

## 10. Dual-use and arms trade controls

### Overview

*Governments are increasingly aware that controlling flows of conventional arms and items that can be used for both civilian and military purposes—dual-use items—is a complex process involving regulation of exports and associated brokering, transit, trans-shipment and financing activities. This complexity requires effort and cooperation from countries around the world. States, therefore, engage in various multilateral mechanisms and continually create new instruments, or adapt existing ones, to address these challenges.*

*There were mixed results for multilateral efforts to strengthen trade controls for dual-use items and conventional arms during 2012. With regard to trade controls for conventional arms, the year was characterized by the failure to conclude an arms trade treaty (ATT) in July and to agree a United Nations arms embargo against Syria (see sections I and II in this chapter). Divisions among the five permanent members of the UN Security Council played an important role in both cases. Meanwhile, restrictive measures have been expanded beyond traditional strategic trade controls to regulations and prohibitions regarding items that cannot make a direct contribution to nuclear weapon or missile programmes (see section III). There was more progress in 2012 in the field of trade controls for dual-use items as the multilateral export control regimes agreed to expand the scope of their activities as well as the items subject to controls (see section IV). The European Union also considered strengthening controls on transfers of surveillance technologies through the introduction of a new catch-all clause in its Dual-Use Regulation and it expanded sanctions against Iran and Syria (see section V).*

*The July 2012 UN Conference on an ATT concluded without agreement on a draft treaty text. Several states, in particular Russia and the United States, called for more time for UN member states to discuss these issues. Advocates for an ATT have sought to universalize principles and standards that already exist in regional and national conventional arms trade control instruments.*

*Two issues proved particularly challenging for ATT negotiators in 2012. First, it proved difficult to find an agreeable compromise on how to incorporate respect for obligations under international humanitarian and human rights law alongside state security prerogatives for arms transfers, as a number of states feared that the former would have a negative effect on the latter. In contrast, there is an established consensus on principles and international law on the prohibition of the transfer of biological and chemical weapons, and—with some caveats—on the non-proliferation of nuclear*

*weapons. This body of international law provides legitimacy for multilateral supplier regimes and complements UN Security Council Resolution 1540. While the original rationale and stated aim of Resolution 1540 was to prevent supplies to non-state actors, the wording contains generic obligations regarding comprehensive controls that should apply to all actors.*

*Second, the 2012 draft ATT text defined the scope of items to be subject to transfer controls as encompassing the seven categories of the UN Register of Conventional Arms (UNROCA) plus small arms and light weapons, with some controls on ammunition and parts and components. The scope of the draft was, therefore, narrower than the Munitions List of the Wassenaar Arrangement. In contrast, Resolution 1540 and UN sanctions refer to the control lists agreed by informal supplier regimes when defining dual-use items that are subject to control or prohibition. While much attention focused on the fact that the USA, a member of the Wassenaar Arrangement, took a strong stance on excluding ammunition from the ATT, many other states that are not members of supplier regimes opposed proposals for an ATT to have a broad scope comparable to that of the Wassenaar Arrangement's Munitions List.*

*The final conference on the ATT took place in March 2013, with UN member states given a final chance to achieve consensus on an international treaty to establish the 'highest possible common international standards for the transfer of conventional arms'.*

*In 2012 the informal supplier regimes reviewed the scope of items subject to trade controls. The Australia Group highlighted nanoscience as an area for further attention, while the Wassenaar Arrangement expanded existing trade controls to cover certain types of surveillance technology. In the Missile Technology Control Regime, discussions on scope also continue, in particular on the classification of unmanned aerial vehicles (UAVs) for control purposes.*

*International obligations to establish trade control systems create a legal rationale and policy context for national and international capacity-building efforts. International assistance is essential to the establishment of effective trade control systems, particularly when the instruments establishing obligations do not clearly define standards and leave room for differences in implementation and enforcement. This is the case with Resolution 1540, and an ATT is likely to share this characteristic. One of the advantages for implementing an ATT in this regard is that in many states, the laws, administrative procedures, agencies and staff responsible for controlling transfers of dual-use items overlap with those for conventional arms. Additionally, some categories of goods and technologies appear on control lists for both conventional arms and weapons of mass destruction (WMD), and some conventional arms can also be used to deliver WMD. Enforcement remains a shared challenge for controls on both dual-use items and conventional arms.*