



ARMS TRADE CONTROL CAPACITY BUILDING: LESSONS FROM DUAL-USE TRADE CONTROLS

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I. Introduction

Since the end of the cold war, countries around the world have increased their joint efforts to counter common security threats, among them the proliferation of weapons of mass destruction (WMD). These efforts have included attempts to deny particular states and non-state actors access to weapons and the means to develop them. Many of the goods, materials and technologies needed to develop weapons, however, also have a range of civilian uses. The imperative to control the cross-border movement of such 'dual-use' items, while minimizing the impact on legitimate trade, has led to the development of two major international capacity-building assistance programmes, along with a number of smaller programmes and activities.¹

This paper identifies good practices in capacity building in the area of dual-use trade controls, based on the experience of programmes implemented over the past two decades.² Even though capacity building in the dual-use area and existing programmes related to conventional arms currently take place largely in isolation from each other, the national legal provisions and the licensing and enforcement staff involved frequently overlap, and general principles of good practice in capacity building apply to both areas.³ It is hoped that the lessons and elements of good practice identified here will thus inform the discussions on implementation assistance under the arms trade treaty (ATT) currently being negotiated through the United Nations.⁴

There has been some discussion on implementation assistance in the ATT process, but this has mostly focused on formal and institutional issues such

¹ Dual-use items have both civilian and military applications, in contrast to military equipment and technology, which are items specially designed, developed or modified for military use.

² This paper draws especially on direct practical experience gained through SIPRI's involvement in capacity building since 2005, much of it in the context of the EU-funded dual-use trade control cooperation programmes.

³ For an analysis of conventional arms export control outreach and assistance see Holtom, P. and Bromley, M., 'Implementing an arms trade treaty: mapping assistance to strengthen arms transfer controls', SIPRI Insights on Peace and Security no. 2012/2, July 2012, <http://books.sipri.org/product_info?c_product_id=447>.

⁴ On the definitions of 'capacity building', 'implementation assistance' and other terms used in this paper see box 1. On the ATT negotiations see Bromley, M., Cooper, N. and Holtom, P., 'The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history', *International Affairs*, vol. 88, no. 5 (Sep. 2012), pp. 1034–43.

SUMMARY

● Capacity-building programmes aimed at strengthening national-level controls on international trade in dual-use items have a two-decade history. Many lessons have been learned during this time that could be valuable to the further development of conventional arms trade controls, particularly in the context of a future arms trade treaty (ATT). These lessons range from the sensitive use of terminology to managing relations between participating states to practicalities such as the optimal form and sequence of capacity-building events.

While the conventional arms and dual-use areas each have unique characteristics and challenges, there is significant overlap. Potential synergies between capacity-building activities in the two areas should be systematically explored, and lessons learned in each field shared.

**Box 1. Reflections on terminology**

‘Capacity building’ is used here to refer to a range of activities used to strengthen the strategic trade controls of one or more states. Activities include outreach, training, dialogue, exchange, study visits, conferences, seminars and workshops.

Much of this capacity building is carried out through cooperation between states, although to be effective and sustainable it has to be complemented by domestic capacity building without outside involvement. While true peer-to-peer learning between states is possible, and mutual learning invariably an element of all international cooperation on this very complex and fast-moving issue, most capacity building involves an asymmetrical relationship between an assistance provider or providers and one or more states whose controls are seen as in greater need of strengthening. These relationships can be reflected, or at least implied, in the language and methods used in and around capacity-building programmes. When the relationship is asymmetrical, the provider is often said to be providing ‘(technical) assistance’. ‘Cooperation’ implies that information and learning flows both ways, and hopefully reflects the participants’ acknowledgement that it does so.

Outreach efforts attempt to engage with the relevant states and actors to persuade them of the need to bring their trade control systems into line with the highest international standards. They have been used by the multilateral trade control regimes for their engagement with non-participating states both for this purpose and to increase the transparency of their activities. ‘Outreach’ has also been used by the European Union (EU) and Japan as an overarching term for engaging with other countries on strategic trade control issues (and in the EU, internal capacity building within the EU has been referred to as ‘inreach’). ‘Implementation assistance’ is often used to refer to capacity-building assistance directly related to a state’s trade control commitments linked to, for example, an international treaty or a United Nations Security Council resolution.

Some capacity-building activities and language are inherently asymmetrical. ‘Training’ involves a trainer, who is assumed to be knowledgeable, and a trainee, who it is assumed will learn from the trainer. ‘Assistance’ implies a traditional donor–beneficiary relationship. In contrast, ‘cooperation’ suggests partnership and a more equal relationship between the partners. Often the choice between calling a programme ‘assistance’ or ‘cooperation’ is only a matter of emphasis, reflecting the underlying philosophy and spirit in which the activities are conducted and the way they fit into the overarching policy framework. ‘Cooperation’ and its associated language could be considered more respectful and sensitive to the partner country.

as the role of a secretariat that could be tasked with providing and coordinating this assistance. Little attention has so far been given to issues such as the potential goals, structure, methods and tools of such assistance.⁵ It is hoped that this paper can feed practical considerations into the discussion based on experience in the area of dual-use trade control.

Section II of the paper describes some recent developments in strategic trade control cooperation, including the international legislation that underpins it. Section III introduces the main dual-use trade control capacity-building programmes worldwide. Section IV examines the main points of commonality and difference between dual-use and arms trade controls, from a capacity-building perspective. Section V presents some of the main lessons learned to date in dual-use trade control capacity-building cooperation. Section VI gives some conclusions.

II. Recent developments in strategic trade control cooperation

The perception that the main security threats were posed by an opposing bloc of countries that characterized the cold war has in recent years been replaced with shared international concerns about certain states seeking to acquire WMD and about the possibility that non-state actors could carry out terrorist acts with WMD or conventional arms. Since the 1990s concerns about proliferation have featured high on the international

⁵ Holtom and Bromley (note 3). There have been attempts to move the ATT implementation assistance discussion in a more concrete direction, as illustrated by e.g. dedicated events at the UN offices in Geneva on 18 June 2012 and New York on 12 July 2012, which were co-hosted by SIPRI and the Swedish Ministry for Foreign Affairs.



agenda, after it was recognized that foreign suppliers had contributed to nuclear weapon programmes in countries such as Iraq, North Korea, Libya and Pakistan. In the past decade, an international anti-terrorism agenda has emerged in parallel with, and partially linked to, the counter-proliferation agenda. Controlling the trade in dual-use items to deny such states and non-state actors access is seen as a key response to these threats.

There has also been an increasing realization that states cannot achieve their strategic trade control objectives alone, since the items whose movement they are trying to control could also originate in or pass through other states. States that have previously seen no need to develop dual-use trade control systems might now find themselves on the increasingly circuitous international routes that are often used by traffickers to avoid states with stronger controls. These states may lack the legal, administrative and physical capability to prevent diversion of the items to unauthorized end-users or end-uses, or to control the re-export of the items. Moreover, globalization, regional integration and technological developments have reduced the control function of physical borders and increased the importance of long-term preventive measures such as international cooperation and awareness raising with industry and other stakeholders.

Changes in the international environment have also been crucial for the emergence of cooperative approaches to conventional arms export controls. Since the end of the cold war, denial of technology to particular destinations is no longer the main organizing principle for conventional arms export controls, except in cases where the UN or a regional organization has imposed an embargo. Instead, state authorities have usually assessed exports to all destinations on a case-by-case basis using agreed guidelines. Economic considerations, such as enhancing competitiveness, have begun to play a stronger role in shaping export control policies for conventional arms. At the same time, this is being balanced by a trend of applying a humanitarian yardstick to controls, which has resulted in the ATT negotiations, among others.

Another response to the trends noted above has been states' cooperation in four informal, non-legally binding multilateral strategic trade control regimes: the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime and the Wassenaar Arrangement.⁶ These regimes have expanded their scope in terms of issues—from an initial focus on control list definitions to discussions, guidelines and best practice guidance on a range of trade control activities—and increasingly engage with non-participating states.⁷

⁶ The Nuclear Suppliers Group was established in 1975. In 1992 it published guidelines for the transfer of nuclear-related dual-use items. The Australia Group, founded in 1985, seeks to harmonize and enhance export controls to ensure exports do not contribute to the development of biological or chemical weapons. The Missile Technology Control Regime, founded in 1987, coordinates national licensing and enforcement efforts to prevent the proliferation of missile technologies. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established in 1996. For more information on these groups see Bodell, N., 'International security cooperation bodies', *SIPRI Yearbook 2012: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2012), pp. 505–508.

⁷ Bauer, S. and Mičić, I., 'Controls on security-related international transfers', *SIPRI Yearbook 2010: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2010), pp. 451–61.



From export control to trade control

Over the past decade, international debate and action on controlling the movement of dual-use items has expanded from the traditional focus on controlling exports to encompass controls on transit, trans-shipment, brokering and financing.⁸ While this shift in trade control realities has not yet been fully reflected in a shift in terminology from ‘export control’ to ‘trade control’, the term ‘strategic trade control’ is increasingly used.

The persistence of the limited term ‘export control’ can be attributed to a number of factors: habit; the fact that the term ‘strategic trade control’ does not easily translate into all languages; the fact that ‘export control’ is included in existing names of programmes, budget lines and institutions; and the argument that export control remains the core concept around which an increasing number of associated activities revolve. It should be noted that controls on brokering, transit and trans-shipment have been included in the draft ATT.⁹

The range of items subject to control has also expanded over time to include both tangible transfers and intangible transfers of dual-use technologies through email, file sharing and similar. These changes have been in response to the increasingly complex procurement patterns that are associated with illicit WMD programmes, the multiplication of actors involved, and technological developments that have made proliferation-sensitive flows more difficult to control through traditional legal concepts and enforcement methods.

One result has been that it is not only producer countries that are required to establish control systems. With the number of countries and actors potentially involved in or used for proliferation activities having exponentially increased in the 2000s, more and more public- and private-sector actors as well as academia and research institutions are affected by regional and international dual-use trade control obligations and resulting national legal requirements or provisions. Within countries, many ministries and agencies now have some role in strategic trade controls. In the private sector, it is not only producers but also shippers, traders, freight forwarders, financiers and other actors that can be subject to the laws regulating trade controls.

More and more public- and private-sector actors as well as academia and research institutions are affected by dual-use trade control obligations

⁸ There are no standard international definitions of these terms. Broadly speaking, ‘transit’ refers to the movement of internationally traded goods through the territory of a state that is neither the port of origin nor the destination port. In some definitions it refers only to cases where the goods stay on the same means of transport and is contrasted with trans-shipment, in which the goods are transferred from one means of transport to another. ‘Brokering’ can include different aspects of facilitating transactions. While the scope is often limited to transactions between 3rd countries, some states include activities conducted on their territory in their legal definition of brokering. On definitions of financing see Bauer, S., Dunne, A. and Mičić, I., ‘Strategic trade controls: countering the proliferation of weapons of mass destruction’, *SIPRI Yearbook 2011: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2011), pp. 441–43; and the website of the Financial Action Task Force, <<http://www.fatf-gafi.org/>>. Differences in definitions can have important legal and practical implications; e.g. the EU defines trans-shipment as a form of transit or as part of the export process, whereas other countries give it a separate legal status.

⁹ UN Conference on the Arms Trade Treaty, Draft treaty text submitted by the President of the 2012 ATT Conference on 26 July 2012, A/Conf.217/CRP.1, 1 Aug. 2012.



International law and dual-use trade control

The post-cold war shift from bloc-based threat perceptions to targeting individual states and non-state actors is reflected in several UN Security Council resolutions. For example, resolutions 1718 and 1737 (both adopted in 2006) imposed embargoes on the export to and import from North Korea and Iran, respectively, of arms and dual-use items.¹⁰ Additionally, resolution 1540 (adopted in 2004) obliges states to ‘take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials’, with particular emphasis on the need to prevent proliferation to and by non-state actors. These resolutions were all adopted unanimously under Chapter VII of the UN Charter and are therefore binding on all UN member states.

Resolution 1540 specifically obliges all states to establish strategic trade controls. States must

establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items [nuclear, chemical or biological weapons and their means of delivery], including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations.

It also calls on member states to develop national lists of items to control.¹¹

Another important aspect of Resolution 1540 is that it explicitly acknowledges that these threats can only be tackled cooperatively. It requires states to develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, *including through international cooperation when necessary*, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law.¹² Furthermore, it is a basis for implementation assistance: ‘States in a position to do so’ are invited to ‘offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions’.¹³

Over the past decade, Resolution 1540 has become the main driver for the establishment and enhancement of strategic trade controls by non-members of the export control regimes, and for the mobilization of funding for capacity

¹⁰ UN Security resolutions 1718, 14 Oct. 2006; and 1737, 23 Dec. 2006. For summaries of the provisions of the embargoes imposed on these countries see the SIPRI Arms Embargoes Database, <<http://www.sipri.org/databases/embargoes>>.

¹¹ UN Security Council Resolution 1540, 28 Apr. 2004, articles 3(d) and 6.

¹² UN Security Council Resolution 1540 (note 11). Article 3(c) (emphasis added).

¹³ Two later Security Council resolutions also address implementation assistance regarding Resolution 1540. Resolution 1810, 25 Apr. 2010, ‘Encourages States that have requests for assistance to convey them to the 1540 Committee’ and ‘urges States and international, regional and subregional organizations to inform the Committee . . . of areas in which they are able to provide assistance’. Resolution 1977, 20 Apr. 2011, repeats and adds to these provisions.



building for this purpose. Another key factor driving trade control capacity building has been the increase in the number of countries and actors potentially involved in, or used for, proliferation activities, and therefore affected by international obligations and resulting national laws.

III. Dual-use trade control capacity-building programmes

A number of actors have been involved in the delivery of technical assistance and other support and cooperation aimed at helping to establish and strengthen national systems to control cross-border flows of dual-use items. The United States has the longest history of trade control assistance programmes, which originated in the immediate post-cold war context of the early 1990s.¹⁴ These programmes initially focused on the Soviet Union and its successor states but have developed into a worldwide programme, Export Control and Related Border Security (EXBS), with an annual budget of \$40–50 million. While conventional military equipment and technology are also within the mandate of EXBS, the underlying rationale and focus is clearly on WMD-related items.¹⁵ There are also programmes by other US Government departments, partly funded through EXBS, including the Department of Energy's Second Line of Defense and International Nonproliferation Export Control programmes.¹⁶

Since 2005 the EU has developed the world's second biggest dual-use trade control capacity-building programme

The European Union (EU) explicitly acknowledged the need for international cooperation against global threats in 2003, when it introduced a range of measures to strengthen its approach to security in general and WMD proliferation in particular. These included the EU Strategy against the Proliferation of Weapons of Mass Destruction (EU WMD Strategy), which states the EU's commitment to 'strengthen export control policies and practices within its borders and beyond, in co-ordination with partners'.¹⁷

Before 2005, export control cooperation was provided bilaterally by certain EU member states, but was limited in scope.¹⁸ Also, during the 1990s the EU provided technical assistance on chemical, biological, radiological and nuclear (CBRN) issues such as detecting the trafficking of nuclear materials. However, it was ad hoc, primarily focused on the former Soviet Union, not underpinned by a common strategy, and not focused on establish-

¹⁴ On the history of EXBS see US Department of Commerce, Bureau of Export Administration, *Export Control Annual Report 2000* (Department of Commerce: Washington, DC, 2000), chapter 8.

¹⁵ Bauer, S., 'Enhancing export control-related CTR (Cooperative Threat Reduction) programmes: options for the EU', Background Paper no. 6, Conference on Strengthening European Action on WMD Non-proliferation and Disarmament: How Can Community Instruments Contribute?, Brussels, 7–8 Dec. 2005, <http://www.sipri.org/research/disarmament/dualuse/resultoutput/papers_publications>; and US Department of State, 'The EXBS program', <<http://www.state.gov/t/isn/ecc/c27911.htm>>.

¹⁶ US Department of Energy, National Nuclear Security Administration (NNSA), 'Second Line of Defence Program', <<http://nnsa.energy.gov/aboutus/ourprograms/nonproliferation/programoffices/internationalmaterialprotectionandcooperation/se>>; and US Department of Energy, Nuclear Engineering Division, 'Nonproliferation and National Security Program, Technical Nonproliferation Policy Support (TNPS)', <<http://www.ne.anl.gov/research/NPNS/incep.html>>.

¹⁷ Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction', 15708/03, 10 Dec. 2003, <<http://www.consilium.europa.eu/showPage.aspx?id=718>>.

¹⁸ Bauer (note 15).



ing dual-use export control systems. In 2004–2005 the realization grew in EU circles that export control was an area where EU funding could support the implementation of the EU WMD Strategy and Resolution 1540.

Since 2005 the EU has developed the world's second biggest dual-use trade control capacity-building programme, after that of the USA, now involving countries not only in Europe but also in Africa, Asia and the Middle East. Complementary EU capacity-building activities in the conventional arms area are only in their early stages and so far can access only limited funds, although activities are expected to expand from 2013.¹⁹

The EU programme Cooperation in Dual-use Export Control is implemented by the German export licensing authority, the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), with a pool of legal, licensing, industry outreach and enforcement practitioners drawn from across the EU. Since the first pilot project, in 2005–2006, cooperation has expanded from 4 to nearly 30 countries.²⁰ In 2006 the EU created the Instrument for Stability (IFS), which allocated at least €14 million (\$17.7 million) specifically to dual-use export control capacity building for the period 2007–13.²¹

While the EU and the USA have the only major dedicated programmes with international scope, a few other states have programmes with a regional, and WMD-related, focus: Japan and, to a lesser extent, Australia in the Asia–Pacific region;²² while some EU member states engage in bilateral and subregional cooperation complementary to the EU programme, such as the Nordic–Baltic dialogue and information exchange.²³ Outreach activities are also conducted by the export control regimes and by the Proliferation Security Initiative.²⁴ A number of non-governmental and international organizations have also been engaged in capacity building in their respective

¹⁹ Holtom and Bromley (note 3); and Council Decision 2012/711/CFSP of 19 Nov. 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP, *Official Journal of the European Union*, L321, 20 Nov. 2012.

²⁰ The first pilot project (2005–2006), which was led by SIPRI, contained a field validation exercise designed to explore ways to deliver effective export control assistance. The second and third projects (2006–2007 and 2007–2008), led by BAFA, were dedicated to expanding and developing this work. BAFA also implemented a European Commission programme of export control cooperation with the Russian Federation. See German Federal Office of Economics and Export Control (BAFA), 'EU cooperation in dual-use export control', <<http://www.eu-outreach.info>>; and SIPRI, 'Current projects: EU project on strengthening export controls of dual-use goods', <<http://www.sipri.org/research/disarmament/dualuse/capacity-building/current>>.

²¹ Council of the European Union, Six-monthly progress report on the implementation of the EU Strategy against the proliferation of weapons of mass destruction (2012/II), *Official Journal of the European Union*, C39, 9 Feb. 2013.

²² Bauer (note 15). See also the presentations by Australia and Japan at the Tenth Annual International Export Control Conference, 25–27 June 2009, <<http://exportcontrol.org/past-conferences/2705c.aspx>>; on Japan see also the website of the Center for Information and Security Trade Control, <<http://www.cistec.or.jp/english/service/inter.html>>.

²³ Bauer (note 15); and Swedish Ministry for Foreign Affairs, Strategic export control in 2011—military equipment and dual-use products, Government communication, Skr. 2011/12:114, presented to the Swedish Parliament 15 Mar. 2012, p. 49.

²⁴ See SIPRI Yearbook chapters on strategic trade controls, particularly Bauer, S. and Mičić, I., 'Controls on security-related international transfers', *SIPRI Yearbook 2010: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2010), pp. 447–66. On the Proliferation Security Initiative see Bodell (note 6), p. 508; and Dunne, A., *The Proliferation Security Initiative: The Statement of Interdiction Principles, Legal Considerations and Operational Realities*, SIPRI Policy Paper (SIPRI: Stockholm, forthcoming 2013).



fields with relevance for dual-use trade controls. There is thus a substantial body of experience in dual-use trade control capacity building that could be of use in the context of conventional arms trade control and a future ATT, in addition to existing experience on conventional arms export control capacity building.²⁵

IV. Relevance of dual-use experience to arms trade control

In many states the laws, administrative procedures, agencies and staff that are responsible for controlling transfers of dual-use items overlap with those for conventional arms. Consequently, areas of capacity building in both areas also overlap. The main common areas for capacity-building cooperation across strategic trade controls are outlined in box 2.

Dual-use items include civilian items with military applications in both conventional weapons and chemical, biological and nuclear weapons. Nevertheless, in the political debate, in particular about Resolution 1540, they are often associated with WMD alone. The category of conventional dual-use items is sometimes dealt with alongside WMD dual-use items and sometimes along with conventional arms. In the EU legal, political and institutional context, all dual-use items are dealt with together. Additionally, there are technical linkages as some categories of goods and technologies appear on both conventional and WMD control lists, and some conventional arms can also be used to deliver WMD. Some items, such as machine tools and lasers, have both conventional arms and WMD applications.

It is therefore worth reiterating that many dual-use items are controlled because of their potential application for conventional weapons, not (or not only) WMD. The Wassenaar Arrangement deals with both conventional arms and conventional dual-use items. However, if, as indicated by the current draft text, a future ATT is limited to the categories of the UN Register of Conventional Arms plus small arms and light weapons (SALW), there would be no overlaps in control list categories for technical assistance.²⁶

Not only do dual-use and arms trade control overlap and reinforce each other, but there are potential synergies and complementarities that can be exploited in cooperation programmes and assistance efforts. In fact, it is difficult to separate the two areas neatly in trade control capacity-building activities, as the officials participating do not always distinguish between them but rather raise whatever issues are on their minds, whether related to dual-use or conventional arms trade controls.

Furthermore, the development of new dual-use trade controls often builds on existing conventional arms controls systems. Adding dual-use provisions to an existing conventional arms control system requires some knowledge and understanding of the latter, not only to ensure consistency between the respective legal provisions and procedures but also to make training more efficient. Where new control systems for both areas are to be developed in parallel, optimal use of resources and minimizing bureaucratic hurdles and procedures for industry also requires coordination.

²⁵ For an overview of conventional arms export capacity building see Bromley and Holtom (note 3).

²⁶ UN Conference on the Arms Trade Treaty (note 9).



There are, however, also differences between the two areas that have implications for transferring learning from one to the other. The first is that industries involved in conventional arms production tend to be more aware than producers of dual-use goods of the regulatory environment, including those governing import, transportation (and possibly also production), since arms transfer controls based on national security interests have been around for much longer than dual-use controls. (There will certainly be exceptions to this rule, as producers of certain chemicals that can be, and have been, used in chemical warfare are likely to be aware of this fact.) Furthermore, producers and exporters of conventional arms are usually either state owned or have close links to the state, since their government is the—or at least a—main customer.

Another difference is that effective controls on the trade in conventional arms are, generally speaking, more a question of political will, and licensing decisions a question of policy, than is the case with dual-use controls. While there is also a policy element to dual-use controls, much of the decision making around the granting of licences is focused on establishing the plausibility of a civilian end-use. In conventional arms control, the most complex questions relating to end-use are more political in nature, regarding not only the risk of re-export but also the risks of the arms being used in aggression or violations of human rights or international humanitarian law, having an impact on international or regional peace and stability, and so on. This means also that while instruments from dual-use trade control capacity building could be applied to the conventional arms area, the contents must be adapted and in many areas complemented with issues specific to the latter.

On the enforcement side, customs officers tend to be aware that the export or import of conventional arms usually requires some paperwork. It cannot be taken for granted that they will know that a dual-use item may also need accompanying documentation, since the potential military applications of dual-use items are usually much less obvious (although it is also the case that some purely military technologies and major components can be hard to identify as military without specific knowledge). However, verifying that the items at the control point are in fact what is declared on paper does require technical expertise across the spectrum of dual-use and military items. Furthermore, the investigation and prosecution of trade control offences involving dual-use items are often more complicated than is the case with conventional arms due to the need to prove end-use or intent.²⁷

A final difference is that in the dual-use area there is generally a stronger consensus on principles: Resolution 1540, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), the 1972 Biological and Toxin Weapons Convention (BTWC), and the 1993 Chemical Weapons Convention (CWC) provide the rationale for WMD-related dual-use controls. There are no such worldwide principles for conventional arms transfers as yet, and even if an ATT is adopted, the application of its principles to individual countries and transfers will be largely a

In many states, the laws, administrative procedures, agencies and staff responsible for controlling transfers of dual-use items overlap with those for conventional arms

²⁷ Such cases pose fewer challenges when the relevant penal code provides for strict liability (i.e. the trade control violation is defined as an offence regardless of intent).

Box 2. Elements of effective capacity-building programmes

Across different strategic trade control capacity-building programmes it is possible to distinguish five pillars: legal, licensing, industry outreach, enforcement (detection), and investigation and prosecution. Within each of these pillars, examples of different areas or topics of capacity building illustrate the range of possible activities. Some issues such as inter-agency cooperation, coordination and communication are cross-cutting and relevant to different pillars. Inter-agency cooperation could, in fact, be the subject of one session of a seminar, the theme of a whole seminar, or simply reflected in the participation of personnel from different agencies.

Legal

- Key elements of strategic trade control legislation, including administrative and criminal penalties^a
- Complementary legislation (customs law, Chemical Weapon Convention implementation act, etc.)
- Implementing regulations
- Control list structure and logic

Licensing

- Setting up a licensing authority, the licensing process and the supporting inter-agency process
- Licensing procedures, including risk assessment and reliability of exporters
- Handling of control lists
- Access to technical expertise
- Development of handbooks and websites

Enforcement (detection)

- Awareness raising on the role of customs authorities in strategic trade control
- Specialized training on risk management and risk profiling for strategic trade control
- Exercises on detection of suspicious activity (e.g. at the border, with or without the participation of neighbouring countries)
- Inter-agency events on information sharing (with the participation of different agencies within the beneficiary country)
- Compliance verification, including company audits
- Product recognition/commodity identification—both for the purpose of broader awareness raising, and in more detail for specialized teams and technical experts

Outreach to industry and other stakeholders

- Awareness raising for producers and exporters
- Awareness raising for other actors in the supply chain, such as freight forwarders, shippers and transport agents
- Awareness raising for academics and research laboratories
- Awareness raising for financial institutions regarding proliferation finance and embargo-related finance provisions

Investigation and prosecution

- Awareness raising on proliferation and trade control issues for prosecutors
- Specialized training on investigating and prosecuting strategic trade control offences for investigators and prosecutors, including investigation techniques and applying national legislation to strategic trade control offences

^a This is also relevant for the investigation and prosecution pillar.

matter of interpretation and will inevitably include a strong policy element. However, certain principles are emerging in regional contexts such as the Economic Community of West African States (ECOWAS) and the EU.²⁸ An ATT would provide a stronger international reference point, in addition to UN arms embargoes and existing bans on certain types of conventional weapons (anti-personnel mines and cluster munitions).

²⁸ The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, adopted 14 June 2006, entered into force 29 Sep. 2009, <<http://www.ecosap.ecowas.int/index.php?Itemid=84>>; Council of the European Union, EU Code of Conduct on Arms Exports, 8675/2/98 Rev. 2, Brussels, 5 June 1998; and its successor, Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, Official Journal of the European Union, L335, 13 Dec. 2008, pp. 99–103.



V. Lessons learned for capacity-building cooperation

Many challenges are common across the spectrum of conventional arms and dual-use trade control capacity building. Principles of successful capacity building can be derived from the practical experience of designing and implementing activities, many of which are applicable not only to cooperation with third countries, but also to a country's or region's efforts to strengthen its own system. Box 3 presents a distillation of the learning into 10 principles for capacity building.

Establishing and implementing a cooperation programme

No one size fits all

Both in strategic trade control systems and in capacity-building programmes, one-size-fits-all solutions are likely to fail. Every country has to find its own approach to strategic trade control, depending on its size, geography, industrial structure, trading patterns, legal system, institutional set-up, administrative traditions and the state of development of its existing trade control system (if there is one). Capacity-building programmes must take into account all of these factors and more in order to maximize their chances of delivering sustainable improvements.

To help tailor capacity-building programmes to local needs, involving the partner country is crucial. This requires engagement not only at the policy level or with one of the stakeholders, but also with the different institutions—ideally in a process coordinated by the partner country itself. There should be joint processes for needs assessment and for designing the appropriate response in terms of issues, format, timing and location. As political, legal or institutional changes could occur in the partner country during the lifetime of the cooperation programme, joint needs assessment should be carried out and reviewed regularly so that the programme can be adjusted to match the changing context.

Programme design and goals should be well matched. Particularly if the purpose of a cooperation programme is to assist a country in establishing a full-scope strategic trade control system from scratch, it needs to take into account all of the elements discussed in box 2. Simply holding a few events with one or two of the sectors involved in trade controls will probably be a waste of time, as they may not be able to translate what they learn into practice without changes in, for example, institutional relationships, laws and regulations, or the way other sectors work.

Finally, the financial scope and modalities of a cooperation programme must reflect its goals. For example, where flexibility is required, the budget rules have to allow for that and rigid two-year advance planning is not possible. If needs assessment is accepted as a process, and follow-up engagement considered a key element of cooperation, the budget has to allow for interaction outside of formal activities, including through appropriate travel budgets.

Box 3. Ten principles of capacity building

1. Treat partners as peers and respect confidentiality.
2. Maximize ownership by the partner.
3. Tailor programmes and activities to the partner country and audience.
4. Use tools and methodologies that support the objectives.
5. Pay attention to appropriate timing and sequence.
6. Don't just talk, listen.
7. Stay flexible.
8. Share both good and bad practice.
9. Coordinate with other capacity-building providers.
10. Never assume you have all the answers.

Ownership

Ownership of processes and learning is always important in capacity building—when one partner perceives the processes as being imposed or overwhelmingly run by another, they are less likely to engage fully or to integrate what they learn in their own practice. For example, laws should be drafted and understood by the competent national institutions, not presented by an external actor as a *fait accompli*. If all relevant agencies are involved from the beginning and understand the importance of their role, the chances of sustainability and effective implementation will be better.

Joint needs assessment is clearly an important element in generating a sense of ownership. Ideally, this involves an element of self-assessment, not only to increase ownership and consequently sustainability, but also because some aspects may be considered sensitive, whether due to internal disagreements and political dynamics or simply due to the inherent sensitivity of this area of capacity building. Such a needs assessment process should show where external involvement and expertise is useful and appropriate, and where issues have to be resolved by the partner country internally.

How the relationship between assisting and partner countries is presented is also important. There may be valid reasons why the donor or assistance provider's role should be given visibility, but the partner should also enjoy visibility—and not in a way that presents it as merely a beneficiary. Similarly, it may be counterproductive for donors or assistance providers to claim too much credit for positive changes in the partner country that result from the cooperation (or that their involvement may have contributed to), even if their own visibility guidelines require it.

Sustainability: build to last

The aim of any capacity-building programme should be to generate sustainable improvements in the national trade control system. The improvements need to be institutionalized to ensure that they can survive changes of government and changes of personnel in the organizations involved. In order to achieve sustainability there is a need to invest in laws and regulations, procedures, institutions and people, and engage with the full range of potential institutional partners (all those involved with the control process, from laws and licensing through to enforcement as well as the relevant interlocutors in industry and other private- and public-sector stakeholders that produce or trade in dual-use items).



At the level of organizations, ensuring sustainability includes addressing issues of staff turnover to minimize the impacts from losing contact points and trained staff. While a certain degree of turnover is unavoidable, and may even be part of an anti-corruption policy, the importance of maintaining institutional memory and established relationships must be understood by the partner organization, and a common understanding on this may even need to be a prerequisite for certain forms of cooperation.

A peer-to-peer approach

From the planning and public presentation of a cooperative programme right down to conduct in individual activities, the importance of a respectful approach that treats partners as peers cannot be overemphasized. Countries and individuals should not be treated as junior partners or in a patronizing manner, even if the learning effect may be asymmetrical or they openly acknowledge their need for outside support. Otherwise, they may listen but be less likely to implement or to take things forward on their own. Even when there is an objective need for assistance, the political assumption or official position may be that a functioning export control system is in place.

Countries and individuals should not be treated as junior partners or in a patronizing manner, even if they openly acknowledge their need for outside support

It is worth noting that this is not only a matter of language. No system is flawless, and all countries can benefit from international cooperation, exchange, and constant review and critical analysis.

It is of course useful to evaluate the effectiveness of a national control system for a number of reasons. However, care should be taken with how and where the results are presented. Revealing another countries' gaps or publicly grading them—especially if they are graded low—is counterproductive, fundamentally contradicts the peer-to-peer approach, and is likely to undermine both goodwill and ownership. It is also worth noting that while there are methods to evaluate the effectiveness of national control systems, such approaches are never fully objective, in particular as regards implementation and enforcement.

Political will and management support

It cannot be assumed that mid-level managers and ministers with other areas of competence support the allocation of financial and staff resources to strategic trade controls just because their government has signed a particular treaty or their foreign minister has made a statement. For assistance providers, it is important that the targeted practitioners' superiors recognize the value of involvement in capacity-building cooperation, both to enhance the skills and networks of their staff, and more broadly for national and international security. If participation in such international activities is treated on a par with vacation days or sick leave or could damage career prospects, it will be difficult to motivate practitioners to travel abroad or make time to receive colleagues from other countries for study visits.

One thing that can make gaining support easier is if cooperation can be shown to tick several 'boxes' at once. These 'boxes' could be fulfilling obligations under particular international treaties (such as the CWC or a future ATT) or Security Council resolutions (particularly Resolution 1540);

advancing the implementation of an action plan adopted within a related but distinct issue area (e.g. the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade, SAFE); or strengthening competences in areas beyond strategic trade control, such as risk management for other commodities. The prospect of economic and technological benefits, such as suppliers allowing the country to import certain goods if the national control system is strengthened, may also provide incentives.

Planning and conduct of individual activities

Scheduling activities

The appropriate sequencing and timing of activities within a capacity-building programme is essential, since an event that is crucial now may be useless in six months' time or would have been premature six months ago. For example, assistance with drafting legislation is generally useless for some time after the promulgation of a new law governing the same issue. Even if the new law is clearly flawed, immediate revision would be embarrassing—unless there is an external driver such as new international obligations that necessitate the revision.

Scheduling activities within a trade control capacity-building programme can be complicated. There is always a possibility that the same individuals are participating in different events within the programme, or in other activities organized by other programmes, and this is compounded in smaller countries where officials may have functions and obligations in multiple areas. Also, officials' participation must not undermine the very systems that the programme seeks to strengthen—for example, by leaving licensing or customs authorities critically short-handed for several weeks in a row. To be balanced against this is the fact that it may be more efficient to hold activities organized by different assistance providers or related to dual-use items and conventional arms back-to-back.

Avoiding scheduling problems is largely the responsibility of the partner country itself, but the different parts of the national administration may not be aware of the different strands of international engagement that are relevant to strategic trade control capacity building. This could include ministries of foreign affairs, trade, industry, economy, justice or defence; customs agencies; attorney-generals' chambers; prime ministers' offices; or specialized agencies such as for nuclear regulation or CWC implementation. One way to remedy this is to organize inter-agency events to increase awareness among the different stakeholders regarding their respective roles and participation in capacity-building programmes and other international events.

One option, both for increasing overall efficiency and to avoid scheduling clashes, is to sponsor the participation of officials from other countries or institutions in activities organized by another government, organization or assistance provider.



Country-specific vs multi-country events

Capacity-building programmes should offer the possibility of combining country-specific events and multi-country events (organized on a regional or subregional basis, or gathering more geographically dispersed countries), as appropriate to the aim and context.

Country-specific events are more suitable for dealing with issues such as national laws and regulations, or institutional set-up. Most of the issue areas listed in box 2 generally need to be addressed through country-specific events, not least because such events allow for smaller, more interactive activities and at the same time larger participation from that country. Country-specific events also tend to be logistically easier and cheaper.

Multi-country events should be considered as additional elements in capacity building, not as a substitute for country-specific events. Multi-country events provide a platform for the exchange of experiences and views on implementation and discussion of implementation options. Regional or subregional events enable officials to meet their counterparts from neighbouring countries and discuss solutions to similar or common problems, in the process fostering cross-border cooperation. Multi-country events can be most useful where countries share the same language and a similar legal system, face similar issues, or share borders and thus have to cooperate on cross-border traffic. They can also be useful where a very small number of officials are concerned by a topic, and the number of experts is also limited.

Multi-country events should be considered as additional elements in capacity building, not as a substitute for country-specific events

Where national delegations to multi-country events include officials from different agencies, such events can also foster relationship building, understanding and cooperation within the national control system, by providing time and a context for them to exchange information, discuss ideas presented at the event, and plan follow-up and implementation. However, it is important to note that events bringing together neighbours are not necessarily more likely to generate such benefits than those that bring together delegations from more geographically dispersed countries, which may be culturally closer to each other than to their immediate neighbours. Also, in planning regional events, the potential sensitivities of relationships between neighbouring countries should be borne in mind. Officials from one country may not feel comfortable discussing gaps in their national systems in front of officials from a neighbouring country. It may even be the case that one country is grappling with problems that it sees as being caused by a neighbour.

Attendees

While for some activities a large number of participants is essential—for example, industry outreach, or general awareness raising among customs officers—others will tend to work with a small group of officials, particularly where they need to attend a series of events to build on knowledge they have acquired and develop their expertise, or to strengthen trust and relationships (e.g. between counterparts in a regional setting).

Customs or licensing officers may feel that they have more in common with other customs or licensing officers from another part of the planet



than with their colleagues from a ministry in their own country. While this illustrates the need for inter-agency cooperation, and involving participants from different departments within an institution, there is also great value in making sure that those from a specific community (such as customs and licensing, or frontline officers) meet and share information to encourage a frank exchange among peers, as noted above.

For an industry audience, company representatives from countries that have established dual-use trade control systems can present experiences in implementing internal compliance systems and demonstrate tools that assist in achieving required standards, thus complementing presentations by government officials.

In organizing multi-country activities, identifying functional counterparts in different countries can be difficult, as specific functions are not necessarily carried out by the same organization in every country. For example, export licences may be issued by a ministry of trade or economy in one country, and by a ministry of foreign affairs, the customs authority or a dedicated licensing agency in another. Similarly, the investigation of strategic trade control offences may be the responsibility of the police, customs, a specialized enforcement agency, or a combination. Due attention also needs to be paid to the way functions are divided up within an organization; finding the right department or departments to provide participants may be a challenge.

Speakers and presentations

Key messages can get lost or forgotten when speakers focus too much on the specifics of their own systems or on advanced features and ideal situations. To maximize learning, presenters need to identify what are the essential elements that could conceivably be incorporated into the partner country's control system (although it is of course appropriate to discuss or present other features where they are of interest to the audience).

Presenters should also bear in mind that their audience may not be familiar with the terminology that they use every day. Sometimes even key messages such as what is meant by 'dual-use item' or why knowing about such items is relevant for a customs officer get lost because basic terms are misunderstood. In particular, expert communities within a specific region may be used to referring to legal acts and specific paragraphs in shorthand—such as 'Article 4' (the EU's catch-all provision for unlisted dual-use items) of '428' (the reference number of the EU dual-use regulation)—that will mean nothing to those outside the region, or even to many people within the region. It should also be kept in mind that a practitioner audience is rarely interested in theoretical discussion, but rather in hands-on, practical solutions.

Activities must take into account both the individual country's or institution's needs and the advising, assisting or supporting country's expertise, for example by matching countries that are comparable in size, export volume, licensing and enforcement capacity, and legal and administrative traditions. Not only may it sound daunting for a small country seeking to establish a control system if the only partner it has to listen to is disproportionately resourced, but those with a well-resourced system may have difficulties understanding the challenges for small countries and making

Assistance providers should be ready to offer guidance to speakers on effective communication



their experience relevant. Being presented with perspectives from different systems at a given event makes it easier to think in comparative terms and to adjust and combine those experiences to design a unique and appropriate approach.

Assistance providers should be ready to offer guidance to speakers on effective communication, especially to practitioners whose regular work does not include presenting, especially to international audiences. Such training exercises would need to be included in capacity-building programme budgets.

Also important are the differences in cultures, language and legal definitions between regions, countries and organizations. This can be particularly problematic when there are no standard definitions based on international treaties or resolutions, such as for the terms ‘transit’ and ‘brokering’.²⁹ As another example, in many cultures, officials will not speak openly if their superiors are present in the same group. One implication of this is that, while keeping country delegations within the same working group may serve to develop inter-agency cooperation, as those individuals may meet for the first time, there is also value in breaking up participants into working groups by hierarchical functions.

Beyond the linguistic and cultural issues, content also has to be tailored as closely as possible to the needs of the audience. For example, a customs training on a given issue has to convey different messages and address different issues depending on whether front-line officers, mid-level management or the senior policymaking level participate.

Functional counterparts from different countries often naturally treat each other as peers, since they relate to each other as colleagues. This also should be reflected in the terminology—the term ‘instructor’ does not indicate a peer-to-peer approach, for example, while ‘counterpart’ does. Even those with long trade control experience benefit from international cooperation, as they are exposed to other practices, allowing them to rethink legal provisions and routines, especially in the fast-changing environment of strategic trade control.

Sharing good practices and bad experiences

Developing and sharing good practices in strategic trade control is a useful means of helping to tailor cooperation programmes and national control systems. By being presented with a range of approaches that have worked in different contexts, participants can choose the most appropriate and adapt them to their national context. Sharing of other experiences and even mistakes is equally important, as much can be learned from what has gone wrong. However, this requires a significant level of trust and openness that might not always exist between participating countries, as noted above.

Choosing tools and methodologies

The seminar is far from the only appropriate format for capacity-building activities. A wide range of other formats are available that serve specific purposes in support of the underlying goal: larger conferences, smaller and more interactive workshops, study visits, staff exchanges, practical exer-

²⁹ See note 8.



cises, legal reviews, remote provision of advice (e.g. by email), sponsorship of participation in activities organized or funded by other governments or international organizations rather than organizing a separate event, preparatory visits, among others. There are also a vast range of tools that can be used within the various types of meeting: traditional presentations, case studies, hypothetical scenarios, dedicated question-and-answer sessions, and break-out groups combining different agencies, countries, functions or levels of hierarchy.

Identifying the appropriate tools and formats is partly a question of experience and knowledge of the issue areas and partner country or organization, and partly one of thinking carefully through the best ways to achieve the purpose of the event. For example, as a general rule, the interactivity of events tends to decrease with the number of participants. Also, location will have a strong impact on attendance. Where a seminar is close to, or even in, the participants' workplace, they will invariably come and go rather than attend the whole event. The host country of any event will normally provide the highest number of participants, including those that may be too busy to leave the country for several days. On the other hand, experience shows that study visits can be attractive to those who are not necessarily the most appropriate to attend. Working meetings in popular tourist destinations may therefore not always attract the right participants.

As a general rule, the interactivity of events tends to decrease with the number of participants

Follow-up

Capacity-building events require follow-up because the benefits of capacity building really only arise through a sustained series of interactions, including informal interactions between events. Follow-up should be a two-way process; the partner country needs to play a proactive role. Networks of contacts established during a capacity-building phase should be kept active, and such networks could also evolve into long-term cooperation.

While this can happen in an unplanned way, positive effects could be enhanced by awareness of the possibilities, and planning from the start for a longer-term relationship. Practical questions will invariably arise after an event is concluded, and it is important for organizers to anticipate this by encouraging sharing of contact details and, where appropriate and necessary, facilitating this communication. Also, it is important that participants from a partner country, who also invest time and trust, know that future collaboration can be expected, thus making the investment more worthwhile.

VI. Conclusions

Capacity building in the area of conventional arms trade control could clearly benefit from the lessons learned in the dual-use area. These lessons are particularly applicable for legal and technical aspects such as drafting of laws, licensing procedures, industry awareness, detection methods, investigation and prosecution techniques.

In the area of conventional arms control, additional areas of capacity building include risk assessment based on criteria relating to the importing country, the end-user, the type of item being transferred, with regard to human rights, humanitarian and other considerations, and reporting requirements.



Specific challenges will arise from the fact that existing control systems, which are more likely to be found for conventional arms than dual-use items, may be affected by vested institutional interests and views resistant to change. The export of conventional arms is also an area considered to be close to the heart of national sovereignty and a political instrument, much more so than dual-use exports. At the domestic level, conventional arms export decisions are far more controversial than decisions on dual-use exports.

While common ground may be found between countries cooperating on arms trade control where there are international provisions, such as arms embargoes, there are likely to be sensitivities about sharing information with competitors and discussing political decisions. There may be value in keeping the two areas apart in cases where politics or competition may impede partnerships between certain countries in the conventional arms area, while cooperation on WMD proliferation-related issues may be viable and welcome. Nevertheless, potential synergies between activities in both conventional arms and dual-use areas should systematically be explored, and the lessons learned in each field should be shared.

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ARMS TRADE CONTROL CAPACITY BUILDING: LESSONS FROM DUAL-USE TRADE CONTROLS

SIBYLLE BAUER

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