

10. Dual-use and arms trade controls

Overview

In 2013 considerable progress was made in global efforts to strengthen trade controls for conventional arms, with the United Nations General Assembly agreeing in April on the text of the Arms Trade Treaty (ATT) after six years of negotiation. Multilateral efforts in the area of dual-use trade controls were not marked by similar landmark developments, but followed the incremental development path of recent years.

The agreement on the ATT was the result of global efforts to reach a consensus on an international treaty to establish the ‘highest possible common international standards for the transfer of conventional arms’. Although the final conference on the ATT in March 2013 ended with Iran, North Korea and Syria blocking consensus, the treaty was subsequently adopted by the UN General Assembly, and it was opened for signature on 3 June (see section I in this chapter).

The ATT is the first agreement of an international treaty covering the brokering, transit and export of conventional arms. Sections of the treaty also apply to parts, components and ammunition. The ATT provides for information exchange on various aspects of the arms trade, although the precise scope and mechanisms are yet to be defined. The treaty also includes an obligation to report on national implementation systems as well as on transfers of the seven categories of major conventional weapons established by the UN Register of Conventional Arms (UNROCA), as well as on transfers of small arms and light weapons (SALW). Making the reporting on SALW imports and exports obligatory rather than voluntary distinguishes the ATT from UNROCA. However, the scope of the ATT is narrower than the Munitions List of the Wassenaar Arrangement and does not include dual-use items with conventional arms applications.

Advocates for an ATT sought to build on principles and standards that already exist in some conventional arms trade control instruments at the regional and national levels. The specific mention of gender-based violence as a criterion goes beyond most national and regional agreements, including the European Union (EU) Common Position on arms exports, although it is implied in the latter. The compromise agreement on the ATT sought to reconcile a wide spectrum of UN member states’ positions regarding the relationship between state security prerogatives and human security considerations—including obligations under international humanitarian and human rights law—as well as the interests of exporters and importers. This

has resulted in language that leaves scope for interpretation as states translate the treaty into law, policy and practice.

In the area of arms embargoes, results were more mixed, given the continued failure to agree a UN arms embargo against Syria, with divisions among the five permanent members of the UN Security Council playing an important role (see section II). The Arab League's embargo on Syria remained in force, but in June 2013 the EU allowed its 2011 arms embargo to expire, due to a lack of agreement among member states on whether to extend or adapt the embargo, and in particular on whether arms supplies to the opposition should be permitted. In April the EU had agreed to allow the supply of certain non-lethal equipment to Syrian opposition forces, but the supply of equipment and software for use in monitoring of communications by the Syrian Government remained prohibited. In August EU member states suspended exports to Egypt of any equipment that might be used for internal repression, although this was not formalized in a legally binding embargo. In 2013 the UN Security Council imposed one new arms embargo, on the Central African Republic. As in previous years, the UN panels tasked with monitoring UN arms embargoes reported violations.

Four informal, non-legally binding regimes—the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies—continued to work on consensus-based decisions to strengthen strategic trade controls (see section III). These multilateral regimes routinely updated the lists of items subject to control, but did not agree on new guidelines or principles for export-related activities such as brokering, transit and trans-shipment. Mexico joined the Australia Group in 2013, having already been admitted by the NSG and the Wassenaar Arrangement in 2012. India's interest in joining the regimes continued to be subject to considerable discussion, without results. The relevance and importance of the Australia Group, which covers items that have applications in biological and chemical weapons, was highlighted through the use of chemical weapons in Syria. Continued supplies of nuclear reactors to China by Pakistan were subject to controversy inside and outside the NSG.

Capacity-building efforts to implement regional and international obligations continued in the dual-use area, while efforts related to conventional arms are expected to increase in future given the reference to technical assistance included in the ATT. In December 2013 the EU established an programme to support states' efforts to implement the ATT. Effective enforcement remains a shared challenge for controls on both dual-use items and conventional arms, including sanctions and embargoes, and will also be a major challenge for the ATT.