

19. Dual-use and arms trade controls

Overview

This chapter reviews international, multilateral and regional efforts to strengthen controls on the trade in conventional arms and dual-use items—items that can be used for both civilian and military purposes.

Section I reviews aspects of the Arms Trade Treaty (ATT), focusing on the results of the First Conference of States Parties (CSP1), which took place in Cancun, Mexico on 24–27 August 2015. Despite disagreement on key issues during the preparatory process, key procedural decisions were made that laid the groundwork for implementation of the ATT. These included the rules of procedure for itself and future CSPs and the location of the ATT Secretariat. However, major challenges to the practical impact of the ATT remain. These include achieving an increase in rates of accession, particularly among states in Africa and Asia, as well as building capacity to enable treaty implementation. Important arms supplying and recipient states, such as China, India, Russia and Saudi Arabia, remain outside the treaty and the United States is yet to ratify it.

Section II examines developments in multilateral embargoes on arms and dual-use items, focusing on restrictions imposed by the United Nations, the European Union (EU) and other regional bodies. In 2015, 38 multilateral arms embargoes were in force: 15 imposed by the UN, 22 by the EU and 1 by the League of Arab States. Of the EU embargoes, 11 directly implemented UN decisions, 3 implemented UN embargoes with modified geographical scope or coverage and 8 had no UN counterpart. The single Arab League arms embargo (on Syria) had no UN counterpart. Two major developments in 2015 were the UN imposing an arms embargo on the Houthi armed group in Yemen and significant changes to the arms embargo against Iran. The EU did not impose any new embargoes during the year. Several violations of UN embargoes were again reported in 2015, involving arms exports by Iran and arms supplies to Libya that were carried out without the permission of the relevant UN sanctions committee. Unlike UN arms embargoes, there are no systematic mechanisms in place for monitoring compliance with EU and Arab League arms embargoes.

Section III analyses the latest developments in the multilateral export control regimes: the Australia Group (AG), 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. Each regime sought to update its trade controls on goods, software and technologies that have uses in connection with chemical, biological, nuclear and

conventional weapons. Discussions on agreeing common standards for controls on transit and trans-shipment resulted in the adoption of a best practice document in the Wassenaar Arrangement. All the regimes faced difficulties with admitting new members, due to the requirement that all existing members must approve the application. In 2015 there was an ongoing discussion in all the regimes about how to engage with non-participating states. In particular, the regimes sought to increase the added value of their outreach dialogue beyond sharing publicly available information. For the AG, this included holding—for the first time—an outreach exercise at the same time as its plenary meeting. Discussions continued on India's participation in the regimes, in particular the NSG and the MTCR. The MTCR did not approve India's membership, reportedly due to a veto based on an unrelated matter. The regimes also amended the common control lists to address the challenges of emerging technologies and the procurement strategies of those seeking to acquire weapons of mass destruction and advanced delivery systems.

At the EU level, export controls on conventional arms and dual-use items were subject to review in 2015 (see section IV). The review of the EU Common Position defining common rules governing control of exports of military technology and equipment was concluded in 2015. While it did not result in changes to the instrument, the guidance attached to certain export criteria was amended, partly in order to take account of sections of the ATT, including its reference to gender-based violence. The EU's revision of its regulation on the export, transit and brokering of dual-use items continued throughout 2015 and is unlikely to reach a conclusion before 2017. The legislative proposal that the European Commission is expected to put forward in 2016 is likely to include expanded controls on transfers of information and communication technology surveillance technologies. It could also lead to a shift beyond the civilian-use or military-use paradigm that frames the range of goods controlled by dual-use export controls to encompass systems used by intelligence agencies and law enforcement agencies.

Section V focuses on the essential role of industry in dual-use and arms trade control. The expansion in the range of private sector entities that are potentially subject to trade controls and the increased complexity of trading patterns has helped drive two sets of developments among national licensing authorities, the EU's export control regimes and—to a lesser extent—international forums. First, there has been a growing shift to a reduction in licensing requirements, notably for less sensitive exports, through the use of global and general licences. Second, there are ongoing attempts to incentivize the adoption of internal compliance programmes in companies and research institutions and to improve standards in this area. The section provides an overview of these developments and explores their potential implications for transparency and non-proliferation.