Strategic trade control regimes and systems: appropriate instruments to counter the threat of acquisition of biological and chemical sensitive items?

Pr. Dr. Quentin Michel

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Strategic Trade Control: a Multilayers system of control

Strategic trade control regimes
- International set of hard law and soft law ruling transfers of items and technology
- Bio and chemicals: CWC, BWC, Australia Group, Wassenaar Arrangement

Strategic trade control systems
- Regimes commitments national implementation
- Essentially national but could be regional
- EU Regulation 428/2009 as amended
Strategic Trade Control Objectives

Counter the risk of **unfair competition** between suppliers by defining
- Common conditions, criteria of transfers
- Common list of items, catch-all clause
- Exchange of information

Counter the risk of **misuses** of items transferred
- Verification of declared end-use
- Verification of final end user
- Verification of an existing correlation
Strategic Trade Control
a preventive instrument

Detection of a potential risk by
- Prohibiting transfer
- Submitting transfer to certain conditions and criteria

Efficiency is highly dependant on information at the disposal of the state authority to assess risk
- Exchanges of information between regimes members
- Intelligence
- Support from third states
Bio and chemical non-proliferation

Non-proliferation principles

Risks assessment

Transfer conditions

Granting authorization

Verification

Reporting

Done by end user authorities

Made by OPCW for chemicals (partly) Bio ?

Defined by CWC BWC Australia Group Wassenaar Arrangement

Made by National authorities with the support of third states and Australia group WA

Defined by National authorities based on regimes national commitments

Issued by National/regional authorities

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An instrument to control states rather than non states actors

International regimes: ruling relation between States to counter WMD states proliferation
- Conditions, criteria
- Authorisation granted by states authorities to certified operators established on their territory
- Transfer to non state actors or operators in conflict zones are almost impossible
WMD proliferation of non states actors has been included in late nineties as an element to consider to grant an authorisation

Australia Group Guidelines:

a. Information about **proliferation and terrorism involving** CBW, including any proliferation or terrorism-related activity, or about involvement in clandestine or illegal procurement activities, of the parties to the transaction;

h. The risk of controlled items falling into the **hands of terrorist groups** and individuals
Safeguards and verification: WMD diversity

Nuclear: NPT (article III) NSG guidelines and IAEA
- Comprehensive Safeguards Agreement as conditions of supply
- Regular inspections in the end-user country not only on declared facilities

Chemicals: CWC, Australia Group guidelines, OPCW
- Transfer notification to OPCW of certain chemicals
- Routine inspections on certain facilities using certain chemicals

Biological: BWC, Australia Group Guidelines
Sanctions: a kaleidoscope

National penalties for infringement of the trade control system: a kaleidoscope
- Administrative and criminal sanctions
- Circumstances when infringements are regarded as criminal offences (any case, only intend)
- Investigation and Prosecution

International: Strategic trade control regimes
- No direct sanctions except potential denial for a further transfer
- Peer pressure
- Alert/reporting to the UNSCR
Consequences

Strategic trade control:
- **Instrument to control sensitive transfers between States**
  - Facilitate trade between regimes members
  - Strengthening controls with non States member
- **Focusing on licit trade and not illicit**
  Defined indirectly what is illicit
- **Proliferation activities within a State** not involving cross borders movements are not under its scope
Proposals

- Developing **verifications** systems especially for bio
- Defining guidelines/MoU for **sanctions** to counter/reduce the risk of licence shopping
- Raising operators awareness and increasing exchanges of **information** between States authorities on WMD related operators and activities