

**Second Annual Disarmament and International Security Affairs
Fellowship Programme
New Delhi, 17 January 2020**

“The Role and Relevance of the Wassenaar Arrangement”

(Ambassador Philip Griffiths, Head of Secretariat, Wassenaar Arrangement
on Export Controls for Conventional Arms and Dual-Use Goods and Technologies)

- *Multilateral cooperation in promoting transparency and responsibility in defence-related trade*
- *Working to prevent undesirable exports without impeding bona fide civil transactions*
- *Maintaining up-to-date and user-friendly Munitions and Dual-Use Control Lists*
- *Keeping pace with international security developments, advances in technology and market trends*
- *Projecting the WA's work and fostering synergies.*

Introduction

I am grateful to the Disarmament and International Security Affairs Division of the Ministry of External Affairs and the Foreign Service Institute for the opportunity to join you this morning to speak about the contributions of the Wassenaar Arrangement (WA) to international peace and security.

I believe that the WA's work, alongside that of other international instruments, including the other multilateral export control regimes, is making an important contribution to regional and global security and stability.

In essence, the WA is an intergovernmental information-sharing and standard-setting forum on export controls for conventional arms and dual-use goods and technologies. Although it is formally outside the United Nations system, it shares a strong focus on contributing to global peace and security.

Its origins can be traced back to the Coordinating Committee on Multilateral Export Controls, or COCOM, which existed during the Cold War. In the early 1990s there was a recognition that the old East-West focus was no longer an appropriate basis for export controls. There was a search for a new export control forum with a global focus. After extensive negotiations in Wassenaar in the Netherlands, a Declaration was signed in The Hague in 1995 paving the way for the establishment of the WA with 33 founding member governments. Austria offered to host the new body from the beginning, and the WA has had its seat in Vienna since 1996. All its regular meetings are held in Vienna where the small permanent Secretariat that I lead is

based. I am the third WA Head of Secretariat and was a New Zealand career diplomat before being appointed to this role in mid-2012.

I should note that the WA is an arrangement, not an agreement. It represents a political commitment by its Participating States and rests on voluntary undertakings, rather than being Treaty-based with formal legal obligations.

First, a couple of definitions may be helpful.

Export controls – These have a long history. It stands to reason that you would not want to supply weapons to anyone who is likely to use them against yourself or your friends. Export controls are now a well-recognised part of the security tool-kit available to governments. Their purpose is not to prohibit exports, but to ensure that transfers of certain strategically sensitive items go only to the intended recipient and end-use by requiring an exporter to apply for a licence from the competent national authority prior to export. Various factors are taken into account in assessing an export licence application, such as the policies (including export controls) of the destination country and the security situation in its region, the credentials of the end-user and the specified end-use. Certain conditions may be attached to an export licence in particular circumstances, such as no re-transfer to another external or internal recipient without prior consultation with the original exporting country.

The national export licensing authority may vary from country to country. Often it is the Ministry of Foreign Affairs, the Ministry of Commerce or the Ministry of Defence in respect of weapons-related items, or a combination of these. In any event, inter-agency consultation, including with national intelligence services, is an indispensable part of effective export licence decision-making. International consultation may also be required or beneficial.

In recent times international attitudes to export controls have evolved significantly. I understand that you are having a separate session on UNSCR 1540 which established the requirement for all United Nations Member States to implement export controls. More recently the Arms Trade Treaty (ATT), which has attracted wide international adherence, is built around the requirement for its States Parties to maintain an effective national control system to regulate transfers of conventional arms.

Beyond this, I believe it is fair to say that there has been growing acceptance by governments and industry that having effective export controls facilitates trade and supports national economic interests - by building confidence that sensitive goods and technologies will not be diverted, thereby enhancing access to high-end imports and foreign direct investment.

A second definition - **dual-use goods and technologies** are those that have civil applications but that may also be used in military programmes, including for the development, production, use or enhancement of military capabilities. Examples would include items made of special materials, certain electronic and computer components, advanced sensors and lasers. We will come back to this.

WA Purposes

The WA Participating States seek to contribute to international and regional security and stability by promoting transparency and responsibility in transfers of relevant items, thus preventing destabilising accumulations, as well as their acquisition by terrorists.

The aim is to ensure that such transfers do not contribute directly or indirectly to the development or enhancement of military capabilities which undermine peace and security, and are not diverted to support such capabilities.

It goes without saying that a multilateral approach to export controls - acting in concert with partners - is more effective than acting alone, both in terms of protecting national and regional security, and in seeking to create a level playing-field for international trade in these items, which is of key importance to exporters.

There is significant value in having a multilateral diplomatic forum, including major producers and exporters of relevant items, in which to develop common understandings of transfer risks, of which goods and technologies should be listed, and of standards for effective national export control practice.

All decisions in the WA are taken by consensus. Its founding document makes clear that the WA is not directed against any state or group of states, and that it will not impede *bona fide* commercial transactions.

The founding document also makes clear that all measures undertaken with respect to the WA will be in accordance with national legislation and policies, and will be implemented on the basis of national discretion.

This balance between consensus-based agreement on key export control principles and standards, and the exercise of national authority in all matters related to implementation, is an essential feature of the WA's work, and a common thread in the fabric of each of the multilateral export control regimes.

The measures agreed in the WA are a floor not a ceiling – there is nothing to stop individual Participating States from implementing additional export licensing requirements, beyond what is collectively agreed, in the light of particular national circumstances or needs.

Participation

The WA is open on a global and non-discriminatory basis to new members who meet the relevant criteria and whose admission is approved by the Plenary. India is the most recent admission, having joined the WA at the end of 2017, taking the membership from 33 founding members in 1996 to currently 42 Participating States from every continent.

According to the most recent SIPRI (Stockholm International Peace Research Institute) data, WA Participating States comprised 19 out of the 25 leading conventional arms exporters in

2018 and were responsible for 92% of world arms exports by value.

Several membership applications are currently under consideration, while the number of countries invited to participate in WA outreach events has grown to 46 in the last few years. More and more countries are basing their export controls on the WA Munitions and Dual-Use Lists and taking a close interest in the WA's work, with or without seeking to become a member. They may apply the WA Lists directly, or by means of following the consolidated EU Control Lists, which are based on the work of the WA and other multilateral export control regimes.

Where the WA Fits

The WA complements and reinforces, without seeking to duplicate, other multilateral export control regimes which are concerned with weapons of mass destruction and their means of delivery. The WA was established after the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR) and the Australia Group (AG). Each of the regimes has its own particular historical context explaining why and how it came into being.

As earlier noted, the WA has recently been joined in its area of the international architecture by the Arms Trade Treaty (ATT).

The WA also sits alongside various United Nations instruments aimed at improving transparency and responsibility in transfers of conventional arms, especially small arms and light weapons.

Structure

A word about structure. The WA's governing and decision-making body is the Plenary which normally meets once a year in Vienna in early December. The main subsidiary bodies are the General Working Group (GWG) dealing with policy and procedures, and the Experts Group (EG) addressing issues related to the WA Control Lists. The Chairs of most WA bodies rotate annually on an alphabetical basis. The Plenary Chair for 2020 is held by Croatia; last year it was held by Greece, and next year it is to be held by Hungary. The GWG is chaired by Ukraine in 2020 after Turkey in 2019 and before the United States in 2021. The Chairs of the EG and the Licensing and Enforcement Officers Meeting (LEOM) are currently Latvia and Italy respectively.

Basic Commitments

WA Participating States make two main commitments on joining - to apply fully effective export controls at the national level based on the WA Control Lists, and to exchange information and views about the risks associated with transfers of these items, as well as reporting 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, which is important to exporters.

The WA does not attempt to introduce collective decision-making into national export licensing processes. All decisions, whether to grant an export licence for a particular item to a particular destination, or to deny an application, are taken by each WA Participating State in accordance with its national legislation and policies. As I see it, the WA's role is to share national risk assessments and to "set the standard" against which Participating States manage their national export control systems.

There are accordingly no verification or enforcement mechanisms in the WA. Reliance is placed on frank exchanges in a diplomatic setting and on an element of "peer review" - any Participating State may, if it wishes, follow up by seeking further discussion with a WA partner, within the WA forum or bilaterally, as to the rationale behind a particular national transfer decision.

Key Areas of Work

Continuously maintaining the collectively agreed Lists of items that require a national export licence, exchanging information on transfer risks and trends and developing and further refining export control standards is challenging work.

Let me turn to each of these three key areas, with a focus on recent developments.

I. WA Control Lists

The technical work of keeping the Control Lists up-to-date and relevant is a core part of the WA's mandate. The WA Lists are the widest ranging among those of the multilateral export control regimes, and for most countries account for the majority of export licence applications received and issued.

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 List of Dual-Use Goods and Technologies 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. Controlled dual-use goods and technologies include those which are major or key elements for the indigenous development, production, use or enhancement of military capabilities.

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

A "catch all" principle, originally agreed in 2003, provides for the control of non-listed dual-use items when they are intended for destinations that are subject to UN or other binding arms embargoes, and are intended entirely or in part for military end-use, including for the

manufacture or repair of military equipment.

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

The selection of dual-use items is more complex, involving four main criteria: foreign availability outside the WA; the ability to control their export effectively; the ability to make a clear and objective specification of the items; and non-duplication with other export control regimes. These criteria were reviewed by experts from the Participating States in the course of 2019 and were found to remain relevant and applicable in a rapidly evolving technology and security environment.

Recent Control List Changes

The process of reviewing and updating the WA Munitions List and Dual-Use List involves highly technical collaboration among Participating State experts with assistance from their industry specialists.

They meet as the WA Experts Group (EG) for on average six weeks a year, and network intersessionally, to consider possible additions to, modifications of, or deletions from the WA Control Lists, in order to stay in step with technological developments and changes in the international security situation, taking into account market trends. Each entry in the Control Lists needs to be set precisely to focus licensing decisions on items of security concern while allowing other items to be traded freely.

Not to arrive at excessive or inappropriate controls is particularly challenging when, as is often the case, there are close similarities between the equipment, components or technologies used for military/security purposes, and those used in industrial/commercial applications.

A careful balancing and rebalancing of relevant factors is necessary. Special efforts are also taken to make the Control Lists text readable and user-friendly for both licensing authorities and exporters.

Once the Control List changes are approved by the annual WA Plenary in early December, they are published on the WA website and WA Participating States, and an increasing number of other countries, incorporate them into national regulations and procedures as appropriate.

2019 was a particularly busy year for the WA at the technical level, as Participating States put forward a record number of Control List proposals, many of which addressed challenging issues. Despite the heavy workload, consisting of some 288 papers, just over half of the 102 national proposals were agreed, some of which had been under discussion for several years.

I think it is fair to say that the risks being addressed by export controls are expanding and becoming more complex. Warfare and instability associated with conventional military threats have not gone away. Small arms and light weapons continue to be used with the most

devastating consequences around the world, including by terrorists. At the same time, other challenges have gained in importance resulting from rapid technological advances, now more often driven by the civilian sector, as well as increasingly sophisticated proliferation and diversion risks, including through intangible transfers of technology. WA Participating States need to review export controls not only in relation to traditional security challenges, but also relevant to activities in the new domains of cyberspace and outer space. At the same time, they seek to adjust or eliminate controls made redundant due to changes in the marketplace. For example, the rapid development of software and technology using information security for consumer protection requires a regular reassessment of the purpose and feasibility of export controls in this area.

Specific emerging technologies which have been discussed in the WA in recent years include, for example, electronic forensics or investigative equipment, cyber threats and cyber warfare, UAV jamming systems, 3-D printing, and space-related technologies including space launch platforms, satellite tracking and space debris mitigation. The intertwined development of both civilian and military applications of these technologies poses a significant challenge to crafting controls which protect both the security and the economic and commercial interests of the Participating States.

Among the main List changes agreed last year were new export controls regarding cyberwarfare software, digital investigative (forensics) tools, software for lawful communications monitoring, and sub-orbital vehicles.

These are just a few examples which give an idea of the complexity and highly technical nature of the Control Lists.

At the technical level, the WA is also pursuing informal contacts with experts in the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG) on specific Control List issues in order to better understand mutual concerns, share technical expertise and avoid duplication. These inter-regime technical links are increasingly important given the accelerating pace of technological change.

II. Transparency and Information-Sharing

A second focus of the WA's work is transparency. As mentioned earlier, information-sharing is an essential aspect of the WA which helps to maintain confidence among its Participating States. WA Participating States are continuing what is called a general information exchange designed to focus at least three times a year on transfer risks 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 perspectives from different parts of the world. They are an opportunity to sensitise partners to particular transfer risk concerns with the aim of having these reflected in national export licensing decision-making.

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

Specific information exchanges include ongoing regular reporting of Participating States' 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. every six months) and include more information than is required under the UN reporting system and the 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. Moreover, should an export licence nevertheless be issued in respect of the most sensitive controlled dual-use item previously denied by a WA partner, WA Participating States are required to notify such an approval.

Information exchange is facilitated through the WA's dedicated secure electronic network (WAIS), to which all Participating States have 24/7 access. This platform is being constantly refined.

In addition, WA Participating State licensing and enforcement officers come together in Vienna once a year and network intersessionally to share national export control implementation experiences, including case studies and practical lessons learned. Topics discussed last year ranged from general licences, re-export controls, and intangible transfers of technology, to government and industry cooperation, end-user verification and check procedures and transit and trans-shipment. Participating States have, on occasion, organised events on the margins of such meetings to facilitate dialogue with industry.

III. Standard-Setting Work

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

This work is particularly important given the reliance on national implementation. The WA provides a forum for an ongoing exchange among its members of experiences regarding all aspects of export controls.

Over the years, this process has helped to drive the creation of a comprehensive library of some 25 non-binding best practices, elements and procedures for effective export control implementation. These guidelines are of interest to both Governments and exporting companies or entities.

They relate to such issues as export risk assessment, re-export controls for conventional weapons systems, end-user/end-use controls for military list equipment, catch-all controls, intangible technology transfer controls, internal compliance programmes (ICPs) for industry and the research sector, brokering and transit or trans-shipment controls, among others.

Since 2016, WA Participating States have undertaken to ensure the regular review and where appropriate updating of existing guidance documents, given the passage of time since their original adoption in some cases and ongoing developments in many areas. In 2019, the Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) and the Best Practices for Export Controls/Disposal of Surplus or Demilitarised Equipment were updated, while the Criteria for the Selection of Dual-Use Items, including for the Sensitive List and the Very Sensitive List, were reviewed and found to remain relevant and applicable in a rapidly evolving technology and security environment.

All of these best practice guidelines are shared on the WA public website and other governments as well as the private sector are encouraged to consider them as they update their own export control processes and procedures.

WA Outreach

Turning to outreach, unlike some other export control regimes, the WA does not have a category of "adherents". It already shares its major outcomes in terms of the Control Lists and Best Practices as public documents on the WA website. In addition, considerable information is conveyed to interested non-member countries through a structured outreach programme, with the objective of encouraging voluntary adherence to the WA Control Lists and WA-equivalent standards for effective export controls, and a strengthening of export control systems generally.

Included among these outreach activities are regular collective briefings on both policy and technical issues – an annual Post-Plenary Briefing and an Enhanced Technical Briefing at which WA experts discuss the latest changes to the Control Lists and other issues and answer specific questions. The Enhanced Technical Briefing is normally held in conjunction with the WA Experts Group and the Licensing and Enforcement Officers' Meeting in Vienna to facilitate capitals-based expert exchanges and the sharing of practical implementation experience. The next Enhanced Technical Briefing is scheduled for 18-19 June 2020.

Other outreach activities include bilateral dialogue and invited visits, as well as participation in international conferences, including interaction with industry and academia.

For example, in recent years WA delegations have made technically-focused visits to Singapore, Malaysia, India (before it joined the WA) and Israel at their invitation, meeting with representatives of both government and industry.

At the multilateral level, the WA Secretariat also maintains contacts with other relevant international and regional organisations, including parts of the UN system, the ATT, as well as

the Organisation for Security and Cooperation in Europe (OSCE) and the Organisation of American States (OAS).

The important task of keeping industry/academia informed about export control developments is primarily a WA Participating State national responsibility. The Secretariat also has a role in ongoing interaction with industry through participation in international events.

Indeed, WA Participating States attach particular importance to engagement with industry and the research sector. This engagement is a two-way process. Both sides can learn from each other's expertise and benefit from a better understanding of each other's concerns, priorities and methods of operation.

The WA public website is also an important outreach tool. Further enhancements in recent months have included the addition of non-English text. Thanks to the generous assistance of France, Germany, Russia, and Spain, much of the information on the website is now available in each of their respective languages.

Arms Trade Treaty (ATT)

I am often asked about the current and future relationship between the WA and the ATT. The WA has participated as an observer at each of the ATT Conferences of States Parties. I believe that the WA and the ATT will continue to be seen as complementary and mutually-reinforcing. The WA's accumulated expertise and experience, including the WA Munitions List and its guidelines and best practices, may be beneficial to other countries in meeting their obligations under the ATT and fulfilling the ATT's objectives as it evolves. For their part, WA Participating States can be expected to wish to continue using the WA to further develop international export control standards and enhance their implementation, thereby seeking to lead by example for the broader international community. At the same time, the WA and the ATT are separate entities. Not all WA Participating States have joined the ATT, and vice versa.

Concluding Remarks

In closing, the importance of effective national export controls underpinned by multilateral cooperation continues to be reinforced by current international security challenges.

These include destabilising accumulations of conventional arms, regional conflicts and the proliferation and diversion of increasingly sophisticated strategic goods and technologies to non-state actors, including terrorists.

The WA is working in a challenging but critical area of the international trade and security agenda. It strives to meet these challenges by, inter alia:

- preserving the multilateral consensus that is essential to its effective operation;
- conducting its core technical work as efficiently as possible;
- facilitating general and specific information-sharing among its Participating States in a timely manner;

- identifying and responding as quickly as possible to new technological developments or applications with security implications – in order to minimise any vulnerabilities arising both before new controls can be agreed multilaterally, and before they are implemented in national practice;
- setting standards for effective export control procedure and practice; and
- promoting the widest possible application of equivalent standards through active outreach to non-WA countries and partners.

Working together with one's partners sharing a similar commitment to vigilance and restraint builds confidence, supports security and facilitates international trade. Raising awareness in the private sector of increasingly sophisticated proliferation and diversion risks and promoting cooperation and self-regulation are integral to implementing robust export controls. Active outreach to other countries and relevant international and regional organisations to encourage adoption of equivalent controls is also key to achieving shared objectives.

I think it is fair to say that the trust and collaboration built up through the WA's work have been an important stabilising factor in the international trade and security environment over the last twenty-three years. This work remains more relevant than ever.

The WA remains focused on the need to respond rapidly and coherently to the evolving international trade and security landscape.

I would be happy to provide further information or answer any specific questions.

Thank you for your attention.