

MTCR Introduction ACA Meeting

Washington, 15 February 2018

Introduction

Good morning! Quite a pleasure to be with you (in a sense). I am very happy that Arms Control Association and the Monterey Institute organise this birthday party for the Missile Technology Control Regime, even though the MTCR's 30 year's birthday is nearly a year ago. So, let's celebrate 31, or possibly 33 because by March 1985 consensus had essentially been reached among the G7 who formed the original group of countries involved in controlling the spread of nuclear-capable missile systems.

On a more serious note I welcome public discussion about the MTCR, because to my mind the MTCR still operates too much in the dark. I am not a proponent of opening up MTCR meetings to the public or to accredited NGO's, even though such plenary meetings are often not very different from say NPT Review Conferences. The same applies a fortiori to the experts meetings which are the core of the regime.

Confidentiality is key there. But I do think some greater openness is warranted, and I have promoted several initiatives to increase transparency during the year I was Chair, like a revamped website and use of a twitter account to give more insight in the work of the MTCR Chair throughout the year. I also have made clear – like I did when I was NSG Chair - that I was available for interviews, so that those interested would be able to understand better how the MTCR works.

Let me make five points which are all somehow connected with the theme of consensus.

1. The value of export control regimes

I believe in the need for and the value of export control regimes, but that is less of a no-brainer than you might think. Take the Nuclear Suppliers Group which I was also chairman of, 6-7 years ago. From a non-proliferation point of view it has proven crucial that nuclear technology holding states – states with companies on their territory that have the ability to export relevant goods and services – at some point created a level playing field. But there is a tension with the NPT philosophy of “anything goes as long as it is under safeguards”.

Two phases: in the mid-seventies quite a number of sensitive exports were being planned, exports that could have easily led to further proliferation of nuclear weapons. It was the *restraint* that the exporting countries committed to that prevented these developments. Second phase: when it was discovered in the late eighties that Iraq had imported many products that were relevant for the different enrichment routes that the country explored, goods that were not *especially designed*

or prepared for nuclear use, the NSG decided to add a dual use list to its nuclear triggerlist, going beyond the NPT, but doing so by consensus. Export control regimes like the NSG or the MTCR prevent that shady buyers hop from country to country and find the government with the lowest norms. All technology holding States should have the same rules and implement these in a consistent manner. And these rules should evolve in all concerned countries in a similar way.

So: are the export control regimes a cartel of rich and developed countries preventing the *have nots* from getting even? That's an argument that has often been used, and there is something to it. It is the argument that Abdul Qadeer Khan used when he tried importing centrifuge parts and related goods into Pakistan by going around export control provisions. As I said, I believe in the necessity and the value of export control regimes, but there is something ironic in the fact that the NSG was created after the Indian PNE in 1974, as no country has wrestled harder and longer, and to some extent publicly, with the question to go nuclear or not. However, the rationale for doing what we are doing is that we have broadly accepted norms that say that abolishing weapons of mass destruction through negotiations and preventing their spread, is the right course of action. *You* may have the right to make nuclear weapons (assuming no commitments to the contrary), but *we* have the right to do our best to prevent that, based on our commitments.

For the Netherlands and many other countries that is the norm for our exports: no contribution to any nuclear weapon programme, budding or mature. Our policy promotes being a *responsible exporter*, and that is a shared responsibility between government and companies. The government should provide companies with clear rules about what they can export and for which goods they have to check in with the government and obtain an export license. In doing business, companies themselves have a responsibility as well, their corporate social responsibility. Though being commercial enterprises, exporters know as no other the potential of their products – their intended civil, peaceful uses, but also the more malign applications. It is also in their interest, not in the least for fear of reputation, to be aware of this, and to say **no** to certain suspect orders.

2. On why the MTCR is the weakest of the regimes

The NSG has the NPT, the Australia Group the CWC. Relatively speaking, the MTCR has in my view the weakest base of the export control regimes (it is on less solid ground than the others), because it doesn't have a widely accepted international treaty that underpins the activity. The closest we have is HCoC, the The Hague Code of Conduct, an offspring of the MTCR, which is widely accepted, having 139 subscribing states at present. It is not a treaty, but it certainly is a valuable instrument. At its core it lays down a number of principles, such as the need to prevent and curb the proliferation of ballistic missile systems capable of delivering weapons of mass destruction; the need to exercise restraint in the development, testing and deployment of such missile systems and not to assist others with

developing them. It also aims at greater transparency about ballistic missile programmes.

These are important principles. Of course, there is no mechanism for translating them into operational measures, but the fact that the term “restraint” is embraced is important, as is the fact that a term like “ballistic missile systems capable of delivering weapons of mass destruction” is used. It supports the distinction between such systems and space systems, and thereby enhances the legitimacy of the MTCR.

So, the Code of Conduct lays down a norm, but that norm is not internationally legally binding, and the Code has no implementation mechanism other than an annual meeting. Therefore, it will always be difficult to ascertain whether subscribing States have honoured their obligations. Even asking difficult questions is a problem. Did the US for example, or India for that matter – to take just two examples – “exercise maximum possible restraint in the development, testing and deployment of ballistic missiles capable of delivering weapons of mass destruction”?

Despite those weaknesses, MTCR partners would do well to nurture the The Hague Code of Conduct and to strengthen the relationship between the MTCR and the Code. In that context I am very happy that the present Ireland/Iceland Chairmanship invited the HCoC Chair to Dublin for the most recent annual MTCR Plenary. The Code is the best we have for the time being as the normative base for the MTCR and it is unlikely we will get anything better in the near future. Unlike in the nuclear and chemical realm, we will not have anytime soon a “missile limitation treaty”, let alone a secretariat that has the task to verify states’ commitments in this area.

3. The regime’s establishment is the key moment.

I now come to the different aspects of consensus. The first is that the most important consensus decision for all export control regimes is the decision to establish them, to create that level playing field.

In the case of the MTCR, just as in the case of the NSG, such a consensus was reached in a small group. A prime consideration for any export control regime is whether the countries in the Regime are the main exporting countries, because you want to have as many of the active and likeminded exporters as possible in the regime. You want to remain relatively small, but at the same time you want to have critical mass. And of course views differ about whether potential members are likeminded enough to be invited to join. For that being likeminded we have criteria, prospective members need to subscribe to the MTCR Guidelines, but there is also a political element to such decisions. So, one of the difficulties of maintaining consensus in the regimes is managing that discussion. In “my” year as MTCR Chair I was lucky that the admission of India had been prepared by my predecessor. It is no secret that one country (its name starts, like India, with an i) had a bilateral issue with India that prevented admission of that country during the MTCR Plenary in Rotterdam in 2015.

But the membership issue could be finalised during my chairmanship. The role of the Chair during the year was very modest, but staying in touch with the two diplomatic “I” teams, relaying messages from time to time, helped overcome this obstacle which was quickly becoming an embarrassment. Both sides had a strong wish to resolve the issue, and indeed: it worked, we got consensus, and India joined in June 2016.

If the establishment of the MTCR was the critical moment, it is not surprising that the value and the impact of the Regime was greatest in the initial period. It is interesting that the MTCR in the early days has been credited with achievements that include the dismantling of Argentina's Condor II project, the cancellation of two Brazilian systems, and delays in India's missile programme. Interesting because all these countries are now members of the Regime, India with a nuclear deterrent, Argentina and Brazil without, but all three countries with excellent missile non-proliferation credentials. Israel, at one time cooperating with South Africa, is now a de facto adherent to the Annex and Guidelines.

Perhaps I should single out one other moment in history – other than the moment of their creation - where the value of the export control regimes increased, a moment in which their stocks climbed significantly. That moment was the adoption of resolution 1540, you know, the 2004 resolution in which the Security Council decided that all States should refrain from helping non-state actors in any way with acquiring weapon of mass destruction. That resolution required States to have solid export control regimes. And although the resolution doesn't prescribe how you set up a solid WMD export control regime, subsequent documentation points to the different export control regimes as we know them, export control regimes that before 1540 were too toxic to touch in a UN context.

4. The backbone of the MTCR

I mentioned the importance of consensus in the MTCR Plenary, I now come to the level below the Plenary if you want, but “below” certainly doesn't mean: less important. On the contrary, the three Experts Meetings that operate “under” the plenary level, are in my view the backbone of the Regime. 1) The IEM, the Information Exchange Meeting where members share information on topics such as technological and regional developments, procurement, brokering and transshipment; 2) the TEM, Technical Experts Meeting via which members ensure that the MTCR Technical Annex to the Guidelines (the actual export control list) is kept up to date and stays connected with relevant developments that often have been discussed before in the IEM; and 3) the LEEM, the Licensing and Enforcement Experts Meeting where members share information and best practices on the licensing and enforcement of items controlled by the Annex and issues laid down in the MTCR Guidelines.

Given also the confidential nature of discussions in the IEM, let me zoom in on the work of the TEM, because it's in the TEM that consensus really matters. The TEM is – continuing the *backbone* metaphor - the crucial vertebra of the Regime. (Of course, I

don't say that because it now has a Dutch Chairman.) This group debates at the intersection of security and commercial interests: how to keep the Annex up to date? How to control MTCR-relevant technology in a proportional and consistent manner? The scope of control can't be too wide, nor too limited. Clear control parameters need to be defined; clear for licensing officers, but also in line with industry standards. In some instances, new controls can be introduced quite quickly, as has been done recently with for example *gel propellants*. But when the potential impact on industry is larger or when views on control parameters differ strongly, it can take quite some time to get consensus among the 35 MTCR members, as was the case for example with *aerothermodynamic test facilities*.

Sometimes it is very difficult to get consensus. That was especially the case a number of times when items that do not, entirely or in part, fall within the scope of the Annex, were nevertheless considered relevant for the development and production of missiles and UAV's (Unmanned Aerial Vehicles), because they were sought after by proliferators. So, at the plenary level the consensus decision made back in 2003 was to amend the Guidelines to require all Partners to have catch-all controls in place, enabling them to control items not covered by the Annex, when they may be intended for use in connection with WMD delivery systems other than manned aircraft. This forces countries of concern to revert to much less optimal design solutions, increasing costs and delaying programmes.

5. Most productive time of a Chair?

Finally, being the Chair of the MTCR for a year is of course a serious responsibility, but on the other hand, it is less cumbersome than it perhaps seems. The Chair has to preside over the annual plenary meeting, which lasts normally one and a half days, and throughout the year he (or she) travels to States that are interested in the Regime as potential members, or countries that are of interest or of concern to the Regime; concern for example because more relevant goods pass their harbours than they may realize. In such cases the MTCR may function as a set of good practices for what to control and how to do it. So, yes, I was busy throughout the year, traveling with the chairs of the three experts meetings to different capitals.

But, looking back, and thinking about today's theme, the time I found most productive from the perspective of getting consensus, is the time *before* I was actually the MTCR Chair. I travelled to a few of the main capitals of MTCR Partners for having a quiet and open discussion about the Regime. How do you see the Regime? What can it achieve and what is beyond us? What are your priorities - in general, and for the upcoming meeting in particular? Do you have any comments on the agenda as I have it? How will you approach this or that issue?

I am probably not telling you anything new; most chairs have made similar trips, time permitting. But I do want to stress the value of such exploratory talks because they give you a sense what is possible and what is not. One should travel with an ambitious and realistic agenda. One should go to the most important capitals as a

person whose only goal is to use the plenary meeting time as productively as possible. And if you are a trusted chair, you will know after your visits where the red lines are, and where consensus is possible.

Thank you. I hope I have made some stimulating and sometimes provocative remarks, and I wish you an interesting meeting.