

III. The multilateral export control regimes

KOLJA BROCKMANN

The four main multilateral export control regimes are 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 (Wassenaar Arrangement, WA).¹ The regimes are informal groups of states which coordinate trade controls and related policies, and exchange information and good practices on trade in goods and technologies that have uses in connection with chemical, biological, nuclear and conventional weapons and their means of delivery (table 14.3). Each of the regimes takes decisions by consensus and their agreed common rules and control lists are politically rather than legally binding. The states participating in a regime implement the regime-prescribed controls through national laws. A large and increasing number of states that are not participating in the regimes adopt regime control lists and adhere to regime guidelines and regime-issued guidance. The regimes thus have an important international norm-setting function beyond their membership.² For the participating states, the regimes also serve an important information-exchange function, as they facilitate sharing of information about (a) export licence denials, and in some cases licences granted; (b) enforcement and prosecution cases; and (c) best practices among national policy and licensing officials, technical experts, and enforcement and intelligence officers.

In 2020 the impact of the Covid-19 pandemic was the dominant influence on the work of the regimes—as in almost all areas. The public health situation and the restrictions on international travel and in-person meetings meant that since March 2020 none of the regimes has been able to hold its annual plenary—the main decision-making body—or intersessional meetings. Consequently, no major decisions, such as amendments to the regimes' control lists, could be taken for most of 2020. As in 2019, none of the regimes admitted new participating states or partners, nor did additional states officially declare adherence to either the AG or the MTCR—which both have an official procedure for non-members to declare adherence. The AG is the only one of the four regimes in which participating states agreed to conduct at least some official meetings in virtual formats. The regimes took a range of measures—varying in each one—to address challenges to their work posed

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

² Bauer, S., 'Main developments and discussions in the export control regimes', Literature Review for the Policy and Operations Evaluations Department of the Dutch Ministry of Foreign Affairs: Final Report, SIPRI, Aug. 2017, p. 62.

Table 14.3. The four multilateral export control regimes

Regime (year established)	Scope	No. of participants ^a	2020 plenary chair	2020 plenary status
Australia Group (1985)	Equipment, materials, technology and software that could contribute to chemical and biological weapons activities	43	Australia	Cancelled
Missile Technology Control Regime (1987)	Unmanned aerial vehicles capable of delivering weapons of mass destruction	35	Austria	Postponed to 2021
Nuclear Suppliers Group (1974)	Nuclear and nuclear-related materials, software and technology	48 ^b	Belgium	Postponed to 2021
Wassenaar Arrangement (1996)	Conventional arms and dual- use items and technologies	42	Croatia	Cancelled

^a Participant numbers are as of 31 Dec. 2020.

^b In addition, the European Union and the chair of the Zangger Committee are permanent observers of the Nuclear Suppliers Group.

Sources: Australia Group; Missile Technology Control Regime; Nuclear Suppliers Group; and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies.

by the pandemic. These included the upgrading of the information-sharing system of the NSG, introduction of a newsletter by the MTCR, and increased participation of regime representatives in virtual meetings organized by third parties.

The Australia Group

The AG participating states coordinate and harmonize their national export controls to reduce the risk of contributing to the proliferation of chemical and biological weapons.³ The AG was founded in 1985 upon an initiative by Australia in response to the revelation of extensive procurement of precursor chemicals, equipment and materials from Western states that were found by a United Nations investigation to have been used in chemical weapons in the 1980–88 Iran–Iraq War.⁴ Since then the AG has significantly expanded its coverage to include equipment, materials and technology relevant to the development, production and use of both chemical weapons and biological weapons.⁵ The AG participating states discuss technological developments and emerging technologies to continuously update the control lists defining

³ Australia Group, 'The Australia Group: An introduction', [n.d.]; and Australia Group, 'Objectives of the Group', [n.d.].

⁴ Australia Group, 'The origins of the Australia Group', [n.d.].

⁵ Australia Group (note 4).

these items. The AG is permanently chaired by Australia which also runs an informal secretariat situated within the Australian Department of Foreign Affairs and Trade.

The number of participants in the AG has grown from 18 to 43, including the European Union (EU). In 2020, no new participants were admitted, while several applications are still under consideration.⁶ The AG encourages states not participating in the regime to make voluntary declarations of adherence to the guidelines and common control lists. Although the AG offers such adherents additional access to information and to assistance from AG participating states with implementing the AG guidelines and control lists, Kazakhstan remains the only state to have submitted the required notification.⁷

The AG held an intersessional meeting on 6 February 2020 in Bratislava, hosted by the Slovak Republic, to continue discussions on the addition of novichok nerve agent precursors to the AG's control lists and on improving the implementation of catch-all controls.⁸ In November 2019 the Organisation for the Prohibition of Chemical Weapons had added novichok nerve agents to Schedule 1 of banned substances of the Chemical Weapons Convention. The AG followed and complemented this step by agreeing to add novichok nerve agent precursors to its chemical weapons precursors control list.⁹ The AG further agreed to 'continue reviewing other potential chemical precursors that might need to be added to the control list in the future'.¹⁰

The AG cancelled its annual plenary meeting in Paris and the chair did not conduct any outreach missions in 2020, because of pandemic restrictions. In contrast to the other regimes, the AG managed to find consensus among the participating states on resuming some of its official meetings in a virtual format. Nevertheless, no other changes to the AG control lists were adopted after the February 2020 intersessional meeting.

The Missile Technology Control Regime

The MTCR aims to prevent the proliferation of missiles and other unmanned delivery systems capable of delivering chemical, biological or nuclear (CBN) weapons. The Group of Seven (G7) largest industrialized states founded the MTCR in 1987 with the objective of helping to prevent the proliferation of

⁶ Australia Group, 'Australia Group participants', [n.d.].

⁷ Australia Group, 'Australia Group adherents', [n.d.].

⁸ Australia Group, 'Statement by the Australia Group chair: Addition of novichok precursor chemicals to the Australia Group Control List', 28 Feb. 2020.

⁹ Brockmann, K., 'The export control regimes', *SIPRI Yearbook 2020*, pp. 547–58. For recent developments on the use of novichok agents, the Chemical Weapons Convention and the work of the Organisation for the Prohibition of Chemical Weapons see chapter 12, sections IV and V, in this volume.

¹⁰ Australia Group (note 8).

nuclear weapons by introducing export controls on goods and technologies related to missiles capable of carrying nuclear weapons.¹¹ The scope of MTCR controls expanded to include ballistic and cruise missiles, and all unmanned aerial vehicles (UAVs) capable of delivering CBN weapons.¹² The MTCR covers any such missile or UAV ‘capable of delivering a payload of at least 500 kg to a range of at least 300 km’, or destined to be used to deliver CBN weapons.¹³ The number of MTCR participants—referred to as ‘the partners’—has grown from 7 to 35 states, but has not increased since the 2016 admission of India despite numerous pending applications—including from nine EU member states.¹⁴ The MTCR has formalized declarations of adherence to the MTCR guidelines since 2014, which offers benefits to adherent states, including invitation to technical outreach meetings, briefings on control list changes, meetings with the MTCR chair and access to some presentations from Licencing and Enforcement Experts Meetings (LEEM).¹⁵ Since its introduction, only three states—Estonia, Kazakhstan and Latvia—have unilaterally declared their adherence by notifying the MTCR Point of Contact in Paris, and no additional states have done so in 2020.

The partners agreed on a provisional postponement of the 2020 plenary to be held in Vienna under the chairship of Austria on 15–19 March 2021—if the circumstances related to the pandemic permit in-person meetings.¹⁶ New Zealand nevertheless handed over the chair to Austria in October 2020, in line with the established chairing periods. Austria will be followed by Russia assuming the chair for the period 2021/22 and by Switzerland for the period 2022/23. Informal consultations among some partners took place in various formats. Proposals and non-papers on topics of discussions continued to be submitted and shared among the participants—for example, on technical topics in the Technical Experts Meeting (TEM).¹⁷ The co-chair of the TEM was taken over by the United Kingdom and Switzerland from the Netherlands and Australia.¹⁸

The New Zealand chair conducted several outreach activities to engage non-members in late 2019 and early 2020, before in-person outreach had

¹¹ Missile Technology Control Regime, ‘Frequently asked questions (FAQs)’, [n.d.]. The G7 states are Canada, France, Germany, Italy, Japan, the United Kingdom and the United States.

¹² Missile Technology Control Regime (note 11).

¹³ Missile Technology Control Regime, ‘MTCR Guidelines and the Equipment, Software and Technology annex’, [n.d.].

¹⁴ Missile Technology Control Regime, ‘Partners’, [n.d.].

¹⁵ Missile Technology Control Regime, ‘Adherence policy’, [n.d.].

¹⁶ Hajnoczi, T., ‘Upcoming chair’s introduction’, *Missile Technology Control Regime Newsletter*, 3 Sep. 2020, p. 5.

¹⁷ Government senior adviser on export control technical policy, Interview with the author, 16 Dec. 2020.

¹⁸ Horton, A., ‘The TEM: Keeping calm and carrying on!’, *Missile Technology Control Regime Newsletter*, 3 Sep. 2020, p. 2.

to be suspended due to the pandemic. The chair participated in a training course for UN Security Council Resolution 1540 Points of Contact in the Asia-Pacific Region, which took place in China, and used the opportunity to hold a bilateral meeting with Chinese officials to ‘convey the Regime’s interest in renewing contact on MTCR issues with China’.¹⁹ China has pursued membership and declared that they would follow the MTCR guidelines in the past, but some partners—most vocally the United States—opposed Chinese membership and pointed to its mixed record on missile non-proliferation and shortcomings in its export control system.²⁰ The MTCR was also represented at the 27th Asian Export Control Seminar in February 2020 in Tokyo through a presentation and a side event for outreach to Asian countries.²¹ The only formal MTCR outreach mission was to Israel in March 2020, continuing the regular engagement with Israel.²² The MTCR also published its first newsletter in September 2020, which took stock of the outgoing chair’s work, the work of the TEM, the Information Exchange Meeting (IEM), and the LEEM. This is a notable step towards more transparency, particularly during the pandemic when public information from the regimes was even more sparse. The newsletter also introduced the incoming chair, thus providing for additional public and official information on the work of the MTCR.²³

The Hague Code of Conduct against Ballistic Missile Proliferation

The Hague Code of Conduct against Ballistic Missile Proliferation (HCOC) is the only multilateral transparency and confidence-building instrument on ballistic missile non-proliferation.²⁴ It originated from discussions within the MTCR in 2002 and has since developed into an independent politically binding instrument that complements the MTCR in its goal on missile non-proliferation.²⁵ Three more states subscribed to the HCOC in 2020—Saint Vincent and the Grenadines (January 2020), Equatorial Guinea (January 2020) and Somalia (February 2020)—bringing the total to 143.²⁶ Moreover, on 7 December 2020 the UN General Assembly adopted Resolution 75/60

¹⁹ Higgie, D., ‘MTCR outreach activities’, *Missile Technology Control Regime Newsletter*, 3 Sep. 2020, p. 4.

²⁰ Spector, L. S., ‘The Missile Technology Control Regime and shifting proliferation challenges’, *Arms Control Today*, vol. 48, no. 3 (Apr. 2018); and Rasmussen, N. A., ‘Chinese missile technology control: Regime or no regime?’, DIIS Policy Brief, Feb. 2007.

²¹ Asian Export Control Seminar Secretariat, ‘The 27th Asian Export Control Seminar’, [n.d.]; and Sargison, G., ‘Missile Technology Control Regime’, Presentation to the 27th Asian Export Control Seminar, Tokyo, 12 Feb. 2020.

²² Missile Technology Control Regime, ‘Report by the MTCR Chair: Outreach visit to Israel’, News, 23 Mar. 2020.

²³ Missile Technology Control Regime, *Missile Technology Control Regime Newsletter*, 3 Sep. 2020.

²⁴ Hague Code of Conduct, ‘What is HCoC?’, Feb. 2020.

²⁵ Brockmann, K., *Controlling Ballistic Missile Proliferation: Assessing Complementarity between the HCoC, MTCR and UNSCR 1540*, HCOC Research Paper no. 7 (HCOC: Vienna, June 2020).

²⁶ Hague Code of Conduct, ‘List of HCoC subscribing states’, Feb. 2020.

in support of the HCOC with 176 votes in favour, 1 against (Iran) and 10 abstentions. This was a considerable increase over the last such biannual resolution in 2018 which had previously held the record for the strongest support received.²⁷

In contrast to the export control regimes, which admit participating states by consensus, any state can subscribe to the HCOC by submitting its subscription to the Austrian Ministry for Foreign Affairs, which serves as the Immediate Central Contact for the HCOC. Subscribing states commit to implementing a limited range of transparency and confidence-building measures. In particular, they agree to provide annual declarations about national ballistic missile and space launch programmes and policies, and to exchange pre-launch notifications on launches and test flights of their ballistic missiles and space launch vehicles.²⁸

Despite the pandemic circumstances, the 19th annual regular meeting of the HCOC took place in Vienna on 12 October 2020, after being postponed in June.²⁹ Delegations from 71 of the 143 subscribing states attended—only a small decrease compared to previous regular meetings. On 3 June Switzerland assumed the chair of the HCOC for the 2020/21 period, taking over from Norway. Switzerland stated that it would focus its chairing role on ensuring full compliance by subscribing states and securing the participation of additional states in the HCOC.³⁰

Norway carried out several outreach activities on behalf of the HCOC in late 2019 and early 2020. This included providing a presentation on the HCOC during the Asian Export Control Seminar in Tokyo in February 2020.³¹ The Swiss chair participated in a range of virtual events, including a virtual side event co-organized with the Foundation for Strategic Research (Fondation pour la recherche stratégique, FRS) on the margins of the UN General Assembly First Committee, a virtual expert mission to Vietnam, and an ‘Asian Regional Webinar’ on the HCOC co-organized by FRS and the UN Regional Centre for Peace and Disarmament in Asia and the Pacific.³²

²⁷ UN General Assembly Resolution 75/60, 7 Dec. 2020; and Maletta, G. et al., ‘The export control regimes’, *SIPRI Yearbook 2019*, pp. 525–26.

²⁸ Hague Code of Conduct, ‘How to join HCoC’, Nov. 2018.

²⁹ Hague Code of Conduct, ‘19th regular meeting of the subscribing states to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC)’, Press release, Oct. 2020.

³⁰ Swiss Federal Department of Foreign Affairs, ‘Switzerland seeks to build trust between states to stop the proliferation of delivery systems for weapons of mass destruction’, Press release, 3 June 2020.

³¹ Nyhamar, I. M. W., ‘The Hague Code of Conduct against Ballistic Missile Proliferation (HCoC)’, Presentation to the 27th Asian Export Control Seminar, Tokyo, 12 Feb. 2020.

³² Foundation for Strategic Research and Hague Code of Conduct, ‘The state of ballistic missile proliferation today’, Virtual side-event organized on the margins of the UN General Assembly First Committee, 29 Oct. 2020; Foundation for Strategic Research, ‘Expert mission on the HCoC with Vietnam’, 10 Dec. 2020; and Foundation for Strategic Research, ‘Asian regional webinar’, 18 Dec. 2020.

The Nuclear Suppliers Group

The NSG seeks to prevent the proliferation of nuclear weapons by controlling transfers of nuclear and nuclear-related material, equipment, software and technology. It was established in 1974 in response to India's first nuclear test, the first explosion of a nuclear weapon by a state not recognized as a nuclear-weapon state by the Treaty on the Non-proliferation of Nuclear Weapons (NPT).³³ The number of NSG participating states has grown from 7 to 48, but has not increased since the admission of Serbia in 2013.³⁴ The NSG continued discussions on several pending requests to participate, but in 2020 there continued to be a lack of consensus for admitting any additional states. In particular, there continues to be no agreement on the long-standing question of whether India and Pakistan, both non-NPT members, should be admitted to the NSG.

The NSG's annual plenary, which was set to take place in Brussels in June, was postponed by a full year to mid 2021.³⁵ Belgium assumed the chair of the NSG for the period 2020/21, taking over from Kazakhstan. The troika of the previous, current and incoming chairs worked together with the chairs of the subsidiary NSG bodies to implement a regular transition of the NSG chair at the time of the postponed plenary to ensure the functioning of the regime. As a timely measure under the pandemic circumstances, the US National Nuclear Security Administration completed the modernization of the secure NSG Information Sharing System (NISS) in October 2020.³⁶ The timeliness of the upgrade to the new system highlighted the need for well-functioning and secure electronic communication channels among regime participants and helps build resilience to disruptions to in-person engagement, travel and international meetings.

Despite the pandemic, the Belgian chair announced that he would conduct outreach to 'important players in the nuclear field to promote adherence to the NSG Guidelines' and reiterated the plans for addressing the NPT Review Conference, which was postponed to 2021.³⁷ The chair acknowledged that while regular NSG activities continue, some of them do so in a 'somewhat adapted format'.³⁸ Discussions on substantive issues continued among the participating states albeit mainly in smaller groups. The NSG does not disclose topics of discussion or the content of pending proposals regarding the control list and guidance materials. Track 1.5 workshops and

³³ Nuclear Suppliers Group, 'About the NSG', [n.d.].

³⁴ Nuclear Suppliers Group, 'Participants', [n.d.].

³⁵ Nuclear Suppliers Group, 'Chair's corner', [n.d.].

³⁶ National Nuclear Security Administration, 'NNSA launches new web platform to support the nonproliferation work of the Nuclear Suppliers Group', 21 Dec. 2020.

³⁷ For more on the postponed NPT Review Conference see chapter 11, section III, in this volume; and Nuclear Suppliers Group, 'Chair's corner' (note 35).

³⁸ Nuclear Suppliers Group, 'Chair's corner' (note 35).

conferences continued to focus on emerging technologies, including additive manufacturing, and advanced reactor designs.³⁹

The NSG was also represented in several outreach meetings in late 2019 and early 2020, including ones attended by non-participating states. The NSG presented at a training course for UN Security Council Resolution 1540 Points of Contact in the Asia-Pacific Region, hosted by China in October 2019, and presented and conducted a side event at the Asian Export Control Seminar in February 2020.⁴⁰

The Wassenaar Arrangement

The WA was established as the successor to the cold war era Co-ordinating Committee for Multilateral Export Controls (COCOM) in 1996. The WA participating states seek to promote ‘transparency and greater responsibility’ in the transfers of conventional weapons and dual-use goods and technologies. In doing so they aim to prevent transfers that contribute to ‘destabilising accumulations’ of such weapons and technologies that could endanger international and regional security and stability, as well as transfers to terrorists. Since its inception, the number of participating states in the WA has expanded from 33 to 42. No additional participating states have been admitted since India in 2017.⁴¹

The plenary chair was handed over from Croatia to Hungary at the end of 2020, while the USA assumed the chair of the General Working Group and Malta assumed the chair of the Experts Group for 2021. Italy continued chairing the Licensing and Enforcement Officers Meeting in 2021.

Due to the pandemic the participating states did not hold any meetings in 2020 or conduct the usual in-depth technical review of technological developments and potential updates to the WA control lists. The WA participating states nevertheless continued intersessional cooperation and adopted several decisions to ensure the continued implementation of the WA’s work programme and the functioning of the WA Secretariat. They also set up a framework to conduct the sixth internal ‘Assessment of the Arrangement’, which comprises an in-depth review and evaluation of the functioning of the WA to ‘improve its effectiveness and efficiency’ and will be a key activity in 2021. A ‘programme of activities’ was agreed to mark the

³⁹ The author participated in several of these meetings as a discussant.

⁴⁰ United Nations, ‘Security Council Resolution 1540 (2004) points of contact training for states of Asia-Pacific Region’, Press release, 30 Oct. 2019; and Nuclear Suppliers Group, ‘The Nuclear Suppliers Group and its Guidelines: “A Public Good”’, Presentation at the 27th Asian Export Control Seminar, Tokyo, 12 Feb. 2020.

⁴¹ Wassenaar Arrangement, ‘About us’, updated 17 Dec. 2020.

25th anniversary of the establishment of the WA in 2021, including outreach to non-participating states.⁴²

The WA Secretariat participated in several outreach activities in early 2020 before most travel and in-person meetings were suspended. The secretariat participated in the Second Annual Disarmament and International Security Affairs Fellowship Programme in New Delhi in January 2020 and delivered a presentation and organized a side event on the margins of the Asian Export Control Seminar in Tokyo in February.⁴³

Conclusions

The impact of the Covid-19 pandemic in 2020 raised serious concerns over the resilience of the multilateral export control regimes and their reliance on annual in-person plenaries as the main decision-making bodies. Most of the regimes' work continued and largely ran through the information-exchange functions or was conducted in smaller groups of participating states. However, the ability to take decisions and continue discussions on difficult and particularly political and technical topics was seriously hampered. The lack of transparency due to reduced participation in public events and fewer public statements and press releases has demonstrated the imperative for the regimes to explore complementary ways of continuing on a trajectory towards more openness. The launch of a new newsletter by the MTCR is an example of a small step in this direction. The modernization of the NSG Information Sharing System is an example of a step that could help ensure a regime's functioning while adding resilience in the face of future disruptions. The volume of proposals and working papers that had to be carried over from 2020 will ensure a significant workload and busy schedule for the regimes in 2021. In addition, many important processes, such as the increased engagement between the regimes, will need to be rekindled as soon as the public health situation permits.

⁴² Wassenaar Arrangement, 'Statement issued by the plenary chair of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies', Vienna, 17 Dec. 2020.

⁴³ Griffiths, P., 'The role and relevance of the Wassenaar Arrangement', Presentation to the Second Annual Disarmament and International Security Affairs Fellowship Programme, New Delhi, 17 Jan. 2020; Griffiths, P., 'Wassenaar Arrangement updates', Presentation to the 27th Asian Export Control Seminar, Tokyo, 12 Feb. 2020; and Wassenaar Arrangement, 'Outreach event at the Asian Export Control Seminar', 14 Feb. 2020.