

15. Dual-use and arms trade controls

Overview

This chapter reviews global, multilateral and regional efforts to strengthen controls on the trade in conventional arms and dual-use items—goods, software and technologies that can be used both for civilian purposes and in connection with conventional, biological, chemical and nuclear weapons, and their delivery systems. It also outlines ongoing discussions to broaden the scope of current control measures and concepts.

Section I reviews aspects of the Arms Trade Treaty (ATT), focusing on the results of an Extraordinary Meeting of States Parties (CSP1.5) in February 2016 and the Second Conference of States Parties (CSP2) in August 2016, both of which took place in Geneva. At the February meeting, key decisions were taken in relation to the role and functioning of the ATT Secretariat. At CSP2 consensus was achieved on the permanent Head of the ATT Secretariat, Dumisani Dladla; the reporting templates recommended for the initial report on treaty implementation and the Annual Report on Arms Transfers; draft terms of reference for the ATT Voluntary Trust Fund; and the setting up of Intersessional Working Groups on Effective Implementation of the Arms Trade Treaty, Treaty Universalization, and Transparency and Reporting. Major challenges remain on the practical impact of the ATT: the low levels of accession in Asia and the Middle East, the commercial and political considerations shaping the interpretation of treaty provisions, important arms-supplying and recipient states remain outside the treaty and limitations with regard to the role and capacities of the Secretariat.

Section II examines developments in multilateral embargoes on arms and dual-use items, focusing on the restrictions imposed by the United Nations, the European Union and other regional bodies. In 2016, 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 in terms of the weapon types included and 8 had no UN counterpart. The single Arab League arms embargo (on Syria) had no UN counterpart. Most of these embargoes only cover conventional arms. However, the UN and EU embargoes on Iran and North Korea, and the EU embargo on Russia also cover exports of dual-use goods. No new multilateral arms embargoes were imposed in 2016. Implementation of the UN embargoes was again not without problems, as demonstrated in the 2016 investigations into their implementation.

Section III analyses the latest developments in the multilateral export control regimes: the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies (Wassenaar Arrangement, WA). Each regime sought to update its respective trade control lists and guidelines. Most of the regimes continued to face difficulties with admitting new members, owing to the requirement that all existing members must approve the application. However, India finally got one step closer to its goal of joining the export control regimes by becoming a participating state in the MTCR and in The Hague Code of Conduct against Ballistic Missile Proliferation in June 2016. Discussions continued in all the regimes about how to better engage with non-participating states. Several of the regimes conducted broader outreach dialogues that went beyond technical briefings.

Section IV highlights key developments in EU dual-use trade controls. The EU's revision of its Regulation on the export, transit and brokering of dual-use items continued throughout 2016 and is unlikely to reach a conclusion before 2018. In September 2016 the European Commission put forward a legislative proposal that includes several elements that have provoked strong negative reaction from industry and several EU member states, and would constitute fundamental changes to the EU dual-use control regime: expansion of the definition of dual-use items to include items that can be used in violation of human rights and in connection with acts of terrorism; an EU control list that for the first time goes beyond the lists of the four export control regimes; and expansion of the so-called catch-all controls for unlisted items to situations where items could be used in human rights abuses or in connection with terrorism.

Section V focuses on discussions about expanding the range of normative concerns that states apply when exporting dual-use goods to include issues relating to human rights. The application of these human rights norms to arms export controls has been broadly accepted for several years. However, their application to dual-use export controls has always been less clear-cut and more unevenly applied. This issue has received increased attention largely as a result of the addition of a number of information and communications technology surveillance systems to the WA and EU dual-use lists. These items have drawn attention largely owing to the human rights concerns associated with their use. Their inclusion in the WA and EU dual-use lists has led to calls for a further expansion in the range of such surveillance systems that are subject to control. At the EU level in particular, this has also fed into discussions about establishing a clearer connection between dual-use export controls and the application of human rights norms.