

# INTERNATIONAL SEMINAR ON STRATEGIC EXPORT CONTROLS

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## *“The Wassenaar Arrangement: Transparency and Effectiveness in Regulating Transfers of Conventional Arms And Dual-Use Goods and Technologies”*

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### Introduction

Thank you to the Strategic Export Control Division of the Ministry of Foreign Affairs of Pakistan for inviting me to participate in this international seminar.

It is an honour for me to be here on this first Wassenaar Arrangement (WA) visit to Pakistan. Pakistan has participated in and contributed to the WA's annual outreach briefings in Vienna since 2012. I hope that this visit will lead on to further mutually beneficial exchanges.

### Background

The WA is an inter-governmental information-sharing and standard-setting forum concerned with export controls for conventional arms and dual-use goods and technologies. It serves as a mechanism for building trust and collaboration among interested countries involved in international trade in these items, including major producers and exporters.

It became operational in 1996, nearly 22 years ago, with 33 founding members and a small permanent Secretariat based in Vienna.

Its establishment reflected a shift from an east-west focus of export controls after the end of the Cold War. The new forum was the first global multilateral arrangement to address the risks to international peace and security associated with the spread of conventional arms and related items.

The WA represents a political commitment to cooperate in promoting transparency and responsibility in such transfers, thereby preventing destabilising accumulations. WA Participating States undertake, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities that undermine regional and international security and stability, and are not diverted to support such capabilities, or to terrorism.

The WA works by consensus and is open on a global and non-discriminatory basis to new members who meet the agreed criteria and whose admission is approved by the WA Plenary.

Membership has now expanded to include 42 countries from across the continents.

Several membership applications are currently pending, while some 46 countries are among the WA's regular outreach partners, including many in the Asian region. An increasing number of countries are opting to apply the WA Control Lists without seeking to become a member. They may do this directly, or by means of voluntarily following the consolidated European Union (EU) Control Lists, which incorporate the WA Control Lists as well as those of other multilateral export control regimes.

The WA complements, without seeking to duplicate, the other multilateral export control regimes dealing with weapons of mass destruction (WMD) and their means of delivery.

The WA makes clear that it is not directed against any state or group of states, and that it will not impede *bona fide* civil transactions.

Conventional arms, as is well known, are the weapons that are currently used with the most devastating consequences around the world, especially small arms and light weapons (SALW), which are also the weapons of choice of terrorists.

Increasing recognition of the need to regulate international trade in these arms has been reflected in the development of broad-based support for the Arms Trade Treaty (ATT).

Interest in the WA and its work continues to grow in this context. The WA's outputs may be seen as a useful reference or resource for countries which are building or strengthening their export control systems.

As noted by other speakers, apart from security considerations, more and more countries are recognising that effective export controls bring national economic benefits, by facilitating trade, building confidence and enhancing access to sensitive imports, as well as to foreign direct investment.

#### WA Commitments

Upon joining, WA members make two main commitments: firstly to apply fully effective export controls at the national level based on the collectively agreed WA Control Lists; secondly, to exchange information about the risks associated with transfers of these items, as well as data of their own transfers and denials in certain cases. This transparency helps to build common understandings and to assess the scope for coordinating national export control policy and practice. It also serves to promote greater consistency in transfers of these items.

It should be stressed that the WA does not seek to introduce collective decision-making into national export licensing. On the contrary, all decisions, whether to grant an export licence for a

particular item to a particular destination, or to deny an export licence application, are taken by each WA Participating State in accordance with its national legislation and policies.

As I see it, the role of the WA is to set the standard against which Participating States take such decisions, and to provide for an element of peer review – any Participating State may follow up by seeking further discussion, in the WA forum or bilaterally, as to the rationale behind a particular national transfer decision.

This balance between collective agreement on key principles and standards, and the preservation of national discretion in implementing them, is an essential feature of the WA's work.

### Control Lists

A key part of the WA's work is collectively agreeing on which items should require an export licence at the national level.

The WA *Munitions List* has close to 300 entries in 22 categories, covering all types of conventional arms, as well as ammunition, parts and components, related production equipment, technology and software.

The WA *Dual-Use List* contains over 1,000 items in 9 categories, ranging from special materials and related equipment to electronics, computers, telecommunications, information security, sensors and lasers, navigation and avionics, marine, aerospace and propulsion.

Within the WA Dual-Use List, 170 items are classified as "sensitive" and 80 as "very sensitive", requiring a more vigilant approach.

It is worth noting that the WA Lists, especially the *Dual-Use List*, are more extensive than those of other export control regimes and for most countries account for the vast majority of export licence applications received.

WA Participating States may apply additional export controls at the national level beyond those defined in the WA Lists. A "catch all" principle, agreed in 2003, provides for the control of non-listed dual-use items in certain circumstances – e.g. when they are intended for destinations that are subject to UN or other binding arms embargoes, and are for military end-use, including for the manufacture or repair of military equipment.

The key selection criterion for the *Munitions List* is whether the item is a major or key component for military capability.

The selection of dual-use items is more complex. A dual-use good or technology may have civil applications but may also be used in military programmes, including for the development, production, use or enhancement of military capabilities.

Factors to be taken into account in listing dual-use items include availability on the global market, the ability to control the item's export effectively, the ability to specify it clearly and objectively, and non-duplication with other export control regimes.

To remain relevant, export control lists need to be constantly updated. WA Participating States invest considerable resources in this ongoing work. The group of national technical experts meets for on average six weeks a year in Vienna, and also works intersessionally, to consider possible changes to the WA Control Lists – additions to, modifications of, or deletions from existing controls - in order to stay in step with technological advances, changes in the international security environment and market trends. WA Participating States may involve industry experts in the highly specialised work of updating the Lists. It is important to set the Control List specifications precisely so as to focus licensing decisions on items of security concern, while allowing other items to be traded freely.

To take a few recent examples. On the dual-use side, as some of you may know, the WA introduced new export controls in 2013 on goods and technologies related to mobile communications interception, intrusion software and Internet network surveillance tools which, under certain conditions, may be detrimental to international and regional security and stability. Last year, in the light of implementation experience, additional *clarifications* were agreed in relation to intrusion software so as to exclude from the scope of controls software and technology intended for vulnerability management and cyber incident response. Further clarifications of other controls were also achieved in 2017, in areas such as spacecraft equipment, gas turbine engines and equipment incorporating information security, taking into account the increasing integration of once sensitive functionalities in mainstream consumer products.

In 2017, the WA also continued its focus on emerging technologies of concern, for example lawful electronic interception devices, electronic forensics tools and systems for the jamming and interception of unmanned aerial vehicles (UAVs), which could have negative security consequences if diverted. In such areas, the challenge relates to establishing a clear distinction between equipment and technologies of concern and comparable items for legitimate civil use that are increasingly available on the global market.

Among the most significant *updated* controls agreed last year were those related to high-performance digital computers, specific electronic components able to withstand extreme environmental conditions, submarine diesel engines, optical wave-front sensors and additional military explosives.

Some controls were *relaxed*. For example, mechanical high-speed cameras were deleted from the Control Lists as they have now been replaced by digital high-speed cameras in all sensitive applications. The control of rifle-scopes having no electronic image processing was also relaxed to avoid unnecessary licensing of widely available sporting and hunting rifle-scopes.

As can be seen, it is not just a question of constantly adding to controls, but also of amending or deleting existing controls to take account of obsolescence or to enhance common interpretation.

The WA can be expected to continue to provide a forum to address new technologies of concern, and to keep export control specifications up-to-date on sensitive items, including through further refining understandings, such as in relation to electronic forensics equipment, communications interception systems and robots having image-processing capabilities. Other ongoing challenges include further developing appropriate export controls in respect of Additive Manufacturing (or 3-D printing), new generation sensors and the so-called "Internet of Things".

#### Information Exchange

Export licensing decisions can be complex and it helps to have access to a wide pool of information. What is called a *general information exchange* in the WA is designed to focus, at least three times a year, on transfer risks and trends in specific regions, suspicious acquisition/brokering activities, projects and programmes of concern, as well as terrorism-related issues. These exchanges are a kind of collective risk assessment bringing together WA Participating State perspectives from different parts of the world.

In practice, an individual Participating State may draw the attention of its partners to any matter that it considers relevant to achieving the WA's purposes.

*Specific information exchange* in the WA involves regular national reporting of conventional arms transfers, as well as transfers and denials of certain dual-use goods and technologies, to destinations outside the WA. WA arms transfer notifications are submitted more frequently (i.e. twice per year) and include more information (e.g. additional sub-categories) than is required under the United Nations Register of Conventional Arms (UNROCA) and the Arms Trade Treaty (ATT).

Reporting of transfer denials brings to the attention of partners efforts to obtain access to a controlled item or technology that one Participating State considers to be contrary to the WA's purposes. Such reporting is therefore an important and timely warning mechanism that also helps to avoid inadvertent undercuts.

WA-information-sharing is facilitated through the WA's dedicated secure electronic network (WAIS), to which all Participating States have 24-hour access.

### Standard-Setting Work

The third focus of the WA, as I see it, lies in its standard-setting work. WA Participating States have agreed to collaborate in producing export control implementation guidance drawing on their practical experience.

Over the years the WA has built up a comprehensive library of some 25 non-binding Best Practices Guidelines, elements and procedures to assist both governments and the private sector in effective export control implementation. These documents are available on the WA public website.

Related to this work is the valuable sharing of national implementation experiences at the practitioner level. Licensing and enforcement officers from WA Participating States meet every year and network informally to share practical insights, including case studies and lessons learned.

Looking at some of the key WA documents, relevant to the export risk assessment process are the *"Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons"*, originally agreed in 1998 and most recently updated in 2011, listing factors to be taken into account when assessing an export licence application.

Other WA Best Practice Guidelines relate to, inter alia, re-export controls for conventional weapons systems, end-user/end-use controls for exports of military list equipment, intangible transfer of technology controls and internal compliance programmes (ICPs) for industry and the academic/research sector.

Among recently agreed guidelines are *Best Practices for Transit or Transshipment* and *Elements for the Effective Fulfilment of National Reporting Requirements*. In 2016, updates were approved of earlier *Best Practices for Effective Legislation on Arms Brokering* and *Best Practices for Effective Export Control Enforcement*, as part of a newly agreed procedure for the regular review and, where appropriate, updating of all existing WA guidance documents.

### Outreach

Export controls are most effective when they are widely applied. The WA attaches priority to outreach to non-member countries to encourage the establishment and maintenance of fully effective export controls. As earlier noted, there are currently 46 countries on the list of regular WA outreach partners, identified as significant exporters, importers or transit and trans-shipment countries of items on the WA Control Lists. WA outreach activities include annual collective briefings on both technical and policy issues and bilateral dialogue (visits/meetings) with interested non-Participating States. In recent years WA missions have visited, for example, India, Israel, Singapore and Malaysia, by invitation. The WA Secretariat is also mandated to participate

in international events such as this one, and to stay in touch with other international and regional organisations working in related areas. In addition, the WA is pursuing informal technical contacts with the Nuclear Suppliers Group (NSG) and the Missile Technology Control Regime (MTCR) on specific Control List issues to avoid duplication.

### Arms Trade Treaty (ATT)

Given the alignment of their goals, I am often asked about the current and future relationship between the WA and the ATT. I believe that they can be seen as complementary and mutually-reinforcing. The WA's collective experience, including its *Munitions List*, and the expertise acquired in the application of its best practices and guidelines, may be useful to other countries seeking to fulfil their ATT commitments. This could save a lot of time and work. In addition, many WA members are active in their national and/or regional capacities in providing export control advice and assistance to other countries.

For the foreseeable future, I think that its Participating States can be expected to continue using the WA to further develop international export control standards and enhance their implementation, thereby seeking to provide a lead by example for the broader international community.

### Conclusion

In summing up, I believe that the trust and transparency that have been built up through the WA's collaborative work are important elements in the modern international trade and security framework.

The challenges facing export controls are becoming ever more complex – whether related to destabilising accumulations of conventional arms, regional conflicts, or diversion risks associated with rapid technological advances, the increasing role of non-state actors, including terrorists, the accelerating globalisation of business, extensive movement of people, and ever-widening use of electronic communications.

The WA recognises that, to remain relevant, it needs to continue to be able to respond rapidly and coherently to the evolving international threat landscape, without impeding legitimate trade.

Working together with one's partners sharing a similar commitment to vigilance and restraint builds confidence, supports security and helps to create a level playing-field for international trade in these items, which is of key importance to exporters. Raising awareness in industry and the reasearch sector of increasingly sophisticated proliferation and diversion risks, including through intangible transfers of technology (ITT), and promoting cooperation and buy-in, including self-

regulation, is an integral part of implementing robust export controls. Active outreach to other countries and relevant international and regional organisations is also important to success.

Just a reminder that the WA public website contains all the key WA documents, including the Control Lists and the Best Practices Guidelines.

I would be happy to provide further information or answer any specific questions, either as part of this session or in informal contacts on the margins of the meeting.

Thank you.