

## 10. Dual-use and arms trade controls

### Overview

*Global, multilateral and regional efforts continued in 2018 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 seek to establish and promote agreed standards for the trade in arms and dual-use items remained stable following recent expansions. At the same time, there were growing signs that the strength of these instruments is being increasingly tested by stretched national resources. This could be seen in the shortfalls in compliance with mandated reporting under the 2013 Arms Trade Treaty (ATT), the many reported violations of United Nations arms embargoes and the difficulties in finding states willing to act as chair of some of the export control regimes. Broader geostrategic tensions and the rapid pace of technological advances are also eroding international consensus on both the broader purpose and the effectiveness of export controls. This was visible in differences between the United States and the European Union (EU) and within the EU about what goals export controls should be seeking to achieve, as well as in the growing interest in using other mechanisms—particularly controls on foreign direct investment (FDI)—as a means of tackling proliferation and other national security objectives.*

*The Fourth Conference of States Parties to the ATT took place in Tokyo in August 2018 (see section I). While the conference was able to conduct a focused examination of the topic of diversion, it was also forced to spend a considerable amount of time discussing the administration of the trust fund that supports the participation of low-income states and other aspects of treaty architecture. Moreover, levels of compliance with the ATT's reporting and funding obligations continued to fall short in several areas, posing clear challenges for the long-term relevance and health of the treaty. Efforts to achieve universalization have made some progress in recent years and by the end of 2018 the treaty had 100 states parties, although membership remains geographically skewed.*

*Thirty-six multilateral arms embargoes were in force in 2018: 14 imposed by the UN, 21 by the EU and 1 by the League of Arab States (see section II). Of the EU's 21 embargoes, 10 implemented UN arms embargoes directly, 1 was put in place before an equivalent UN embargo was imposed, 2 were similar to UN embargoes but differed in geographical scope or the types of weapon covered and 8 had no UN counterpart. Most of these embargoes only covered conventional arms. However, the UN and EU embargoes on Iran and the Democratic People's*

*Republic of Korea (DPRK, or North Korea) and the EU embargoes on Russia and Syria also covered exports of dual-use items. One new multilateral arms embargo was imposed in 2018: a UN embargo on South Sudan. The UN and EU arms embargoes on Eritrea, imposed in 2009, were lifted. As in previous years, investigations by the UN revealed problems in the implementation of its embargoes, with numerous reported cases of violations.*

*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 and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies—reviewed its respective trade control lists and guidelines in 2018 (see section III). As in previous years, commonalities among the regimes centred around keeping up with technical developments and illegal procurement efforts. An additional complication in recent years has arisen from the increase in geopolitical tensions. Finally, for those regimes with an annually rotating chair, there were indications that it may be becoming more difficult to find governments willing to take the chair.*

*To implement these four regimes in its common market, the EU has established a common legal basis for controls on the export, brokering, transit and trans-shipment of dual-use items and, to a certain degree, military items (see section IV). The EU is the only regional organization to have developed such a framework. In 2018 the EU institutions continued work on the ‘recast’ of the EU Dual-use Regulation and began work on a review of the EU Common Position on Arms Exports. In both cases there were attempts by non-governmental organizations and the European Parliament to expand the scope of these instruments—particularly by strengthening their language on human rights and international humanitarian law. These attempts were opposed by some EU member states.*

*In 2018 the USA, the EU and a number of EU member states took steps to increase the role of regulations on FDI in controlling transfers of ‘sensitive’ or ‘strategic’ technology (see section V). A key focus of national and multilateral dual-use and arms export controls is regulating transfers of technology. Long-standing challenges to the efficacy of export controls have been compounded by rapid advances in military-relevant emerging technologies in the civilian sector and the growing levels of foreign investment in the companies and research institutes involved. However, attempts to use FDI regulations to place restrictions on the trade in technology may come to be seen as further evidence of the willingness of states to use export controls to further their own economic interests and—in the long term—may undermine the value of export controls as a multilateral tool for countering destabilizing transfers of arms and dual-use items.*