

India and the Wassenaar Arrangements

SHAMEEM AHMAD MIR

Ph.D. Student

CIPOD, School of International Studies, Jawaharlal Nehru University, New Delhi (India)

ABSTRACT

International technology control regimes (ITCR) are legally non-binding organizations which allow for technology export coordination between and among states. States which are capable of supplying weapons and other materials or technologies of dual-use and are committed to non-proliferation form the core of such organizations. Every regime has a detailed list of materials, goods and technologies it intends to control to avoid proliferation or misuse of the same. The member states share common understanding regarding the enlisted goods and technologies and carry out strict supply controls based on their national laws and regulations. Presently, we have four international export control regimes vigilant about the supply co-ordinations between and among member states. The four regimes include- The Wassenaar Arrangements, The Nuclear Suppliers Group (NSG), The Australia Group and The Missile Technology Control Regime (MTCR). This paper is primarily focused on the Wassenaar Arrangements. This work is an attempt to have an understanding of the Wassenaar Arrangements; the criteria its member-states follow; the weapons or technologies it deals with; and the goals or objectives Wassenaar Arrangement strives for. Besides, this paper tries to analyze the prospects for India *vis-à-vis* Wassenaar Arrangements.

Key Words : Control regimes, Arms control, NSG, MTCR, Australia Group, Wassenaar Arrangements

INTRODUCTION

International technology control regimes are legally non-binding organizations which allow for technology export coordination between and among states. The states capable of supplying weapons and other materials or technologies of dual-use and are committed to non-proliferation form the core of such organizations. Presently we have four international export control regimes vigilant about the supply coordinations between and among member states. The four regimes include:

The Wassenaar Arrangements :

Established with the intent to promote regional and international security and stability. The Wassenaar arrangements are concerned with the responsible and transparent transfer of conventional weapons and dual-use goods and technologies.

The Nuclear Suppliers Group (NSG) :

NSG is concerned with the non-proliferation of nuclear weapons. The group provides for

various guidelines to keep check on the nuclear exports and the member states adhere to them accordingly and, also, formulate national legislation to conduct stringent control over such exports.

The Australia Group :

This group is established to keep control and check on the supply of chemical and biological materials and avoid the risk of proliferation of chemical and biological weapons. The member states are not legally bound, their cooperation is based on their shared commitment to non-use of chemical and biological weapons. The members of the Australia group are also parties to the chemical weapons convention (CWC) and biological weapons convention (BWC) aimed at banning of chemical and biological weapons.

The Missile Technology Control Regime (MTCR):

This regime aims at the non-proliferation of unmanned delivery systems capable of carrying weapons of mass destruction. The control list includes MTCR equipments, software and technology etc. the MTCR decisions are reached at by consensus and the member states exchange information regularly.

Every regime has a detailed list of materials, goods and technologies it intends to control to avoid proliferation or misuse of the same. The member states share common understanding regarding the enlisted goods and technologies and carry out strict supply controls based on their national laws and regulations. Also, there is a transparent exchange of information and activities between the member states. Besides, these control regimes are trying to widen their control circle to include other non-member states. Modern developed and innovative technology and the sophistication in the weaponry has led to many security challenges which need to be addressed. Such technologies including the materials and equipments need to be controlled and should be under regular check to avoid proliferation and consequent misuse. So, control regimes serve the purpose. The guidelines and the controls provided therein are worked out via consensus among the member states and they adhere to those controls and guidelines out of shared commitment to non-proliferation of weapons of mass destruction. The member states put stringent controls on their exports (regarding the listed materials or technologies) through their national legislations as well which are in consonance with the control guidelines. However, these control regimes are faced with many challenges/loopholes which impede their efficient working. Some developing countries oppose such control regimes stating them as discriminatory constructs of developed countries to prevent technology transfer to them. Also, procurement from states which neither take part in these control regimes nor conduct strict national export control pose a serious challenge to the effectiveness of these control regimes.

Wassenaar arrangements :

Wassenaar arrangement is an international export control regime regarding conventional weapons and dual-use goods and technology. Wassenaar was successor to the so called coordinating committee for multilateral exports control (COCOM) which was established to control and keep check on the exports of strategic materials by western states to communist states. COCOM constituted of 17 states and existed from 1956 to 31 March, 1994. In the light of the end of cold war, COCOM members realized the inappropriateness of the focus on East-West export controls and agreed to terminate COCOM on November 16, 1993. The decision was confirmed at a high level meeting held in Wassenaar, Netherlands on 29-30 March, 1994 and COCOM ceased to exist by March 31, 1994. Consequently, Wassenaar arrangement was established on December 19, 1996 in

wassenaar with a declaration issued at the peace palace in The Hague. Unlike COCOM, wassenaar arrangement is universal and non-discriminatory (as COCOM targeted only East bloc states). Also, wassenaar member states do not exercise any veto power on the control lists as was provided in COCOM.

The wassenaar arrangement has a member strength of 41 countries- Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, Spain, South Africa, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States. However, the membership to wassenaar arrangement is universal and non-discriminatory to states provided they meet the established criteria:

- Produce/export arms or associated dual-use goods and technologies;
- Implementation of national policies not permitting the sale of arms or sensitive dual-use items to countries whose behavior is a cause for concern;
- Adhere to international nonproliferation norms and guidelines; and
- Implement fully effective export controls.

The Wassenaar Arrangement's *Secretariat* is located in Vienna and the representatives of the member states meet there regularly. *WA Plenary* is the decision-making and governing body of the wassenaar Arrangement and is composed of representatives of all Participating States who normally meet once a year, usually in December. The Plenary Chair is subject to annual rotation among Participating States. Wassenaar arrangement constitutes of two control lists- Munitions List and List of Dual-use goods and technologies. The Munitions List contains 22 main entries on items designed for military use, including certain items within the categories such as (but not limited to):

- Small Arms and Light Weapons (and related ammunition);
- Tanks and other Military Armed Vehicles;
- Combat Vessels (surface or underwater);
- Armoured/Protective Equipment,
- Aircraft and Unmanned Airborne Vehicles, Aero Engines and related equipment

The list of dual-use goods and technologies includes general technology and general software notes. List constitutes of following categories:

- 1) Special materials and related equipments.
- 2) Material processing.
- 3) Electronics.
- 4) Computers.
- 5) Telecommunications.
- 6) Information security.
- 7) Navigation and avionics.
- 8) Marine.
- 9) Propulsion.

The Wassenaar Arrangement serves the following objectives:

- Contributes to regional and international security and stability
- Promotes transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies
- Complements and reinforces the existing control regimes for weapons of mass destruction and their delivery systems

- It is universal and non-discriminatory. It is not directed against any state or group of states.
- Export controls are used as a means to combat terrorism

Prospects for India :

India is emerging as an important country for the control of sensitive goods and technology. Annually, India approves a few hundred applications for the export of controlled goods. Alongside India's growing economy, there is a corresponding increase in the production and acquisition of goods and technology having potential end uses in Weapons of Mass Destruction programmes making India a potential supplier of sensitive goods. In order to control and keep check on such goods, India has developed an impressive framework of export controls. It has legal and regulatory mechanisms, licensing, enforcement, and private sector engagement policy. India claims and has held for long the policy of responsibly controlling sensitive goods. Earlier India followed the non-alignment philosophy which would also reflect on its export control policy. India, along with other countries, especially in the NAM, protested against these perceived inequalities through different international fora. Control over nuclear goods and technology was seen as discriminatory preventing developing states to benefit from the civil nuclear energy programmes. Export controls have historically been a contentious issue between India and the United States in particular, and the Western world in general. With the emergence of liberalization in 1991, India's need for technology also increased. Despite liberalized economy India was unable to procure the high-level technology. One more challenge to India came when it faced sanctions on the Indian Space Research Organization for importing cryogenic engines from Russia for its space delivery programmes. However, the 1998 nuclear tests marked a new phase in the history of India, particularly in its export control requirements. India started to negotiate with Washington regarding the sanctions being imposed over it. The Jaswant Singh and Strobe Talbot rounds of talks were the most significant and export controls featured prominently on the agenda. The relationship cultivated by Singh and Talbot was further consolidated by the India-US Civil Nuclear Agreement, and the endorsement of India's membership of the four multilateral export controls regimes.

Presently, India has developed a very healthy relationship with best global practices in export controls and has adopted a regulatory system with elements from legislators all over the world. India passed three relevant legislations or amendments after 2004 which included the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act of 2005, popularly known as the Weapons of Mass Destruction (WMD) Act; the amended Foreign Trade (Development and Regulation) Act 2010; and the Chemical Weapons Convention (Amendment) Act of 2012. In 1993 India signed the Chemical Weapons Convention (CWC) being one of the first 65 countries to ratify it. Also, passed the Chemical Weapons Convention Act in 2000 to implement CWC domestically. In 2010, a bill to amend the CWC act was introduced in Parliament with the objective to widen the scope of the act and to harmonize Indian national legislation with the CWC. The bill was passed making it a part of Indian legal framework in September 2012.

The WMD Act is one of three new entries in the Indian legal framework designed to implement India's commitment to the United Nations Security Council Resolution (UNSCR) 1540. One of its principal objectives included prevention of non-state actors from acquiring sensitive technologies which may be used for weapons of mass destruction. And this WMD Act introduced almost all of the global export control practices to the Indian export controls system. Also, India has developed an impressive institutional framework in order to implement and enforce its export control laws.

India has been using trade regulations to strike the correct balance, limiting the risk of proliferation

without creating unnecessary impediments to legitimate trade. India has come up with laws, regulations and institutions to enforce its export controls safeguarding its national security and promoting global non-proliferation and foreign policy goals. The same rules, regulations and institutions have provisions and mechanisms for addressing suppliers' grievances. Evident from all this is the fact that India shares concerns about global security risks and it could harmonize its system fully if granted the membership of all four control regimes. And India's membership would prove a win-win situation for both global control regimes as well as India itself.

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