stockpile management and destruction of MANPADS surplus to national requirements; (*b*) to adopt strict national export controls on MANPADS and their essential components; (*c*) to ensure strong national regulation of production, transfer and brokering; (*d*) to ban transfers of MANPADS to non-state end-users (MANPADS should only be exported to foreign governments or to agents authorized by a government);[65] (*e*) to exchange information on uncooperative countries and entities; (*f*) to examine the feasibility of technical solutions to prevent unauthorized use of MANPADS; and (*g*) to encourage action in the International Civil Aviation Organization (ICAO) Aviation Security Working Group on MANPADS. The G8 participating states agreed to exchange information on their national implementation of these steps in December 2003.

On 9 June 2003, the defence ministers of the Commonwealth of Independent States (CIS) discussed a draft resolution to establish stricter controls on the sale and export of MANPADS. It was approved by most of the CIS states in August 2003 and requires them to ban transfers to non-state actors, maintain stockpile inventories, share information on inventories and exports, and destroy surplus systems.[66]

In October 2003 the leaders of 21 countries meeting at the Asia–Pacific Economic Cooperation (APEC) forum agreed an Action Plan based on the elements agreed by the G8.[67]

The Assembly of the ICAO, composed of representatives from all contracting states, passed Resolution A32-23 at its 32nd Session in September–October 1998. It calls on the ICAO contracting states 'to reduce the threat posed to civil aviation by terrorist and other unauthorized use of man-portable air defence systems (MANPADS)'.[68] The ICAO Aviation Security Working Group has considered guidelines on countermeasures to assess the actions its members can take to reduce the threat from MANPADS. The working group is concentrating on recommendations for measures that can be taken at airports and the area immediately surrounding them. It has urged that the countermeasures focus on locations at which the threat is considered greatest and take

[65] This is a modification of the policy of several suppliers, including the USA.

[66] 'Council of CIS defense ministers approves draft resolution on MANPADS', *NIS Export Control Observer*, Aug. 2003, p. 12. MANPADS have been used to shoot down Russian military aircraft in Chechnya, and Russian authorities claim that weapons from the stockpiles of the Georgian armed forces were among the equipment recovered during operations against Chechen forces. Georgia did not sign the draft resolution on MANPADS that was discussed by the CIS defence ministers.

[67] Fifteenth APEC Ministerial Meeting: Joint Statement, 17 Oct. 2003, URL <http://www.apec2003.org/eng/index.html>. Cambodia subsequently announced that it would destroy its stockpile of 233 MANPADS, which were imported from the Soviet Union in the 1980s, with US financial and technical assistance. Agence France-Presse, 'Cambodia to destroy more than 200 anti-aircraft missiles', 16 Dec. 2003, URL <http://www.spacewar.com/2003/031216054035.2iwdmwg6.html>.

[68] ICAO 'MANPADS Export Control', ICAO Resolution A32-23, URL <http://www.icao.int/icao/en/res/a32_23.htm>. A full list of resolutions adopted at the 32nd Session is available at URL <http://www.icao.int/cgi/goto.pl?icao/en/assembl/index.html>.

into account the fact that the airline industry is unable to bear the costs of new security measures.[69]

At the WA plenary meeting in December 2003, the participating states strongly endorsed multilateral efforts to develop strict controls on the transfer of MANPADS. In addition, the participating states, all of which already control exports of MANPADS, established guidelines to be applied when making national licensing assessments. They agreed, among other things, that any decision to permit MANPADS exports must be made on a case-by-case basis at senior policy level (and controlled by an individual licence). Exports are only to be approved to foreign governments or to agents specifically authorized to act on behalf of a government after presentation of an official end-use certificate certified by the government of the receiving country. As one measure to prevent unauthorized use of MANPADS, it was agreed that producer countries would 'implement technical performance and/or launch control features for newly designed MANPADS as such technologies become available to them'. In addition, participating states agreed to ensure that each state has adequate criminal sanctions in place when it is proven that illegal transfers of MANPADS have occurred. The WA participating states will promote these agreed principles and standards in their contacts with non-participating states.[70]

VI. Developments in cooperative arms destruction

There is an increasing trend that states should have a 'cradle-to-grave' responsibility for arms and military equipment that they develop, produce, acquire and use. This includes making provision for the demilitarization and disposal of weapons and related materials at the point at which they are no longer considered to be useful. In recent years there has been a tendency for states to cooperate to destroy weapons in the framework of arms control and disarmament treaties. The US Cooperative Threat Reduction (CTR) programme facilitated the implementation of the Russian–US 1991 Treaty on the Reduction and Limitation of Strategic Offensive Arms (START I Treaty). States have cooperated to destroy Russian CW stockpiles in the framework of the 1993 Chemical Weapons Convention (CWC)[71] as well as to assist states to implement the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM Convention).[72]

[69] Speech of Giovanni Bisignani, IATA Director General and Chief Executive Officer, at the AVSEC Aviation Security Meeting, Athens, 18 Nov. 2003, URL <p://www.iata.org/pressroom/iata_speaks/2003-11-18-01.htm>.

[70] 'Elements for Export Controls of Man-Portable Air Defense Systems' (note 62).

[71] The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. See chapter 16 in this volume. The parties and signatories to the CWC are listed in annex A in this volume.

[72] The text of the APM Convention is available at United Nations, 'The Antipersonnel Mine Ban Convention', URL <http://www.mineaction.org/misc/dynamic_overview.cfm?did=23>. The parties and signatories to the APM Convention are listed in annex A in this volume. See also Blom, F., 'Landmines and destruction efforts', *SIPRI Yearbook 2003* (note 8), pp. 712–26.

There has been a growing tendency to examine the process of arms reduction from a cooperative point of view even in cases in which no treaty has been agreed and no national obligation exists. This can consist of programmes to facilitate the implementation of treaty-based destruction activities by states that are not parties to the treaty in question.[73] In addition, some countries have military capacities that are not subject to international agreements but which they, nevertheless, do not need or want and which they lack the financial and/or technical capacity to dispose of in an irreversible and environmentally safe manner.

In December 2003 the foreign ministers of the 55 OSCE member states agreed a Document on Stockpiles of Conventional Ammunition, which is intended to tackle surplus stocks of all categories of conventional ammunition, explosive material and detonating devices considered to represent a hazard to people and the environment.[74] The document included information on the experience gained from projects to collect, secure and destroy ammunition and elaborated practical procedures that could be used by states on a voluntary basis. The OSCE has been trying to facilitate a project to recycle and destroy ammunition and bombs that are stored on military bases which are being closed in Georgia. A number of other initiatives are already attempting to mobilize international resources to assist states to carry out safe and secure demilitarization and disposal.[75]

In 2003 the USA reorganized and strengthened its national weapon destruction activities by creating the Office of Weapons Removal and Abatement (WRA) within the Bureau of Political–Military Affairs at the State Department 'to contain the weapons and their aftereffects that are most responsible for fuelling regional conflicts, unrest and terrorist activity worldwide'.[76] The USA has for some time been a major contributor to demining programmes in a number of countries. The new organization is intended to expand the scope of activities to include assistance to secure or destroy surplus stocks of small arms, light weapons and abandoned ordnance as well as to address the risks posed by poorly secured munitions.[77]

[73] The USA, for example, is the single most important sponsor of mine destruction although it is not a signatory of the APM Convention.

[74] OSCE Press Office, 'New OSCE document tackles risks from ammunition', 1 Dec. 2003, available at URL <http://www.osce.org/features/show_feature.php?id=197>. The OSCE 'Best Practice Guide on National Controls of Arms Brokering' (note 52) includes chapters on National Procedures for Stockpile Management and Security and National Procedures for the Destruction of Small Arms and Light Weapons, URL<http://www.osce.org/fsc/documents/salw/>. See also chapter 17 in this volume.

[75] The UN Practical Disarmament Initiative and the NATO Partnership for Peace Trust Fund both provide an instrument by which countries with a need to carry out demilitarization projects can seek financial and technical assistance. See Bailes, A. J. K., Melnyk, O. and Anthony, I., *Relics of Cold War: Europe's Challenge, Ukraine's Experience*, SIPRI Policy Paper no. 6 (SIPRI: Stockholm, Nov. 2003), available at URL <http://editors.sipri.se/recpubs.html>.

[76] US Department of State, 'Formation of Office of Weapons Removal and Abatement', 6 Oct. 2003, URL <http://www.state.gov/r/pa/prs/ps/2003/24910.htm>.

[77] The US Department of State, Office of Weapons Removal and Abatement Internet site is located at URL <http://www.state.gov/t/pm/wra/>.

The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction

In 2002 the G8 established a Global Partnership Against the Spread of Weapons and Materials of Mass Destruction as a collective effort to keep NBC or radiological weapons out of the hands of terrorists or hostile states.[78] In 2002 the G8 also agreed a statement in which the scope of cooperation in the framework of the Global Partnership was defined to include activities related to non-proliferation, disarmament, counter-terrorism and nuclear safety.

The G8 agreed to raise up to $20 billion over a 10-year period in order to finance activities carried out under the Global Partnership. As a first step towards achieving their overall objectives the G8 agreed to focus their activities primarily in Russia and to concentrate on four priority areas: CW destruction, the dismantlement of decommissioned nuclear powered submarines, the disposition of fissile materials (i.e., making it impossible to use these materials in a nuclear explosive device) and preventing former weapon scientists from contributing to illegal weapon programmes.[79]

The G8 formed a Senior Officials Group (SOG) to oversee and facilitate the implementation of the Global Partnership. Its members report directly to the offices of their respective heads of state or government to ensure continued high-level political engagement in the Global Partnership.

At their June 2003 summit in Evian, France, the G8 leaders reviewed progress in implementing the Global Partnership[80] and agreed guidelines that are intended to facilitate the implementation of projects. The guidelines were developed in the light of implementation difficulties experienced in the past and were tailored to conditions in Russia—the main focus of activities in the first phase of the Global Partnership. Among the issues identified by the SOG as having slowed down or prevented the implementation of projects in Russia were problems related to taxation, liability protection for contractors working on cooperation projects and gaining access to work sites for contractors.

In the past, equipment and materials imported by Russia for use in CTR projects were sometimes subject to taxes, duties, levies and other charges that increased the cost of external assistance to the donors. Donors made clear to Russia that these unanticipated charges could not be justified and that they made it more difficult to sustain political support in donor countries for assistance programmes.

[78] The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction is discussed in Anthony, I., 'Arms control in the new security environment', *SIPRI Yearbook 2003* (note 8); and Anthony, I., *Reducing Threats at the Source: A European Perspective on Cooperative Threat Reduction* (Oxford University Press: Oxford, 2004).

[79] 'Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, G8 Senior Officials Group: Annual Report', June 2003, available at URL <http://www.g8.fr/evian/english/home.html>.

[80] Other G8 initiatives related to controls on radiological sources were adopted at the G8 Summit of Heads of State and Government held in Evian, France, in June 2003. 'Nonproliferation of weapons of mass destruction: securing radioactive sources: a G8 statement', 2 June 2003, available at URL <http://www.g8.fr/evian/english>.

Many envisaged projects deal with hazardous materials and will be carried out in locations whose geographical conditions and climate can be severe. There is therefore a risk of loss of life, personal injury and loss of or damage to property during the completion of a project. Project participants have emphasized that they need to know the extent of their liability in such cases including the rules for compensation, restitution for economic losses arising from damage caused and the costs of both preventive and remedial damage limitation measures during project implementation.

Many of the sites at which projects are being carried out are subject to security arrangements that involve multiple agencies in Russia, including the Federal Security Service, the FSB (Federal'naya Sluzhba Bezopasnosti). On a number of occasions in the past, foreign nationals were refused access to sites in Russia at which projects supported by international assistance were being conducted. At other times, access was subject to long delays while the individuals who were to visit project sites were assessed by Russian authorities. The SOG has worked out procedures intended to make prior notification more efficient and to reduce delays.

In 2003 progress was reported in all of these areas.[81] Russian President Vladimir Putin made a number of high-level decisions on the issue of tax exemptions that were expected to improve the situation.

The Multilateral Nuclear Environmental Programme in the Russian Federation (MNEPR) Framework Agreement that was agreed in 2003 provides a legal framework to guide states in drawing up specific documents establishing rules for carrying out projects related to the management of spent nuclear fuel and radioactive waste in north-western Russia.[82] The negotiation of the MNEPR started at the Barents Euro-Arctic Council (BEAC) meeting in Bodø, Norway in 1999, and the final obstacles to the agreed text were overcome at a BEAC meeting in Kirkenes, Norway, in January 2003.[83] Subsequently, 11 countries as well as the European Community and the European Atomic Energy Community (EAEC, Euratom) signed the MNEPR Framework Agreement in Stockholm on 21 May 2003.

The MNEPR Framework Agreement and its accompanying Protocol on Claims, Legal Proceedings and Indemnification provide an agreed set of rules that any of the signatories can utilize when designing projects for implementation in north-western Russia in the areas of enhancing the safety of spent nuclear fuel and nuclear waste management. The MNEPR Framework Agree-

[81] See, e.g., Devaux, O., 'Le Partenariat mondial du G8 contre la proliferation' [G8 world partnership against proliferation], *Défense Nationale*, vol. 59 (Nov. 2003), pp. 174–81. Devaux, an official of the Ministry of Defence, played an important role in the work of the SOG during the French G8 Presidency.

[82] The text of the MNEPR Framework Agreement is available at URL <http://www.utrikes.regeringen.se/fragor/aktuella_fragor/bilder/pdf/MNEPR%20Agreement%20ENGLISH.pdf.> See also 'Council Decision of 19 May 2003 on the signing on behalf of the European Community and provisional application of a Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation and its Protocol on Claims, Legal Proceedings and Indemnification and approving the conclusion by the Commission on behalf of the European Atomic Energy Community of the abovementioned Agreement and its Protocol (2003/462/EC)', *Official Journal of the European Union*, no. L 155, 24 June 2003, pp. 35–46.

[83] The members of the BEAC are listed on the BEAC Internet site at URL <http://www.beac.st/>.

ment, which was ratified by the Russian Duma on 28 November 2003, should facilitate interactions between project participants to resolve disagreements related to project implementation, should they arise. The agreement establishes rules for the disclosure of financial information and the verification of project-related spending as well as exemptions from customs duties and taxation in connection with financial and technical contributions to MNEPR projects. The protocol to the Framework Agreement establishes rules covering issues of liability in the event project implementation leads to damage of various kinds.

The Framework Agreement established an MNEPR Committee composed of one authorized representative of each of the parties. This individual is also designated as the point of contact for all questions relevant to the MNEPR. The European Commission signed the MNEPR Framework Agreement on behalf of the EU, and it represents the EU on the MNEPR Committee. National representatives of the eight EU member states that signed the agreement (Belgium, Denmark, Finland, France, Germany, the Netherlands, Sweden and the UK) also sit on the committee, and there is a requirement that the European Commission coordinate its position with these member states prior to committee meetings.[84]

The role of the G8 Senior Officials Group has been defined as facilitating and coordinating project implementation. The G8 does not have an executive function and most projects are implemented bilaterally either by states or by the EU through its collective activities. In 2003 there was progress in developing projects in each of the four main priority areas for initial action under the G8 Global Partnership.

In 2003 Canada, Finland, Germany, Italy and Norway expanded their support for CW destruction in Russia. Among the international donors, Germany, in particular, has played a leading role in assisting Russia with CW destruction. France, Germany, Japan, Norway and the UK increased their activities to assist with the safe and secure dismantlement of decommissioned nuclear-powered submarines. Although Italy and the UK have signalled their interest to expand their cooperation in plutonium disposition, there has been less progress towards the development of projects in this area.

The way in which the G8 cooperation can facilitate programme development can be illustrated by the case of Canada—a country that provided a very low level of international non-proliferation and disarmament assistance prior to the establishment of the Global Partnership. Canada is conducting negotiations on a bilateral agreement with Russia that satisfies the Global Partnership's Guidelines for New or Expanded Cooperation Projects. However, rather than waiting until the agreement is in place, a process that has proved time consuming in other cases, during 2003 Canada used existing arrangements to accelerate the delivery of assistance. Under the Global Partnership, Canada will contribute up to $33 million to help construct a railway connecting the chemical weapon storage depot near Planovy to the destruction facility at

[84] The MNEPR Committee met for the first time in Moscow in Oct. 2003. *RANSAC Nuclear News*, 9 Feb. 2004, available at URL <http://www.ransac.org/showdocument.asp?404;http://www.ransac.org/Projects%20and%20Publications/News/Nuclear%20News/index.asp>.

Shchuchye.[85] The funds will be contributed using the United Kingdom's bilateral agreement with Russia, and on 19 November 2003, Canada and the United Kingdom signed a Memorandum of Understanding for the contribution, under which the UK will be responsible for implementing the Project, in consultation with Canada. In another example, Canada has contributed approximately $32 million to the Northern Dimension Environmental Partnership of the European Bank for Reconstruction and Development (EBRD).[86] This will allow Canada to make a contribution to the safe and secure dismantlement of nuclear submarines without the need to establish a separate bilateral programme with Russia.

VII. Conclusions

In 2003 the states that participate in informal multilateral groups to enhance the effectiveness of their national export controls continued to acknowledge that additional efforts are needed to combat and, if possible, reverse the proliferation of weapons of mass destruction and the delivery systems for them. As a result of decisions taken by the Wassenaar Arrangement, a new momentum was generated in the effort to control international exports of conventional arms.

Participating states in the various groups have tried to pursue issues of common concern—such as control over brokering, information about end-users of concern and the effective enforcement of export controls—more systematically using the informal cooperation arrangements. It would be logical to enhance cooperation between the regimes—including cooperation on practical issues such as streamlining the timetables and location of meetings.

A combination of legal commitments and political undertakings has made the European Union the most far-reaching international export control regime. The further development of dual-use export controls is part of the wider process of developing a more effective EU strategy against the proliferation of WMD. The EU Code of Conduct on Arms Exports, which has both normative and operational elements, has become a framework for deeper cooperation between the member states. The framework in which the Code of Conduct (a political declaration) has operated, including an increase in transparency and a climate in which national authorities are subject to 'peer pressure', has stimulated more far-reaching cooperation between states than that achieved so far in processes based on a legally binding document.

In the European Union there is a strong case for strengthening cooperation between the different parts of the overall EU apparatus. This includes cooperation within the European Commission (between the bodies responsible for

[85] Canadian Department of Foreign Affairs, 'Global Partnership Program: chemical weapons destruction', URL <http://www.dfait-maeci.gc.ca/foreign_policy/global_partnership/destruction-en.asp#canadian>.

[86] Canadian Department of Foreign Affairs, 'Global Partnership Program: dismantlement of nuclear submarines', URL <http://www.dfait-maeci.gc.ca/foreign_policy/global_partnership/submarine-en.asp#partners>.

External Relations and Trade) as well as cooperation between the intergovernmental pillars dealing with the EU CFSP (in which export control policies are discussed) and Justice and Home Affairs (in which enforcement agencies discuss police cooperation and border control issues). Effective cooperation will become more important in an enlarged EU.

In 2003 export controls on both dual-use items and arms were examined in the context of EU enlargement—a process that will directly affect the export controls of new member states and that is also likely to influence the export controls of those countries around the perimeter of the enlarged EU.

The strengthening of export controls is one part of the wider effort to develop an effective range of non-proliferation instruments. Another element in that wider process is the effort to secure and, in some cases, eliminate unwanted military capacities and dangerous materials. These cooperative efforts are becoming an increasingly prominent feature in the overall effort to enhance security. In the framework of the G8 and the OSCE a number of such cooperative threat reduction efforts were developed and initiated in 2003.