

II. Limiting the military capabilities of others: developments in arms export control

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During 2011 efforts to improve controls over the export of items specially designed, developed or modified for military use included those in the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies as well as in the European Union (EU). Meanwhile, ongoing efforts to reduce the risks associated with the proliferation of small arms and light weapons (SALW)—including attempts to improve export controls—continued in the Organization of American States (OAS), the Organization for Security and Co-operation in Europe (OSCE) and at the United Nations.

Also during 2011 discussions continued in the UN on the creation of a legally binding arms trade treaty (ATT), prior to the negotiating conference to be held in July 2012.¹ Hopes were raised that China and Russia—which had been relatively passive in discussions—were becoming more engaged in the process when the five permanent members of the UN Security Council (China, France, Russia, the United Kingdom and the United States) issued a joint statement in July 2011 that expressed support for ‘efforts aimed at establishing an international instrument on the transfer of conventional weapons’.² There was a further positive sign on 2 December 2011, when China and Russia voted for the UN General Assembly decision to hold the final session of the ATT Preparatory Committee, having abstained from all previous ATT votes.³ Nonetheless, discussions at the Preparatory Committee meetings during 2011 demonstrated significant differences between states over the content and purpose of a future treaty.

Export control regimes

During 2011 the two informal, non-legally binding, multilateral export control regimes that focus in part on conventional arms transfers—the Mis-

¹ Attention at the July 2011 meeting of the ATT preparatory committee focused on how any treaty would be implemented. Holtom, P. and Bromley, M., *Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms*, SIPRI Policy Paper no. 28 (SIPRI: Stockholm, July 2011).

² Third Preparatory Committee on an Arms Trade Treaty, P5 Statement, 12 July 2011, <<http://www.un.org/disarmament/convarms/ATTPrepCom/Statements.html>>.

³ United Nations, General Assembly, First Committee, ‘The arms trade treaty’, Draft resolution, A/C.1/66/L.50, 14 Oct. 2011; and Reaching Critical Will, ‘Draft resolutions and decisions, voting results, and explanations of vote from First Committee 2011’, <<http://www.reachingcriticalwill.org/political/1com/1com11/resolutions.html>>.

sile Technology Control Regime and the Wassenaar Arrangement—continued their work.⁴ No new members were admitted to either in 2011.⁵

At the MTCR Plenary Meeting in Buenos Aires, Argentina, in April 2011 discussions covered transit and trans-shipment controls as a means of preventing proliferation as well as the risks posed by countries with weak export controls. States exchanged information on the ongoing missile programmes of states in the Middle East, North East Asia and South Asia, including Iran and the Democratic People's Republic of Korea (DPRK, or North Korea).⁶

During 2011 the states participating in the Wassenaar Arrangement continued to update and improve its joint military list. They also adopted two new best practice guidelines, including one on re-export controls for conventional weapon systems, and updated others.⁷ In addition, the Wassenaar Arrangement carried out its fourth assessment and evaluation of the overall functioning of the regime and its 'contribution to regional and international security and stability', the first since 2007. Several initiatives were launched and completed while others continued beyond the conclusion of the assessment period.⁸

The European Union

The 2008 EU Common Position defining common rules governing control of exports of military technology and equipment aims to harmonize the national arms export policies of EU member states in line with agreed minimum standards.⁹ Prior to 2011, meetings of the Council of the EU's Working Party on Conventional Arms Exports (COARM)—where states discuss implementation of the EU Common Position—were chaired by the state holding the rotating Council presidency. COARM meetings are now chaired by a representative of the new European External Action Service (EEAS).¹⁰ In line with Article 15 of the Common Position, a review of the

⁴ The MTCR and the Wassenaar Arrangement also cover transfers of so-called dual-use goods. On their work in these areas see previous editions of the SIPRI Yearbook. On the activities of the Nuclear Suppliers Group (NSG) to coordinate national transfer controls on nuclear materials see chapter 8, section V, in this volume. See also annex B, section III, in this volume.

⁵ However, Mexico was admitted to the Wassenaar Arrangement on 25 Jan. 2012.

⁶ Missile Technology Control Regime, 25th Plenary Meeting, Press release, Buenos Aires, 13–15 April 2011, <<http://www.mtcr.info/english/press.html>>.

⁷ Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 2011 Plenary Meeting, Public statement, Vienna, 14 Dec. 2011, <http://www.wassenaar.org/publicdocuments/index_PS_PS.html>.

⁸ Official from Wassenaar Arrangement participating state, Communication with author, 12 Apr. 2012.

⁹ Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008

¹⁰ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <<http://europa.eu/>>

instrument was initiated in 2011. The EEAS sought member states' views on the potential scope and coverage of the review to be conducted during 2012.¹¹

During 2011 EU member states also proceeded with transposing the European Commission directive on intra-community transfers of defence-related products (ICT Directive) into their national legislation on arms transfer controls.¹² The directive obliges EU member states to introduce simplified procedures for licensing the export of military equipment to other EU member states. It forms part of a wider package of Commission efforts aimed at reducing barriers to intra-EU cooperation in the defence industry.¹³ EU member states were given until 30 June 2011 to transpose the directive and until 30 June 2012 to apply it.¹⁴ As of December 2011, 19 states had informed the Commission that they had transposed the directive.¹⁵

Regional efforts to control small arms and light weapons in the Americas and Europe

Since the late 1990s, many—but not all—regions have adopted legally or politically binding instruments on small arms. Implementation efforts continued in 2011. This section focuses on two regional organizations: the OAS and the OSCE.

The Organization of American States was the first organization to take concrete steps at the regional level to curb the illicit small arms trade by improving controls on the movement of these weapons. The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA) was adopted on 14 November 1997 and entered into force on 1 July 1998.¹⁶ Through its Department of Public Security, the OAS assists states

lisbon_treaty/>. See also Grip, L., 'Mapping the European Union's institutional actors related to WMD non-proliferation', Non-proliferation Papers no. 1, EU Non-proliferation Consortium, May 2011, <<http://www.nonproliferation.eu/activities/activities.php>>, pp. 6–7.

¹¹ Della Piazza, F., Chair of COARM, Presentation to the European Parliament Subcommittee on Security and Defence, 5 Dec. 2011, <<http://www.europarl.europa.eu/ep-live/EN/committees/video?event=20111205-1500-COMMITTEE-SEDE>>. See also Bromley, M., 'The review of the EU Common Position on arms exports: prospects for strengthened controls', Non-proliferation Papers no. 7, EU Non-proliferation Consortium, Jan. 2012, <<http://www.nonproliferation.eu/activities/activities.php>>.

¹² Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, *Official Journal of the European Union*, L146, 10 June 2009.

¹³ Anthony, I. and Bauer, S., 'Controls on security-related international transfers', *SIPRI Yearbook 2009*, pp. 476–78. See also chapter 5, section I, in this volume.

¹⁴ European Commission, Directorate-General for Enterprise and Industry, 'Defence industries: reference documents', 2 Feb. 2012, <http://ec.europa.eu/enterprise/sectors/defence/documents/index_en.htm>.

¹⁵ Hale, J., '19 EU countries OK defense product transfers law', *Defense News*, 13 Jan. 2012.

¹⁶ For a summary and other details of CIFTA see annex A in this volume.

parties to implement the convention and, more broadly, tackle the problem of firearms trafficking. During 2011 the OAS focused on three specific areas: legislative assistance; marking, record keeping and tracing; and stockpile management and surplus destruction.¹⁷

The effectiveness of a multilateral instrument depends, in the first instance, on appropriate national legislation and administrative procedures, and on their enforcement. The OAS offers legislative assistance to its member states in implementation of CIFTA. In 2011 the OAS conducted an analysis of legislation on firearms trafficking in Central American states, coupled with an assessment of their level of implementation of the convention. The OAS plans to expand this initiative to all Spanish-speaking member states in 2012. In addition, a project for the preparation of model legislation, covering all CIFTA issue areas, neared completion in 2011, with approval of the last sets of model legislation expected in late 2012.

CIFTA's marking requirements, subsequently developed in both the 2001 UN Firearms Protocol and the 2005 International Tracing Instrument (ITI), underpin the prosecution of firearms trafficking through tracing.¹⁸ With funding from the USA, the OAS is providing its member states with marking machines, training in their use and associated record keeping equipment. In 2011, 16 OAS member states signed a cooperation agreement with the OAS to participate in the programme and received the equipment and training.¹⁹ As of early January 2012 the project had trained approximately 120 governmental personnel in the use of the marking equipment.

In response to the fact that 'the excessive and destabilizing accumulation and uncontrolled spread of small arms . . . pose a threat and a challenge to peace', the states participating in the Organization for Security and Co-operation in Europe adopted the OSCE Document on Small Arms and Light Weapons in November 2000.²⁰ The document outlines a range of commitments for states in many aspects of SALW control, including in areas relating to transfer controls. Since 2000 it has been supplemented

¹⁷ Information on OAS activities is derived from correspondence with the OAS Department of Public Security, Jan. 2012.

¹⁸ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001, entered into force 3 July 2005, *United Nations Treaty Series*, vol. 2326 (2007); and International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument, ITI), adopted by the UN General Assembly in Decision 60/519, 8 Dec. 2005, <<http://www.poa-iss.org/InternationalTracing/InternationalTracing.aspx>>. On the Firearms Protocol and the ITI see below.

¹⁹ These states are the Bahamas, Barbados, Belize, Costa Rica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and Uruguay. As of 1 Jan. 2012, all but one—Saint Vincent and the Grenadines—were parties to CIFTA.

²⁰ OSCE, Forum for Security Co-operation, OSCE Document on Small Arms and Light Weapons, 24 Nov. 2000, <<http://www.osce.org/fsc/20783>>, section I, para. 1.

and strengthened by the adoption of a series of politically binding decisions on export control as well as the creation of several best practices documents and the exchange of information between states.²¹

During 2011 the OSCE continued to assist participating states to improve their controls over international transfers of SALW. This included conducting a survey of how states were implementing the OSCE Principles on the Control of Brokering in Small Arms and Light Weapons and the development of an electronic end-user certificate template.²² The OSCE also initiated a series of regional workshops for export licensing officials and customs agencies dealing with controls on the export of military and dual-use goods. The first workshop, for states in South Eastern Europe, was held in Zagreb, Croatia, in October 2011. Follow-on events were held in early 2012 in Valletta, Malta, and in Ashgabat, Turkmenistan.²³ Future events are planned in Eastern Europe and the Caucasus.

The United Nations Programme of Action on small arms and light weapons

From 9 to 13 May 2011 an open-ended meeting of governmental experts (MGE) convened in New York to discuss implementation of the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (the Programme of Action, POA).²⁴ On the basis of consultations conducted by the meeting

²¹ See OSCE, *Handbook of Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003); OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports', Decision no. 5/04, FSC.DEC/5/04, 17 Nov. 2004; OSCE, Forum for Security Co-operation, 'Updating the OSCE principles for export controls of man-portable air defence systems', Decision no. 5/08, FSC.DEC/5/08, 26 May 2008; and OSCE, Forum for Security Co-operation, 'Information exchange with regard to sample formats of end-user certificates and relevant verification procedures', Decision no. 12/08, FSC.DEC/12/08, 12 Nov. 2008.

²² OSCE, Forum for Security Co-operation, 'OSCE principles on the control of brokering in small arms and light weapons', Decision no. 8/04, FSC.DEC/8/04, 24 Nov. 2004; OSCE, Conflict Prevention Centre, 'Summary report on replies provided by participating States on the one-off information exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons', FSC.GAL/95/11, 1 Sep. 2011; OSCE, Ministerial Council, 'The continuing implementation of the OSCE Document on Small Arms and Light Weapons', FSC Chairperson's progress report, MC.GAL/2/11, 14 Nov. 2011; and OSCE, Conflict Prevention Centre, 'OSCE helps control export of small arms and light weapons', News, [n.d.], <<http://www.osce.org/cpc/83173>>.

²³ OSCE, Forum for Security Co-operation, 'OSCE holds a workshop for customs and licensing authorities with Mediterranean Partners on military and dual-use goods', Jan. 2012, <<http://www.osce.org/fsc/87153>>.

²⁴ United Nations, General Assembly, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, 20 July 2001, pp. 7–22. On the 2011 MGE see <<http://www.poa-iss.org/MGE/>>. In the UN context, 'open-ended' indicates that all member states are invited to participate. For a fuller account of the MGE see McDonald, G., 'Precedent in the making: the UN meeting of governmental experts', Small Arms Survey Issue Brief no. 5, Mar. 2012, <<http://www.smallarmssurvey.org/publications/by-type/issue-briefs.html>>.

Chair, Ambassador Jim McLay of New Zealand, small arms marking, record keeping and tracing were selected as the themes for the MGE.²⁵

The durable marking of weapons, coupled with adequate record keeping and cooperation between and within countries, allows for the tracing of SALW from the time of manufacture or last legal import to the point of their diversion to the illicit sphere. In practice, the reference point for the discussion of marking, record keeping and tracing was not the POA, but a spin-off measure, the 2005 International Tracing Instrument, which covers the area in much greater detail.

While no substantive outcome was negotiated at the MGE, it did provide a space for focused discussion of technical issues by governmental experts. The discussion covered some current sticking points in ITI implementation.²⁶ For example, since the ITI and the UN Firearms Protocol were adopted, the manufacture of polymer-frame firearms has become more widespread, especially for the civilian market. In contrast to metal-frame firearms, it is relatively difficult to put a durable mark on a polymer-frame weapon, especially after it has been manufactured (e.g. on import into a second country). MGE delegates highlighted this problem and discussed various solutions to it. In the same way, they considered 'implementation challenges and opportunities' arising in all of the areas under discussion, which, besides marking, were record keeping, cooperation in tracing, national frameworks, regional cooperation, and international assistance and capacity building.²⁷

It is clear that some of the discussions held during the MGE, including those conducted in the margins of the main session, will yield concrete improvements in implementation of the ITI. For example, one critical aspect of ITI implementation is the nomination of one or more national points of contact for tracing requests and broader information-exchange functions. As of mid-January 2011, the website of the UN Office for Disarmament Affairs listed ITI-specific points of contact for only 18 of the UN's 192 member states. By 12 May, the penultimate day of the MGE, that figure had increased to 67.²⁸

²⁵ See New Zealand Permanent Mission to the United Nations, Letter dated 13 December 2010 from Jim McLay, Permanent Representative.

²⁶ These points are summarized in a document compiled by the meeting chair. United Nations, General Assembly, Summary by the Chair of discussions at the open-ended meeting of governmental experts on the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 9–13 May 2011, New York, annex to A/66/157, 19 July 2011. On implementation of the ITI see McDonald, G., 'Fact or fiction? The UN small arms process', *Small Arms Survey 2011: States of Security* (Cambridge University Press: Cambridge, 2011), pp. 49–50.

²⁷ United Nations (note 26).

²⁸ McDonald (note 26); and United Nations, Office for Disarmament Affairs, 'ITI National Points of Contact. Updated as of 12 May 2011'.