

III. Export control regimes

SIBYLLE BAUER AND IVANA MIČIĆ

In 2013 four voluntary, consensus-based export control 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—worked within their specific fields to strengthen trade controls.¹ Although export controls remain the regimes' main organizing principle, associated trade activities are increasingly becoming the focus of control efforts. However, ongoing discussions to expand the scope of activities and items to be subject to controls—in particular regarding brokering, transit and transshipment, and intangible transfers of technology—achieved no concrete outputs in terms of new documents adopted during 2013.

Discussions on India's participation in the regimes continued in 2013, in particular in the NSG. Meanwhile, following a meeting in 2012 between Pakistan and the Wassenaar Arrangement, in January 2013 Pakistan met with the NSG Troika (comprised of the previous, current and future chairs) in Ankara, Turkey, and in February received outreach visits from the Australia Group and the MTCR.²

The Australia Group

Participants in the Australia seek to prevent the development or acquisition of chemical or biological weapons through coordinated trade controls, including a jointly agreed list of items subject to national licencing requirements.³

In January 2013 the Australia Group issued a statement expressing concern about the situation in Syria and the potential use of chemical weapons.⁴ The group reaffirmed 'the vigilant position adopted by all 41 members with regard to dual-use exports to Syria and the particular scrutiny Australia Group participants afford to exports to Syria', called on all parties in the conflict in Syria not to make use of chemical or biological

¹ For brief descriptions and lists of participating states of each of these regimes see annex B, section III, in this volume.

² Pakistani Ministry of Foreign Affairs, 'Pakistan's engagement with multilateral export control regimes', Press release, 20 Feb. 2013, <<http://www.mofa.gov.pk/secdiv/pr-details.php?prID=1431>>; and Hussain, S., 'Pakistan eyeing MTCR membership, recognition as nuclear power', *Pakistan Today*, 20 Feb. 2013.

³ For a brief description and list of participants of the Australia Group see annex B, section III, in this volume.

⁴ Australia Group, 'Australia Group statement of concern regarding Syrian chemical weapons', 28 Jan. 2013, <http://www.australiagroup.net/en/syria_statement.html>.

weapons, and called for the elimination of these weapons.⁵ By the time of the group's June 2013 plenary meeting, there was increasing evidence of the use of chemical weapons in Syria, and this further influenced discussions. Following the plenary, the group reiterated the points made in its January statement and additionally urged support for the United Nations mission to investigate allegations of the use of chemical weapons in Syria.⁶

Given the potential chemical and biological weapon applications of new and emerging technologies, the plenary continued to focus on developments in chemical agents, the life sciences and nanotechnology, and chemical and biological production equipment.⁷ As is the case each time the Australia Group meets, a number of working groups preceded the 2013 plenary. For example, licensing and enforcement officers discussed specific implementation and enforcement issues and shared their experiences of preventing transfers of sensitive dual-use chemical and biological items (i.e. items with both military and non-military applications). In addition, technical experts met to review the list of chemical and biological items. In March 2013 they amended the Australia Group's Control List of Dual-use Chemical Manufacturing Facilities and Equipment and Related Technology and Software and its List of Biological Agents for Export Control.⁸ In June and July updates for biological equipment and for animal pathogens were published for the Control List of Dual-use Biological Equipment and Related Technology and Software and the List of Animal Pathogens for Export Control Core List.⁹

The plenary continued the previous year's discussion on ways to strengthen cooperation and information sharing 'on approaches to visa vetting, experience in the implementation of catch-all provisions and other measures to further enhance the effectiveness of the Group'.¹⁰ The participating states reaffirmed their commitment to reach out to industry and academia in order to raise awareness of brokering controls—for which new guidelines were agreed in 2012—and controls of intangible transfers of technology (such as via email or through technical assistance).

⁵ On the use of chemical weapons in Syria see chapter 1, section III, and chapter 8, section I, in this volume.

⁶ Australia Group, Media release, Plenary meeting, Paris, 7 June 2013, <http://www.australiagroup.net/en/media_june2013.html>.

⁷ Australia Group (note 6).

⁸ Australia Group, 'Control list of dual-use chemical manufacturing facilities and equipment and related technology and software', Mar. 2013, <http://www.australiagroup.net/en/dual_chemicals.html>; and Australia Group, 'List of biological agents for export control', Mar. 2013, <http://www.australiagroup.net/en/biological_agents.html>.

⁹ Australia Group, 'Control list of dual-use biological equipment and related technology and software', June 2013, <http://www.australiagroup.net/en/dual_biological.html>; and Australia Group, 'List of animal pathogens for export control core list', July 2013, <<http://www.australiagroup.net/en/animal.html>>.

¹⁰ Australia Group (note 6).

The Australia Group also continued to engage with non-participating states. In August 2013 Mexico—which had joined the Wassenaar Arrangement and the NSG in 2012—became the 42nd participating state, the first to join the Australia Group since Croatia in 2007.¹¹ The 40 participating states and the European Commission reached a consensus on Mexico's application during the plenary meeting, expressing their 'very strong support' for Mexico's membership.¹² Mexico's statement in response to the confirmation of its membership highlighted its commitment to non-proliferation, and also emphasized that trade controls allow the Mexican industry 'to acquire greater safety and competitiveness by strengthening the platform for the continued and controlled development of cutting edge technology, particularly in the sectors that utilize chemical substances, biological agents and technologies controlled by the Group'.¹³ Several other applications are still pending, including application by Chile, Kazakhstan, Russia and Serbia.¹⁴ It has been argued that India considers regime membership as a package deal, or at least may want to see a road map for joining the MTCR and the NSG before joining the Australia Group.¹⁵

The Missile Technology Control Regime

The MTCR was established to prevent the proliferation of unmanned systems capable of delivering weapons of mass destruction (WMD).¹⁶ At its 27th plenary meeting in Rome in October 2013, Italy assumed the rotating chair for the second time.¹⁷

¹¹ On the Mexican export control system and the background to Mexico's regime membership see Ochoa, C. E. H. and Morales, P. F. G., 'A milestone in Mexico's export control evolution', *1540 Compass*, no. 3 (spring 2013), pp. 22–25.

¹² Australia Group, 'Press Release: Mexico joins the Australia Group', 12 Aug. 2013, <http://www.australiagroup.net/en/mexico_statement.html>.

¹³ Mexican Ministry of Foreign Affairs and Secretariat of Economy, 'Mexico formally enters the Australia Group', Joint statement, 12 Aug. 2013, <http://www.australiagroup.net/en/joint_sre_statement.html>.

¹⁴ On the dynamics of regime membership expansion see Bauer, S. And Mičić, I., 'Controls on security-related international transfers', *SIPRI Yearbook 2010*, pp. 457–58; and Clinton, H., US Secretary of State, 'Australia Group: supplementary guidance for Australia Group Plenary, September 21–25, 2009', Cable to US Embassy in Canberra and US Embassy in Paris no. 09STATE97434, 18 Sep. 2009, <https://wikileaks.org/plusd/cables/09STATE97434_a.html>.

¹⁵ Nayan, R., 'Accepting a nuclear India', *The Diplomat*, <<http://thediplomat.com/2011/06/accepting-a-nuclear-india/1/>>, 5 June 2011; and Nayan, R. and Stewart, I., 'Export controls and India', King's College Centre for Science and Security Studies Occasional Papers no. 2013/1, Aug. 2013, <<http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/pubs/India-export-control.pdf>>.

¹⁶ For a brief description of the MTCR and a list of its partners see annex B, section III, in this volume.

¹⁷ Missile Technology Control Regime, Press release, Plenary meeting, Rome, 14–18 Oct. 2013, <<http://www.mtc.info/english/press/Italy2013.html>>; and Italian Ministry of Foreign Affairs, 'Bonino: "The war on missiles relaunched from Rome"', 15 Oct. 2013, <http://www.esteri.it/MAE/EN/Sala_stampa/ArchivioNotizie/Interviste/2013/10/20131015_BoninoMTCR.htm>. Italy first chaired the MTCR in 1988. Norway will chair in 2014, followed by Ukraine in 2015.

The MTCR partners states discussed existing and potential missile proliferation developments since the 2012 plenary in Berlin, Germany. While Iran and the Democratic People's Republic of Korea (DPRK, North Korea) were specifically mentioned, concerns were also expressed regarding 'ongoing missile programs in the Middle East, Northeast Asia, and South Asia, which could fuel missile proliferation activities elsewhere'.¹⁸ MTCR partners confirmed their commitment to implementing relevant UN Security Council resolutions, which were specifically listed. The group's Technical Expert Meeting, Licensing and Enforcement Expert Meeting and the Information Exchange Meeting preceded the plenary, as is customary. Discussions included key technology trends as well as procurement activities and methods. The internal functioning of the regime was also discussed, including 'issues related to the continuity and effectiveness of MTCR presidencies'.¹⁹

At the plenary, membership issues were discussed but no new members admitted. The partners agreed to 'redouble their efforts to inform and assist interested parties that are supportive of missile nonproliferation and of the objectives and purposes of the MTCR'.²⁰ Outreach activities in 2013 included visits to Pakistan and the United Arab Emirates (UAE) in February, when the MTCR was still under German chairmanship.²¹ In addition, the 'continuation of individual, collective and regional efforts' to assist countries in 'implementing missile-related export controls as mandated under [UN Security Council] Resolution 1540' was encouraged, and the usefulness of the MTCR control list and guidelines in 'providing an international benchmark for best practice export controls on missile-related items' was highlighted.²²

The MTCR is complemented by the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC), which originated in the MTCR in 2002 but has developed into a separate initiative.²³ A commemorative event on the occasion of the HCOC's 10th anniversary was held in January 2013 in Vienna, Austria.²⁴

¹⁸ Missile Technology Control Regime (note 17). On international transfers of long-range guided missiles see chapter 5, section II, in this volume.

¹⁹ Missile Technology Control Regime (note 17).

²⁰ Missile Technology Control Regime (note 17).

²¹ Bauer, S. and Viski, A., 'Export control regimes', *SIPRI Yearbook 2013*.

²² Missile Technology Control Regime (note 17).

²³ For a brief description and list of signatories of the HCOC see annex B, section III, in this volume. Two states—Antigua and Barbuda and Dominica—joined the HCOC in 2013, taking the number of signatories to 136. The annual HCOC meetings take place in Vienna. The meeting in May 2013 was chaired by Japan. The 2014 meeting will be chaired by Peru.

²⁴ European External Action Service, Delegation to the International Organisations in Vienna, 'HCOC commemorative event', 29 Jan. 2013, <http://eeas.europa.eu/delegations/vienna/press_corner/news_un/2013/hcoc_2_en.htm>.

The retrieval by the Republic of Korea (ROK, South Korea) of a rocket launched by North Korea offered some insights into North Korean procurement and production and illustrated both the importance and limitations of export controls in curbing proliferation. A number of the parts used in the construction of the rocket were reportedly ‘commonly available from China and four other countries’, while the majority of the parts were manufactured inside North Korea.²⁵ According to an analysis by the South Korean Agency for Defense Development, the foreign-made parts—including converters, temperature sensors and other electronic devices—were produced in a total of five countries, and were ‘made for everyday use’—and therefore not listed by the MTCR. The agency concluded that ‘notwithstanding restrictions on the introduction of technology and the acquisition of parts through sanctions by the international community, [North Korea] was able to improve the quality of its long-range missile technology through many experiments’.²⁶

The MTCR also revised and updated its control list and published a version with tracked changes on its website, which is helpful for those countries that adhere to the list without participating in meetings.²⁷

In their 2013 plenary statement, participating governments underlined the ‘importance of focusing on brokering, transit and transshipment issues and on efforts to exploit them to evade export controls’ but did not mention any progress on the development of guidelines or best practices on these issues.²⁸ In contrast, the Australia Group published brokering guidelines in 2012.²⁹

The Nuclear Suppliers Group

The NSG aims to prevent the proliferation of nuclear weapons by controlling transfers of nuclear and nuclear-related material, equipment, software and technology ‘without hindering legitimate trade and international cooperation on peaceful uses of nuclear energy’.³⁰ The group’s June 2013 plenary in Prague, Czech Republic, brought together the 48 participating

²⁵ Kim, K., ‘Most of December rocket was produced within North Korea’, *The Hankyoreh*, 22 Jan. 2013, <http://english.hani.co.kr/arti/english_edition/e_northkorea/570753.html>.

²⁶ Kim (note 25).

²⁷ Missile Technology Control Regime, ‘Equipment, software and technology annex’, 17 Oct. 2013, <http://www.mtcr.info/english/MTCR-TEM-Technical_Annex_Track_Changes_2013-10-17_from_2012-10-23.pdf>.

²⁸ Missile Technology Control Regime (note 17).

²⁹ Bauer and Viski (note 21), pp. 447–48.

³⁰ Nuclear Suppliers Group (NSG), Public statement, Plenary meeting, Prague, 13–14 June 2013, <<http://www.nuclearsuppliersgroup.org/en/nsg-documents>>. For a brief description and list of participants of the NSG see annex B, section III, in this volume. See also Bauer, S., ‘Developments in the Nuclear Suppliers Group’, *SIPRI Yearbook 2012*; and Viski, A., ‘The revised Nuclear Suppliers Group guidelines: a European Union perspective’, EU Non-proliferation Consortium, Non-proliferation Papers no. 15, May 2012, <<http://www.nonproliferation.eu/activities/activities.php>>.

states—including Mexico and Serbia for the first time—as well as the European Commission and the chair of the Zangger Committee (both of which are permanent observers).³¹

Similar to the other regimes, the NSG seeks to keep pace with technological developments and security challenges. The fundamental review of the NSG control lists initiated at the 2010 plenary in Christchurch, New Zealand, was finalized at the 2013 plenary.³² The revision considered the applications of materials, equipment and technology in relation to the processing, use or production of special fissionable material and to the design, testing and development of nuclear explosive devices. Not all items with uses in nuclear weapon-related activities are included in the NSG lists, but individual states may control additional items through ‘catch-all’ provisions defining licensing requirements for unlisted items. The NSG may choose not to list an item for a number of reasons, including as a result of a lack of consensus in control list amendments or the possible implications for legitimate trade, or in order to avoid advertising the potential uses of certain items in connection with nuclear weapons.³³

At the plenary, the annual exchange of information and practices took place on licensing and enforcement issues, which included concerns associated with proliferation activities, in particular in Iran and North Korea. The plenary statement explicitly referred to North Korea’s nuclear test of February 2013, the NSG position in support of the respective resolutions of the UN Security Council and the IAEA Board of Governors resolutions on Iran, and the NSG-relevant UN Security Council resolutions.³⁴ The NSG also amended its guidelines to include a reference to recommendations made by the International Atomic Energy Agency (IAEA) on physical protection.³⁵ The NSG also agreed to launch a newly updated public website to provide information in multiple languages.

³¹ For a brief description and list of members of the Zangger Committee see annex B, section III, in this volume.

³² As is the case with all public NSG documents, the revised trigger and dual-use lists were published by the International Atomic Energy Agency (IAEA) as information circulars. International Atomic Energy Agency (IAEA), Communication received from the Permanent Mission of the Czech Republic to the International Atomic Energy Agency regarding certain member states’ guidelines for the export of nuclear material, equipment and technology, INFCIRC/254/Rev.12/Part 1, 13 Nov. 2013; and International Atomic Energy Agency (IAEA), Communication received from the Permanent Mission of the Czech Republic to the International Atomic Energy Agency regarding certain member states’ guidelines for transfers of nuclear-related dual-use equipment, materials, software and related technology, INFCIRC/254/Rev.9/Part 2, 13 Nov. 2013.

³³ On the role of unlisted items in nuclear weapon programmes see Albright, D., Stricker, A. and Wood, H., *Future World of Illicit Nuclear Trade: Mitigating the Threat* (Institute for Science and International Security: Washington, DC, July 2013).

³⁴ Nuclear Suppliers Group (note 30). On developments regarding Iran and North Korea see chapter 6, sections IX and XI, and chapter 7, sections I and II, in this volume.

³⁵ International Atomic Energy Agency (IAEA), INFCIRC/254/Rev.12/Part 1 (note 32), para. 3(a) and Annex C. On physical protection and nuclear security see Anthony, I., ‘Measures to combat nuclear terrorism’, *SIPRI Yearbook 2013*.

NSG participating states continued to discuss the implementation of the 2008 Statement on Civil Nuclear Cooperation with India and the NSG's relationship with India.³⁶ The Australian Foreign Minister, Julie Bishop, stated during her New Delhi visit in November 2013 that Australia will back India's full membership of the NSG.³⁷ After an informal meeting in March 2013 in Vienna, it was reported that France, Russia, the United Kingdom and the United States supported India's NSG membership bid, while China was opposed. It was also reported that Japan and some European countries, including the Netherlands, Switzerland and Ireland, were 'not particularly favorable to the idea', but did not publicly express an intention to block India's application.³⁸ At a meeting with his Indian counterpart, the Turkish Foreign Minister, Ahmet Davutoğlu, supported India's bid but also stated that the issue of India's membership of the 1968 Non-Proliferation Treaty (NPT) had to be resolved first.³⁹ The USA has publicly stated its support for Indian membership of all four export control regimes, including the NSG, and the issue was also discussed at a US Congressional hearing on export control reform in April 2013.⁴⁰

Meanwhile, in mid-2013 China—which has supplied four nuclear power reactors to Pakistan since the mid-1990s—agreed to provide Pakistan with up to two new ACP-1000 pressurized water reactors. There are concerns that, although the reactors are intended for civilian use, they may 'contribute to Pakistan's nuclear weapons programme and increase the risk of proliferation in the region', and that they also 'may be designed to apply pressure on NSG members to open the way for Pakistan to achieve a global nuclear market access agreement similar to that achieved by New Delhi in 2008'.⁴¹ The sale of the two reactors has re-energized the discussion both

³⁶ The 2008 statement is published as International Atomic Energy Agency (IAEA), Communication dated 10 September 2008 received from the Permanent Mission of Germany to the Agency regarding a 'Statement on Civil Nuclear Cooperation with India', INF/CIRC/734 (Corrected), 19 Sep. 2009. On the relationship between India and the NSG see Bauer (note 30), pp. 382–84; and Bauer and Viski (note 21), pp. 454–55.

³⁷ Hodge, A., 'Australia to back India for nuclear watchdog group membership', *The Australian*, 19 Nov. 2013.

³⁸ Painter, D., 'The Nuclear Suppliers Group at the crossroads', *The Diplomat*, 10 June 2013, <<http://thediplomat.com/2013/06/the-nuclear-suppliers-group-at-the-crossroads/>>.

³⁹ 'Turkey not against India's membership in NSG, Turkish FM says', *Hürriyet Daily News*, 24 July 2013. For a summary and other details of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) see annex A, section I, in this volume.

⁴⁰ US Congress, House Committee on Foreign Affairs, 'Hearing: Export control reform: the agenda ahead', 24 Apr. 2013, <<http://foreignaffairs.house.gov/hearing/hearing-export-control-reform-agenda-ahead/>>; 'US reiterates support for India's multilateral regimes membership', *WorldECR*, [n.d.], <<http://www.worldecr.com/u-s-reiterates-support-for-indias-multilateral-regimes-membership/>>; and 'Le Groupe des fournisseurs nucléaires (NSG) et le régime mondial de non-prolifération nucléaire' [The Nuclear Suppliers Group (NSG) and the global nuclear non-proliferation regime], *Observatoire de la Non-prolifération*, no. 85 (Oct. 2013).

⁴¹ Hibbs, M., 'Power loop: China provides nuclear reactors to Pakistan', *Jane's Intelligence Review*, Jan. 2014. On the nuclear trade between China and Pakistan in relation to the NSG and the application of the so-called grandfather clause in this context see Bauer (note 30), pp. 384–85.

within and outside the NSG on the so-called grandfather clause: China has argued that these transactions fall within the scope of a 2003 bilateral agreement with Pakistan, which it informed the NSG about when it joined in 2004.⁴²

In terms of outreach, the plenary provided additional guidance to the NSG chair, which includes a reference to the UN Security Council's 1540 Committee with regard to brokering and transit activities.⁴³

The Wassenaar Arrangement

While the Australia Group, the MTCR and the NSG focus on WMD and their delivery systems, the Wassenaar Arrangement seeks to prevent 'destabilizing accumulations' by states of conventional arms and related dual-use goods and technologies and to prevent the acquisition of such items by terrorist groups, organizations and individuals.⁴⁴ It promotes transparency and the exchange of information and views on transfers and encourages responsible behaviour in support of regional and international security and stability.⁴⁵

After the adoption of the Arms Trade Treaty (ATT) by the UN General Assembly in April 2013, the Wassenaar Arrangement issued a statement suggesting that the instruments and guidelines for effective implementation of export controls—such as the Wassenaar Arrangement control lists and best practices documents—could be adopted by other states, and that Wassenaar Arrangement participants 'stand ready to share their experience and expertise with other states'.⁴⁶ During its plenary in Vienna on 3–4 December 2013, the group again welcomed the adoption of the ATT, emphasizing that the goals of the ATT align with those of the Wassenaar Arrangement and that participating states are ready to share their experi-

⁴² For opposing views see e.g. Vaid, M., 'China's reactor sale to Pakistan: a nuclear mistake?', Observer Research Foundation, 16 Dec. 2013, <<http://orfonline.org/cms/sites/orfonline/modules/analysis/AnalysisDetail.html?cmaid=60664&mmacmaid=60665>>; Balachandran, G. and Patil, K., 'China's reactor sale to Pakistan: the known unknowns', Indian review of Global Affairs, 16 Nov. 2013, <<http://www.irgamag.com/component/k2/item/5870-china%E2%80%99s-reactor-sale-to-pakistan-the-known-unknownsmistake?>>; and Hibbs, M., 'Pakistan's next Chinese reactor', Arms Control Wonk, 28 Sep. 2013, <<http://hibbs.armscontrolwonk.com/archive/2248/pakistans-next-chinese-reactor>>.

⁴³ Nuclear Suppliers Group (note 30).

⁴⁴ For a brief description and list of participants of the Wassenaar Arrangement see annex B, section III, in this volume.

⁴⁵ Wassenaar Arrangement, 'Guidelines and procedures, including the initial elements', Dec. 2011, <<http://www.wassenaar.org/guidelines/>>.

⁴⁶ Wassenaar Arrangement, 'Public statement by the Wassenaar Arrangement on the Arms Trade Treaty (ATT)', 3 June 2013, <http://www.wassenaar.org/publicdocuments/index_PS.Other.html>. For a summary and other details of the ATT see annex A, section I, in this volume. On the adoption of the ATT see section I above.

ence and expertise with other states.⁴⁷ The implications of the ATT for the work of the group were to be discussed in the months following the plenary.⁴⁸

Denmark held the rotating chair of the plenary meeting in 2013, and regular meetings of the Wassenaar Arrangement's working groups also took place. The group also conducted its annual 'regional views exercise' in order to exchange information on risks associated with transfers of arms and conventional dual-use items to specific regions. Members also continued discussing national practice and experience with end-use and end-user assurances; transit, trans-shipment, brokering and re-export controls; catch-all provisions for non-listed items; industry engagement; and international compliance programmes.⁴⁹

The group reaffirmed its commitment to engaging with non-participating states through bilateral meetings (e.g. with India), providing collective and technical briefings on control list changes, and interacting with industry.⁵⁰ The Wassenaar Arrangement maintains contacts with relevant regional and international organizations, and informal contacts with the NSG are being pursued on specific control list issues. While a number of membership applications are under consideration, no new members were admitted in 2013.⁵¹ Participating states restated that the Wassenaar Arrangement is open to new members 'in compliance with agreed criteria' and indicated that a discussion of strategic issues related to future participation had been launched.⁵²

The plenary also decided to conduct an internal assessment in 2016 in order to review and evaluate the overall functioning of the group, and improve its effectiveness and efficiency. The most recent assessment took place in 2011.⁵³

The Wassenaar Arrangement's control list are amended by clarifying, deleting and adding entries on the basis of the large number of national proposals received each year. In 2013 participating states clarified existing controls for inertial measurement equipment or systems and relaxed

⁴⁷ Wassenaar Arrangement, Public statement, Plenary meeting, Vienna, 3–4 Dec. 2013, <http://www.wassenaar.org/publicdocuments/index_PS_PS.html/>.

⁴⁸ Interview: Talking export controls with Philip Griffiths', *WorldECR*, no. 26 (Oct. 2013), pp. 13–14.

⁴⁹ Wassenaar Arrangement (note 47).

⁵⁰ Wassenaar Arrangement (note 47). On outreach to India see 'Interview: Talking export controls with Philip Griffiths' (note 48).

⁵¹ Interview: Talking export controls with Philip Griffiths' (note 48).

⁵² Wassenaar Arrangement (note 47).

⁵³ Bromley, M. and McDonald, G., 'Limiting the military capabilities of others: developments in arms export control', *SIPRI Yearbook 2012*, p. 426.

controls on items such as instrumentation tape recorders and digital computers.⁵⁴

Control of surveillance technology

In the light of recent concerns over uses of surveillance technology, the Wassenaar Arrangement agreed new export controls for intrusion software and Internet surveillance systems.⁵⁵ On the basis of British and French proposals, a number of items were added to the Wassenaar Arrangement control list, including ‘surveillance and law enforcement/intelligence gathering tools’ and ‘Internet Protocol (IP) network surveillance systems or equipment, which, under certain conditions, may be detrimental to international and regional security and stability’.⁵⁶

Since the events of the Arab Spring in 2011, governments, parliaments and non-governmental organizations have reflected on risks associated with the export of surveillance technology from a human rights perspective, and explored options to address those concerns through export control measures. Traditionally, export controls of dual-use items have been based on the rationale of either WMD non-proliferation or their potential use in connection with conventional military items. While human rights concerns play a role in criteria applied to licensing decisions, the rationale for including items on the control list remains their potential for military use. Items that can be used as torture equipment have been dealt with through a separate control measure in the European Union (EU) legal context.⁵⁷

The chair of the British House of Commons’ Committees on Arms Export Controls, John Stanley, stated that there was a need for constant updating of lists of equipment that require a licence. He emphasized the fact that ‘this is becoming an ever bigger issue as we move further and further into the electronic age when states of all types, democratic and non-democratic, have a capacity for surveillance which is unparalleled’.⁵⁸

In a 2013 interview the Head of the Wassenaar Arrangement Secretariat, Philip Griffiths, responded positively to the question of whether he would

⁵⁴ Wassenaar Arrangement (note 47); and Wassenaar Arrangement, ‘Summary of changes: list of dual-use goods & technologies and munitions list’, 4 Dec. 2013, <<http://www.wassenaar.org/control-lists/>>.

⁵⁵ Wassenaar Arrangement (note 54).

⁵⁶ Wassenaar Arrangement (note 47); and Omanovic, E., ‘International agreement reached controlling export of mass and intrusive surveillance technology’, Privacy International blog, 9 Dec. 2013, <<https://www.privacyinternational.org/blog/international-agreement-reached-controlling-export-of-mass-and-intrusive-surveillance>>.

⁵⁷ Council Regulation (EC) no. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, *Official Journal of the European Union*, L200 (30 July 2005), pp. 1–19.

⁵⁸ Hopkins, N. and Taylor, M., ‘Trade in spy systems must be reviewed, says committee chair’, *The Guardian*, 19 Nov. 2013.

‘expect to see expansion of the dual-use controls list further into telecommunications and other forms of technology that can be used for surveillance’. He highlighted that many categories on the control list (e.g. electronics, computers, telecommunications and information security) were already relevant and explained that items were ‘regularly considered for possible addition to the dual-use list based on national proposals and a collective risk assessment of new technologies and international trends’.⁵⁹

Conclusions

While nuclear weapons had dominated the WMD non-proliferation agenda in the export control regimes for many years, events in 2013 re-focused attention on the issue of chemical weapons. The dynamism of the regimes is also shown by their engagement with non-participating states—as highlighted by the Wassenaar Arrangement’s offer of assistance in implementing the new ATT—ongoing industry outreach efforts by most of the regimes, and the way in which they adapt their control lists to keep pace with emerging technologies of concern—such as surveillance technology—and advances in research and innovation. These aspects of the export control regimes’ work in 2013 demonstrate their continuing relevance.

⁵⁹ Interview: Talking export controls with Philip Griffiths’ (note 48).