
SECURITY ASSISTANCE PERSPECTIVES

Non-Proliferation Control Regimes

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Uncontrolled proliferation of weaponry and related technologies has long been a priority [concern] of U.S. foreign policy. With the Administration declaration in March 1991 that "a proliferation of weapons of mass destruction may profoundly challenge our national security in the 1990s," the United States decisively reinforced its global leadership in trying to stem the uncontrolled flow of weaponry. Earlier, in 1987, with its already long-established position of preeminence in control of both nuclear and chemical materials, the United States joined with six other similarly minded nations to establish the Missile Technology Control Regime (MTCR), a cooperative effort to limit the spread of missiles and their technology. With these three nonproliferation regimes—nuclear, chemical, and missile—firmly in place, the United States took another major and significant step in the war against the unchecked spread of weapons of mass destruction. Declaring a state of "national emergency" in his Executive Order 12735 on November 16, 1990, President Bush ordered into existence a sweeping code of stringent measures designed to effectively meet this "unusual and extraordinary threat to the national security" of the United States.

The Enhanced Proliferation Control Initiative (EPCI) significantly expands the range of export controls on chemical and biological weapons and their components. It mandates severe sanctions to be imposed on U.S. or foreign entities involved in illicit trade in these commodities. The resulting array of regulations now in place ranges from protocols dating back some seventy-odd years to vigorous new measures taken to counter today's menace.

As a result, applications for export licenses and other export related activities are today scrutinized in ways radically different than before. Applications are now subject to a myriad of new considerations driven by the often interlocking, always inter-related, concerns of the several non-proliferation regimes. It is therefore essential that the exporter know and understand these controls. To bring a semblance of order to the wealth of data available, this article will attempt to consolidate pertinent facts about each of these regimes, their background, purpose, and range of interest. Instructive rather than exhaustive, this article sets the stage for a more detailed treatment of each of the regimes in subsequent issues of *NewsNotes*.

THE REGIMES

The term "regime" has come into common usage in referring to the wide array of instruments—treaties, conventions, understandings, legislation, policies—whether unilateral, bilateral or multilateral, that forms the basis for international cooperation in pursuit of common

objectives in the non-proliferation field. This article will review the regimes currently in place, beginning with the oldest, through the most recent of these international cooperative structures.

CHEMICAL AND BIOLOGICAL WEAPONS NON-PROLIFERATION REGIME

The oldest of the three regimes, it traces its roots to the Geneva Protocol of 1925, which banned the use in war of poison gases and biological agents. It did not, however, prohibit the production of such weapons. A half century later, in March 1975, the "Convention on Prohibition, Development and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction," expanded the scope of the Geneva Protocol to include development, production, stockpiling and transfer of biological weapons.

For intensely nationalistic reasons, ratification of the Geneva Protocol was a complicated process, fraught with reservations. Many nations ratified with the proviso that the Protocol would cease to be binding should an enemy fail to abide by its provisions, giving rise to the term "no first use agreement." Other nations found parochial reasons to tailor their interpretation and agreement. The Convention, nevertheless, set historic precedent as the first multilateral arms control agreement designed to eliminate a complete category of weaponry.

Adding to the growing impetus for reduction and elimination of weapons of mass destruction, there have been three Review Conferences of the 1975 Convention: in 1980, 1986, and 1991. The second Review Conference attempted to establish four confidence building measures promoting a freer exchange of information about biological warfare related activities. The third Review Conference reflected mounting concerns of the members at escalating evidence of the spread of the potential for chemical and biological warfare. The Iraqi threat during the Gulf War of use of weapons of mass destruction on the battlefield, reinforced by the subsequent disclosure of Iraq's advanced militarily-focused biological research project, concentrated international attention as nothing before.

Also at the 1991 Conference, steps were taken toward verification, beginning with the formation of an experts group in March 1992, to examine scientific and technical mechanisms; improvement of agreed-to confidence building measures including information exchanges among members to include, most significantly, reporting on import and export controls put in place by member states; and a significant agreement that Convention restrictions cover any receipt of pertinent materials by any state, calling for appropriate sanctions.

On another level, in 1968, the United Nations Conference of Disarmament began a series of negotiations designed to permanently bar chemical weapons. Since 1980, the Ad Hoc Committee on Chemical Weapons has concentrated on developing a global ban on all chemical weapons and has garnered increasing support. Once formally put in place, an international inspection and verification agency, similar to the International Atomic Energy Agency (IAEA), which provides such support for the nuclear non-proliferation regime, will exist.

Subsequently, the U.N. established a working group of six nations—Bulgaria, Egypt, France, the then Soviet Union, Sweden, and the United States—to develop inspection and verification procedures for the Secretary General to employ in investigating allegations of illicit use of chemical or biological weapons.

The most dramatic manifestation of international concern over the spread of chemical weaponry was the creation, in July 1985, of a voluntary organization of seven nations—Australia, Canada, France, Germany, Italy, the United Kingdom, and the United States—to impose export controls on 50 chemical precursors of grave concern for their potential in the development of chemical weapons. The so-called "Australia Group" now numbers 22 nations. In 1989, Australia

chaired a 66 country conference of government and industry leaders which produced the first joint statement affirming cooperation in chemical and biological non-proliferation measures and called for a world-wide treaty.

Domestically, the **Biological Weapons and Anti-Terrorism Act** of 1959 became law, imposing criminal penalties for violations of controls on biological weapons and bioterrorism, thereby implementing the Biological Weapons Convention ratified by the United States in 1974. The 101st Congress attempted to pass into law several measures including the House Chemical and Biological Warfare Elimination Act; the Senate joined with a similar measure, the Chemical and Biological Weapons Control Act. However, while recognizing bipartisan congressional support for increased export controls affecting chemical and biological agents, President Bush objected to the statutory imposition of sanctions as infringing upon presidential authority. In his statement vetoing the proposed Export Administration Act in November, 1990, the President announced the EPCI, which took effect in December of that year.

NUCLEAR NON-PROLIFERATION REGIME

The most elaborately developed of the three regimes, the Nuclear Non-Proliferation regime is based upon a number of major international treaties, numerous multilateral and bilateral agreements, and an international inspection and verification organization, the International Atomic Energy Agency (IAEA).

Rooted in President Eisenhower's Atoms for Peace address to the U.N. in 1953, U.S. leadership was the catalyst for the creation of a series of controls that soon followed. The first of these, the Atomic Energy Act of 1954, drew a distinction between information for peaceful uses of atomic energy and militarily restricted data. Subsequently, the **Foreign Assistance Act** of 1961 forbade nuclear cooperation with nations not under IAEA verification, a measure strengthened in 1976 and 1977 by the Glenn-Symington amendments imposing sanctions against nations trying to develop a nuclear capability. In 1985, the Pressler amendment to the **Foreign Assistance Act** conditioned aid to Pakistan on a Presidential determination as to whether Pakistan had a nuclear explosive device or components thereof, a measure still impacting on U.S. relations with Islamabad. The Solarz amendment in the same year provided a cutoff of aid to any country illegally exporting nuclear material or technology.

Twelve other legislative and regulatory measures demonstrating the scope of U.S. concern about nuclear controls have been enacted, beginning in 1945 with the **Export/Import Bank Act** and continuing to 1987 with the **Foreign Relations Authorization Act** and the **Anti-Terrorism Act**. Internationally, several major treaties provide an enduring underpinning for cooperative efforts to limit nuclear proliferation. These include: the 1957 Statute of the International Atomic Energy Agency (IAEA), a U.N.-affiliated international verification agency, which created the essential element of the nuclear non-proliferation regime; the Treaty for Prohibition of Nuclear Weapons in Latin America (1968), the so-called Treaty of Tlatelolco named for the place where it was signed in Mexico City, which created a nuclear weapons free zone in Latin America, with separate protocols binding nations with territories in the region and forbidding the use of nuclear weapons against its signatories; and the Treaty on the Non-Proliferation of Nuclear Weapons (1970) which established the number of nuclear weapons states at five—the U.S., the then-USSR, China, France, and the U.K. Only three of those states, the U.S., the U.K., and the then-USSR, have signed; however, a total of 141 nations are adherents to the Treaty. [Editor's Note: Subsequent to the original publication of this article, both China and France signed the Treaty in March and June 1992, respectively. However, France has yet to deposit the instruments of accession with any of the three original signatories.] The NPT is the principal foundation and legal precept barring nuclear proliferation and is the cornerstone of international nuclear security. The last major treaty was the South Pacific Nuclear Weapons Free

Zone (1986), or the Treaty of Rarotonga, prohibits the manufacture or acquisition of nuclear weapons by its signatories and prohibits the stationing of such weapons within the region. However, it failed to address visits of nuclear weapons-equipped ships or aircraft to the region, a source of contention between the United States and Japan, as well as New Zealand.

In the early 1970s, two other international mechanisms came into being. The seven nation nuclear supplier group formed the Nuclear Exporters Committee; known as the "Zangger Committee," with a goal of reinforcing implementation of NPT restrictions on nuclear trade, focusing on specifically designed and prepared nuclear material. In 1975, eight additional supplier nations joined with the major suppliers to form the "London Club," which although similar in policies to the Zangger Committee, adopted even more restrictive guidelines for items on the "dual-use" list. In 1987, the Convention on Physical Protection of Nuclear Material established norms for safeguarding nuclear material against threats from terrorism and requires its 24 signatories to report to the IAEA on security measures taken during transport and on final disposition of nuclear material.

A strong tradition of Presidential and Congressional support over the years has reinforced the Nuclear Non-Proliferation Regime's activities with enactment of specific legislation and administration policy pronouncements. Total international support for the NPT is still lacking. Neither France nor China have signed; and some signatories, Iraq, Libya and North Korea, are openly attempting to acquire nuclear weaponry. It nevertheless remains the crucial foundation of U.S. nuclear non-proliferation policy.

MISSILE TECHNOLOGY CONTROL REGIME

The most recent of the arms control regimes, the Missile Technology Control Regime (MTCR), probably has the greatest impact upon the U.S. exporter today. Formally constituted in April, 1987, among the economic summit members of the U.S., Canada, France, Germany, Italy, Japan, and the U.K., it established a set of guidelines designed to sharply limit missile proliferation. Its growth has been dramatic; today twenty-two nations are members.

Unlike the nuclear and chemical/biological regimes, the MTCR has no basis in treaty nor U.N. sponsorship; further, it lacks an international verification agency such as the IAEA. Instead, it relies exclusively upon unilateral and multilateral voluntary export controls by its members. Faced with a growing threat that could see as many as 15 developing nations producing ballistic missiles by the end of the decade, the MTCR today constitutes the single bulwark supporting efforts to curb missile proliferation. The MTCR is challenged by a rapidly emerging Third World capability to obtain or produce missiles and by the inherent difficulties in dealing with "dual use" technologies, which difficulty it shares with both the nuclear and chemical regimes.

While the single formal element in the international control of missiles, the MTCR looms particularly large for the U.S. exporter faced with compliance with a complex set of restrictions. These stem from establishment of guidelines agreed to by the MTCR members and are manifest in the establishment of two major categories of equipment control. Category I includes complete rocket systems, complete subsystems and production facilities for missiles capable of delivering a 500 kilogram payload to a range of 300 kilometers or more. Moreover, Category I carries a presumption of denial for export authority for missile systems and production facilities.

Category II covers a far more extensive range of equipment and material. There are 16 items in all which could be used to design, develop, manufacture, assemble, operate, test, support, and launch missiles. Application for their export is subject to a case-by-case review by several agencies of the U.S. Government. Two mechanisms have come into being to support the controls imposed by the MTCR: the Missile Technology Export Control Group (MTEC), created in June

1989, bringing together experts from the Departments of State, Defense, Commerce, NASA, the Arms Control and Disarmament Agency, and the Intelligence Community is chaired by the Department of State's Bureau of Politico Military Affairs (which currently reviews some 1100 license applications annually) and the Missile Trade Analysis Group (MTAG) which was formed to analyze foreign involvement in both ballistic missiles as well as civilian space launch programs and to formalize cooperation among the members of the MTEC.

Domestically, the **Missile Technology Control Act of 1990** requires semi-annual reporting to the Congress by the Secretary of State on proliferation of both long range missiles and "destabilizing offensive aircraft," and provides sanctions for violations of the Act.

Taken in conjunction with the EPCI, MTCR controls have a wide-ranging impact on exporters, requiring licenses for any export to an end-user suspected of aiding in the production of unmanned weapons delivery systems, for any known U.S. participation in exports for missile related projects, and empowering the U.S. Department of Commerce to deny any license for missile proliferation related reasons.