

17. Transfer controls

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I. Introduction

In 2004 evidence continued to accumulate that more countries recognize the strong self-interest in maintaining modern and effective national transfer controls.

In 2004 the international community was digesting the consequences of the war in Iraq where, as one author has noted, ‘it has become abundantly clear through revelations in the last decade that the lax export control standards of both national and multilateral regulatory frameworks contributed significantly to the development of the clandestine Iraqi WMD [weapons of mass destruction] programme, which has been a primary cause of two multi-national wars in 12 years’.¹ Concern about new suppliers of technologies that are relevant to the development or production of nuclear, biological and chemical (NBC) weapons was heightened by the public disclosure of the activities of a network of ‘knowledgeable individuals’ led by Pakistani nuclear scientist Abdul Qadeer Khan, which had been working for more than a decade to supply weapon-relevant materials and technology to Iran, North Korea and Libya, perhaps without the knowledge of the Government of Pakistan.² Khan’s global network of collaborators included a number of participants located in and operating from countries that participate in the relevant export control group, the Nuclear Suppliers Group (NSG).

This chapter surveys the main efforts to strengthen multilateral export control cooperation in 2004, both in informal arrangements and in the European Union (EU). Section II focuses on the Australia Group (AG), the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA). Section III examines developments in the NSG and the Zangger Committee. Supply-side measures in the EU, including both dual-use and defence items, are discussed in section IV. The conclusions are presented in section V. Appendix 17A addresses export controls in the United States.

¹ Joyner, D. H., ‘Restructuring the multilateral export control regime system’, *Journal of Conflict and Security Law*, vol. 9, no. 2 (summer 2004), p. 182.

² In Feb. 2004 Dr Khan, a central figure in the Pakistani nuclear weapon programme, appeared on Pakistani television and acknowledged that after 1992 he had arranged and coordinated supplies of nuclear materials, know-how and equipment to North Korea. The Khan network is described in chapter 12 in this volume. See also Braun, C. and Chyba, C. F., ‘Proliferation rings: new challenges to the nuclear nonproliferation regime’, *International Security*, vol. 29, no. 2 (fall 2004), pp. 5–49.

Table 17.1. Membership of multilateral weapon and technology transfer control regimes, as of 1 January 2005

State	Zangger Committee ^a 1974	NSG ^b 1978	Australia Group ^a 1985	MTCR ^c 1987	Wassenaar Arrangement 1996
Argentina	x	x	x	x	x
Australia	x	x	x	x	x
Austria	x	x	x	x	x
Belarus		x			
Belgium	x	x	x	x	x
Brazil		x		x	
Bulgaria	x	x	x	x ^d	x
Canada	x	x	x	x	x
China	x	x ^d			
Cyprus		x	x		
Czech Republic	x	x	x	x	x
Denmark	x	x	x	x	x
Estonia		x ^d	x ^d		
Finland	x	x	x	x	x
France	x	x	x	x	x
Germany	x	x	x	x	x
Greece	x	x	x	x	x
Hungary	x	x	x	x	x
Iceland			x	x	
Ireland	x	x	x	x	x
Italy	x	x	x	x	x
Japan	x	x	x	x	x
Kazakhstan		x			
Korea, South	x	x	x	x	x
Latvia		x	x ^d		
Lithuania		x ^d	x ^d		
Luxembourg	x	x	x	x	x
Malta		x ^d	x ^d		
Netherlands	x	x	x	x	x
New Zealand		x	x	x	x
Norway	x	x	x	x	x
Poland	x	x	x	x	x
Portugal	x	x	x	x	x
Romania	x	x	x		x
Russia	x	x		x	x
Slovakia	x	x	x		x
Slovenia	x	x	x ^d		x ^d
South Africa	x	x		x	
Spain	x	x	x	x	x
Sweden	x	x	x	x	x
Switzerland	x	x	x	x	x
Turkey	x	x	x	x	x
UK	x	x	x	x	x
Ukraine	x	x		x	x
USA	x	x	x	x	x
Total	35	44	38	34	34

Note: The years in the column headings indicate when the export control regime was formally established, although the groups may have met on an informal basis before then.

^a The European Commission participates in this regime.

^b The Nuclear Suppliers Group. The European Commission is an observer in this regime.

^c The Missile Technology Control Regime.

^d Joined in 2004.

II. The main developments in multilateral transfer control regimes in 2004

In 2004 a number of proposals were put forward that suggest the need to develop a new legal framework for multilateral export control cooperation.

In May 2004 Mohamed ElBaradei, the Director General of the International Atomic Energy Agency (IAEA), asserted that the existing export control mechanisms 'are completely busted right now. There [are] a lot of countries [which] are able to export [that] are not part of the regime—India, Pakistan, Malaysia, Israel. You cannot just pretend they do not exist. We need to have everybody as part of the export control regime'.³ Previously, immediately after A. Q. Khan had confessed to his proliferation activities, ElBaradei had observed that the current export control cooperation:

relies on a gentlemen's agreement that is not only non-binding, but also limited in its membership: it does not include many countries with growing industrial capacity. And even some members fail to control the exports of companies unaffiliated with government enterprise. We must universalize the export control system, remove these loopholes, and enact binding, treaty-based controls—while preserving the rights of all States to peaceful nuclear technology.⁴

The widespread belief that a stronger legal basis may be required for effective national action to be taken against non-state actors was reflected in the adoption, on 28 April 2004, of United Nations (UN) Security Council Resolution 1540 by a unanimous vote. The resolution, passed under Chapter VII of the UN Charter and therefore binding on UN member states, called for a strengthening of national export controls, among other measures.⁵

More generally, there have been increasing calls to strengthen the international legal basis for controls on transfers of military items. Several non-governmental organizations (NGOs) have argued that an international treaty should be negotiated to provide a set of common minimum standards for the control of arms transfers and to ensure a workable operative mechanism for the application of these standards.⁶ This idea has also been espoused by governments. In September 2004 the British Foreign Minister, in a speech to the Labour Party Annual Conference, stated that the United Kingdom would 'start work soon with international partners, drawing on experience from the EU, to

³ 'The challenges facing non-proliferation', Remarks of Mohamed ElBaradei at the Council on Foreign Relations, New York, 14 May 2004, URL <http://www.cfr.org/pub7032/graham_t_allison_mohamed_elbaradei/the_challenges_facing_nonproliferation.php>.

⁴ ElBaradei, M., 'Saving ourselves from destruction', *New York Times*, 12 Feb. 2004.

⁵ UN Security Council Resolution 1540, 28 Apr. 2004. It is discussed in chapters 11 and 18 in this volume and reproduced as appendix 11A.

⁶ Information on the draft treaty is available on the Internet site of the International Action Network on Small Arms at URL <http://www.iansa.org/action/new_york/arms_trade_treaty.htm>.

build support for an International Arms Trade Treaty, further to extend the international rule of law'.⁷ Commenting on the speech, an unnamed British official noted that the UK could use its presidency of the EU Council of Ministers in the second half of 2005 to initiate a dialogue about the treaty.⁸

The calls for strengthening international legal controls notwithstanding, the main cooperative efforts to improve the effectiveness of export controls have been carried out in ad hoc groups with limited membership. The Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement are informal groupings in which states seek to improve the effectiveness of their national export controls by agreeing common rules and exchanging information about a range of issues. The participating states in these arrangements as well as the Zangger Committee (discussed below) are identified in table 17.1.

The Australia Group

The Australia Group was established in 1985 following international concern about the use of chemical weapons (CW) in the 1980–88 Iraq–Iran War.⁹ The participating states of this informal group initially cooperated to maintain and develop their national export controls to prevent the further spread of chemical exports that may be used for, or diverted to, CW programmes. The participating states seek to prevent the intentional or inadvertent supply by their nationals of materials or equipment to CW or biological weapon (BW) programmes. The AG is currently also developing measures that seek to prevent the acquisition of BW or CW by non-state actors, with a particular focus on measures aimed at individuals or groups planning to carry out terrorist attacks.

In 2004 the AG expanded to 38 states. The European Commission also participates. Five states participated in the group for the first time in 2004: Estonia, Latvia, Lithuania, Malta and Slovenia.

The AG has agreed a series of lists that define dual-use precursor chemicals, biological agents, chemical and biological equipment and related technology, and animal and plant pathogens.¹⁰ The participating states are informally committed to ensure that these items are subject to national export controls, and they have agreed a set of guidelines to consider when assessing export licence applications. In 2004 the AG added three bacteria and two new viruses to the list of controlled biological agents.

In 2004 the Australia Group participating states agreed to consider whether brokering controls should be introduced to help curtail the activities of front companies and intermediaries. A front company works on behalf of a client in

⁷ 'Delivering progressive values to the wider world', Speech by Jack Straw, Foreign Secretary, Labour Party Annual Conference, Brighton Centre, 30 Sep. 2004, URL <http://www.labour.org.uk/ac2004news?ux_news_id=ac04js>.

⁸ Boese, W., 'British call for arms trade treaty', *Arms Control Today*, Nov. 2004, URL <http://www.armscontrol.org/act/2004_11/British.asp>.

⁹ See the AG Internet site at URL <<http://www.australiagroup.net>>.

¹⁰ Australia Group, 'AG common control lists', URL <<http://www.australiagroup.net/en/agcomcon.htm>>.

order to hide the identity of the true end-user of a controlled item. The front company—which might or might not be based in the same country as the true end-user—acquires a particular item (apparently legally) and then diverts or re-exports it to another recipient. In this way the true end-user avoids being scrutinized by export control authorities. The heightened concern with brokering and front companies is the result of the increasing sophistication of procurement efforts by proliferants.¹¹ The 2004 plenary meeting also sought to develop controls for the proliferation threat posed by non-state actors.

The Missile Technology Control Regime

The MTCR is an informal arrangement in which countries that share the goal of non-proliferation of unmanned delivery systems for NBC weapons cooperate to exchange information and coordinate their national export licensing processes.¹²

The MTCR was formed in 1987, at which time the primary focus of its activities was on ballistic missiles able to deliver a payload weighing 500 kilograms to a range of 300 kilometres. These technical parameters were considered to be consistent with missiles likely to be used to deliver first-generation nuclear weapons. The MTCR participating states have subsequently expanded the scope of their activities to include any unmanned air vehicles (UAVs)—a category that includes cruise missiles—capable of delivering NBC weapons.

The role of export controls in combating terrorism continues to be discussed in the MTCR as in other export control cooperation arrangements. One important issue in this context is how to share information and intelligence—an activity that normally takes place on a bilateral basis—more effectively in order to provide the most critical information to the people who need it in real time.

At their annual plenary meetings the MTCR participating states make a general assessment of proliferation risks, including a discussion of missile programmes of concern to the regime. However, the participating states have stressed that the MTCR Guidelines are for general application and do not ‘target’ particular states. In line with this approach, the MTCR public documents have not, in the past, named particular countries. In 2004 the press statement agreed at the MTCR plenary meeting drew attention to ‘serious concern’ over missile proliferation in North-East Asia, South Asia and the Middle East. However, the MTCR stopped short of naming particular countries of missile proliferation concern.

The press statement drew attention to the ‘exemplary decision’ of Libya to give up its WMD and ballistic missile programmes. European Union countries

¹¹ E.g., in his annual report to the US Congress, the Director of the Central Intelligence Agency noted the increasing prevalence of front companies in the acquisition of WMD components. US Central Intelligence Agency, ‘Attachment A, Unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, 1 July through 31 December 2003’, URL <http://www.cia.gov/cia/reports/721_reports/july_dec2003.htm>.

¹² See the MTCR Internet site at URL <<http://www.mtc.info/english/>>.

were keen to have a statement encouraging Syria to strengthen its national export control system.¹³

On the basis of an analysis of illicit trafficking by companies located in Dubai, the MTCR discussed the issues of strengthening controls on goods destined for trans-shipment centres and the activities of front companies.

Participation

In 2004 Bulgaria joined the MTCR, bringing the number of participating states to 34.¹⁴ However, decisions were deferred regarding the participation of a number of other applicant states. Applications are pending from states that have become members of the EU but that do not participate in the MTCR, from several countries that are located on the territory of the former Soviet Union, and from China.

As with the other export control regimes, the decision to expand the MTCR participation is taken by consensus among the existing participants and is based on an assessment of a number of criteria: whether the applicant has demonstrated a sustained and sustainable commitment to non-proliferation; whether the country has a legally based and effective export control system that can put into effect the MTCR Guidelines and procedures and administer them; and whether that control system is enforced effectively. The MTCR does not have an observer category.¹⁵

In 2003 the Chinese Government sent a letter to the Chairman of the MTCR indicating that China would have no difficulty in participating in the regime in the light of recent changes in its national export control regulations.¹⁶ The letter was interpreted as an application to join the MTCR and the idea was subsequently discussed, although no decision was taken in 2004.

On 10–11 February 2004, the Chairman of the MTCR and a delegation of diplomats and experts from 15 MTCR participating states conducted in-depth talks with a high-level delegation from China. At that meeting the documents presented by China on its national export control system were reviewed and agreed to be consistent with international standards. However, the imple-

¹³ In Oct. 2004 the EU and Syria agreed on a trade and cooperation agreement that included a so-called 'non-proliferation clause' under which they agreed to contribute to countering the proliferation of WMD and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. This issue is discussed further below. On Libya see chapter 14 in this volume.

¹⁴ Plenary Meeting of the Missile Technology Control Regime, Seoul, 6–8 Oct. 2004, Press Statement, 8 Oct. 2004, URL <<http://www.sipri.org/contents/expcon/mtr04.html>>.

¹⁵ The issue of participation in the export control regimes by EU member states is discussed in section IV of this chapter.

¹⁶ In Aug. 2002 China introduced strengthened regulations on export control of missiles and missile-related items and technologies as well as an updated control list. The regulations and the control list conform closely to the MTCR documents. In Dec. 2003 the State Council of the People's Republic of China published a White Paper which stated that China 'adopts a positive and open attitude toward all international proposals for strengthening the missile non-proliferation regime'. *China's Non-Proliferation Policy and Measures* (Information Office of the State Council of the People's Republic of China: Beijing, Dec. 2003), p. 7, URL <<http://www.gcdd.net/TX=2003/TX.031=2003.12.03.China.English.pdf>>.

mentation and enforcement aspects of Chinese controls continue to be discussed and some questions remain unresolved. The difficulty is believed to relate to the continued cooperation between Chinese enterprises and missile programmes of concern, including programmes in Iran. This cooperation raises questions for some participating states, including the USA, about how Chinese authorities interpret the MTCR Guidelines when making licensing decisions and about how export controls are enforced.

Outreach activities

A country can choose to adhere to the MTCR Guidelines,¹⁷ which is a public document, without participating in the regime. A number of countries, such as Israel, have done so, and the MTCR participating states have encouraged all non-participating countries to take this approach. In order to further this objective the MTCR participating states have carried out a broad dialogue on missile proliferation issues with a range of different countries.

The Chairman carries the main responsibility for outreach and the participating states have discussed how to coordinate and carry out this activity. In 2004 the MTCR Chairman was not received in two countries (Iran and Pakistan) and alternative ways of interacting with these countries need to be found.

In 2004 outreach activities included a visit to Libya at the invitation of the Libyan Government. Libya explained its decision to give up its programme to acquire ballistic missiles that exceed the MTCR Category I range and payload parameters, and the MTCR team visited a number of sites of interest. During the visit the issue of Libyan adherence to the MTCR Guidelines was raised, and it was agreed that the MTCR participating states would assist Libya to put in place efficient export control procedures.

The Wassenaar Arrangement

The decision to establish the WA was taken by 33 states in December 1995 at a meeting in Wassenaar, the Netherlands. The objective of the WA is to promote transparency, exchange of information and exchange of views on transfers of an agreed range of items with a view to promoting responsibility in transfers of conventional arms and dual-use goods and technologies and to preventing ‘destabilizing accumulations’ of such items.

The participating states held the second WA assessment in 2003,¹⁸ which brought about the first substantial changes in the way in which the WA functions. The participating states agreed on major revisions of the founding document, the Initial Elements (e.g., to extend the arms transfer notification

¹⁷ MTCR ‘Guidelines for sensitive missile-relevant transfers’, URL <<http://www.mtc.info/english/guidetext.htm>>.

¹⁸ At its creation the participating states recognized that the WA would need to develop additional elements if it was to achieve its stated objectives. This was reflected in the decision to call the founding document Initial Elements and to conduct a review of the WA in 1999. Following the second assessment, in 2003, the participating states decided to review their activities regularly—the next time in 2007. See the WA Internet site at URL <<http://www.wassenaar.org>>.

requirement also to small arms and light weapons, SALW) and adopted three documents aimed at tightening export controls on man-portable air defence systems (MANPADS), brokering and unlisted equipment. For the first time, a Ministerial Statement affirmed the commitment of the participating states to the WA.¹⁹

In 2004 much of the work in the WA focused on the implementation of decisions reached in 2003, in particular with regard to export control measures to counter terrorism. A noteworthy result of the 2004 plenary meeting was the admission of Slovenia to the WA. This was the first enlargement of the WA since its establishment. Previously, consensus on the admission of new members could not be reached.²⁰ The decision to expand WA participation is taken by consensus among existing participants and is based on an assessment of various criteria: whether the applicant state 'is a producer/exporter of arms or industrial equipment respectively'; whether the country adheres to 'fully effective export controls'; and whether the country has 'non-proliferation policies and appropriate national policies'. At the 2003 assessment an additional criterion was agreed which takes into account whether a country has adopted the WA control lists as a reference in its national export controls.²¹

In the 2004 plenary meeting's Public Statement, the participating states 'in a position to do so' committed themselves to providing 'assistance on the development of effective export controls to those States that request it'.²² This commitment was explicitly put into the context of UN Security Council Resolution 1540, which requires all states to establish, develop and maintain effective export and trans-shipment controls.

The working method of inter-sessional activities conducted by task forces and working groups, which had proven useful in 2003, was continued in 2004. The task forces are composed of several participating states of which one or more acts as chairman. In 2004 task forces worked on criteria for the selection of dual-use items, the dual-use list review and best-practice guidelines on licensing mechanisms. In addition, an ad hoc working group on export control documentation was established.

Much of the work of the outreach group focused on the preparation of the regime's first outreach seminar, which was held in Vienna on 19 October 2004. Representatives of non-participating governments (Belarus, China, Croatia, Cyprus, Estonia, Israel, Latvia, Lithuania, Malta, Slovenia²³ and South Africa), NGOs, academia, industry and the media participated. The aim

¹⁹ On the 2003 assessment plenary see Anthony, I. and Bauer, S., 'Transfer controls and destruction programmes', *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2004), pp. 737–62. The plenary documents are available at URL <<http://www.wassenaar.org>>.

²⁰ See the section on 'Export control elements of the WMD Action Plan' in this chapter.

²¹ Wassenaar Arrangement (WA), 'Purposes, Guidelines & Procedures, including the Initial Elements, as adopted and amended by the Plenary of December 2003', URL <<http://www.wassenaar.org/2003Plenary/2003PlenaryDocs.htm>>.

²² WA, 'Public Statement, 2004 Plenary Meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies', URL <<http://www.wassenaar.org/docs/docindex.html>>.

²³ At this stage Slovenia was a non-participating country.

of the seminar was to 'raise awareness of the positive contribution that the Wassenaar Arrangement makes to responsible transfers of conventional arms and dual-use goods and technologies'.²⁴ The presentations explained the WA's purpose, history, working methods, activities and areas of ongoing negotiation. Speakers also addressed a range of policy areas of particular interest to the WA, including brokering, small arms and light weapons, and MANPADS. Follow-up events are planned for future years, and outreach to industry will be one of the priorities for such activities. In late 2003 the WA initiated contact with China to establish a mechanism for bilateral dialogue. This led to two days of talks in Beijing in April 2004. A WA outreach visit to South Africa took place in early 2005.

At the 2004 plenary session, the participating states also exchanged information on national measures taken to implement the 2003 decision to tighten controls on the export of MANPADS.

As a matter of routine, the WA control lists were amended to take into account technical and security developments. Particular attention was paid to items which may be used for terrorist purposes. Changes to the WA list are prepared through technical meetings during the year and formally approved at the December plenary session.

The growing attention to national export controls

As noted above, UN Security Council Resolution 1540 *inter alia* requires states to put in place effective national export control systems. States are requested to report on the measures currently in place in order to ensure that sensitive items that could contribute to NBC weapons or missile delivery systems for such weapons are not exported without prior assessment. The response by states to the resolution indicated that a large number of them accept that there is a need for effective export controls.²⁵ In 2004 three states whose capacity and technical expertise are of direct concern in this regard, and that remain outside the 1968 Treaty on the Non-proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), took action to strengthen their national export controls.

In April 2004 *Israel* adopted a new Export Control Order, which entered into force in July 2004. The order strengthened government control over transfers of NBC items. It includes a list of items that cannot be exported without specific authorization and incorporates the control lists developed by the AG and the NSG. However, the order also includes a 'catch-all' or end-use control which prohibits the export of any items (whether they are included on any control list or not) to NBC weapon programmes and criminalizes such exports should they occur. The authorization to export controlled items is given by the

²⁴ WA, 'Outreach seminar 19 October 2004', Press Statement, 21 Oct. 2004, URL <http://www.wassenaar.org/docs/Seminar_press_statement.htm>.

²⁵ See the Internet site of the SIPRI Non-proliferation and export control project at URL <<http://www.sipri.org/contents/expcon/>>.

Minister of Industry, Trade and Labour but only after consultation with and approval by the Ministry of Foreign Affairs and the Ministry of Defence.

In 2004 *India* evaluated changes to its export control system. India has been engaged in a dialogue with the USA on export control issues since the meeting between President George W. Bush and Prime Minister Atal Bihari Vajpayee in November 2001. After that meeting the 'next steps in strategic partnership' were defined, including a dialogue on a range of non-proliferation issues, such as export control. The USA agreed to consider options for expanded Indian-US technical cooperation in the areas of civil nuclear and space applications and to examine the possibilities for expanding high-technology commerce. India has agreed to take concrete steps to address what the USA considers to be shortfalls in the Indian export control system.

India currently controls exports using a complicated patchwork of at least nine different pieces of primary legislation, some of which date from the 1960s. This is supplemented by secondary legislation (in the form of Public Orders) on specific technical matters. In 1993 the Indian Government established the Small Group on Strategic Export Controls as an inter-agency effort to review and coordinate the list of items subject to control. In particular, this exercise was intended to develop the content of a control list attached to the 1992 Foreign Trade Development and Regulation Act, which aims to catch any items not already subject to control under existing legislation.²⁶

The USA has urged India to provide government-to-government assurances that items supplied by US companies will not be used for unauthorized purposes in facilities owned and operated by the Indian Government. To this end the Indian Government is also being asked to agree to facilitate on-site visits by US officials at facilities where US-origin items are located. The USA has also requested that a system be put in place to prevent the transfer of US-origin items to India's ballistic missile programme, to unsafeguarded nuclear facilities and to third countries.

The USA has urged India to apply the MTCR and the NSG guidelines in its national export licence assessments. It asked India to harmonize its lists of items which require a licence before export with the control lists that have been developed in the multilateral export control regimes. India is considering these requests and is reviewing the introduction of controls on intangible technology transfer and on brokering.

In 2004 *Pakistan* enacted the Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and Their Delivery Systems Act 2004, which entered into force in September 2004. The new law supplemented legislation related to chemical weapons that was enacted in 2000. The act commits Pakistan to prevent the proliferation of biological and nuclear weapons and missile delivery systems for both types of weapon. Pakistan controls the export of items of relevance to the production of

²⁶ Ramachandran, R., 'For a controls regime', *Frontline*, 1-14 Jan. 2005, URL <<http://flonet.com/fl2201/20050114002404800.htm>>.

CW by using the national implementing legislation for the 1993 Chemical Weapons Convention.²⁷

III. The Nuclear Suppliers Group

The aim of the NSG is to prevent the proliferation of nuclear weapons through controls on the export of nuclear and nuclear-related material, equipment, software and technology. The export controls, which are implemented by the participating states through national legislation and procedures, are not intended to prevent or hinder international cooperation on peaceful uses of nuclear energy.²⁸

At the 2004 plenary meeting of the NSG the participating states, which operate by consensus, agreed that four new states—China, Estonia, Lithuania and Malta—would participate in the activities of the group from 10 June 2004. With the accession of these states, the NSG now includes 44 countries.²⁹

The NSG participating states have agreed two sets of guidelines which they apply when assessing applications to export controlled items. One set of guidelines is applied to items that were specially designed or developed for nuclear use, while the other set of guidelines is applied to exports of nuclear dual-use items. The NSG participating states include states in which the main exporters of nuclear technology are located, and the group recognizes that peaceful nuclear cooperation is both legitimate and necessary. The participating states share the view that its guidelines ‘facilitate the development of trade’ by ‘providing the means whereby obligations to facilitate peaceful nuclear cooperation can be implemented in a manner consistent with international nuclear non-proliferation norms’.³⁰

The obligation to facilitate peaceful nuclear cooperation is codified in Article IV of the NPT. This article states that nothing in the treaty shall be interpreted as affecting ‘the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes’. Moreover, under Article IV all the parties to the treaty ‘undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy’.

In order to ensure that transfers are exclusively for peaceful purposes the non-nuclear weapon states which are parties to the NPT commit themselves, in Article III, to accept safeguards contained in bilateral agreements with the International Atomic Energy Agency. The IAEA has developed a safeguards

²⁷ See chapter 13 in this volume.

²⁸ See the NSG Internet site at URL <<http://www.nsg-online.org/>>.

²⁹ Nuclear Suppliers Group (NSG), ‘Press Statement from the 2004 Plenary Meeting of the Nuclear Suppliers Group’, Gothenburg, Sweden, 27–28 May 2004, URL <<http://www.nuclearsuppliersgroup.org/public.htm>>.

³⁰ The latest versions of the NSG Guidelines as well as a statement on how they are to be applied are available at URL <<http://www.nuclearsuppliersgroup.org/guide.htm>>.

system based on nuclear material accountancy to detect any diversion of declared nuclear materials for proscribed purposes.

On a number of occasions the IAEA has found that states have violated the terms of their safeguards agreements. In recent years the NSG has discussed what impact these violations should have on nuclear supply policies. The NSG has discussed the proposal to suspend the supply of items that were specially designed and developed for nuclear use to any state that the IAEA Board of Governors finds to be in non-compliance with its safeguards obligations. As of the end of 2004 no decision had been taken on this proposal.

The NSG has also discussed whether existing guidelines ought to be supplemented or revised to reflect concerns about the transfer of equipment and technology for parts of the nuclear fuel cycle that are considered particularly sensitive from a proliferation perspective. The sensitive parts of the fuel cycle are those that can produce the fissile materials (certain isotopes of highly enriched uranium and plutonium) that are essential parts of a nuclear weapon. In particular, the NSG has discussed whether specific criteria should apply to assessments of applications to export the equipment and technology that are required to enrich natural uranium and to reprocess spent fuel in order to extract plutonium.

As noted above, the IAEA has developed a set of safeguards to detect the diversion of nuclear material to unauthorized uses. The recognition that the comprehensive or 'full-scope' safeguards had been violated by Iraq without prompt detection led the IAEA to develop a model Additional Protocol that would supplement existing arrangements by increasing the transparency of the nuclear sector in states and by providing the agency with new rights of access and a new right to information.³¹

The NSG has discussed the proposal that the Additional Protocol should become an essential condition of nuclear supply and has examined how the existing guidelines would have to be modified to that end. As of the end of 2004 agreement had not been reached on what kinds of change would be required.

At the Group of Eight (G8) Summit in Sea Island, Georgia, in June 2004 it was proposed that 'sensitive nuclear items with proliferation potential will not be exported to states that may seek to use them for weapons purposes, or allow them to fall into terrorist hands'.³² The G8 leaders set the objective of amending the NSG guidelines to reflect this proposal by the time of the June 2005 G8 Summit in the UK. In the interim, the G8 leaders agreed that they would not sanction new transfers of enrichment and reprocessing equipment and technologies, except to states that already possess such items. In the face of opposition from a number of NSG states and the European Commission to this ban, the G8 are now discussing a set of restrictive guidelines for transfers of the most sensitive technologies.

³¹ States which have safeguards agreements and Additional Protocols in force are listed in annex A to this volume.

³² 'Sea Island Summit 2004: G8 Action Plan on Nonproliferation', Sea Island, Ga., 9 June 2004, URL <http://www.g8usa.gov/d_060904d.htm>.

The G8 leaders also agreed to cooperate to complement export controls by developing new measures to ensure that all states would have ‘reliable access to nuclear materials, equipment, and technology, including nuclear fuel and related services, at market conditions, for all states, consistent with maintaining nonproliferation commitments and standards’.³³ To this end the IAEA established an independent expert group to examine alternatives to national controls on uranium enrichment and plutonium separation as well as the storage and disposal of spent nuclear fuel.³⁴

The Zangger Committee

The Zangger Committee is not formally a part of the NPT regime, but its participants seek to take account of the effect of changing security aspects on the NPT and to adapt export control conditions and criteria in that light. The Zangger Committee is an informal group of states that meet to discuss how to interpret their obligations under Article 3.2 of the NPT. According to Article 3.2 each party to the treaty ‘undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes’ unless the material is subject to IAEA safeguards. The Zangger Committee was established to help its members define exactly what constitutes ‘equipment or material especially designed or prepared for the processing, use or production of special fissile material’ and to examine the conditions and procedures that would govern exports of such material.³⁵ The committee has agreed a so-called Trigger List containing items whose export would ‘trigger’ a need for safeguards to be put in place. In 2004 the Zangger Committee discussed the need for a review of the conditions that a recipient state must satisfy to be eligible to receive items on the Trigger List.

IV. Supply-side measures in the European Union

The first major review of the 1998 EU Code of Conduct on Arms Exports and the peer review of the implementation of Council Regulation 1504/2004³⁶ by

³³ Sea Island Summit 2004 (note 32).

³⁴ The proposals to place certain parts of the nuclear fuel cycle under international control are discussed in chapter 12 in this volume.

³⁵ On the Zangger Committee see URL <http://www.sipri.org/contents/expcon/NSG_documents.html>, and the Zangger Committee Internet site at URL <www.zanggercommittee.org/Zangger/default.htm>.

³⁶ ‘Council Regulation (EC) no. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technologies’, *Official Journal of the European Communities*, L159 (30 June 2000). It has been updated and amended regularly and was reissued in 2004 to adapt it to enlargement. ‘Council Regulation (EC) no. 1504/2004 of 19 July 2004 amending and updating Regulation (EC) no. 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology’, *Official Journal of the European Union*, L281 (31 Aug. 2004), pp. 1–225. For an overview of national implementation efforts see ‘Report to Parliament and the Council on the implementation of Council Regulation (EC) no. 1334/2000 setting up a Community regime for the control of exports of

the member states were at the centre of the EU's export control activities in 2004. The regulation forms a common and uniform legislative basis for dual-use export control in all member states. Like all other EU activities in 2004, these initiatives have to be seen against the political and institutional background of the admission of 10 new member states on 1 May 2004.

Export control elements of the WMD Action Plan

The EU's Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction of June 2003³⁷ contains a number of action points in the area of export controls. Several of these points have been taken forward,³⁸ the most visible being the role of the EU in the export control regimes. In 2004, for the first time, the member states systematically coordinated their positions before and during the meetings of the export control regimes and presented agreed EU positions through the EU Presidency. This is the EU's established practice in the UN, but it had not been employed systematically in these regimes until then. In export control regimes where the European Commission and the Council Secretariat do not have observer or participant status (i.e., the MTCR and the WA), both attended the meetings in their capacity as part of the presidency delegation. Although the Commission had previously been invited to join the presidency delegation to the WA plenary meetings, in 2004 the Commission also attended the working group meetings.

The incomplete nature of the participation of the EU member states in export control regimes remains a challenge to the effective and consistent implementation of the EU dual-use regulation.³⁹ The regulation obliges the member states to apply the rules agreed in export control cooperation arrangements in licensing assessments. Most dual-use items that have both military and civilian applications move freely within the single market of the European Union, and any member state can issue an export licence which authorizes their export (including for items that are physically located elsewhere in the EU). In these circumstances, the EU has argued that each national authority must have a clear understanding of its commitments and access to the information that will allow it to make an informed decision when an application is being considered. The new EU member states that do not participate in the regimes also do not participate in the denial notification procedures, the technical discussions updating the lists of controlled items, the exchange of views

dual-use items and technology, October 2000 to May 2004', URL <<http://trade-info.cec.eu.int/doclib/html/118993.htm>>.

³⁷ Council of the European Union, 'Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction of June 2003', document 10354/1/03 REV 1, Brussels, 13 June 2003.

³⁸ Council of the European Union, 'Progress Report on the implementation of Chapter III of the EU Strategy against the Proliferation of Weapons of Mass Destruction', document 15246/04, Brussels, 3 Dec. 2004.

³⁹ See note 36.

and information considered relevant to the purposes of the regimes, and the informal networking between officials at meetings.

All EU member states now participate in the Australia Group and the Nuclear Suppliers Group, but the Czech Republic, Hungary and Poland are the only new member states that participate in all four export control regimes. The involvement of non-participating EU members therefore remains a key question to address in 2005.

In the MTCR—in which Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia do not currently participate—it has not proved possible to expand participation because of objections by Russia and Turkey. Together with Belarus, Kazakhstan and Ukraine, Russia is negotiating to create a Common Economic Area which would allow the free movement of goods within one joint customs zone. However, the USA has not yet agreed to the participation of Kazakhstan in the MTCR, and the Russian objection to expansion to include EU member states is believed to be part of a campaign to gain US acceptance of Kazakhstan. Turkey, while not arguing against the idea of participation by EU member states per se, currently does not support the participation of Cyprus in the MTCR.

Consideration of expanded participation in the WA will be carried out on a country-by-country basis. The applicants will be considered in the order of their date of application, which will require the WA participating countries to state specific objections to the participation of the country in question. The 2004 WA plenary meeting did not extend membership to the other EU acceding countries, Cyprus, Estonia, Latvia, Lithuania and Malta, or to the candidate country Croatia—all of which had submitted applications to join.⁴⁰

The EU's WMD Action Plan included an assistance programme for states in need of technical knowledge in the field of export control. A Technical Assistance to the Commonwealth of Independent States (TACIS) project for Russia to support the development of effective dual-use export controls is being developed. The December 2004 progress report on the WMD Action Plan proposed providing assistance to and cooperation with third countries: the team of experts set up for the peer review could coordinate and participate in assistance programmes in the Balkans and the European Neighbourhood Policy (ENP) countries in Eastern Europe, the Middle East and North Africa; 'administrative twinning' programmes could be established between ENP countries and one or two EU member states; existing community programmes on border management could be expanded to include export control elements; and ad hoc meetings could be held with China on export controls and exchange of best practice, which could include an offer to train Chinese export control officials. To this end, national expertise and the Common Foreign and Security Policy (CFSP), TACIS, MEDA⁴¹ and Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programmes would be used, as appropriate. In the context of the Euro-Mediterranean Partnership (Barcelona

⁴⁰ As a result of inter-sessional consultations in the spring of 2005, Estonia, Latvia, Lithuania and Malta were admitted.

⁴¹ MEDA is the financial instrument for implementation of the Barcelona Process.

Process),⁴² it was recommended that export control and border management assistance in the MEDA programme be expanded. It was proposed that up to €5 million be made available to both India and Pakistan for nuclear material accountancy and export control assistance.⁴³

The peer review

In 2004 the first stage of a peer review of the export control systems of EU member states and accession countries as regards dual-use items was conducted. The peer review aims to strengthen the coordination of the dual-use export control activities of member states and to provide opportunities for mutual learning in order to enhance the effectiveness of implementation of Council Regulation 1504/2004 in an enlarged EU. The rationale behind the peer review is that the EU dual-use system is only as strong as its weakest link since illicit exports are likely to take the path of least resistance.

A peer review task force was set up in September 2003, consisting of representatives from the Council Secretariat, the European Commission and Finland.

The review process was organized around clusters of countries, comprising two member states and one acceding country. Some member states were represented in more than one cluster. For example, the UK was grouped together with Ireland and Malta, and also with Greece and Cyprus. Experts from member states visited the acceding country, which in turn made return visits. The visits were held between February and July 2004. Discussions were structured around 20 fundamental issues relevant to licensing, enforcement, industry awareness programmes and control of technical assistance.

The peer review revealed discrepancies regarding implementing legislation, industrial awareness programmes, the technical capacities available to national authorities to evaluate licence applications and classify items, and as regards the intelligence infrastructure. The review also found that the application of the dual-use regulation differed with regard to *inter alia* the use of the catch-all clause, the implementation of denial exchanges, intangible technology transfer controls, and transit and trans-shipment controls.

Future peer review activities will be based on the results of these visits, which were summarized in country reports. Each cluster subsequently summarized the main conclusions in a cluster report. On the basis of these reports, the peer review task force produced a report and recommendations for future action. The General Affairs Council of 13–14 December 2004 decided that these recommendations should be ‘acted upon without delay’.⁴⁴

In order to ‘further improve EU export controls and thereby enhance Member States’ capabilities to prevent access by undesirable end-users, including

⁴² See the Euro-Mediterranean Partnership/Barcelona Process Internet site at <http://europa.eu.int/comm/external_relations/euromed/>.

⁴³ Council of the European Union (note 38).

⁴⁴ Council of the European Union, 2630th Council Meeting General Affairs and External Relations, Brussels, General Affairs, Press Release no. 15460/04 (Presse 343), 13 Dec. 2004, URL <<http://www.consilium.eu.int>>.

terrorists in third countries, to dual-use items relevant for WMD purposes', it was decided that actions should be taken to: (a) 'ensure transparency and awareness of legislation implementing the EU system'; (b) 'minimise any significant divergence in practices amongst Member States'; (c) 'investigate the possibilities for adding controls on transit and transshipment'; (d) 'provide assistance in recognition of dual-use items subject to control'; (e) 'improve exchanges of information on denials, and consider the creation of a data base to exchange sensitive information'; (f) 'agree best practices for the enforcement of controls'; (g) 'improve transparency to facilitate harmonisation of implementation of controls on nonlisted items (catch-all)'; (h) 'enhance interaction with exporters'; and (i) 'agree best practices for controlling intangible transfers of technology'.⁴⁵

The peer review is likely to lead to substantive changes to the dual-use export control systems of countries and to a review of Council Regulation 1504/2004 in order to strengthen controls and increase the consistency of practice throughout the EU.

The European Union Code of Conduct on Arms Exports

The EU Code of Conduct on Arms Exports was adopted in June 1998. The countries which acceded to the EU in May 2004, the European Free Trade Association (EFTA) countries which are members of the European Economic Area (EEA)—Iceland, Liechtenstein and Norway—and Bulgaria, Canada, Croatia, Romania and Turkey have aligned themselves with its principles. Although it is not legally binding, the Code of Conduct contains political commitments: eight criteria for export licensing and operative provisions, which outline reporting procedures and mechanisms for intergovernmental denial notification and consultation. In 2000 the EU member states agreed a list of military equipment to which the Code is applied, and that list was revised in 2003.⁴⁶

In 2004 the EU Code of Conduct was formally reviewed. The review process coincided with the full integration of the 10 new EU states into the information and consultation procedures of the Code of Conduct. Conclusion of the review is now anticipated by mid-2005. A central database of notifications of both export licence and brokering licence denials, where these exist, was created in 2004 (the decision was taken in 2003 and announced in the 2003 User's Guide).

In addition to the review process, in 2004 the Conventional Arms Exports Working Group (COARM) took a number of other decisions, which were announced in its Sixth Annual Report. The EU member states agreed that they

⁴⁵ Council of the European Union (note 44).

⁴⁶ 'Common Military List of the European Union (equipment covered by the European Union Code of Conduct on Arms Exports) adopted by the Council on 17 November 2003 (updating and replacing the Common List of military equipment covered by the European Union Code of Conduct on Arms Exports adopted by the Council on 13 June 2000)', *Official Journal of the European Union*, C 314 (23 Dec. 2003), pp. 1–26.

will 'fully apply the Code of Conduct to licence applications where it is understood that the goods are to be incorporated into products for re-exports'.⁴⁷ In assessing such applications, they will also take into account five other criteria, which are identical to the additional criteria for incorporation purposes announced by the British Government⁴⁸ in 2002: (a) 'the export control policies and effectiveness of the export control system of the incorporating country'; (b) 'the importance of their defence and security relationship with that country'; (c) 'the materiality and significance of the goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern'; (d) 'the ease with which the goods, or significant parts of them, could be removed from the goods into which they are to be incorporated'; and (e) 'the standing entity to which the goods are to be exported'.⁴⁹

In 2003 COARM agreed 'in principle to share information on denials on an aggregate basis, without indicating which Member States issued the denials, with selected non-member countries whose export control legislation and policy meet the high standards set by Member States for themselves'.⁵⁰ Each decision is taken on a case-by-case basis. The first such agreement was reached with Norway, and the exchange of information on denials between the EU and Norway began in November 2004.

Developing a dialogue with the European Parliament was one of the priorities for future action outlined in 2003, and in 2004, for the first time, the dialogue contained elements going beyond a presidency briefing to the European Parliament Foreign Affairs Committee. In addition to an 'exchange of views' at the Foreign Affairs Committee's Sub-committee on Security and Disarmament on the issue of the review of the Code of Conduct, the Netherlands Presidency invited the European Parliament's rapporteur on the EU Code of Conduct⁵¹ to brief a COARM meeting and to speak at an informal meeting on the EU Code review that was held in The Hague.

Among COARM's priorities for 2004 was the harmonization of reporting. To this end, the Netherlands Presidency and SIPRI organized a meeting of national experts from EU member states to discuss data collection and reporting methods in the EU and ways to improve the comparability and comprehensiveness of the annual reports on implementation of the EU Code of Conduct.⁵²

⁴⁷ 'Sixth annual report according to operative provision 8 of the European Union Code of Conduct on arms exports', *Official Journal of the European Communities*, C 316 (21 Dec. 2004), pp. 1–215.

⁴⁸ British Foreign and Commonwealth Office, 'Foreign Secretary's statement on incorporation issues', 8 July 2002, URL <<http://www.fco.gov.uk/Files/kfile/Incorporation.pdf>>.

⁴⁹ 'Sixth annual report according to operative provision 8 of the European Union Code of Conduct on arms exports' (note 47).

⁵⁰ 'Sixth annual report according to operative provision 8 of the European Union Code of Conduct on arms exports' (note 47).

⁵¹ The European Parliament's reports on the EU Code of Conduct are available at URL <<http://www.sipri.org/contents/expcon/euparl.html>>.

⁵² SIPRI published a study which analyses the data collection and reporting methods in EU member states, evaluates the utility of existing data for drawing meaningful conclusions about the implementation of the EU Code of Conduct, and makes recommendations for improving the comprehensiveness,

The EU Code of Conduct review

Much of the review focused on the codification of decisions that have been taken piecemeal since 1998 without formal modification to the Code's text. Since 2002 the annual report on the implementation of the Code of Conduct has included a compendium of decisions taken each year. In addition, a User's Guide to the EU Code was published in November 2003 which further defines and interprets the terms and procedures outlined in the 1998 Code of Conduct.⁵³ An updated version of the User's Guide was published in December 2004.⁵⁴ The development of a 'handbook' for use at working level has made the Code of Conduct an instrument whose impact on export controls has gone considerably beyond its original scope. The revised Code, as agreed by COARM,⁵⁵ includes an obligation to apply the most recent version of the User's Guide.

Most amendments to the Code affect its operative provisions (i.e., its procedures for implementation) and therefore the licensing procedures. The scope of the Code was clarified and amended to make clear that licence applications for licensed production overseas, brokering, trans-shipment and intangible technology transfers should be assessed against the criteria of the Code in the same way as licence applications for physical transfers. The modifications also strengthen the requirement for end-use certification and introduce a requirement that member states publish national reports on arms exports.

With regard to the Code's export criteria, a reference to international humanitarian law was added to the human rights criterion (criterion 2). As a result, the assessment of a recipient country's attitude towards international humanitarian law may lead to the denial of an export licence. Criterion 7, on the risk of diversion within the recipient country or re-export under undesirable conditions, was modified to take into account the risk of reverse engineering, the record of the recipient country in respecting re-export provisions imposed by the exporter and the risk of diversion to terrorists. The governments of the EU member states are also elaborating guidelines for the application of criterion 8 for inclusion in the User's Guide. Criterion 8 considers the impact of an export on the technical and economic capacity of the recipient country. Guidelines for the application of other criteria may be added over time.

The governments of the EU member states also considered changing the status of the Code of Conduct from a Council Declaration to a Common Position, but they have not reached consensus on this issue. Unlike a Council Declaration, a Common Position is an instrument of the CFSP referred to in

usefulness and comparability of the annual reports. Bauer, S. and Bromley, M., *The European Union Code of Conduct on Arms Exports: Improving the Annual Report*, SIPRI Policy Paper no. 8 (SIPRI: Stockholm, Nov. 2004, URL <http://www.sipri.org/contents/publications/policy_papers.html>).

⁵³ Council of the European Union 'User's Guide to the European Union Code of Conduct on Arms Exports', document 1428/03, Brussels, 6 Nov. 2003.

⁵⁴ Council of the European Union 'User's Guide to the European Union Code of Conduct on Arms Exports', document 16133/1/04, rev.1, Brussels, 23 Dec. 2004.

⁵⁵ At the time of writing, the document was awaiting formal approval by the foreign ministers of the EU member states.

the 1992 Treaty on European Union,⁵⁶ which politically obliges member states to bring their legislation and policies in line with the agreed Common Position. While a Common Position would not transform the Code of Conduct into European law or make it subject to the jurisdiction of the European Court of Justice, a Common Position has national legal implications for some member states.

The review negotiations should be considered in the context of the discussion of lifting the EU arms embargo on China. At the December 2004 China–EU Summit, the Netherlands Presidency made clear that the embargo would not be lifted until a strengthened Code of Conduct was agreed.⁵⁷ In addition, a post-embargo ‘toolbox’ (temporary measures) would be agreed to address the concerns of some EU members, as well as the USA, that the lifting of the embargo may lead to an increase in arms exports to China.⁵⁸ Future agreement of a post-embargo toolbox had already been announced when the embargo on Libya was lifted. The elements of the toolbox include the sharing of information on equipment licensed in the past five years. In the case of China, this is intended to enable the EU governments to monitor that the commitment made at the December 2004 summit not to increase arms exports to China in qualitative or quantitative terms is being respected. The toolbox will also provide for: a quarterly exchange of detailed information on licences granted for exports of EU Common Military List items to countries that were formerly subject to arms embargo, specifying the type of military equipment, the quantity, the end-use and the end-user; regular consultations about the destination of such exports; discussions at Council level in the event of major national policy changes by one or more member states; and a review of denial notifications issued over the past three years to see if they remain valid.

V. Conclusions

The states that participate in informal multilateral groups to enhance the effectiveness of their national export controls continue to acknowledge that additional efforts are needed to combat and, if possible, reverse the proliferation of weapons of mass destruction and their delivery systems.

A number of processes have been proposed for strengthening the international legal framework for export controls as one important way of enhancing the wider non-proliferation regime. The growing number of states that accept the need for effective national export controls indicates that the environment for such international initiatives may currently be favourable.

In 2004 the need for well-funded and targeted assistance programmes to help countries put in place modern and effective national export controls

⁵⁶ The text of the Treaty on European Union (Maastricht Treaty) is available at URL <<http://europa.eu.int/en/record/mt/top.html>>.

⁵⁷ ‘EU/China: relations between EU and China move forward—lifting of arms embargo may be envisaged’, *Atlantic News*, no. 3635 (11 Dec. 2004), p. 4.

⁵⁸ On the embargo and European arms exports to China see chapter 10 in this volume.

emerged as a theme in the EU, the G8, the UN and the WA.⁵⁹ This implies that the scale of such assistance may grow in future and that there may be a need to strengthen the coordination of such programmes.

For the European Union, effectiveness will require better coordination between the parts of the EU which are responsible for different functions (e.g., border control, dual-use export control and external relations activities). One of the lessons of EU enlargement is that cooperation and assistance at an early stage facilitate compliance with the EU's export control rules and regulations. This lesson should be applied in candidate countries (currently Bulgaria, Croatia, Romania and Turkey) and to prospective applicants such as Serbia and Montenegro. Cooperation in the fight against WMD proliferation is also one of the elements of the European Neighbourhood Policy Strategy,⁶⁰ and export control assistance programmes ought to be an integral part of the ENP.

One way to enhance the consistency of export controls for dual-use and defence items across the EU would be to develop structures to pool technical capacities and intelligence on end-use, and to establish joint training of licensing and enforcement officers in the EU. Such a training capacity could also be used for outreach activities and in assistance programmes.

In addition to assisting the EU countries which are not members of all the export control regimes to prepare for and obtain membership, other EU members may need to develop interim structures and methods to ensure that sufficient and timely information is available to licensing and enforcement officers. This would enhance the consistent application of the dual-use regulation throughout the European Union.

⁵⁹ Assistance programmes were also on the agenda of the Sixth Oxford Conference, an annual, informal gathering of export control experts. It includes countries such as China, which participates in 1 export control regime, and Israel and Serbia, which do not participate in any. The 2004 conference was held in London on 8–10 Nov. 2004. Some presentations are available at URL <<http://www.exportcontrol.org/index.php/pagetype/pastconferences/id/1379/itemid/2145.html>>.

⁶⁰ European Commission, 'Communication from the Commission: European Neighbourhood Policy Strategy Paper', document no. COM(2004) 373 final, Brussels, 12 May 2004, URL <http://www.europa.eu.int/comm/world/enp/document_en.htm>.