

15. Controls on security-related international transfers

IAN ANTHONY and SIBYLLE BAUER*

I. Introduction

International efforts to prevent the proliferation of nuclear, biological and chemical (NBC) weapons have become more multifaceted in recent years. Initiatives to increase the effectiveness of export controls have gone hand-in-hand with attempts to apply them alongside other instruments in order to address proliferation problems in a more coherent manner. These interlocking measures are designed both to address a small number of urgent proliferation ‘hard cases’ and to establish agreed rules for application on a global basis.

In his 2002 State of the Union Address, the President of the United States, George W. Bush, pledged to ‘work closely with [allies] to deny terrorists and their state sponsors the materials, technology and expertise to make and deliver weapons of mass destruction’ (WMD).¹ Since then US policy has focused on strengthening cooperation among like-minded states in informal groupings outside the framework of international organizations. However, while maintaining its approach of concentrating on countries designated to be ‘of proliferation concern’, the USA has increasingly promoted discussion in international organizations, notably the United Nations.

By adopting a steadily expanding catalogue of resolutions, the UN Security Council is playing an ever more prominent role in creating obligations in the area of non-proliferation for all UN member states. These include obligations of a general character, of which Security Council Resolution 1540 is a prominent example, as well as decisions that focus on particular countries.² In 2006 the Security Council adopted two resolutions that require UN member states to block transfers to the Democratic People’s Republic of Korea (DPRK or North Korea) and Iran of items that are specified on control lists that form part of the respective resolution texts, both of which have direct implications for export controls.³

¹ The White House, ‘President delivers State of the Union Address’, News release, Washington, DC, 29 Jan. 2002, URL <<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>>.

² UN Security Council Resolution 1540, 28 Apr. 2004, is reproduced in appendix 11B in this volume and is discussed in appendix 11A. For this and other UN Security Council resolutions cited in this chapter see URL <<http://www.un.org/documents/scres.htm>>.

³ The resolution relating to North Korea is UN Security Council Resolution 1718, 14 Oct. 2006; and that to Iran is UN Security Council Resolution 1737, 23 Dec. 2006.

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The greater role of the UN Security Council in countering NBC proliferation raises a question about the relationship between global efforts to control technology transfer and the efforts of the groups of states that work together in export control regimes and other forums for practical cooperation, such as the Proliferation Security Initiative (PSI).⁴ In section II of this chapter recent developments in multilateral export control regimes and the PSI are examined. Changes in the export controls applied by the European Union (EU), including controls on transfers of both items specially designed and developed for military use and dual-use items, are discussed in section III. In section IV the recent decisions by the UN to use country-specific sanctions as part of the effort to prevent the proliferation of nuclear weapons are examined. The conclusions are presented in section V.

II. The control of international transfers of proliferation-sensitive items

Four of the informal multilateral export control arrangements tried to strengthen export control cooperation in 2006: 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 (WA). The states participating in these arrangements and in the Zangger Committee are listed in table 15.1.⁵ After a significant expansion in participation in these arrangements in 2005, no new countries joined them in 2006 (with one exception).⁶ However, all the regimes conduct outreach efforts to non-participating states to emphasize the importance of modern and effective export controls. Outreach and increased transparency can help non-participating states to apply the guidelines, control lists, standards and procedures developed by regime partners to the extent that these are described in public documents.

Following the end of the cold war, export control regimes placed less emphasis on the targeting of controls on particular countries. Assuming that there was a widespread commitment to non-proliferation norms, public documents did not name countries of proliferation concern but focused instead on generic types of proliferation behaviour (e.g. non-participation in relevant agreements) as the trigger for given actions. This tendency began to change in the late 1990s: several of the regimes now routinely name countries of proliferation concern.⁷ In another new development, the multilateral export control

⁴ On efforts to control exports of civil materials with potential offensive applications see chapter 11 in this volume.

⁵ The Zangger Committee participants seek to take account of the effect of 'changing security aspects' on the 1968 Treaty on the Non-proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) and to 'adapt export control conditions and criteria' in that light, although it is not formally part of the NPT regime.

⁶ Croatia joined the Zangger Committee on 30 June 2006.

⁷ The WA is the exception. According to one of its founding documents, the Initial Elements, the WA 'will not be directed against any state or group of states'. Wassenaar Arrangement, 'Guidelines and pro-

cooperation arrangements have analysed how their work can help ensure that non-state actors are denied the items that they would need to gain access to or make use of NBC weapons and their means of delivery as well as conventional arms and related dual-use technology.

Developments in multilateral export control regimes

The Australia Group was established in 1985 in the light of the international concern about the use of chemical weapons (CW) in the 1980–88 Iraq–Iran War. At first, the participating states cooperated to maintain and develop their national export controls to prevent exports of chemicals that might be used for, or diverted to, CW programmes. The participating states now seek to prevent the intentional or inadvertent supply by their nationals of materials or equipment to CW or biological weapon (BW) programmes.⁸

In 2006 the USA imposed sanctions on two Indian companies that in the past had supplied customers in Iran with a chemical—tri-methyl phosphite—that, according to the USA, could contribute to a CW programme or be used to produce fuel for ballistic missiles.⁹ The chemical is on an AG control list but was not controlled under Indian national export control law. While Indian officials underlined that the firms involved had not violated national laws or India’s international obligations, in 2006 India signalled its intention to incorporate the AG guidelines and control lists in national export control legislation. The Indian Government also announced its plans to conduct outreach activities to national industry in order to familiarize companies with the export control regulations and to discuss how they can most easily comply with their obligations.¹⁰

At the 2006 plenary meeting the AG participating states agreed to modify control lists in the light of the development and spread of new technologies that are considered to pose a potential proliferation threat. The AG participating states will in future apply controls to chemical manufacturing equipment that is suitable for the production of CW made from the metal niobium or niobium alloys.¹¹ Two fungi (*Coccidioides immitis* and *Coccidioides posadasii*)

cedures, including the Initial Elements’, Vienna, Dec. 2006, URL <<http://www.wassenaar.org/guidelines/>>.

⁸ See the AG website at URL <<http://www.australiagroup.net/>>.

⁹ ‘Imposition of nonproliferation measures against foreign entities’, *Federal Register*, vol. 70, no. 250 (30 Dec. 2005), pp. 77441–42. In addition, the USA imposed sanctions on 5 Chinese and 1 Austrian company, alleging a range of different exports of proliferation-sensitive items to Iran. In the case that is relevant to the AG controls, the Indian company Sabero Organic Chemicals Gujarat exported tri-methyl phosphite to Iran according to a press release from the company, reproduced at ‘US sanctions Indian firms for chem sales’, 29 Dec. 2005, URL <<http://www.armscontrolwonk.com/919/indian-firms-sanctioned-for-chemical-sale-to-iran/>>.

¹⁰ Ramachandran, R., ‘India will conform to Australia Group rules’, *Asian Age*, 6 July 2006, World News Connection, National Technical Information Service (NTIS), US Department of Commerce.

¹¹ Australia Group, ‘Control list of dual-use chemical manufacturing facilities and equipment and related technology’, July 2006, URL <http://www.australiagroup.net/en/control_list/dual_chemicals.htm>.

Table 15.1. Membership of multilateral weapon and technology transfer control regimes, as of 1 January 2007

State	Zangger Committee ^a 1974	NSG ^a 1978	Australia Group ^b 1985	MTCR 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	x
Canada	x	x	x	x	x
China	x	x			
Croatia	x ^c	x			x
Cyprus		x	x		
Czech Republic	x	x	x	x	x
Denmark	x	x	x	x	x
Estonia		x	x		x
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		x
Lithuania		x	x		x
Luxembourg	x	x	x	x	x
Malta		x	x		x
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		x
South Africa	x	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	x
USA	x	x	x	x	x
Total	36	45	40	34	40

NSG = Nuclear Suppliers Group; MTCR = Missile Technology Control Regime.

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 is an observer in this regime.

^b In addition to the 39 states listed, the European Commission participates in this regime.

^c Joined in 2006.

were added to the core list of biological agents subject to export control.¹² In future, in order to help combat increasingly sophisticated procurement methods, the AG participants intend to focus on measures to control the activities of intermediaries that facilitate trade.¹³

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.¹⁴ Recognizing that significant investigative resources are needed to identify illegal exports of missile-related items, the MTCR established an ad hoc Enforcement Experts Meeting that convenes at the same time as the MTCR plenary meetings. In 2006 the MTCR participating states helped to draw attention to the significant number of ballistic missile tests that were carried out by India, Iran, North Korea and Pakistan during the year.¹⁵

On 5 July 2006 the North Korean Army test-launched seven ballistic missiles, in each case launching the missiles into the Sea of Japan. In July the UN Security Council adopted Resolution 1695, condemning the missile launches and requiring all UN member states 'to exercise vigilance and prevent missile and missile-related items, materials, goods and technology being transferred to North Korea's missile or WMD programmes'.¹⁶ The resolution did not impose sanctions on North Korea, but it stressed the importance of the discussion in the Six-Party Talks (held by China, Japan, North Korea, South Korea, Russia and the USA) of the denuclearization of the Korean peninsula. The MTCR participating states drew attention to North Korea's missile programme in their October 2006 plenary statement, which expressed 'strong support' for the Security Council resolution and 'grave concern over the missile proliferation threat posed by the DPRK's missile activities'.¹⁷ In the public documents that were agreed at the MTCR plenary meeting, oblique reference was also made to Iran's missile programme, although Iran is not named. Iran test-fired a Shahab ballistic missile in May 2006 and, in November 2006, Iranian armed forces carried out the 'Great Prophet-2' military exercise over the course of 10 days. As part of the exercise, 'several dozen' short- and medium-range ballistic missiles were launched, including an

¹² Australia Group, 'List of biological agents for export control', July 2006, URL <http://www.australiagroup.net/en/control_list/bio_agents.htm>.

¹³ Australia Group, 'Media release: 2006 Australia Group plenary', Press release, Paris, 12–15 June 2006, URL <http://www.australiagroup.net/en/releases/press_2006.htm>.

¹⁴ See the MTCR website at URL <<http://www.mtcr.info/english/>>.

¹⁵ According to the Federation of American Scientists these 4 countries launched at least 15 ballistic missiles during 2006. It should be noted that China, France, Russia and the USA tested long-range ballistic missiles of far greater accuracy and range during 2006. Federation of American Scientists, 'Nuclear missile testing galore', 22 Dec. 2006, URL <<http://www.fas.org/blog/ssp/2006/12/>>. See also chapter 12 and appendix 12A in this volume.

¹⁶ UN Security Council Resolution 1695, 15 July 2006.

¹⁷ Missile Technology Control Regime, 'Plenary meeting of the Missile Technology Control Regime', Copenhagen, 2–6 Oct. 2006, URL <<http://www.mtcr.info/english/press/copenhagen.html>>.

extended-range variant of the Shahab missile that is believed to have a range of over 2000 kilometres.¹⁸

The aim of *the NSG* is to prevent the proliferation of nuclear weapons through export controls on nuclear and nuclear-related material, equipment, software and technology.¹⁹ 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.

In 2006 the exchange of information on current proliferation challenges in the framework of the NSG focused mainly on Iran.²⁰ The NSG adopted decisions at its plenary meeting to revise the procedures for information sharing in the group and to continue discussing the relationship between nuclear export controls and the adoption by states of strengthened nuclear safeguards. The NSG agreed to consider proposals on the possibility of further strengthening the NSG Guidelines by placing special controls on items associated with particularly sensitive parts of the nuclear fuel cycle: uranium enrichment and the reprocessing of spent nuclear fuel. In the light of the commitment to expand bilateral activities in the field of civil nuclear energy contained in the July 2005 Indian–US Civil Nuclear Cooperation Initiative (CNCI), the NSG participants have begun to examine the inclusion of a provision in the NSG Guidelines (which might be either general or specific to India).²¹

The Wassenaar Arrangement was established by 33 states in December 1995 at a meeting in Wassenaar, the Netherlands. Its objective is to promote transparency and the exchange of information and views on transfers of an agreed range of items in order to promote responsibility in transfers of conventional arms and dual-use goods and technologies and to prevent ‘destabilizing accumulations’ of such items.

At the 2006 WA plenary session two new sets of guidelines to help implement effective export controls were agreed: (a) best practices for the control of intangible transfers of technology (ITT) or software; and (b) guidance on the use of global or general licences for less sensitive dual-use items where this would not undermine the purposes of the WA, national export control laws or other international commitments. In addition to introducing laws and regu-

¹⁸ RIA Novosti, ‘Iran successfully launches long-range ballistic missiles’, Moscow, 2 Nov. 2006, URL <<http://en.rian.ru/world/20061102/55318349.html>>.

¹⁹ On the NSG see Anthony, I., Ahlström, C. and Fedchenko, V., *Reforming Nuclear Export Controls: The Future of the Nuclear Suppliers Group*, SIPRI Research Report no. 22 (Oxford University Press: Oxford, 2007).

²⁰ Nuclear Suppliers Group, ‘The NSG: strengthening the nuclear non-proliferation regime. Statement from the NSG plenary meeting’, NSG–BSB/Statement/Final, Brasilia, 1–2 June, 2006, URL <<http://www.nuclearsuppliersgroup.org/PRESS/2006-07-Brasilia.pdf>>.

²¹ US Department of State, ‘Joint statement by President George W. Bush and Prime Minister Manmohan Singh’, Washington, DC, 18 July 2005, URL <<http://www.state.gov/p/sca/rls/pr/2005/49763.htm>>. See also Ahlström, C., ‘Legal aspects of the Indian–US Civil Nuclear Cooperation Initiative’, *SIPRI Yearbook 2006: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2006), pp. 669–85. Indian–US civil nuclear cooperation and its implications are discussed in chapter 12 in this volume. As of Jan. 2007 the NSG has not taken a position on either the need for or the form of its relationship with India.

lations to define and control ITT and raise awareness, the participating states acknowledged the importance of post-export monitoring and ‘proportionate and dissuasive penalties to deter non-compliance’. To this end, the WA participating states’ governments support record-keeping obligations for industry and academia; regular compliance checks; providing training to enforcement authorities on appropriate investigative techniques; and sanctioning those that have committed breaches of laws controlling ITT.²²

According to the WA’s best practice guidelines for licensing of controlled items, global and general licences or licence exceptions may be granted ‘where a Participating State considers that authorisation of exports by such means would not undermine the purposes of the Wassenaar Arrangement and would not be inconsistent with its export control laws and regulations or its other international commitments’. WA participating states may impose reporting requirements on the use of such licences, and the exporter should be expected to keep documentation ‘sufficient to enable the export licensing and/or enforcement authorities’ to be satisfied ‘that the terms and conditions of the licence or exception have been complied with’.²³

The plenary meeting also set up task forces to prepare the regime’s third assessment of its activities, to be conducted in 2007. (The second assessment took place in 2003.²⁴) The WA control lists were amended to take into account technical and security developments. The munitions list includes 22 categories, covering close to 300 items. In 9 categories the WA dual-use list includes close to 1000 items to be controlled. Changes to the WA control lists are prepared at technical meetings held throughout the year and formally approved at the December plenary session. The 2006 plenary also agreed to initiate a dialogue between the WA experts group and its MTCR counterpart to examine overlap in list coverage, terminology and thresholds for control in order to clarify the scope of application of existing rules. Australia, the Plenary Chair of the WA in 2006, highlighted the need to strengthen controls on man-portable air defence systems (MANPADS) and promoted the Wassenaar Elements on Export Controls of MANPADS vis-à-vis non-participants.²⁵

The Proliferation Security Initiative

In June 2006 the states that participate in the Proliferation Security Initiative marked its third anniversary with a high-level political meeting in Warsaw. On

²² Wassenaar Arrangement, ‘Best practices for implementing intangible transfer of technology controls’, Vienna, 6 Dec. 2006, URL <<http://www.wassenaar.org>>.

²³ Wassenaar Arrangement, ‘Best practice guidelines for the licensing of items on the basic list and sensitive list of dual-use goods and technologies’, Vienna, Dec. 2006, URL <<http://www.wassenaar.org>>.

²⁴ 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. 744–47.

²⁵ Downer, A., Australian Foreign Minister, ‘Australia’s international MANPADS initiative’, Speech at Millennium Hotel, New York, 18 Jan. 2007, URL <http://www.foreignminister.gov.au/speeches/2007/070118_manpads.html>. On international controls on MANPADS see appendix 14A in this volume.

behalf of the participating states, Canada stated that the PSI aims ‘to impede and stop illegal shipments of weapons of mass destruction (WMD), their delivery systems and related materials’.²⁶ The contribution of the PSI to non-proliferation is not confined to interdiction of shipments. It also includes the development of informal cooperation networks of officials involved in counter-proliferation activities—such as customs officers and officials from ministries of defence and foreign affairs—and provides an opportunity to gain experience and test procedures in training exercises. The PSI meetings have also enabled the USA, in particular, to advocate and build support for various non-proliferation measures.

Participation in the Proliferation Security Initiative

The group that first met, in 2003, to form the PSI consisted of 11 ‘core states’.²⁷ According to the chairman’s statement at the 2006 Warsaw meeting, ‘more than 75’ states have expressed support for the PSI Principles and committed themselves to actively support interdiction efforts whenever necessary.²⁸ However, only 65 states participated in the 2006 meeting and the core group had been disbanded in mid-2005. There is neither a public list of PSI partners nor a membership procedure.

The Statement of Interdiction Principles formulated under the PSI and published in October 2003 commits the participants to establish ‘a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council’.²⁹ Within six months of the publication of the Statement of Interdiction Principles over 60 countries had expressed public support for it, signalling their intention to try to enforce existing national laws and international agreements (including mandatory decisions of the UN Security Council) more effectively. The private sector has been engaged in the PSI through annual meetings on particular subjects at which industry representatives contribute knowledge and expertise on relevant technical issues related to interdiction.³⁰

²⁶ See the PSI website at URL <<http://www.proliferationsecurity.info/introduction.html>>. See also Ahlström, C., ‘The Proliferation Security Initiative: international law aspects of the Statement of Interdiction Principles’, *SIPRI Yearbook 2005: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2005), pp. 741–65; and the glossary in this volume.

²⁷ The states were Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom and the USA.

²⁸ Cracow Proliferation Security Initiative, High Level Political Meeting, ‘Chairman’s statement’, Warsaw, 23 June 2006, URL <<http://www.psi.msz.gov.pl/>>.

²⁹ The statement is available on the PSI website (note 26).

³⁰ In Aug. 2004 a meeting in Copenhagen was dedicated to analysing ship container security; in Sep. 2005 a meeting in Los Angeles, Calif., was devoted to analysing air cargo security; and in Sep. 2006 a meeting in London focused on maritime security. See PSI Maritime Workshop, ‘Preventing WMD proliferation’, Press release 258/2006, London, 25–26 Sep. 2006, available at British Foreign and Commonwealth Office, URL <<http://www.fco.gov.uk/>>.

By June 2006, 20 states were regularly participating in PSI Operational Expert Group (OEG) meetings.³¹ These states are understood to have the capabilities and expertise to develop the PSI, including the necessary national legal base and inter-agency coordination system, and they have also carried the main burden of organizing practical activities.³²

Since the launch of the PSI in 2003 six countries have signed bilateral ship-boarding agreements with the USA—Belize, Croatia, Cyprus, Liberia, the Marshall Islands and Panama.³³ Except for Croatia, these states provide commercial shipping fleets with a flag of convenience according to the International Transport Workers Federation; and Liberia and Panama have the largest fleets of registered commercial vessels in the world.³⁴ The USA is engaged in discussions about signing such agreements with 20 other countries.

Almost all the European countries support the PSI, as does the EU. In 2004 Belarus declared that it shared the PSI objectives and was ready to cooperate within this framework. In Africa, Angola, Liberia, Libya and Tunisia have participated in PSI activities; and in Central and South America, Argentina, Belize and Panama support the PSI. PSI outreach activities have been carried out in key trans-shipment countries (i.e. countries that function as major hubs for the trading and shipment of cargo) and regions that are regarded as probable proliferation routes. Participation in PSI outreach activities has been undertaken by Azerbaijan and Georgia in the South Caucasus; Kazakhstan, Turkmenistan and Uzbekistan in Central Asia; Bahrain, Iraq, Israel, Jordan, Kuwait, Oman, the United Arab Emirates and Yemen in the Middle East; and Brunei, Cambodia, the Philippines and Thailand in South-East Asia.

There are noticeable gaps in participation. China, Egypt, India, Indonesia, South Korea and Malaysia (which control important shipping or transit routes of non-proliferation relevance) have not participated in the PSI. North Korean authorities have made it clear to China and South Korea that their support for PSI activities—which it has characterized as acts of piracy that can ‘ignite military conflict and lead to the regional and worldwide instability’³⁵—would jeopardize North Korean engagement in nuclear issues and negotiations on them.

³¹ The 20 participants were the 11 ‘core states’ as well as Argentina, Canada, Denmark, Greece, New Zealand, Norway, Russia, Singapore and Turkey. At OEG meetings representatives plan future activities and analyse past activities to consider the possible scope of action under international and domestic legal systems and to determine whether the necessary authority exists to conduct interdiction operations in different circumstances, including actual cases and hypothetical scenarios tested in exercises.

³² All the 23 PSI exercises conducted prior to mid-2006 were organized or co-organized by a country in this group of 20 states.

³³ On these agreements see US Department of State, Bureau of International Security and Nonproliferation, ‘Ship boarding agreements’, URL <<http://www.state.gov/t/isn/c12386.htm>>.

³⁴ Together, the 6 countries that have signed ship-boarding agreements hold the registration of over one-quarter of world merchant shipping. Central Intelligence Agency (CIA), ‘Rank order: merchant marine’, *The World Factbook 2007* (CIA: Washington, DC, 2007), URL <<https://www.cia.gov/cia/publications/factbook/>>.

³⁵ North Korean Institute for Disarmament and Peace, ‘Proliferation Security Initiative (PSI): nuclear energy and countering proliferation’, Paper presented at the Third Meeting of the CSCAP Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific, Singapore, 26–27 Mar. 2006.

The USA has frequently attempted to convince India to participate in the PSI as part of the wider strategy of engaging India in the global non-proliferation system. In 2005 India suggested to the USA that it would be willing to participate in the PSI on equal terms (i.e. if it was able to join the core group of PSI participants or if the group ceased to exist). After the core group's disbanding in 2005, India linked participation in the PSI to the process of negotiating amendments to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), discussed below.³⁶ The SUA Convention was amended in October 2005. The US Congress discussed whether to make Indian participation in the PSI a condition of agreeing the US–India Peaceful Atomic Energy Cooperation Act—an agreement that was needed to enable civilian nuclear cooperation between the two countries.³⁷ This act was passed in December 2006, but references in it to the PSI were restricted to requiring a report from the US president on efforts and progress made towards achieving India's full participation in the PSI.

Indonesia and Malaysia have raised concern over the implications of the PSI for their jurisdiction over maritime routes and their sovereignty claims to the Strait of Malacca. Both countries are very suspicious of any foreign military presence in these waters and, when the question of Indonesian participation in the PSI was brought up by US Secretary of State Condoleezza Rice during her visit to Indonesia in March 2006, Indonesian Foreign Minister Hassan Wirajuda characterized the PSI as an initiative that would endanger Indonesian sovereignty.³⁸

The scope of activities

President Bush proposed expanding PSI activities beyond intercepting goods in a 2004 speech at the National Defense University (NDU) in Washington, DC.³⁹ He suggested that the PSI participants and other interested states should explore more active use of law enforcement and criminal justice procedures to tackle illicit trafficking in proliferation-sensitive items. The 2004 Lisbon PSI meeting endorsed this objective and agreed to 'begin examining the key steps necessary for this expanded role', including a review of national tools available for this purpose.⁴⁰

³⁶ The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was opened for signature on 10 Mar. 1988 and entered into force on 1 Mar. 1992; for the text see URL <<http://www.imo.org/>>. It was amended in Oct. 2005 and the amended convention was opened for signature on 14 Feb. 2006. See also Ahlström (note 26), pp. 763–64.

³⁷ On the US–India Peaceful Atomic Energy Cooperation Act (Hyde Act) see chapter 12 in this volume.

³⁸ Indonesian Embassy, 'RI declines to join Proliferation Security Initiative', Canberra, 18 Mar. 2006, URL <<http://www.kbri-canberra.org.au/brief/2006/mar/031806.htm>>.

³⁹ The White House, 'President announces new measures to counter the threat of WMD: remarks by the President on weapons of mass destruction proliferation, Fort Lesley J. McNair, National Defense University', News release, Washington, DC, 11 Feb. 2004, URL <<http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>>.

⁴⁰ US Department of State, 'Proliferation Security Initiative: chairman's statement at the fifth meeting', Lisbon, 4–5 Mar. 2004, URL <<http://www.state.gov/t/isn/rls/other/30960.htm>>.

The PSI could promote discussion in the area of criminal justice and law enforcement by addressing the measures needed to implement the obligation introduced in UN Security Council Resolution 1540 for states to adopt and enforce appropriate, effective laws to criminalize the financing of non-state actors that would enable them to manufacture, acquire, possess, develop, transport, transfer or use NBC weapons and their means of delivery.⁴¹ However, while Bush raised the freezing of assets associated with any aspect of NBC proliferation (state or non-state) in his NDU speech, there has so far not been much progress in this area of work under the PSI. Substantive discussions on this issue will need to include financial regulators, who are more used to cooperating in groups such as the Financial Action Task Force on Money Laundering, established in 1989 by the Group of Seven (G7) industrialized states,⁴² or the Egmont Group of national finance intelligence units.⁴³

In 2006 the USA suggested that the PSI could be expanded and tools created to interdict payments and financial flows between the parties to proliferation-sensitive transactions.⁴⁴ At the June 2006 PSI meeting in Warsaw, the participants examined some national efforts to disrupt the financial mechanisms that support proliferators. However, the meeting did not recommend a common approach but instead concluded that each participant should consider ‘how their own national laws and authorities might be utilized or strengthened to identify, track or freeze the assets and transactions of WMD proliferators and their supporters’.⁴⁵

Revision of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

The 1988 SUA Convention, together with a protocol on fixed platforms located on the continental shelf, is an anti-terrorist convention that was adopted within the framework of the UN.⁴⁶ Its parties are required to criminalize and prosecute a range of maritime terrorist offences.

After the 11 September 2001 terrorist attacks on the USA the international legal framework against terrorism was reviewed and, as part of that process, the Legal Committee of the International Maritime Organization (IMO) reassessed measures and procedures to prevent acts of terrorism at sea, includ-

⁴¹ For the text of the resolution see appendix 11A in this volume.

⁴² On the Financial Action Task Force on Money Laundering see URL <<http://www.fatf-gafi.org/dataoecd/30/46/37627377.pdf>>. See also Norgren, C., ‘An international response to terrorism’, eds A. J. K. Bailes and I. Frommelt, SIPRI, *Business and Security: Public-Private Sector Relationships in a New Security Environment* (Oxford University Press: Oxford, 2004), pp. 47–58.

⁴³ See the Egmont Group website at URL <<http://www.egmontgroup.org/>>.

⁴⁴ Executive Order no. 13382, issued in June 2005, gave US authorities the power to seize assets and property in the USA and block access to US financial system for designated foreign individuals and entities judged to be engaged in proliferation of NBC weapons and their means of delivery. The White House, ‘Executive order: blocking property of weapons of mass destruction proliferators and their supporters’, News release, Washington, DC, 29 June 2005, URL <<http://www.whitehouse.gov/news/releases/2005/06/20050629.html>>.

⁴⁵ Cracow Proliferation Security Initiative (note 28).

⁴⁶ SUA Convention (note 36).

ing the SUA Convention. In 2004 at PSI meetings the USA suggested amendments to the convention, and the meetings also served as a forum to promote and discuss those proposals. Amendments were adopted on 14 October 2005, and the amended convention was opened for signature on 14 February 2006.

Changes to the convention included widening the scope of offences to include not only the actual use of WMD against or on a ship but also the intentional transport of a range of proliferation-sensitive items on-board a ship. The amended convention establishes an international legal basis for action against a broad spectrum of proliferation-related maritime activities and includes provisions for boarding ships on the high seas that are modelled on bilateral ship-boarding agreements of the kind promoted by the PSI.

III. Supply-side measures in the European Union

In 2006 the EU continued its efforts to adopt the revision of its 1998 Code of Conduct on Arms Exports as a Common Position, which would strengthen its legal status.⁴⁷ The EU worked to strengthen the implementation and enforcement of dual-use export controls, following up recommendations from a 'peer review' of the regulation that is the legal basis for EU dual-use export control, including its national implementation. The EU also continued its outreach efforts to non-EU states on conventional and dual-use export controls. In the dual-use area, outreach efforts have increasingly been supported through technical assistance funded by the European Commission and implemented by EU member states.

The European Union Code of Conduct on Arms Exports

The EU Code of Conduct on Arms Exports was adopted in June 1998.⁴⁸ Beyond its application to the 27 members of the EU (as of January 2007), Bosnia and Herzegovina, Canada, Croatia, Iceland and the Former Yugoslav Republic of Macedonia (FYROM) have officially aligned themselves with its criteria and principles.⁴⁹ In addition, two countries in South-Eastern Europe (Montenegro and Serbia) have included an obligation to apply the EU Code criteria when assessing licence applications in their new export control laws adopted in 2006. Albania is about to adopt similar legislation.

⁴⁷ Council of the European Union, 'European Union Code of Conduct on Arms Exports', document 8675/2/98, Rev. 2, Brussels, 5 June 1998, URL <<http://ue.eu.int/uedocs/cmsUpload/08675r2en8.pdf>>. Unlike a Council Declaration, a Common Position is an instrument of the Common Foreign and Security Policy, 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, it does have national legal implications for some member states.

⁴⁸ See 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/>>.

⁴⁹ 'Eighth annual report according to operative provision 8 of the European Union Code of Conduct on arms exports', *Official Journal of the European Union*, C 250 (16 Oct. 2005), pp. 1–346.

The EU Code of Conduct contains eight criteria for export licensing as well as operative provisions which outline reporting procedures and mechanisms for intergovernmental denial notification and consultation. The EU list of military equipment to which the Code is applied is revised every year to take into account the changes to the WA Munitions List.⁵⁰ The EU could include additional items but has not chosen to do this so far.

In 2004 the EU member states initiated a review of the 1998 Code of Conduct. The Council Working Party on Conventional Arms (COARM) prepared an updated and upgraded Code, which includes changes to its operative provisions, eight criteria and legal status.⁵¹ A draft 'Council Common Position defining common rules governing the control of exports of military technology and equipment' was agreed at the technical level in the spring of 2005. The proposal by the Finnish EU Presidency to adopt the Common Position was vetoed by a number of member states, including France.⁵² The delay was due to a political link between adopting the Common Position and lifting the arms embargo imposed on China in 1989. The adoption of the so-called toolbox of additional transparency and mutual control measures to be applied upon the lifting of an arms embargo, for inclusion in the User's Guide to the Council Common Position defining common rules governing the control of exports of military technology and equipment, has been held up for the same reason. This was in spite of the 2005 decision to apply it to Libya.⁵³

The User's Guide to the EU Code, first published in November 2003, has been updated at least once a year since then. It further defines and interprets the terms and procedures outlined in the 1998 Code of Conduct. A number of important changes were made in 2006: best practice guidelines for the application of criteria 2 ('human rights'), 3 ('internal situation'), 4 ('regional stability') and 7 ('risk of diversion') were agreed. Work on best practice guides for the remaining criteria is ongoing.⁵⁴ The common elements for end-use certificates in the User's Guide were revised in alignment with the indicative list of end-use assurances agreed by the Wassenaar Arrangement.⁵⁵ A sur-

⁵⁰ 'Common Military List of the European Union (equipment covered by the European Union Code of Conduct on Arms Exports) adopted by the Council on 27 February 2006', *Official Journal of the European Union*, C66 (17 Mar. 2006), pp. 1–28.

⁵¹ For a summary of changes see Anthony, I. and Bauer, S., 'Transfer controls', *SIPRI Yearbook 2005* (note 26), pp. 715–18.

⁵² Rettman, A., 'France blocking plan for EU code on arms exports', *EUobserver*, 18 Jan. 2007, URL <<http://euobserver.com/9/23296/?rk=1>>; and Dombey, D., 'EU considers binding rules on arms sales', *Financial Times*, 18 Apr. 2005, p. 2.

⁵³ See Anthony and Bauer (note 51); and Anthony, I., 'Militarily relevant EU–China trade and technology transfers: issues and problems', Paper presented at the Conference on Chinese Military Modernization: East Asian Political, Economic, and Defense Industrial Responses, Maui, Hawaii, 19–20 May 2005, URL <<http://www.sipri.org/contents/expcon/euchinapaper>>.

⁵⁴ Council of the European Union, 'User's Guide to the European Union Code of Conduct on Arms Exports', document 16440/06, Brussels, 18 Dec. 2006, URL <<http://www.consilium.europa.eu/exportcontrols>>. Best practice guidelines for criterion 8 on sustainable development were adopted in 2005.

⁵⁵ Wassenaar Arrangement, 'End-use assurances commonly used, consolidated indicative list', Vienna, updated at the 2005 WA plenary session, Dec. 2005, URL <<http://www.wassenaar.org/publicdocuments/>>.

vey among member states on national requirements and policies for end-use certificates was initiated.

The development of the EU Code's implementation during 2006 is documented in the eighth annual report,⁵⁶ which was published considerably earlier than in previous years and was more comprehensive. The EU governments also held an experts meeting to discuss how to improve the data collection and reporting methods and initiated a survey on this subject.⁵⁷

The member states use the EU's COREU system to circulate notifications of denials of exports and to consult with each other.⁵⁸ The EU Code of Conduct requires such consultations before authorizing a transaction that is essentially identical to an export previously denied by another EU member. According to the eighth annual report, such activities took place 'almost on a daily basis' in 2006.⁵⁹ Denial notifications and the results of bilateral consultations are included in a central database, which is managed by the EU Council Secretariat. In October 2006, 20 member states and acceding countries had legislation in place which fully implements Common Position 2003/468/CFSP on the control of arms brokering.⁶⁰ EU governments also exchanged information about national practices regarding post-shipment verification.

Among COARM's stated priorities for the near future are improvements in the clarity and transparency of annual reporting, in particular regarding the value of actual exports. The EU member states are also seeking to assist countries in the practical implementation of the Code's principles and criteria through, 'inter alia, the provision of practical and technical assistance to ensure the harmonisation of policies on arms export control'.⁶¹

The member states continued their outreach efforts to non-EU countries which are newly included in an annex to the annual report. The Austrian EU Presidency, in cooperation with SIPRI, organized a seminar on conventional and dual-use export controls for the Western Balkans countries in Vienna in May 2006. At the end of October 2006, the Finnish EU Presidency and the Government of Bosnia and Herzegovina, in cooperation with SIPRI, organized a regional seminar on the EU Code of Conduct in Sarajevo, during which working groups discussed the application of the Code criteria to hypothetical cases. In 2006 the EU also sent letters to authorities in Albania, Belarus, Bosnia and Herzegovina, Croatia, the FYROM, Moldova, Montenegro, Serbia, Switzerland, Turkey and Ukraine, in which it offered to strengthen the dialogue with these countries about the practical implementation of the EU Code of Conduct.

⁵⁶ 'Eighth annual report' (note 49).

⁵⁷ For further detail on the data in the eighth annual report and reporting methodologies see chapter 10 in this volume.

⁵⁸ COREU is the French abbreviation for European Correspondence, a telex network linking the foreign ministries of the EU member states.

⁵⁹ 'Eighth annual report' (note 49), p. 2.

⁶⁰ 'Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering', *Official Journal of the European Union*, L156 (25 June 2003), pp. 79–80.

⁶¹ 'Eighth annual report' (note 49), p. 4.

Strengthening European Union dual-use export controls

The participation of EU companies and individuals in the international nuclear trafficking ring coordinated by Abdul Qadeer Khan, a former senior scientific adviser to the Government of Pakistan on nuclear matters, underlined that more effective export controls are needed in Europe. Exports of dual-use items from the EU are controlled by a Council regulation (Regulation 1334/2000 as subsequently amended).⁶² In 2004 the EU conducted a 'peer review' of the dual-use export control system and, in December 2004, EU leaders decided that the recommendations of the review, which were listed in nine categories, should be acted on without delay.

Subsequently, an electronic database was established on a pilot basis to record denial notices made by member states under EU law and in the international export control regimes. The database contains 'a growing number' of the valid denials issued by member states under Regulation 1334/2000 as well as those exchanged pursuant to rules created in the Australia Group and 'some' of those exchanged pursuant to rules created in the Nuclear Suppliers Group.⁶³

Since the peer review of 2004, member states have got into the habit of informing one another about changes to national regulations and have established points of contact to make exchanges regular and systematic. A pool of technical experts has been designated to assist their colleagues to address specific questions on matters such as the classification and recognition of items subject to control as another practical step towards effective cooperation.

As regards Iran, prior to the adoption of sanctions by the UN Security Council in December 2006 (discussed below) the EU took steps to develop a specific approach to applying export controls. Regulation 1334/2000 applies to all exports of listed items but the EU has not prepared a list of countries to which particular measures would apply. However, the July 2006 Council Conclusions indicate that Iran has been the subject of special attention. The member states committed themselves to exercise 'the utmost vigilance in the application of existing export control mechanisms for sensitive material to prevent the transfer of goods, technology and materials that might be used, directly or indirectly, in fissile material programmes and missile programmes'.⁶⁴

The Commission has prepared proposals to modify Regulation 1334/2000 that are intended to enhance security, simplify the task of industry in complying with the established rules and improve coordination of export controls at

⁶² The regulation is normally amended on an annual basis to take into account changes in the control list that forms an integral part of the law. The most recent version at the time of writing is 'Council Regulation (EC) no. 394/2006 of 27 February 2006 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*, L73 (13 Mar. 2006), p. 1.

⁶³ Council of the European Union, 'Implementation of the recommendations of the Peer Review of Member States export control systems for dual-use goods', document 16507/06, Brussels, 12 Dec. 2006.

⁶⁴ Council of the European Union, 2743rd Council Meeting General Affairs and External Relations, Brussels, 17 July 2006, 'General Affairs, Press release 11574/06 (Presse 218)', URL <<http://www.consilium.eu.int>>.

the international level.⁶⁵ These proposals, which address the issues highlighted in the peer review and take into account its recommendations, will be discussed by the Council of the European Union. UN Security Council Resolution 1540 requires appropriate and effective transit and trans-shipment controls over proliferation-sensitive items, including related services such as financing and transport. Neither transit and trans-shipment nor related services are controlled under existing EU law and thus action in this field will be necessary. The review of Regulation 1334/2000 also aims to clarify and update controls on intangible technology transfer. At present ITT falls under the scope of Regulation 1334/2000 when the means of transfer is electronic (including email, fax and via the Internet). However, the oral communication of intangible technology is controlled by each member state under national legislation in line with an undertaking made by EU member states in a Council Joint Action in June 2000.⁶⁶ Except for Cyprus, all EU member states participate in the Wassenaar Arrangement and have therefore committed themselves to implement the 'Best practices for implementing intangible transfer of technology controls' document agreed at the WA plenary meeting in December 2006 and discussed above.⁶⁷

European Union export control outreach and assistance efforts

In recent years, outreach efforts to promote the adoption of modern and effective export controls have become more prominent on the agenda of the international export control regimes. A number of countries, Japan and the USA being the most prominent, have also offered technical assistance to help states that want to strengthen their export controls. While different EU organs have for some time cooperated with non-EU countries on dual-use export controls, there has been neither a systematic approach to coordinating such efforts nor support for them through a long-term technical assistance programme. Export control assistance at the EU level was given during the run-up to the 2004 enlargement, preparing countries to adopt the EU *acquis communautaire* for control of both dual-use and conventional exports, as expressed in the treaties, the secondary legislation and EU policies.

In December 2003 the threat-based approach adopted in the EU Strategy against Proliferation of Weapons of Mass Destruction widened the geograph-

⁶⁵ European Commission, 'New measures on export of Dual Use goods and technologies: summary of the proposals adopted by the Commission', Brussels, 19 Dec. 2006. URL <<http://www.trade.ec.europa.eu/doclib/html/131958.htm>>.

⁶⁶ 'Council Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses', *Official Journal of the European Communities*, L159 (30 June 2000), pp. 1–2. According to the Joint Action, intangible technology transfer is to be controlled 'where it is provided outside the European Community by a natural or legal person established in the European Community and is intended, or the provider is aware that it is intended, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons' (emphasis added). ITT that takes place within the EU (termed 'deemed export' in the USA) is not controlled under EU law.

⁶⁷ Wassenaar Arrangement (note 22).

ical scope of export control assistance within a more coherent EU non-proliferation policy.⁶⁸ The WMD Strategy contains a commitment to work with others on dual-use export controls, in the EU's immediate neighbourhood, in strategic partner countries and in countries of proliferation concern. Export control assistance features prominently in the Action Plan that accompanies the WMD Strategy. During 2006 the EU took large strides towards implementing this commitment, most notably through the development of the Stability Instrument as one of the financial instruments in the Community budget cycle for 2007–13. The Stability Instrument will contain substantial funding to provide technical assistance to non-EU countries to set up or strengthen their dual-use export control systems.

Since 2003 EU assistance efforts have been carried out in a series of pilot projects authorized by the European Parliament. The first such project, which began in 2004 and was implemented by SIPRI, included activities to strengthen the national dual-use export controls of Bosnia and Herzegovina, Croatia, Montenegro and Serbia (initially, the State Union of Serbia and Montenegro) and to elaborate and test approaches to export control assistance that could offer guidance for the subsequent development of a larger programme.

Two pilot projects in the area of dual-use export control assistance are being implemented by the German Federal Office for Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), with the support of officials from other EU countries. These projects focus on cooperation with China, Montenegro, Serbia, Ukraine and the United Arab Emirates. Albania, the FYROM and Morocco are included from 2007. The most recent pilot project aims to develop a training capability at BAFA to improve the delivery of EU assistance. In 2005 the European Commission also contracted BAFA to implement a project on export control of dual-use items in Russia financed under the Technical Aid to the Commonwealth of Independent States (TACIS) programme. The project has a contract budget of €3 million and is scheduled to last at least 30 months. Other EU member states will participate by contributing experts in individual activities. The project's scope includes the legal and regulatory framework, institutional capacity-building and outreach to industry.

The Office of the High Representative's Personal Representative on Non-proliferation highlighted the importance of dual-use export controls for WMD non-proliferation during visits and workshops abroad, for example, in Ukraine in January 2006 and in Pakistan in December 2006.

⁶⁸ Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels, 12 Dec. 2003, URL <http://ue.eu.int/cms3_applications/Applications/newsRoom/LoadDocument.asp?directory=en/misc/&filename=78340.pdf>.

IV. The impact of UN sanctions against North Korea and Iran on export controls

In 2006 the UN Security Council adopted resolutions 1718 and 1737 as part of the effort to address nuclear and missile-related proliferation concerns in North Korea and Iran, respectively. In each case the resolution's targeted and limited measures were integrated into a package of measures including an attempt to conduct a dialogue on nuclear issues with the country concerned and to emphasize the rewards and the potential costs associated with alternative nuclear policies.⁶⁹ In spite of these efforts, at the end of 2006 Iran and North Korea continued to pursue nuclear programmes that create widespread international concern. While the countries engaged in this dialogue cannot accept the nuclear policies of Iran and North Korea, the use of sanctions has been examined because they offer 'something between words and war'.⁷⁰ The measures contained in the resolutions are intended to deny particular target groups the economic or material base with which to conduct activities of concern or to impose restrictions and costs directly on those deemed responsible for deciding the policies and programmes of concern.

UN Security Council Resolution 1718 was unanimously adopted on 14 October 2006 after North Korea carried out a nuclear weapon test.⁷¹ It requires UN members to 'prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories' of a range of different items. The resolution bans the supplying of major conventional weapons and of items set out in three lists that accompany the resolution, corresponding to the lists adopted by the AG, the MTCR and the NSG.⁷² It also bans the provision of technical training, advice, services or assistance related to embargoed items. Supplying luxury goods to North Korea is also banned.

Resolution 1718 also states that North Korea 'shall cease the export' of the same items that may no longer be supplied to North Korea and instructs states to 'prohibit the procurement of such items from the DPRK by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the DPRK'. In order to ensure compliance with these requirements,

⁶⁹ On the nuclear programmes of Iran and North Korea and the wider approaches to address concerns arising from them see chapter 12 in this volume.

⁷⁰ This formulation was used by Swedish State Secretary Hans Dahlgren in a presentation to the UN Security Council laying out the recommendations of a study that aimed to facilitate the more precise use of sanctions against threats to peace, while reducing collateral effects. United Nations, "'Stockholm Process" findings—year-long study on targeted sanctions—presented to Security Council', Press release, UN document SC/7672, 25 Feb. 2003, available at 'Minutes from the UNSC discussion', URL <<http://www.smartsanctions.se/>>. See also Speier, R. H., Chow, B. G. and Starr, S. R., *Nonproliferation Sanctions*, RAND Monograph Report no. MR-1285-OSD (RAND: Santa Monica, Calif., 2001), URL <http://www.rand.org/pubs/monograph_reports/MR1285/>.

⁷¹ The nuclear weapon test is discussed in appendix 12B in this volume.

⁷² The items covered are battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile systems as defined for the purpose of the UN Register of Conventional Arms, URL <<http://disarmament.un.org/cab/register.html>>.

states are 'called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action including through inspection of cargo to and from the DPRK, as necessary'.

The resolution also includes financial and travel sanctions. States are required to freeze funds, other financial assets and economic resources that are owned or controlled, directly or indirectly, by persons or entities that are listed in a document annexed to the resolution. The list contains the names of individuals and entities who are believed to be engaged in or providing support for North Korea's 'nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes', or 'acting on their behalf or at their direction'. Finally, states are instructed to prevent the 'entry into or transit through their territories' of people who are considered responsible for North Korea's 'nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members'.

In July 2006 the UN Security Council adopted Resolution 1696 which demanded that Iran 'suspend all enrichment-related and reprocessing activities, including research and development' and stipulated that this full suspension should be verified by the International Atomic Energy Agency (IAEA).⁷³ Resolution 1696 called on all states, 'in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent the transfer of any items, materials, goods and technology that could contribute to Iran's enrichment-related and reprocessing activities and ballistic missile programmes'. The resolution did not prohibit nuclear or nuclear-related dual-use transfers to Iran but requested the Director General of the IAEA to report on whether Iran had established 'full and sustained suspension' of proliferation-sensitive activities. The Security Council made it clear that, if Iran did not comply with Resolution 1696, then 'appropriate measures' would subsequently be adopted 'to persuade Iran to comply with this resolution and the requirements of the IAEA'.⁷⁴

In two subsequent reports the IAEA Director General stated that Iran had not established full and sustained suspension of all enrichment-related and reprocessing activities as set out in Resolution 1696.⁷⁵ In the light of these reports the UN Security Council passed Resolution 1737 on 23 December 2006, specifying and bringing into effect the 'appropriate measures' referred to in Resolution 1696.⁷⁶ Resolution 1737 bans states from supplying Iran with items that could contribute to enrichment-related, reprocessing or heavy water-related activities or to the development of nuclear weapon delivery systems. This embargo includes technical support that could assist banned activities. The resolution requires states to examine the activities of Iranian nationals

⁷³ UN Security Council Resolution 1696, 31 July 2006.

⁷⁴ UN Security Council Resolution 1696 (note 73).

⁷⁵ International Atomic Energy Agency (IAEA), 'Implementation of the NPT safeguards agreement in the Islamic Republic of Iran', document GOV/2006/53, Vienna, 31 Aug. 2006; and IAEA, 'Implementation of the NPT safeguards agreement in the Islamic Republic of Iran', document GOV/2006/64, Vienna, 14 Nov. 2006. Both are available on the IAEA's website at URL <<http://www.iaea.org/Publications/Documents/>>.

⁷⁶ UN Security Council Resolution 1737 (note 3).

who are resident in their countries and receiving technical education to minimize the risk that these people may acquire proliferation-sensitive knowledge.

The items that are banned for transfer to Iran are not the same as those that are banned for supply to North Korea. The lists applied in the case of Iran are derived from those of the MTCR and the NSG, but the resolution exempts items needed to complete the Iran–Russia project to build a light-water reactor at Bushehr. Under the terms of the resolution Iran is prohibited from exporting any items listed in two documents that conform to the MTCR and the NSG control lists, and states are also banned from importing these items from Iran.

The resolution includes targeted financial sanctions. States should freeze the financial assets of companies, organizations and individuals involved in Iran's nuclear and ballistic missile programmes and an annex to the resolution contains lists of the people and entities subject to these provisions. The resolution does not contain travel sanctions of the kind imposed on North Korea, but states are required to report the movement of designated individuals to the UN Security Council.

The export control implications of UN Security Council resolutions 1718 and 1737

Prior to the adoption of UN Security Council resolutions 1718 and 1737 North Korea and Iran were both subject to certain export restrictions because of their non-compliance with IAEA safeguards. However, the resolutions extend the restrictions to a wider range of items and increase the number of states obliged to implement them.

After April 1993, when the IAEA Board of Governors concluded that North Korea was in non-compliance with its safeguards agreement, the NSG participating states should have denied authorization for transfers of controlled items to North Korea in line with NSG guidelines. The NSG states should have applied the guidelines in a similarly restrictive manner with regard to Iran after September 2004, when the Board of Governors found that Iran was non-compliant with its safeguards agreement. Whereas the NSG guidelines are binding on the NSG participating states and some non-participating states that have made a voluntary decision to respect them, the Security Council resolutions of 2006 extend these restrictions to all states. Subsequent to Security Council resolutions 1781 and 1737, the EU adopted Common Positions concerning restrictive measures against both North Korea and Iran. The Common Positions describe how the UN decisions will be implemented by the EU through national laws in member states and under EU law, as appropriate.⁷⁷

All parties to the 1968 Treaty on the Non-proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT)—that is, all states except India, Israel, North

⁷⁷ 'Council Common Position 2006/795/CFSP of 20 November 2006 concerning restrictive measures against the Democratic People's Republic of Korea', *Official Journal of the European Union*, L322 (22 Nov. 2006), pp. 32–35; and 'Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran', *Official Journal of the European Union*, L61 (28 Feb. 2007), pp. 49–55

Korea and Pakistan—are bound by the undertaking in the NPT's Article III.2 not to provide source or special fissionable material, or 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 source or special fissionable material 'shall be subject' to safeguards. The range of items that falls under the scope of this commitment is not specified in the NPT, but it is narrower than the contents of the lists linked to resolutions 1718 and 1737.

While the UN Security Council lacks the technical capacity to develop lists for sanctions purposes, one of the main tasks of the multilateral export control regimes has been to compile and update lists of items that should be subject to authorization prior to export. The lists that form critical elements of the sanctions imposed by the Security Council are closely modelled on the control lists developed in the regimes.⁷⁸ In order to prevent gaps emerging between the coverage of the national export control laws of important suppliers and the items to which UN Security Council resolutions apply, there should be regular updates of the UN lists in line with the changes agreed in multilateral export control regimes. In this way a valuable technical resource can be put at the disposal of the United Nations.

Unlike some previous sanctions resolutions that have a 'sunset clause', establishing a period of application, resolutions 1718 and 1737 are of unlimited duration. In each case, whether and when sanctions are lifted depend on a judgement by the Security Council about compliance with the terms of the resolution. Both resolutions anticipate that sanctions may be suspended or (partly or fully) lifted in case of compliance but also envisage the adoption of further measures in the event of non-compliance.

The implementation of Resolution 1737 is potentially complicated. Iran has important nuclear cooperation agreements with Russia, and the Russian representative to the UN has pointed out that the restrictions introduced by the Security Council only apply to the areas that are a cause for the IAEA's concern.⁷⁹ Cooperation with Iran in other areas should be subject to national authorization and control but should not be subject to additional restrictive measures imposed by the UN. Thus, Resolution 1737 exempts certain categories of items from the embargo and establishes the functional equivalent of an export licensing mechanism for others.

⁷⁸ The list contained in UN document S/2006/814 conforms with the NSG control lists; the list in UN document S/2006/815 conforms with the MTCR equipment and technology annex; and the list in UN document S/2006/853.Corr.1 conforms with the Australia Group lists. See UN, Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, UN documents S/2006/814 and S/2006/815, 13 Oct. 2006; and UN, Letter dated 1 November 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) concerning the Democratic People's Republic of Korea addressed to the President of the Security Council, UN document S/2006/853/Corr.1, 14 Nov. 2006.

⁷⁹ United Nations, 'Security Council imposes sanctions on Iran for failure to halt uranium enrichment, unanimously adopting Resolution 1737 (2006)', UN Security Council document SC/8928, 23 Dec. 2006, URL <<http://www.un.org/News/Press/docs/2006/sc8928.doc.htm>>.

The Security Council's Resolution 1737 committee, comprising all Security Council members, is responsible for overseeing implementation of the UN sanctions. In certain cases controlled items may be transferred if the committee 'determines in advance and on a case-by-case basis that such supply, sale, transfer or provision of such items or assistance would clearly not contribute to the development of Iran's technologies in support of its proliferation sensitive nuclear activities and of development of nuclear weapon delivery systems'. In such a situation the state applying for permission is required to show that appropriate end-user guarantees are included in the contract. Iran is also required to provide a statement of end-use, pledging not to use the specified items in proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems.

In order to give their informed consent as part of this licensing process the countries that serve on the Security Council will have to depend on support from their national export control systems, as the UN itself has little or no relevant expertise that can underpin specific decisions. The determination that a transfer does not pose an unacceptable proliferation risk would normally involve assessing the programme of the importing countries and the characteristics of the end-user (including ownership and management structures, its past and current operations and activities, and any record of involvement in activities of concern). The assessment would also involve a technical element to judge whether the specifications and the quantity of the items to be transferred are consistent with the stated end-use. Finally, the assessment would examine the national laws and procedures of the importing country to evaluate whether the assurances against unauthorized re-export are sufficient.

Resolutions 1718 and 1737 ban the export of listed items and open the way for cooperative enforcement action, including through the inspection of cargo that enters or leaves North Korea and Iran. As discussed above, the approach that China has adopted to the PSI has been strongly influenced by the direct link that North Korea has made between the PSI and participation in dialogue in the framework of the Six-Party Talks. North Korea's actions, not for the first time, have placed China in a difficult position. China felt compelled to support the resolution condemning the North Korean nuclear test, but in a statement immediately after the adoption of Resolution 1718 Wang Guangya, the Chinese ambassador to the United Nations, said that China did not approve of the practice of inspecting cargo to and from North Korea although this is specifically authorized in the resolution. The inspection of cargoes leaving North Korea could be a potential 'flashpoint'. The ambassador emphasized that China 'strongly urged the countries concerned to adopt a prudent and responsible attitude in that regard' and asked them to 'refrain from taking any provocative steps that could intensify the tension'.⁸⁰

⁸⁰ United Nations, 'Security Council condemns nuclear test by Democratic People's Republic of Korea, unanimously adopting Resolution 1718', UN Security Council document SC/8853, 14 Oct. 2006, URL <<http://www.un.org/News/Press/docs/2006/sc8853.doc.htm>>.

Implementing the targeted financial sanctions that resolutions 1718 and 1737 impose on North Korea and Iran will depend on intrusive monitoring of their assets and on the availability of financial controls to block certain transactions. Targeting the transactions for which financing should be blocked will require the establishment of new links between the export control enforcement community and sanctions enforcement bodies.

V. Conclusions

The role of export controls in supporting the implementation of the main multilateral non-proliferation treaties is now supplemented by the important role that they will play in implementing decisions of the United Nations. The need for a progressively larger number of states to participate in export control cooperation is likely to create further momentum behind calls for a global legal framework for export controls that apply to nuclear, biological and chemical weapons.

The increasing integration of several different measures, of which export controls are only one, to achieve non-proliferation objectives will require cooperation between communities that have never previously worked closely together. This is perhaps particularly true for the communities that enforce export controls, criminal law and financial sanctions. The PSI is one mechanism by which focused dialogue can be organized internationally between different national enforcement agencies. It can also bring together different parts of the enforcement community on an as-needs basis to address specific cases of suspected trafficking. Export controls are being modernized to address changes in the way that international trade and economic cooperation are managed. In particular, there is a growing interest in bringing intangible transfers of technology under effective control.

Many countries may lack the practical capacity to implement Security Council decisions effectively. In particular, strengthening the national export control systems of countries that serve on UN sanctions committees would be a logical target for the various outreach and technical assistance processes that are being carried out around the world, including those of the European Union.

The need to focus on the effective enforcement of export controls has been discussed in the export control regimes, the EU and the UN, both for national capacity-building in the group of states that participate actively in export control cooperation and for technical assistance directed at other states. Such an approach requires the active and competent involvement of a range of national actors—customs, police, intelligence and prosecution services—and the appropriate legal framework, including civil and criminal penalties for export control violations. Adequate emphasis should also be given to building export control enforcement capacity when designing future assistance programmes.

