

10. Dual-use and arms trade controls

Overview

Global, multilateral and regional efforts continued in 2017 to strengthen controls on the trade in conventional arms and in dual-use items connected with conventional, biological, chemical and nuclear weapons and their delivery systems. Membership of the different international and multilateral instruments that are aimed at establishing and promoting agreed standards for dual-use and arms trade controls continued to expand. At the same time, ensuring effective implementation of these instruments—and reaching agreement about what ‘effective implementation’ means—continued to be a challenge. This could be seen in disagreements between non-governmental organizations (NGOs) and states about how to measure and ensure effective implementation of the 2013 Arms Trade Treaty (ATT) and the many reported violations of United Nations (UN) arms embargoes. The difficulties associated with ensuring that dual-use and arms trade controls keep pace with advances in technology and evolving trade patterns were also evident. This was visible in the discussions in the export control regime meetings about updating their control lists and guidance documents and efforts to regulate intangible transfers of technology (ITT).

The third conference of ATT states parties took place in Geneva in September 2017 (see section I). While the conference took a number of key decisions, the tensions between states parties and the community of NGOs that supported the creation of the ATT were again on display. Moreover, while the number of states parties to the treaty continued to increase, levels of compliance with reporting and funding obligations continued to fall short in several areas. Efforts to increase the number of states parties have focused on Asia in recent years and this trend seems likely to continue, given the appointment of Ambassador Nobushige Takamizawa of Japan as president of the fourth conference of states parties. However, while Asia faces a number of the security challenges that the ATT is intended to address, its current political dynamics also place significant obstacles in the way of further increases in the number of parties.

Thirty-five multilateral arms embargoes were in force in 2017: 13 imposed by the UN, 21 by the European Union (EU) and 1 by the League of Arab States (see section II). Of the EU’s 21 embargoes, 9 implemented UN arms embargoes directly, 3 were similar to UN embargoes but differed in geographical scope or the types of weapon covered, and 9 had no UN counterpart. Most of these embargoes only covered conventional arms. However, the UN and EU embargoes on Iran and North Korea and the EU embargo on Russia also covered exports of dual-use items. One new multilateral arms embargo was imposed

in 2017: an EU embargo on Venezuela. As in previous years, investigations by the UN revealed problems in the implementation of its embargoes, with numerous reported cases of violations. However, the scope and significance of these violations varied considerably, with some involving large shipments of arms in contravention of the embargo and others involving a failure by a supplier or recipient state to notify a sanctions committee about a transfer.

Each of the four multilateral export control regimes—the Australia Group (on chemical and biological weapons), 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 (Wassenaar Arrangement, WA)—updated its respective trade control lists and guidelines. As in previous years, a key challenge that all the regimes faced was ensuring that control lists were able to keep pace with the often rapid advances in goods, software and technology (see section III). In recent years all of the regimes have faced difficulties with admitting new members, owing to the requirement that all existing members must approve an application. However, in 2017 India was admitted to the Wassenaar Arrangement and in early 2018 it was admitted to the Australia Group. This follows its admission to the MTCR in 2016. India's application to join the NSG continues to be strongly opposed by a group of countries led by China. There were few changes in the EU's export controls during 2017. The main developments involved discussions concerning the ongoing review of the EU Dual-use Regulation.

The main export control regimes, the EU's controls on the trade in arms and dual-use items, and UN and EU arms embargoes all include requirements to exert and enforce controls on ITT. ITT are generally divided between those that involve transfers of technical data and software and transfers of knowledge and technical assistance. ITT are seen as being particularly difficult to detect, making enforcement hard for national authorities. In addition, controls on ITT also generate significant compliance costs for companies and research institutes (see section IV). The problems in this area are only going to become more acute in the years to come, as new trading patterns and technologies increase the volume and range of ITT that are potentially subject to export controls. During 2017 there were discussions—particularly within the context of the review of the EU Dual-use Regulation but also in the export control regimes—about how controls on ITT should be best structured and applied. Key challenges in this area include if and how export controls should apply to cloud computing and academic publishing, as well as the challenges presented by additive manufacturing—also known as 3D printing—as both an enabler of ITT and a multiplier of associated proliferation risks.

MARK BROMLEY