

FROM COCOM TO WASSENAAR: IS IT STILL OUR WAY AHEAD?

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A multilateral partnership and a product of the Cold War, COCOM has long been superseded by the successor body, the Wassenaar Arrangement, supposedly to be a non-ideological alternative endeavoring to prompt its member nations to pursue cases of export control for conventional arms and dual-use items. But similar to COCOM, the Wassenaar Arrangement has shortcomings. The Wassenaar Arrangement is merely able to provide a platform of coordination and raise awareness among its member nations of suggested benchmarks and best practices, lacking the authority to enforce compliance. Also, some other noteworthy multilateral export control regimes are currently standing side by side with the Wassenaar Arrangement, equally short of enforcement power, but perhaps having some similarities. Moreover, while the Cold War, in name, only appears to be no longer there, geopolitical tensions around the world show little signs of tapering off at present. Under such conditions, the United Nations has yet to exert an authoritative influence over all United Nations member countries in that very aspect which the Wassenaar Arrangement is concerned with. This Article argues that to ensure that export control compliance and enforcement is available and consistent across the board, conceiving a new United Nations agency at a certain point in time may be necessary. As such, having the Wassenaar Arrangement appropriately subsumed thus enables that new agency to play an exclusively United Nations-mandated, authoritative role in terms of effectuating global export control, and eventually ought to be the way ahead.

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INTRODUCTION

More than twenty years ago, the post-Cold War Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies—the Wassenaar Arrangement—succeeded the post-World War II Coordinating Committee for Multilateral Export Controls—COCOM—in its

capacity as a specialized export control mechanism.¹ While trying to stay away from possible ideological residues left by COCOM, the Wassenaar Arrangement may now arguably hold itself out as the first multilateral export control mechanism functioning on a global scale within the fields of “conventional weapons and sensitive dual-use goods and technologies.”² Coinciding with the Cold War era, which was chiefly between the U.S.-orchestrated Western bloc and the communist-leaning Soviet bloc, nearly half a century spanned between establishing COCOM in 1949 and the implementation of the Wassenaar Arrangement in 1996.³ In this time, the U.S. and the Soviet Union were politically and strategically at odds with one another as two leading heavyweights.⁴

Unlike traditional warfare, facing off in the Cold War was virtually non-military in nature and between mainstream parties who vied against each other, principally due to an arms

1. *Scope of Control*, STRATEGIC COMMODITIES CONTROL SYS., <https://www.stc.tid.gov.hk/english/hksarsys/wassenaar.html> (last visited Nov. 1, 2022); *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, BUREAU OF NONPROLIFERATION OF U.S. DEPT OF STATE (Mar. 22, 2000), https://1997-2001.state.gov/global/arms/np/mtr/000322_wassenaar.html.

2. See Wassenaar Arrangement Plenary, *Wassenaar Arrangement on Export Controls for Conventional Arms & Dual-Use Goods & Techs., Public Documents Volume IV, Background Documents & Plenary-related & Other Statements*, at 1 (Dec. 2020), <https://www.wassenaar.org/app/uploads/2020/12/Public-Docs-Vol-IV-Background-Docs-and-Plenary-related-and-other-Statements-Dec.-2020.pdf> [hereinafter *Background Documents & Plenary-related & Other Statements*]; see also *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, *supra* note 1 (describing the origin and purpose of the Wassenaar Arrangement); *Wassenaar Arrangement*, NUCLEAR THREAT INITIATIVE, <https://www.nti.org/education-center/treaties-and-regimes/wassenaar-arrangement/> (July 14, 2020) [hereinafter *NUCLEAR THREAT INITIATIVE*] (explaining that under COCOM, the “targets of constraints were communist States” while the focus of the Wassenaar Arrangement is to “promote[] transparency of national export control regimes on conventional arms and dual-use goods and technologies”).

3. See Scott Jones, *Think Twice Before Bringing Back the COCOM Export Control Regime*, DEFENSENEWS (Apr. 9, 2021), <https://www.defensenews.com/opinion/commentary/2021/04/09/think-twice-before-bringing-back-the-cocom-export-control-regime/>; *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, *supra* note 1; *The Cold War*, JOHN F. KENNEDY PRESIDENTIAL LIBR. AND MUSEUM, <https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/the-cold-war> (last visited Nov. 1, 2022).

4. *The Cold War*, *supra* note 3.

race, proxy wars, and a race to world dominance.⁵ John Gaddis once noted that the Cold War was essentially “an irrepressible conflict between two diametrically opposed ideologies[,] a clash for which individuals . . . could bear no responsibility.”⁶ Moreover, Winston Churchill, Great Britain’s prime minister during the World War II era, illustriously asserted that the Cold War years at first witnessed “[f]rom Stettin in the Baltic to Trieste in the Adriatic *an iron curtain* . . . descend[ing] across the continent.”⁷ The Cold War lastly bore testament to the downfall of the world’s earliest socialist nation.⁸ The behemoth Soviet Union consisted of fifteen union republics, which stood by a cluster of satellite states neighboring Central and Eastern Europe, as well as scores of other communist countries scattered around different parts of the world.⁹

On the other hand, in more businesslike but no less geopolitical terms, the Cold War era provided the backdrop for the launch of COCOM and exercise of related export controls to antagonize an array of specifically delineated non-COCOM member nations that were carefully rounded out by the Western bloc nations. Headquartered in Paris, COCOM was created by the U.S., Belgium, France, Italy, Luxembourg, Netherlands, and the U.K., and later joined by Australia, Canada, Denmark, Germany, Greece, Italy, Japan, Norway, Portugal, Spain, and Turkey—totaling eighteen member nations.¹⁰ Under the aegis of an instrumental role played by the

5. See Erin Blakemore, *What Was the Cold War—and Are We Headed to Another One?*, NAT’L GEOGRAPHIC (Mar. 23, 2022), <https://www.nationalgeographic.com/culture/article/cold-war>.

6. JOHN LEWIS GADDIS, *THE UNITED STATES AND THE ORIGINS OF THE COLD WAR 1941-1947*, at 358 (2000).

7. See DEREK W. URWIN, *A POLITICAL HISTORY OF WESTERN EUROPE SINCE 1945*, at 105 (3d. ed. 1981) (emphasis added).

8. See generally RAYMOND L. GARTHOFF, *A JOURNEY THROUGH THE COLD WAR: A MEMOIR OF CONTAINMENT AND COEXISTENCE* 370 (2001) (describing the revolutionary changes in the Soviet Union after the Cold War).

9. *Soviet Union*, BRITANNICA, <https://www.britannica.com/place/Soviet-Union> (last visited Nov. 1, 2022).

10. Michael Knes, *Coordinating Committee for Multilateral Export Controls and the Wassenaar Arrangement*, REFERENCE FOR BUS., <https://www.referenceforbusiness.com/encyclopedia/Con-Cos/Coordinating-Committee-for-Multilateral-Export-Controls-and-the-Wassenaar-Arrangement.html> (last visited Nov. 1, 2022).

U.S., COCOM showed up as a NATO devotee, carrying out export controls “to ensure that trade with the Soviet Union and its allies did not enable the Soviet bloc to gain access to militarily relevant technology.”¹¹ The ambit of COCOM’s export controls encompassed both military and visible dual-use goods, as well as invisible technologies of strategic significance.¹² In view of this, COCOM’s creation was largely due to the concerns of the U.S. and many of its allies, who could not help but gasp at the Soviet bloc’s rapid military growth from circumventing barriers to state-of-the-art arms procurement and its technological know-how gained from Western economies.¹³ Hence, potential exports or re-exports to any of those targeted non-Western countries, as long as they put Western interests in jeopardy, were bound to be thwarted by the creation of a strategic coalition like COCOM.¹⁴ In that sense, it might fairly be said that the origin of COCOM lied in a tussle between two gargantuan geopolitical camps, which eventually emerged as the Eastern and Western powers—a political fallout from World War II.¹⁵

The demise of the Soviet bloc nations in the late 1980s and early 1990s ended the Cold War with sweeping strokes.¹⁶ It equally foretold that COCOM’s days would become patently numbered, as its geopolitical rationale for indefinitely continuing could no longer be shored up according to a common understanding.¹⁷ COCOM would either have to be

11. See Jones, *supra* note 3.

12. See Kolja Brockmann, *Challenges to Multilateral Export Controls: The Case for Inter-regime Dialogue and Coordination*, STOCKHOLM INT’L PEACE RSCH. INST. 3 (Dec. 2019), https://www.sipri.org/sites/default/files/2019-12/1912_regime_dialogue_brockmann.pdf.

13. See Chad P. Bown, *Export Controls: America’s Other National Security Threat* 10–11 (Peterson Inst. for Int’l Econ., Working Paper No. 20–8, 2020), <https://www.piie.com/sites/default/files/documents/wp20-8.pdf>.

14. See *generally id.* (explaining COCOM’s creation in response to Western European allies’ fears that the Soviet Union would improve its military capabilities through acquisition of western equipment and technologies).

15. See Blakemore, *supra* note 5.

16. *Id.*

17. See Michael Lipson, *The Reincarnation of COCOM: Explaining Post-Cold War Export Controls*, NONPROLIFERATION REV., Winter 1999, at 33, 33–34.

mothballed in a perpetual mode or displaced in a reinstalled form, coming out to be non-identical, at least on specific substantive scales.¹⁸ It was against this background that the Wassenaar Arrangement was anointed as the successor body of COCOM.¹⁹ Fundamentally, the Wassenaar Arrangement surfacing during the mid-1990s betokens the fact that with the Moscow-led entente collapsing, COCOM's continued survival could hardly be drawn out for too long of a period.²⁰ On the heels of the Cold War, COCOM was no more irrevocable.²¹ Previously simmering between the East and the West, the Cold War quite suddenly constituted no imminent menace to world peace, attributable to the entire Eastern Soviet bloc, which seemingly ran out of steam for good.²² Consequently, an appropriate replacement that could instantiate itself as something more sensible had to come along.²³

The Wassenaar Arrangement received its name after its place of creation.²⁴ Created in the Dutch town of Wassenaar in 1995, the final confirmation was held on bringing forward the Wassenaar Arrangement as a new framework for regulating export controls in the world.²⁵ With its official Secretariat based in Vienna, the Wassenaar Arrangement is currently operating as an international united front comprised of forty-two member nations.²⁶ Unlike COCOM, the Wassenaar Arrangement is

18. *See id.* at 33–34.

19. *Id.* at 34.

20. *See id.* at 33–34; Blakemore, *supra* note 5.

21. *See* Lipson, *supra* note 17, at 33.

22. *See* Blakemore, *supra* note 5.

23. *See* Lipson, *supra* note 17, at 33–34.

24. *See* Origins of the Wassenaar Agreement, THE WASSENAAR ARRANGEMENT ON EXP. CONTROLS FOR CONVENTIONAL ARMS & DUAL-USE GOODS & TECHS., <https://www.wassenaar.org/about-us/> (follow “Origins” subheading).

25. *Id.*

26. *See* About Us, THE WASSENAAR ARRANGEMENT ON EXP. CONTROLS FOR CONVENTIONAL ARMS & DUAL-USE GOODS & TECHS., <https://www.wassenaar.org/about-us/> (Sept. 7, 2022) (“The Participating States of the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, Ukraine,

comprised of conventional NATO partners and new partners outside the NATO framework, some of which belonged to the former Soviet bloc during the Cold War era—apart from China, DPRK, India, Iran, Israel, Pakistan, and Syria.²⁷

At least on paper, the Wassenaar Arrangement is unambiguously an internationally accommodating coalition of export controls for conventional arms and dual-use goods and technologies.²⁸ According to the Initial Elements of the Wassenaar Arrangement—a founding document—the coalition strives to contribute to “regional and international security and stability.”²⁹ To that end, member nations are called to fulfill the Wassenaar Arrangement’s mission by “promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies . . . preventing destabilising accumulations.”³⁰

Somewhat akin to how the COCOM initiative was carried out in the past, executing the Wassenaar Arrangement relies on taking a control-list approach. All items presently illustrated in the two control lists of the Wassenaar Arrangement—namely, the List of Dual-Use Goods and Technologies and the Munitions List—are categorized as restricted items.³¹ In this

United Kingdom and United States.”); *Background Documents & Plenary-related & Other Statements*, *supra* note 2, at 3.

27. See NATE OLSON, MAKING PUBLIC-PRIVATE SECURITY COOPERATION MORE EFFICIENT, EFFECTIVE AND SUSTAINABLE 24 (Dec. 2014), https://stimson.org/wp-content/files/file-attachments/PIP_Staff_Report_FINAL.pdf; *About Us*, *supra* note 26; *NATO Member Countries*, N. ATL. TREATY ORG., https://www.nato.int/cps/en/natohq/nato_countries.htm (Aug. 31, 2020); *Soviet Union*, HISTORY, <https://www.history.com/topics/russia/history-of-the-soviet-union> (Apr. 13, 2022).

28. See *About Us*, *supra* note 26.

29. Wassenaar Arrangement Plenary, *The Wassenaar Arrangement on Export Controls for Conventional Arms & Dual-Use Goods & Techs.*, *Public Documents Volume I, Founding Documents 4* (Dec. 2019), <https://www.wassenaar.org/app/uploads/2019/12/WA-DOC-19-Public-Docs-Vol-I-Founding-Documents.pdf> [hereinafter *Founding Documents*].

30. *Id.*

31. See Wassenaar Arrangement Plenary, *The Wassenaar Arrangement on Export Controls for Conventional Arms & Dual-Use Goods & Technologies*, *Public Documents Volume II, List of Dual-Use Goods & Technologies & Munitions List 1* (Dec. 2021), <https://www.wassenaar.org/app/uploads/2021/12/Public-Docs-Vol-II-2021-List-of-DU-Goods-and-Technologies-and-Munitions-List-Dec-2021.pdf> [hereinafter *List of Dual-Use Goods & Technologies & Munitions List*]; *Founding Documents*, *supra* note 29, at 6.

aspect, restricted items will be subject to export controls that are domestically imposed by individual member nations.³² Intended exports or re-exports of restricted items to non-member nations will be deemed unlawful and barred from leaving the exporting or re-exporting countries unless said country receives advanced authorization from relevant authorities.³³ Essentially, the two control lists formed the Wassenaar Arrangement's bedrock protocols, which were created by the Wassenaar Arrangement Plenary.³⁴

Likewise, similar to how the COCOM system functioned, the Wassenaar Arrangement's member nations must domestically frame their relevant rights and obligations in a statutory form.³⁵ Regardless of whether domestic implementation is connected with the need to put forward the required detailed implementation procedures, it is essential for discharging the Wassenaar Arrangement within member nations' respective jurisdictions.³⁶ This kind of legislation and regulatory practice has become indispensable, either in terms of "promoting transparency . . . and greater responsibility in transfers of conventional arms and dual-use goods and technologies . . . preventing destabilising accumulations"³⁷ or vouching for cross-border transfers concerned not falling into the hands of villains—i.e. terrorists.³⁸ In any case, however, it will be at the sole discretion of member nations to determine the merits of individual cases, whether to permit or deny exports or re-exports of restricted items that are under strict control to non-

32. See *Founding Documents*, *supra* note 29, at 5–6; see also *About Us*, *supra* note 26 ("Participating States seek, through their national policies, to ensure that transfers of [restricted] items do not contribute to the development or enhancement of military capabilities which undermine [the] goals [of the Wassenaar Arrangement].").

33. See *Founding Documents*, *supra* note 29, at 5–6; *About Us*, *supra* note 26.

34. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 1. This was accomplished on the basis of the agreements entered as shown in Appendix 5 to the Initial Elements, along with the related alterations subsequently made and put into effect at different times. *Id.*

35. *Background Documents & Plenary-related & Other Statements*, *supra* note 2, at 18.

36. See *id.* at 1.

37. *Id.*

38. See *Founding Documents*, *supra* note 29, at 4.

member nations.³⁹ Any such decisions made will have to be reported to all other member nations pursuant to the Wassenaar Arrangement's relevant covenant.⁴⁰ To fulfill the purpose of the Arrangement, member nations must be transparent and cooperative, which are the framework's two stern prerequisites that must be met.⁴¹ Despite that, as a fairly persuasive multilateral entity, the Wassenaar Arrangement may still be considered far from sturdy.⁴² This is mainly on account of its existing Achilles' heel of having no enforcement power when it is needed.⁴³ This frailty seems to be fatal and scarcely curable.⁴⁴ The Wassenaar Arrangement in itself is not a transnational organization under the wing of the United Nations (U.N.), and it cannot expect to have a chance of securing needed support in the context of a proper international law framework.⁴⁵

Nevertheless, in comparison with COCOM, the Wassenaar Arrangement appears to be less aggressive and not as geo-strategically propelled.⁴⁶ While member nations share their national policies of export controls with one another,⁴⁷ the Wassenaar Arrangement does not claim to be an international police force directed against any particular non-member nation.⁴⁸ As a consequence, publicly or otherwise, the Wassenaar Arrangement completely eschews targeting any nation, region, or axis that might fall into the purview of its assumed surveillance exercise. This is in contrast to what used to be required of COCOM to imperatively accomplish an ostensibly insinuated undertaking of shortlisting the usual

39. *Id.* at 5.

40. *Id.*

41. *See id.*

42. *See* OLSON, *supra* note 27, at 24; *see also* Karim K. Shehadeh, *The Wassenaar Arrangement and Encryption Exports: An Ineffective Export Control Regime that Compromises United States' Economic Interests*, 15 AM. U. INT'L L. REV. 271, 297–98 (1999).

43. Shehadeh, *supra* note 42, at 297.

44. *See id.* at 297–98; *infra* Part II.

45. *See, e.g.*, OLSON, *supra* note 27, at 24; Shehadeh, *supra* note 42, at 297–98.

46. *See* Shehadeh, *supra* note 42, at 297–98.

47. *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, *supra* note 1.

48. *See id.*

suspects.⁴⁹ Furthermore, the Wassenaar Arrangement proclaims that one of its prime functions is to

[c]omplement and reinforce, without duplication, the existing control regimes for weapons of mass destruction and their delivery systems . . . by focusing on the threats to international and regional peace and security which may arise from transfers of armaments and sensitive dual-use goods and technologies where the risks are judged greatest.⁵⁰

This kind of export control is utilized to do nothing more than foil terrorism, which is seemingly humble and prudent.⁵¹ The Wassenaar Arrangement is open for any non-member nation to acquire membership, so far as that nation's eligibility can fit the requirements as those exhibited in Appendix 4 of the Initial Elements.⁵² Therefore, unsurprisingly, many of the former Soviet bloc nations are now Wassenaar Arrangement member states, including their descendant countries due to the fall of the Soviet bloc and the ensuing disintegration of their original legal geography.⁵³

However, there are some fundamental commonalities between COCOM and the Wassenaar Arrangement.⁵⁴ Though COCOM and the Wassenaar Arrangement have divided the different historical periods, they were both initially devised to ramp up obligations over export controls to pursue their member nations' national security goals.⁵⁵ Nonetheless, it may be poor judgment to deem COCOM and the Wassenaar

49. See Shehadeh, *supra* note 42, at 274.

50. *Founding Documents*, *supra* note 29, at 4.

51. *See id.*

52. *Id.* at 14.

53. See *Background Documents & Plenary-related & Other Statements*, *supra* note 2, at 3 (noting when former Soviet bloc nations joined the Wassenaar Arrangement).

54. Both COCOM and the Wassenaar Arrangement were created to control transfers of "dual-use goods and technologies." See Brockmann, *supra* note 12, at 3–4; *Founding Documents*, *supra* note 29, at 4.

55. See Brockmann, *supra* note 12, at 1, 3; *Founding Documents*, *supra* note 29, at 4.

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Arrangement as an export control mechanism of paraphernalia.⁵⁶ In fact, the Western democracies involved in the Cold War seemed to have set the tone for the East and the West that COCOM was everlastingly supposed to serve as a strong, geopolitical bulwark against any threatening military enhancement attempt made by Soviet bloc nations.⁵⁷ As for the Wassenaar Arrangement, it is still difficult to ascertain whether it has inherited COCOM's embedded geopolitical ingredients.⁵⁸ Unsurprisingly, the world did not cease to function, no matter how it might have been perceived through ethical prisms of different ideologies over the past decades.⁵⁹

The U.N. plays a role in carrying out COCOM and the Wassenaar Arrangement through the U.N. Charter principle of "international peace and security" by enacting international treaties for export controls over selected arms and technologies and constricting relevant trade transactions.⁶⁰ For instance, the 2013 U.N. Arms Trade Treaty on conventional weapons and the 2017 Treaty on the Prohibition of Nuclear Weapons can perhaps distinguish themselves as two milestones.⁶¹ In addition, a series of export control-like frameworks have also been put in the spotlight, such as the Zangger Committee,⁶² Nuclear Suppliers Group (NSG),⁶³ Australia Group,⁶⁴ and the Missile Technology

56. See Shehadeh, *supra* note 42, at 318–19.

57. See Richard T. Cupitt & Suzette R. Grillo, *COCOM is Dead, Long Live COCOM: Persistence and Change in Multilateral Security Institutions*, 27 BRIT. J. POL. SCI. 361, 361–62 (1997).

58. See generally Lipson, *supra* note 17, at 36–41 (discussing the arrangement between post-Soviet Russia and the United States and how Japan, Western European countries, and the United States spearheaded the arrangement's discussions).

59. See KATHERINE GRANEY, *RUSSIA, THE FORMER SOVIET REPUBLICS, AND EUROPE SINCE 1989: TRANSFORMATION AND TRAGEDY passim* (2019).

60. U.N. Charter art. 1, ¶ 1.

61. Arms Trade Treaty, *opened for signature* June 3, 2013, 3013 U.N.T.S. 269 (entered into force Dec. 24, 2014); Treaty on the Prohibition of Nuclear Weapons, *opened for signature* Sept. 20, 2017, 57 I.L.M. 350 (entered into force Jan. 22, 2021).

62. Fritz W. Schmidt, *The Zangger Committee: Its History and Future Role*, NONPROLIFERATION REV., Fall 1994, at 38, 38.

63. See *About Us*, *supra* note 26; *Export Controls*, UNITED NATIONS OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/export-controls/> (last visited Nov. 1, 2022).

64. See *About Us*, *supra* note 26; *Export Controls*, *supra* note 63.

Control Regime.⁶⁵ These frameworks were created quite a long time back and have stood in the front lines of the global struggle over preventing proscribed transfers of militarily or strategically critical items, first facing COCOM and now the Wassenaar Arrangement.⁶⁶

Most importantly, according to what is stipulated in the Initial Elements, the Wassenaar Arrangement “will not impede bona fide civil transactions,”⁶⁷ and it will not “interfere with the rights of states to acquire legitimate means with which to defend themselves pursuant to Article 51 of the Charter of the [U.N.]”⁶⁸ To elaborate, it must be known that under Article 51 of the U.N. Charter, respecting “the inherent right of individual or collective self-defence . . . to maintain or restore international peace and security” has long been recognized as a vital international law doctrine.⁶⁹ That is also why some may find it persuasive that upon the Cold War ending, “military power [is] less relevant for international affairs,” whereas economic prowess and other crucially pertinent matters, such as those within the spheres of environmental and humanitarian weightiness, have gained more prominence.⁷⁰

The Wassenaar Arrangement is susceptible to uncertainty and instability, and due to a lack of enforcement power, it may become destabilized or even derailed at an unspecified time in the future. Thus, doubt is cast on whether leaving the Wassenaar Arrangement to live out its existence over an infinite time horizon is abundantly perceptive for protecting the interests of both present and future global generations. This Article posits that when circumstances are apt, the U.N. may undertake an obligation to consider the best way to intervene.

65. See *About Us*, *supra* note 26; *Export Controls*, *supra* note 63.

66. See Ian Anthony, *Multilateral export controls*, in SIPRI YEARBOOK 2002: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 743, 743–54 (2002), <https://www.sipri.org/sites/default/files/14.%20Ian-5.1-F%E2%80%A6AL%20w.%20WA%20fixe.pdf>.

67. *Founding Documents*, *supra* note 29, at 4.

68. *Id.*

69. U.N. Charter art. 51.

70. John Van Oudenaren, *Europe as Partner*, in AMERICA AND EUROPE: A PARTNERSHIP FOR A NEW ERA 104, 113 (David Gompert & F. Larrabee eds., 1997).

The U.N. is in a position capable of creating a new agency of its own, for the purposes of exclusively pooling and institutionalizing export control mechanisms on a global basis and overseeing enforcement, which ought to be far more assuredly undertaken by U.N. authority. In Part I, this Article explains COCOM in greater detail, including its history, rivalries, and shortcomings. In Part II, this Article explores the Wassenaar Arrangement. Then, in Part III, this Article discusses how the Wassenaar Arrangement may be repetitive and explores alternatives. Finally, this Article proposes an exclusive export control framework under the U.N.

I. COCOM: A HELPFUL OR HELPLESS SCHEME?

It might be debatable whether the knots of COCOM's de facto foundations should be unraveled as tantamount to the U.S. export control mechanism. The modern U.S. export control system was inaugurated with the passage and implementation of the Export Control Act of 1949.⁷¹ Though the U.S. statute was finally annulled well before the Cold War ended, the succeeding U.S. law was also unequivocally Cold War-centric.⁷² The U.S. awaited its COCOM allies to proceed on a trajectory towards the same objectives and in the same way of adhering to the standards of firmness as those enshrined in American domestic apparatus.⁷³ Be that as it may, whether export controls could work well under the COCOM scheme was a complicated matter, as running COCOM could be all too often faced with certain relational challenges, the severity of which seemed to have been unabated to any substantial extent.⁷⁴ This Part first

71. Export Control Act of 1949, Pub. L. No. 81-11, 63 Stat. 7.

72. *See id.* The Export Control Act of 1949 was repealed by the Export Administration Act of 1979, which is also amid those most important pieces of legislation in the history of the development of American export control laws. *See* Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503; *see also* IAN F. FERGUSSON, THE EXPORT ADMINISTRATION ACT: EVOLUTION, PROVISIONS, AND DEBATE (2009), <https://apps.dtic.mil/sti/pdfs/ADA503789.pdf> (explaining the evolution of the United States' export control policy).

73. *See* Michael Mastanduno, *The United States Defiant: Export Controls in the Postwar Era*, 120 DAEDALUS 91, 92 (1991).

74. *See id.* at 91.

discusses COCOM and the Export Control Act of 1949. Then, this Part examines COCOM rivalries and ends by discussing the issues with COCOM.

A. COCOM and Export Control Act of 1949

Derived from the NATO framework, COCOM was a stronghold for the U.S. and its allies in the West.⁷⁵ The U.S. championed COCOM's initial formation and pushed hard to solidify its subsequent development.⁷⁶ Notably, COCOM's inception nearly aligned with the enactment of the Export Control Act of 1949,⁷⁷ a U.S. code on export controls of militarily or strategically significant items which were highly restricted and prohibited to be sold or re-sold to the Soviet bloc nations.⁷⁸ But the Export Control Act of 1949 is not the first piece of American legislation in the export controls field; the first statute appeared as early as 1774, mainly for the purpose of banning exports from America to England.⁷⁹ Even so, enacting the Export Control Act of 1949 had special importance. In fact, it represented the first direct upshot of the U.S.'s process of making export control laws after World War II.⁸⁰ Therefore, the U.S. administration's "political-security policy" could be carried out in a more effective way to stave off hostilities and pitfalls over the Cold War period.⁸¹

Since the beginning of 1950, there was a national theme that was pivotal in shaping the U.S. post-World War II foreign

75. *See id.* at 97.

76. *See* Paul H. Silverstone, *The Export Control Act of 1949: Extraterritorial Enforcement*, 107 U. PA. L. REV. 331, 343–46 (1959).

77. *See id.*; Export Control Act § 1.

78. *See* Silverstone, *supra* note 76, at 332, 343–46; Export Control Act §§ 2–6.

79. TAMOTSU AOI, HISTORICAL BACKGROUND OF EXPORT CONTROL DEVELOPMENT IN SELECTED COUNTRIES AND REGIONS 4 (2016), https://www.cistec.or.jp/english/service/report/1605historical_background_export_control_development.pdf.

80. Shahid Alam, *Restructuring the United States' Export Control Legislation for the Post-Cold War Era*, 18 FLETCHER F. WORLD AFFS. 137, 137 (1994).

81. *See id.* at 137–38.

policy.⁸² The U.S. authorities value defending the freedom of the world; they believed that the essence of freedom was embodied in capitalism: a free market economy.⁸³ Making sure that a free world could be sustained on a reasonable scale was essential for maintaining the values of the U.S.⁸⁴ Ensuring a free world became a more pressing issue in the eyes of the U.S. authorities given the various challenging situations around the world at the time. For example, such situations included the nascent emergence of NATO, China's communist leadership setting out to govern the Chinese mainland after their armed forces gained the upper hand in the final showdown against the prior government's combat troops, and the Soviet Union's expanding nuclear power, which posed an alarming threat to the U.S. polity and American values around the globe.⁸⁵

The promulgation and implementation of the Export Control Act of 1949 may be considered as "a formal recognition of the new security threat and of the need for an extensive peacetime export control system."⁸⁶ In fact, before the Export Control Act of 1949 was put forward, the U.S. had never imposed export control measures in statutory form unless in wartime or a rare emergency situation.⁸⁷ Therefore, passing the Export Control Act of 1949 could be perceived as Congress's leading attempt for peace in the history of the U.S.⁸⁸

Regarding the purpose of the Export Control Act of 1949, a number of thought-provoking commentaries ought to be considered. For instance, Harold Berman and John Garson were appalled at the U.S. president's power under the Export Control Act of 1949.⁸⁹ They were unsettled by the fact that "the

82. JOHN FOUSEK, *TO LEAD THE FREE WORLD: AMERICAN NATIONALISM AND THE CULTURAL ROOTS OF THE COLD WAR* 130, 130 (Univ. N.C. Press, 2000).

83. *Id.* at 131.

84. *Id.* at 130–31.

85. *See id.*

86. FERGUSSON, *supra* note 72, at 2.

87. Harold J. Berman & John R. Garson, *United States Export Controls—Past, Present, and Future*, 67 COLUM. L. REV. 791, 791–92 (1967).

88. *See id.*

89. *See id.* at 792.

procedures for implementing this power are left almost entirely to [the president's] discretion."⁹⁰ They contended that, because the president had such broad power, the president could possibly act in a haphazard way and terminate any U.S. export transactions, regardless of the importer or end-user.⁹¹ They also expressed concern that the U.S. may hurt American economic interests, in addition to generating an unfavorable impact on American leadership.⁹² As it was widely understood, the U.S. was often prepared to brush aside economic considerations when it came to dealing with the Soviet bloc nations from a political or military standpoint.⁹³

Additionally, Paul Silverstone contributed his understanding from both domestic and international perspectives.⁹⁴ On the domestic side, he emphasized the importance of controlling "exports of scarce materials," in order to counterbalance "short supply and the consequent inflationary effect of foreign demand," or take precautions against any substantial shortage of "self-sufficiency in strategic resources" plausibly to come across.⁹⁵ On the international side, he viewed "the restriction on export of certain strategic or military items to the Soviet bloc" as an apparatus of U.S. foreign policy to get around potential military hazards or fighting direct face-to-face battles with rivals.⁹⁶ To that point, the U.S. had statutorily been required to collaborate with its allies, and was preparing to count on allies to domestically impose and exercise export controls by matching the legal mechanism in the Export Control Act of 1949.⁹⁷ Thus, the initial role of COCOM was most likely a type

90. *Id.*

91. *See id.*

92. *Id.* at 794.

93. *See* Alam, *supra* note 80, at 137.

94. *See generally* Silverstone, *supra* note 76 (noting that while the security and economic provisions of the Export Control Act "are both domestic policies aimed primarily at conditions within the United States[,] they are "also directed at conditions outside the country as an instrument of foreign policy").

95. *Id.* at 332.

96. *See id.*

97. *See id.*

of companion tool to broaden the influence of the Export Control Act of 1949 globally.⁹⁸ However, in practice, COCOM would find it difficult to coordinate and bring its collective strength into full play.⁹⁹

With respect to trade between the U.S. and Soviet Union, Michael Mastanduno considered the following three strategies: strategic embargo, tactical linkage, and economic warfare.¹⁰⁰ He ultimately concluded that only strategic embargo might work.¹⁰¹ This was because allies of the U.S. loathed tactical linkage and opposed any suspected U.S. coercion through COCOM that would push forward foreign policy cooperation that was not subject to their control.¹⁰² Practically, they were strongly against economic warfare because they feared being plagued by “the extraterritorial extension of U.S. export controls.”¹⁰³ Moreover, the politicization of the U.S. economic relations with the Soviet Union had outstripped a lucid assessment over the possible economic risks or downsides arising from exercising export controls with geopolitical elements involved.¹⁰⁴ As Derek Urwin opined, “Washington conceived of its alliance network as a circle, with all power resting firmly at the centre in the person of the American President and Congress.”¹⁰⁵ Those allies, on the other hand, may have an inclination toward achieving a certain sort of détente with the Soviet bloc nations for their own interests; therefore, they would likely choose to turn a blind eye to the U.S. and err

98. See JOHN H. HENSHAW, THE HENRY L. STIMSON CTR., THE ORIGINS OF COCOM: LESSONS FOR CONTEMPORARY PROLIFERATION CONTROL REGIMES 13 (1993).

99. See *id.*

100. See generally Michael Mastanduno, *Strategies of Economic Containment: U.S. Trade Relations with the Soviet Union*, 37 WORLD POL. 503, 529 (1985) (asserting that, while the U.S. could pursue all three simultaneously, tactical linkage and economic warfare would, either together or independently, undermine the strategic embargo).

101. *Id.* at 530.

102. *Id.*

103. *Id.* at 529–30.

104. See Alam, *supra* note 80, at 137.

105. URWIN, *supra* note 7, at 281.

on the side of caution when it came to fixing their COCOM duties.¹⁰⁶

In other words, the Export Control Act of 1949 was helpful to COCOM member nations.¹⁰⁷ It generally pointed out the direction for the allies to keep sight of and move alongside the U.S.¹⁰⁸ The allies' compliance with this direction was what the U.S. had insisted on over a long period of time, as far as the years of the Cold War were concerned.¹⁰⁹ In that way, the U.S. stance was not just limited to the matter of applying or replicating the early American code on export controls of restricted items.¹¹⁰ Still, it could hardly be anticipated that such an Americanized legal framework for governing exports or re-exports from the West to the East would not have challenges.¹¹¹ This is so especially when every so often, for some COCOM allies, economic benefits may come up short on their anticipated goals, or other interests may appeal to them.¹¹²

B. COCOM's Rivalries

The Cold War unfolded in 1945 after World War II and lasted until the fall of the Soviet Union at the end of 1991.¹¹³ This followed an earlier collapse of neighboring countries in Eastern and Central Europe around 1989.¹¹⁴ Though the two leading allied forces struggling together against the Axis powers in World War II previously, the U.S. and the Soviet Union became rivals right after the world moved into the post-World War II

106. *See id.* at 289.

107. *See* FINDING COMMON GROUND: U.S. EXPORT CONTROLS IN A CHANGED GLOBAL ENVIRONMENT 61–62 (Nat'l Acad. Press, 1991).

108. *See id.*

109. *See id.*

110. *See id.*; URWIN, *supra* note 7, at 282.

111. *See* URWIN, *supra* note 7, at 282.

112. *See infra* notes 199–205 and accompanying text.

113. *See Submarine & Cold War History: Cold War Timeline*, NAT'L MUSEUM OF AM. HIST., <https://americanhistory.si.edu/subs/history/timeline> (last visited Nov. 1, 2022).

114. *See id.*; *see also* GRANNEY, *supra* note 59, at 9 (“The rapidity of communism’s collapse first in the Soviet satellite states of Eastern and Central Europe and then in the Soviet Union itself surprised actors in both halves of Europe.”).

era.¹¹⁵ The two powers began wrestling for supremacy in the quest to re-shape the world order to the liking of their own.¹¹⁶

In particular, as Barry Blechman, Janne Nolan, and Alan Platt argued, the U.S. and the Soviet Union were both aware of the necessity of utilizing arms transfers to other countries or regions “as central instruments of their foreign policies throughout the post-World War II period.”¹¹⁷ This is essentially the case in less developed nations where military conflicts could spontaneously arise,¹¹⁸ to name a few, the Arab-Israeli land,¹¹⁹ the Korean Peninsula,¹²⁰ the Balkan area,¹²¹ the labyrinth of gridlock perched on the Middle East,¹²² the volatile South Asian and Southeast Asian regions,¹²³ the Taiwan Strait,¹²⁴ the Eurasian expanse bordering Russia,¹²⁵ and the African soil where flare-ups here and there were likely.¹²⁶ Strategic considerations might lead the competing global powers to play a role in some special cases or under certain circumstances, either transparently or behind the scenes.¹²⁷

Notably, in 1949, the U.S. became a North Atlantic Treaty Organization (NATO) member, giving rise to the political and

115. *The Cold War*, *supra* note 3.

116. *See id.*

117. Barry M. Blechman, Janne E. Nolan & Alan Platt, *Negotiated Limitations on Arms Transfers: First Steps Toward Crisis Prevention?*, in *MANAGING U.S.-SOVIET RIVALRY: PROBLEMS OF CRISIS PREVENTION* 255, 255 (1983).

118. *See id.*

119. *See id.* at 260.

120. *See id.* at 258–59.

121. *See* Gordon N. Bardos, *The Post-Cold War Balkans: Threats to Security and Stability in Southeast Europe*, 9 *HORIZONS: J. INT’L RELS. & SUSTAINABLE DEV.* 224, 239–40 (2017) (discussing the impact of the Cold War and lasting consequences on the Balkan region).

122. *See* Rajan Menon, *Soviet Arms Transfers to the Third World: Characteristics and Consequences*, 40 *J. INT’L AFFS.* 59, 67 (1986) (discussing U.S.S.R. and U.S. arms transfers with the Middle East).

123. *See id.* at 66–67; Blechman et al., *supra* note 117, at 258–60.

124. Zhang Qingmin, *The Bureaucratic Politics of US Arms Sales to Taiwan*, 1 *CHINESE J. INT’L POL.* 231, 233, 237 (2006) (discussing arms sales to Taiwan).

125. *See* Blechman et al., *supra* note 117, at 255; *see generally* P. TERRENCE HOPMANN, *U.S. INST. OF PEACE, BUILDING SECURITY IN POST-COLD WAR EURASIA: THE OSCE AND U.S. FOREIGN POLICY* (1999) (explaining the impact and consequences of the Cold War on Eurasia).

126. *See* Blechman et al., *supra* note 117, at 257, 259.

127. *See id.* at 256–61.

military heftiness of the organization, which used to be a closely-knit geopolitical league of elite economies of the West.¹²⁸ Currently, NATO is, according to Katherine Graney, a “community of liberal values’ open to ‘all European states that share these values.’”¹²⁹ It is also worth noting that when NATO was created in 1949, it had twelve founding member nations: Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the U.K., and the U.S.¹³⁰ Presently, NATO has thirty member nations in total.¹³¹ It is as active as ever, frequently making an impression on the world stage as a consistent and reliable right-hand partner of the U.S. that facilitates American foreign policies and strategic planning.¹³²

In 1955, a few years after NATO was formed, the Treaty of Friendship, Cooperation and Mutual Assistance—the Warsaw Pact—was established.¹³³ This signified an opposing alliance between the Soviet Union and its neighboring Eastern and Central European satellite countries who were strategically significant and comparable to NATO.¹³⁴ Like NATO, which is, in essence, a military alliance, the Warsaw Pact was supposed to be “a collective defence treaty” entered into by a group of allied nations led by the Soviet Union, all of them sharing more or less the same communist ideals, methodologies, and thoughts.¹³⁵ The Pact’s founding member nations included Albania, Bulgaria, Czechoslovakia, East Germany, Hungary,

128. See *The Cold War*, *supra* note 3.

129. GRANNEY, *supra* note 59, at 89.

130. *Member Countries*, N. ATL. TREATY ORG., https://www.nato.int/cps/en/natolive/topics_52044.htm (Oct. 4, 2022) (stating that Greece, Turkey, and Germany joined NATO in the 1950s; Spain in the 1980s; Czech Republic, Hungary, and Poland in the 1990s; Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Montenegro, North Macedonia, Romania, Slovakia, and Slovenia in the 21st century to date).

131. *Id.*

132. See Kathleen J. McInnis, *Why Americans Still Need NATO*, FOREIGN POL’Y. (June 28, 2022, 4:12 PM), <https://foreignpolicy.com/2022/06/28/us-nato-alliance-madrid/>.

133. *Defence and Deterrence: What Was the Warsaw Pact?*, N. ATL. TREATY ORG., https://www.nato.int/cps/us/natohq/declassified_138294.htm (last visited Nov. 1, 2022).

134. *Id.*; *The Cold War*, *supra* note 3.

135. See *Defence and Deterrence: What Was the Warsaw Pact?*, *supra* note 133.

Poland, Romania, and the Soviet Union.¹³⁶ Albania left the Warsaw Pact in 1968.¹³⁷ With the collapse of the Berlin Wall in 1989, the “communist governments in Poland, Hungary, Czechoslovakia, East Germany, Romania and Bulgaria started to fall.”¹³⁸ Eventually, the Warsaw Pact was nullified in 1991, before the fall of the then wobbling Soviet Union.¹³⁹

China was not a Warsaw Pact member nation, though China and the Soviet Union had been close allies for a long time in the 1950s,¹⁴⁰ and their camaraderie was mostly due to their identical “social revolution, and Marxist-Leninist ideology and organization.”¹⁴¹ Nonetheless, though relatively weak at the time in terms of global communist power, economic well-being, and military power, China never subordinated itself to the Soviet Union.¹⁴² However, under the Trading with the Enemy Act of 1917,¹⁴³ any U.S. citizen/resident or U.S.-controlled firm, regardless of happenings overseas or within U.S. territories, would be forbidden from doing business with communist-led nations.¹⁴⁴ The prohibition could be lifted by successfully obtaining a U.S. government license on a case-by-case basis.¹⁴⁵ So even as a trading partner in the ordinary sense, China was subject to the same regulation.¹⁴⁶

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *See id.*; *China, Soviet Union: Treaty of Friendship and Alliance*, 40 AM. J. INT’L L. 51, 51 (1946).

141. Mark Luper, *Power Restructuring in China and the Soviet Union*, 21 THEORY & SOC’Y 665, 665 (1992); *see* W.W. Rostow, *Russia and China Under Communism*, 7 WORLD. POL. 513, 513 (1955) (describing the similarities and differences between the Soviet Union and Communist China).

142. *See Sino - Soviet Split*, ROYAL AIR FORCE MUSEUM, <https://www.nationalcoldwar.com/exhibition/org/schools-colleges/national-curriculum/detente/sino-soviet-split.aspx> (last visited Nov. 1, 2022); *see also Rupture Between USSR and China Grows Worse*, HIST., <https://www.history.com/this-day-in-history/rupture-between-ussr-and-china-grows-worse> (July 13, 2020).

143. 50 U.S.C. §§ 4301–4341.

144. *Id.* § 4303; Kazimierz Grzybowski, *Control of U.S. Trade with China: An Overview*, 38 L. & CONTEMP. PROBS. 175, 176 (1973).

145. § 4303; Grzybowski, *supra* note 144, at 176.

146. Grzybowski, *supra* note 144, at 176.

Harking back to the Cold War time, as opposed to the era of NATO, a parallel strategic coalition in the East was also prepared, taking in a group of countries known as “people’s democracies.”¹⁴⁷ Further, such an Eastern alliance was predicated on the Soviet theory of building up socialism at that moment and materializing communism in the long run.¹⁴⁸ The world was divided into two principal camps led by the U.S. and the Soviet Union.¹⁴⁹ They turned against one another through “political maneuvering, military coalitions, espionage, propaganda, arms buildups, economic aid, and proxy wars between other nations.”¹⁵⁰ The COCOM embargo or blockade would apply to a nation immediately if that nation happened to pick the wrong team, according to the U.S. and its Western allies.¹⁵¹ Arguably, the U.S. marshaled COCOM’s arrival, in partnership with its NATO allied countries, to impose and exercise export controls.¹⁵² Initially, this was mainly against the Soviet-led Warsaw Pact nations and China and was launched just after the Chinese went through a three-year civil war over slightly beyond the second half of the 1940s, winning diplomatic recognition from none other than those socialist counterparts at the helm of the Soviet dominion.¹⁵³

C. How COCOM Worked and Who It Affected

While no list of target nations had ever been unveiled or formally acknowledged by COCOM openly and publicly,¹⁵⁴ it

147. *The People’s Democracies in Eastern Europe (Some Countries Efforts to Build Socialism)*, ENCYCLOPEDIA OF ANTI-REVISIONISM ON-LINE, <https://www.marxists.org/history/erol/ca.secondwave/is-peoples-demo.htm> (last visited Nov. 1, 2022).

148. See Ruth Amende Rosa, *The Soviet Theory of “People’s Democracy”*, 1 *WORLD POL.* 489, 491–92 (1949).

149. See *The Cold War*, *supra* note 3.

150. *Id.*

151. See Tor Egil Førland, *‘Economic Warfare’ and ‘Strategic Goods’: A Conceptual Framework for Analyzing COCOM*, 28 *J. PEACE RSCH.* 191, 192 (1991).

152. See Philip H. Oettinger, *National Discretion: Choosing CoCom’s Successor and the New Export Administration Act*, 9 *AM. U. J. INT’L L. REV.* 559, 561 (1994).

153. See HENSHAW, *supra* note 98, at 5.

154. Cupitt & Grillot, *supra* note 57, at 364.

is not difficult to figure out that Afghanistan, Albania, Bulgaria, Cambodia, China, Czechoslovakia, Cuba, DPRK, East Germany, Hungary, Laos, Mongolia, Poland, Romania, the Soviet Union, and North Vietnam were flagged as the nations COCOM was tasked to look out for.¹⁵⁵ To put it another way, COCOM's export control apparatus zeroed in on those adversaries primarily composed of the Soviet Union along with a number of other Soviet-influenced communist states—including China, Afghanistan, Cambodia, Cuba, DPRK, Laos, Mongolia, North Vietnam, and the Soviet Union's satellite countries in Eastern and Central European regions.¹⁵⁶ Those Soviet-style sovereign nations were known to have socialist economies and institutionalized communism as their ideological roots.¹⁵⁷ A crushing Soviet impact permeated the East and extended its reach further.¹⁵⁸ Hence, after the mid-1950s, both the U.S. and the Soviet Union shifted the focus of their conventional arms transfers from Europe to the less or least developed countries, also known as "the Third World."¹⁵⁹ However, these increased arms transfers to the Third World may easily pose a roadblock for the U.S. or the Soviet Union in their goal to dominate the world and ensure world peace.¹⁶⁰ To mitigate the danger of being stuck in costly military conflicts likely provoked by their competing spheres of influence, which were inflated in the Third World countries, the U.S. and the Soviet Union pushed the boundaries.¹⁶¹ The two powers met a number of times over the Cold War period, aiming to mutually deescalate the momentum of their arms transfers, which were

155. *Id.*; Knes, *supra* note 10.

156. Knes, *supra* note 10.

157. See *The Soviet Socialist Republics*, LUMEN LEARNING, <https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/the-soviet-socialist-republics/15/> (last visited Nov. 1, 2022).

158. See *The Cold War*, *supra* note 3.

159. Blechman et al., *supra* note 117, at 255.

160. See *id.* at 255–56.

161. See *id.* at 255–61.

predominantly to the Third World, but their efforts were eventually in vain.¹⁶²

Conversely, COCOM was created to play a critical role in providing certain guardianship services on the part of the Western bloc.¹⁶³ It established a particular character for the Western world's export controls of restricted items to non-COCOM member nations at all times and places before surrendering its legacy to the Wassenaar Arrangement on the heels of the iron curtain between the East and the West ultimately being torn down.¹⁶⁴ In order to realize its desired aims, COCOM adopted a control-list approach.¹⁶⁵ An array of categorized items, especially those relating to advanced military technologies, had to comply with COCOM member nations' compulsory export control criteria for national security.¹⁶⁶ COCOM illustrated those categorized items in three general lists: (1) the International Atomic Energy List; (2) the International Munitions List; and (3) the International Industrial List, which contained dual-use goods and technologies not included in the first two lists.¹⁶⁷ Altering these COCOM lists by expanding or curtailing controlled items would require unanimous concurrence of all COCOM member nations.¹⁶⁸ In doing so, COCOM had, in effect, normalized embargo or blockade, especially in the long-term relationship between the East and the West.¹⁶⁹

According to the criteria put forward by COCOM, the embargo or blockade concerned mainly consists of technologies

designed . . . for development, production, or utilization of arms, ammunition, or military systems; unique technology that . . . would be of

162. *See id.* at 261–68.

163. *See* HENSHAW, *supra* note 98, at 9.

164. *See* Knes, *supra* note 10.

165. *See* HENSHAW, *supra* note 98, at 5.

166. *See* Oettinger, *supra* note 152, at 155–56.

167. *See* HENSHAW, *supra* note 98, at 5.

168. Cupitt & Grillo, *supra* note 57, at 364.

169. *See* HENSHAW, *supra* note 98, at 9.

significant assistance to an adversary's military capability; and materials, equipment, and technology that might contribute to such a capability by allowing adversaries to overcome their military deficiencies sooner than would reasonably be expected.¹⁷⁰

The technologies in question may also be generally interpreted as connected to "computing systems, networking, hardware, and software, . . . which . . . might enhance the military capability of the other country, or place at risk the technology advantage of the exporting country."¹⁷¹ In this context, the first two COCOM general lists were pertinent to nuclear technologies and other militarily related technologies as a whole.¹⁷²

In other words, under such a control-list approach, unless otherwise stated, a COCOM member nation planning to add items into any existing COCOM list must first satisfy certain preconditions.¹⁷³ For instance, whether exported or re-exported items would become weapons for production purposes would depend on the connection to capturing technical know-hows of military significance by dangerous foreign countries, or they could make up for a shortage of needed materials in such foreign countries trying to increase military growth somewhere within the Soviet bloc territories.¹⁷⁴ But as might be expected, those COCOM control lists were not constructed to be static; on the contrary, they underwent routine reviews.¹⁷⁵ For example, a COCOM core list was once put forward in 1991, which led to the considerable truncation of the preceding control lists.¹⁷⁶

170. *Id.* at 5.

171. *Overview: CoCom*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095621218> (last visited Nov. 1, 2022).

172. HENSHAW, *supra* note 98, at 5.

173. *See* Cupitt & Grillot, *supra* note 57, at 364.

174. *See* James Plousadis, *Soviet Diversion of United States Technology: The Circumvention of Cocom and the United States Reexport Controls, and Proposed Solutions*, 7 *FORDHAM INT'L L.J.* 561, 568–69 (1983).

175. *See* HENSHAW, *supra* note 98, at 6.

176. *Id.*

Also, within a COCOM member nation, exporting an item on the control list may be permitted if an “exception request” was submitted and the corresponding endorsement was granted.¹⁷⁷ That is to say, exceptions may not be totally controverted, so long as they could be justified under proper circumstances.¹⁷⁸

D. *The Predicaments of COCOM*

Even from the very beginning, COCOM had opted to take the form of a transnational but less formal collective body, operating on the strength of its member nations’ explicit or implicit consensus and cooperation.¹⁷⁹ Perhaps for that reason, COCOM’s establishment did not involve entering into a U.N. registered multilateral treaty by all its member nations.¹⁸⁰ Despite such an absence of formality, the U.S. leadership in COCOM could still be considered overwhelming.¹⁸¹ As the world’s superpower both militarily and economically, the U.S. imposed the most stringent standards of export controls over COCOM’s restricted items, and the U.S. had the power to deny any export license.¹⁸²

However, while COCOM’s general Americanized tendency was notable, the NATO-affiliated entity had not proven to be a great success.¹⁸³ For instance, in considering the relationship between the U.S. and its COCOM partner countries, the latter may not necessarily match the U.S. export control regime after the post-World War II Export Control Act of 1949 came into force.¹⁸⁴ In principle, except for the U.S. itself, all other COCOM

177. See Plousadis, *supra* note 174, at 569.

178. See *id.*

179. See Michael D. Beck & Scott A. Jones, *The Once and Future Multilateral Export Control Regimes: Innovate or Die*, 5 STRATEGIC TRADE REV. 55, 59 (2019); Bown, *supra* note 13, at 11; Plousadis, *supra* note 174, at 569.

180. See Beck & Jones, *supra* note 179, at 59; see also Bown, *supra* note 13, at 11 (“COCOM was not treaty-based; it was an informal agreement that was established in secret and did not create binding legal obligations on the countries involved.”).

181. See HENSHAW, *supra* note 98, at 13, 16.

182. Cupitt & Grillo, *supra* note 57, at 364.

183. See *id.*

184. HENSHAW, *supra* note 98, at 15–17.

member nations had no legal obligation to follow the U.S. paradigm.¹⁸⁵ The problem was that a successful COCOM ought to be contingent on collaboration by pitting the Western bloc against the Soviet bloc.¹⁸⁶ In that aspect, the U.S. certainly tended to mold its NATO partner countries to value America's general legal framework for imposing and exercising export controls; this was in order to prevent the free world from being corrupted, either purposefully or inadvertently.¹⁸⁷ Overall, the synergistic effects brought forth in practice could hardly be said to be tenable across the board.¹⁸⁸ COCOM had been trapped in various predicaments which hindered its progression.¹⁸⁹

The first problem with COCOM is that carrying out certain enforcement responses was non-binding on COCOM member nations.¹⁹⁰ COCOM member nations needed to legislate their own export control measures based on their domestic laws, which were supposed to align with COCOM's intentions.¹⁹¹ Even though the needed legislation could be achieved, full compliance would depend on the required self-discipline, cautiousness, and proficiency of the nations' enforcement agencies in a single-sided way.¹⁹² Due to the secrecy of COCOM enforcement proceedings, it is unclear whether each and every enforcement operation had really been accomplished.¹⁹³ This would require squaring with COCOM's guiding doctrines, given the substantial financial and human resources needed to be devoted to enforcement activities by each individual nation, especially in certain unknown, unpredictable, uncontrollable, or insurmountable instances.¹⁹⁴ Furthermore, in reality, quite a lot of COCOM member nations simply asked the relevant seller

185. *See id.* at 10–12; Beck & Jones, *supra* note 179.

186. *See* HENSHAW, *supra* note 98, at 18–19.

187. *See* Cupitt & Grillot, *supra* note 57, at 364; HENSHAW, *supra* note 98, at 13.

188. *See* Cupitt & Grillot, *supra* note 57, at 364.

189. *See id.*; *infra* notes 190–209 and accompanying text.

190. Bown, *supra* note 13, at 11.

191. Beck & Jones, *supra* note 179, at 59.

192. *See id.*; Cupitt & Grillot, *supra* note 57, at 364.

193. *See* Plousadis, *supra* note 174, at 577.

194. *See id.*; Cupitt & Grillot, *supra* note 57, at 364.

to guarantee that the export in question would not conflict with the buyer's end use; however, the consignee's detailed information provided to the relevant authorities was still insufficient.¹⁹⁵ This tended to trigger the suspicion that improper proceedings took place.

Second, in the actual practice of exercising export controls, success in different jurisdictions around the world—or even just in Europe—could not be achieved in the way similar issues were handled.¹⁹⁶ The U.S. was skeptical that COCOM member nations were not exercising export controls in conformity with the agreed COCOM guidelines upheld by U.S. support.¹⁹⁷ Conversely, the COCOM allies would refute such accusations, arguing that the U.S. export control regime was per se problematic.¹⁹⁸

Third, economic considerations that were important to COCOM stakeholders could loosen export controls to some degree, depending on the circumstances.¹⁹⁹ This was especially the case for COCOM's European partner countries and its key Asian ally, Japan, as both were known to have a predilection for prioritizing international trade opportunities with the Soviet bloc nations over U.S. indoctrination and the assented COCOM etiquette.²⁰⁰ By leveraging its post-WWII economic sway to establish the dominance of the U.S. export control system as the global standard, the U.S. tended to put its allies in the crosshairs of its foreign policy strategy.²⁰¹ This was especially so under America's Battle Act,²⁰² i.e. the Mutual Defense Assistance

195. *See id.* at 578.

196. *See* HENSHAW, *supra* note 98, at 15–17; Plousadis, *supra* note 174, at 578.

197. *See* Plousadis, *supra* note 174, at 578.

198. *See id.* at 578–79. Ally nations could contend that U.S. export control is excessively complicated, too pertinacious, and extremely unwieldy, especially when COCOM member nations needed to deal with those exception matters allowable under the COCOM regime. *Id.*

199. *See id.* at 575–76.

200. *See id.*

201. *Id.* at 576.

202. Berman & Garson, *supra* note 87, at 836 (explaining the Act was named after its sponsor, Congressman Laurie Battle).

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Control Act of 1951,²⁰³ a piece of American legislation enacted “to induce a greater degree of cooperation from all friendly countries.”²⁰⁴ This Act blocked U.S. aid from extending to recipient nations that may appear to be defiant.²⁰⁵

Fourth, some COCOM member nations blatantly slighted COCOM and did not regard it “as a viable safeguard of Western security.”²⁰⁶ They evaded COCOM protocols and sneakily exported restricted items without submitting their exception requests, or they did so by deliberately ignoring a rejection already received.²⁰⁷ On the other hand, it should be noted that the U.S. re-export controls restrictions sometimes became a tricky factor by setting off a ripple effect in the international community.²⁰⁸ The application of those restrictions could be halted at any moment, as many COCOM allies would not tolerate the U.S. infringing upon their legitimate sovereign status by exercising long-arm jurisdiction.²⁰⁹

Put simply, over the Cold War years, neither the U.S. nor COCOM, in its own right, was able to brainstorm a judicious solution that could take the sting out of these uncertain circumstances or even impasses.

II. THE WASSENAAR ARRANGEMENT: A TIGER WITHOUT TEETH?

Unlike COCOM, which was shrouded in geopolitical gloominess, the Wassenaar Arrangement is supposed to play a more neutral part. On the strength of its two general control lists, the List of Dual-Use Goods and Technologies and the Munitions List, the Wassenaar Arrangement has provided well-designed technical standards, bench-marking for best practices

203. Plousadis, *supra* note 174, at 576; Berman & Garson, *supra* note 87, at 836; 22 U.S.C. §§ 1611–1613d (1952) (superseded by 50 U.S.C. Appx. § 2416(e) (2012)).

204. Berman & Garson, *supra* note 87, at 836.

205. *See* Plousadis, *supra* note 174, at 576.

206. *Id.* at 578.

207. *Id.*

208. *Id.* at 579, 581.

209. *See id.*

in its own export control fields.²¹⁰ However, the Wassenaar Arrangement still cannot totally rid itself of an organizational structure or preference of a certain sort of balkanization.²¹¹ More unfortunately, it falls short of a monopoly of enforcement power and is thus unable to become an effective troubleshooter in practice.²¹²

A. *A Good Technical Work Without Enforcement Power*

With the baton-passing concluded between COCOM and the Wassenaar Arrangement, new challenges will arise given the different global landscape while many of the old problems may continue to go unaddressed.²¹³

As to the technical substance, the Wassenaar Arrangement's Public Documents Volume II contains two general control lists, which are currently effective and have made up the backbone of this ongoing multilateral export control mechanism: (1) the List of Dual-Use Goods and Technologies, and (2) the Munitions List.²¹⁴ In contrast to COCOM which was also control-list oriented, the Wassenaar Arrangement is, at least on its face, supposed to be hyper-focused on conventional items only, sidestepping any possible prey which consists of nuclear elements.²¹⁵ At the same time, the Wassenaar Arrangement is undeniably impressive, from its scientific information and list of best practices.²¹⁶ Volume II is a sizable piece which is

210. See generally *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31 (publishing the List of Dual-Use Goods and Technologies and the Munitions List of the Wassenaar Arrangement).

211. See OLSON, *supra* note 27, at 24–25 (stating all forty-one Wassenaar members must institute their own legislative policy “that ensures the responsible transfer of conventional weapons and dual-use items”).

212. See Lipson, *supra* note 17, at 24 (“Typical of export control regimes, [the Wassenaar Arrangement] is an informal arrangement lacking a legal basis in a formal treaty.”); NUCLEAR THREAT INITIATIVE, *supra* note 2 (“[The Wassenaar Arrangement] is a voluntary association, not bound by a treaty, and therefore has no formal mechanism.”).

213. See Lipson, *supra* note 17, at 33–34.

214. *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31.

215. See NUCLEAR THREAT INITIATIVE, *supra* note 2.

216. See *Wassenaar Arrangement at a Glance*, ARMS CONTROL ASS'N, <https://www.armscontrol.org/factsheets/wassenaar> (Feb. 2022).

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composed of 243 pages.²¹⁷ The technical benchmarks and specifications of the related dual-use items and munitions are neatly itemized and are mathematically precise.²¹⁸

Nevertheless, the drawback in Volume II, which is basically the same as that of COCOM, remains generally unchanged.²¹⁹ Needless to say, hamstrung by its innate deficiency, the Wassenaar Arrangement lacks mandatory power and authority to enforce Wassenaar rules in the event of defaults on or violations of censorial duties.²²⁰ Due to that conundrum, it can hardly be expected that the international community at large would have full confidence in the effectiveness of the Wassenaar Arrangement, especially given that it is unmandated and could become easily compromised at any moment.²²¹

B. *Dual-Use Goods and Technologies*

Under the Wassenaar Arrangement, the dual-use goods and technologies, the exports or re-exports of which must be constrained, are explained as “those which are major or key elements for the indigenous development, production, use or enhancement of military capabilities.”²²² Here, the term “use,” refers to “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.”²²³ To qualify as a dual-use item, and be controlled as such, a number of premises have been established in the context of the Wassenaar rules, and in practice, it is unclear if they can be met; this includes (1) “[f]oreign availability outside Participating

217. *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 243.

218. *See id.*

219. *See* NUCLEAR THREAT INITIATIVE, *supra* note 2.

220. *See id.*

221. *See id.*

222. Wassenaar Arrangement Plenary, *Criteria for the Selection of Dual-Use Items* (1994) (amended at the 2004 and 2005 Plenary), https://www.wassenaar.org/app/uploads/2019/consolidated/Criteria_for_selection_du_sl_vsl.pdf [hereinafter *Criteria for the Selection of Dual-Use Items*].

223. *Id.* at 1 n.1.

States;" (2) "[t]he ability to control effectively the export of the goods;" (3) "[t]he ability to make a clear and objective specification of the item;" and (4) "[c]ontrolled by another regime."²²⁴

The concrete dual-use goods and technologies, known generally as the dual-use items, are spelled out by the first general list set forth in the Wassenaar Arrangement, i.e. the List of Dual-Use Goods and Technologies.²²⁵ Under the List of Dual-Use Goods and Technologies, those so-called dual-use items are classified into nine general categories: (1) Special Materials and Related Equipment; (2) Materials Processing; (3) Electronics; (4) Computers; (5) Part 1 Telecommunications and Part 2 Information Security; (6) Sensors and Lasers; (7) Navigation and Avionics; (8) Marine; and (9) Aerospace and Propulsion.²²⁶ Each category may further relate to a cohort of five specific subcategories: (i) systems, equipment and components (ii) test, inspection and production equipment; (iii) materials; (iv) software; and (v) technology.²²⁷

As a complete unit, the List of Dual-Use Goods and Technologies covers most necessary basics. Besides, two extra sub-lists are more prominently attached as a complement to the List of Dual-Use Goods and Technologies, namely a "sensitive list" and a "very sensitive list," where certain particulars appearing to be different from what is illustrated in the List of Dual-Use Goods and Technologies are emphatically highlighted.²²⁸ The accentuated places identified from these two sub-lists remind any related parties that the sensitivity of a particular item may vary depending on circumstances, perhaps higher than under normal conditions in the context of the List of Dual-Use Goods and Technologies.²²⁹ In broad strokes, the

224. *Id.* at 1.

225. *See List of Dual-Use Goods & Technologies & Munitions List, supra* note 31, at 3–180 (providing the full text of the Dual-Use and Technologies list).

226. *Id.* at 2 (internal quotation marks omitted).

227. *See id.* at 4–169.

228. *See id.* at 170–80 (providing the Sensitive and Very Sensitive Lists).

229. *See id.*

Wassenaar Arrangement portrays the dual-use items embodied in the sensitive list mainly as “key elements directly related to the indigenous development, production, use or enhancement of advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.”²³⁰ More tellingly, after rearranging a couple of words on the basis of that description, the Wassenaar Arrangement is able to distinguish the dual-use items belonging to the Very Sensitive List from the Sensitive List as “[t]hose items from the Sensitive List which are key elements essential for the indigenous development, production, use or enhancement of the most advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.”²³¹ In practice, under the Wassenaar Arrangement, the threshold guidelines to be used can be prescribed differently, hinging on the merit of the case in question.²³²

Notably, it appears more difficult to figure out the intended connotations of the twin terms “technology” and “software” under the List of Dual-Use Goods and Technologies.²³³ In many circumstances, these two specific sorts of controlled dual-use items can hardly be singled out as something easily and concretely explainable and ascertained.²³⁴ In light of the List of Dual-Use Goods and Technologies, the controlled “technology” must be the technology that is going to be employed for the “development, production or use of items controlled in the Dual-Use List.”²³⁵ Any “technology” will not be controlled, if it “is the minimum necessary for the installation, operation, maintenance . . . or repair of those items which are not

230. Wassenaar Arrangement Plenary, *Criteria for the Selection of Dual-Use Goods and Technologies for the Sensitive List* (1998) (amended at the 2000 and 2004 Plenary), https://www.wassenaar.org/app/uploads/2019/consolidated/Criteria_for_selection_du_sl_vsl.pdf.

231. *Id.* at 3.

232. *Id.* at 2–3.

233. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 3.

234. See *id.*

235. *Id.* (internal quotation marks omitted).

controlled or whose export has been authorised.”²³⁶ Also, any “technology” will not be controlled, if it is “in the public domain” already, or is to be utilized for the purpose of carrying out “basic scientific research,” or constitutes “the minimum necessary information for patent applications.”²³⁷ By the same token, any “software” will not be controlled, if it is “[g]enerally available to the public by being . . . [s]old from stock at retail selling points without restriction,” “[d]esigned for installation by the user without further substantial support by the supplier,” “[i]n the public domain,” or “[t]he minimum necessary ‘object code’ for the installation, operation, maintenance . . . or repair of those items whose export has been [given the go-ahead].”²³⁸

C. *The Munitions List*

Compared to the List of Dual-Use Goods and Technologies, the second general control list of the Wassenaar Arrangement, the Munitions List, is no less critical.²³⁹ The items contained in the Munitions List denote various munitions to be heeded.²⁴⁰

236. *Id.*

237. *Id.* (internal quotation marks omitted).

238. *Id.*

239. *See id.* at 181–213.

240. On the whole, the Munitions List enumerates the following twenty-two categories of target items: (1) “[s]mooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories”; (2) “[s]mooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors specially designed or modified for military use and accessories”; (3) “[a]mmunition and fuze setting devices”; (4) “[b]ombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories”; (5) “[f]ire control, surveillance and warning equipment, and related systems, test and alignment and countermeasure equipment”; (6) “[g]round vehicles and components”; (7) “[c]hemical agents, ‘biological agents,’ ‘riot control agents,’ radioactive materials, related equipment, components and materials”; (8) “[e]nergetic materials’ and related substances”; (9) “[v]essels of war (surface or underwater), special naval equipment, accessories, components and other surface vessels”; (10) “[a]ircraft, ‘lighter-than-air vehicles,’ ‘Unmanned Aerial Vehicles’ (‘UAVs’), aero-engines and ‘aircraft’ equipment, related equipment, and components”; (11) “[e]lectronic equipment, ‘spacecraft’ and components, not specified elsewhere on the Munitions List”; (12) “[h]igh velocity kinetic energy weapon systems and related equipment”; (13) “[a]rmoured or protective equipment, constructions and components”; (14) “[s]pecialised equipment for military training’ or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by [Item

With regard to the applicability and exemption of the prescribed control pertaining to “technology,” the standards to be assumed, according to the Munitions List, resemble the List of Dual-Use Goods and Technologies.²⁴¹ In today’s digital age and regardless of being a member of the Wassenaar Arrangement, countries may be adversely influenced by problems concerning cyber weapons and security, software tools’ possible vulnerabilities, and government hacking.²⁴² Some technologies and software tools could potentially become problematic to the international community if they cannot be administered legally, ethically, and professionally.²⁴³

On the other hand, in contrast to articulating an assembly of clear criteria for selecting the dual-use items in question, the Wassenaar Arrangement is silent on the parameters for the munitions.²⁴⁴ Naturally, the relevant technical details should be systematically discernible when scrutinizing the Munitions List.²⁴⁵ However, neither the text of the Munitions List nor the Wassenaar Arrangement defines the word “munition” in a summarily definitive fashion.²⁴⁶ Evidently, it has not been prearranged for the usage of “munition” to fall into the category of a group of succinctly conceptualized forewords to the Wassenaar Arrangement.²⁴⁷ In this regard, particularizing the

1 or 2 shown in the Munitions List]; (15) “[i]maging or countermeasure equipment”; (16) “[f]orgings, castings and other unfinished products”; (17) “[m]iscellaneous equipment, materials and ‘libraries’”; (18) “[p]roduction’ equipment, environmental test facilities and components”; (19) “Directed Energy Weapon (DEW) systems, related or countermeasure equipment and test models”; (20) “[c]ryogenic and ‘superconductive’ equipment”; (21) “[s]oftware”; and (22) “[t]echnology.” *Id.* It may be interesting to know that this Munitions List is particularly treated by Russia and Ukraine “as a reference list drawn up to help in the selection of dual-use goods which could contribute to the indigenous development, production or enhancement of conventional munitions capabilities.” *See id.* at 181. But beyond these things, such an approach of treatment adopted by Russia and Ukraine ought not to be misread as having anything to do with the current war between these two former Soviet Republics.

241. *See id.* at 3, 213.

242. *See* Jukka Ruohonen & Kai K. Kimppa, *Updating the Wassenaar Debate Once Again: Surveillance, Intrusion Software, and Ambiguity*, 16 J. INFO. TECH. & POL. 169, 182 (2019).

243. *See id.* at 178.

244. *See List of Dual-Use Goods & Technologies & Munitions List, supra* note 31, at 181–213.

245. *Id.* at 185–209.

246. *See id.* at 181–213.

247. *See id.*

meaning of “munition” is deeply necessary, and must be equally severe and indispensable, in a putative sense, with the “dual-use items.”²⁴⁸ It is hard to understand why such a loophole is yet to be closed.

D. *Best Practices*

Similar to the two control lists, the Wassenaar Arrangement has hatched a string of norms of its own best practices, pertinent to the propounded export control proceedings.²⁴⁹ However, such best practices are, in essence, nothing more than recommended principles.²⁵⁰ To the fullest extent, member nations are expected to comply with these best practices; still, compliance entirely depends on nations implementing the best practices and their capabilities of carrying out enforcement measures.²⁵¹ In a strictly legal sense, the Wassenaar best practices are not intended to be, and can in no way become, compulsorily binding upon any member nation of the Wassenaar Arrangement.²⁵² To crystallize the detailed way of complying with the Wassenaar best practices, the Wassenaar Arrangement has put forth a range of documents, taking the form of a series of suggested rules, regulations, and guidelines, so that people are at least able to recognize what the Wassenaar best practices are meant to be in theory and in practice.²⁵³

248. *See id.* at 3–213.

249. *See* Wassenaar Arrangement Plenary, *Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies*, at 1 (2011), <https://www.wassenaar.org/app/uploads/2019/consolidated/2-Internal-Compliance-Programmes.pdf> [hereinafter *Best Practice Guidelines on Internal Compliance Programmes*].

250. *See id.*

251. *See* Wassenaar Arrangement Plenary, *Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies*, at 1 (2006), <https://www.wassenaar.org/app/uploads/2019/consolidated/09Best-Practice-Guidelines-for-the-Licensing-of-Items-on-the-Basic-List-and-Sensitive-List-of-Dual-Use-Goods-and-Technologies.pdf> [hereinafter *Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies*]; *Best Practice Guidelines on Internal Compliance Programmes*, *supra* note 249, at 1–2.

252. *See* Wassenaar Arrangement Plenary, *Best Practices for Effective Export Control Enforcement*, at 1 (2000) (amended at the 2016 Plenary) [hereinafter *Best Practices for Effective Export Control Enforcement*].

253. *See Best Practice Guidelines on Internal Compliance Programmes*, *supra* note 249, at 1.

In terms of general use, the following four documents are in place: (1) Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons;²⁵⁴ (2) Best Practices for Effective Export Control Enforcement;²⁵⁵ (3) Elements for the Effective Fulfilment of National Reporting Requirements;²⁵⁶ and (4) Best Practices for Implementing Intangible Transfer of Technology Controls.²⁵⁷

Regarding arms transfers, the following seven documents can be employed when appropriate: (1) Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW);²⁵⁸ (2) Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport;²⁵⁹ (3) Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS);²⁶⁰ (4) Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons

254. Wassenaar Arrangement Plenary, *Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons* (1998) (amended at the 2004 and 2011 Plenary), <https://www.wassenaar.org/app/uploads/2019/consolidated/Elements-for-Objective-Analysis.pdf>.

255. *Best Practices for Effective Export Control Enforcement*, *supra* note 252.

256. Wassenaar Arrangement Plenary, *Elements for the Effective Fulfilment of National Reporting Requirements* (2015), <https://www.wassenaar.org/app/uploads/2019/consolidated/12Elements-for-the-Effective-Fulfilment-of-National-Reporting-Requirements.pdf>.

257. Wassenaar Arrangement Plenary, *Best Practices for Implementing Intangible Transfer of Technology Controls* (2006), https://www.wassenaar.org/app/uploads/2019/consolidated/ITT_Best_Practices_for_public_statement_2006.pdf.

258. Wassenaar Arrangement Plenary, *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)* (2002) (amended at the 2007 and 2019 Plenary), <https://www.wassenaar.org/app/uploads/2019/12/Best-practice-guidelines-on-export-of-SALW-web-version.pdf>.

259. Wassenaar Arrangement Plenary, *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) Through Air Transport* (2007), https://www.wassenaar.org/app/uploads/2019/consolidated/Best_Practices_to_Prevent_Destabilising_Transfers_of.pdf.

260. *See* Wassenaar Arrangement Plenary, *Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)* (2003) (amended at the 2007 Plenary), <https://www.wassenaar.org/app/uploads/2019/consolidated/Elements-for-Export-Controls-of-Manpads.pdf>.

Systems Contained in Appendix 3 to the WA Initial Elements;²⁶¹ (5) Statement of Understanding on Arms Brokerage;²⁶² (6) Best Practices for Effective Legislation on Arms Brokering;²⁶³ and (7) Elements for Controlling Transportation of Conventional Arms Between Third Countries.²⁶⁴

In regard to transit and trans-shipment, the representative piece is Best Practice Guidelines for Transit or Trans-shipment.²⁶⁵ As to demilitarized military equipment, the prototypal piece is Best Practices for Export Controls/Disposal of Surplus or Demilitarised Military Equipment.²⁶⁶

Regarding dual-use goods and technologies, the following six documentations have set up the required benchmarks: (1) Criteria for the Selection of Dual-Use Items;²⁶⁷ (2) Criteria for the Selection of Dual-Use Goods and Technologies for the Sensitive List;²⁶⁸ (3) Criteria for the Selection of Dual-Use Goods and Technologies for the Very Sensitive List;²⁶⁹ (4) Extreme Vigilance: Sub-set of Tier 2 (VSL) Items Best Practices;²⁷⁰ (5) Best

261. Wassenaar Arrangement Plenary, *Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems Contained in Appendix 3 to the WA Initial Elements* (2011), <https://www.wassenaar.org/app/uploads/2019/consolidated/3-Re-export.pdf>.

262. Wassenaar Arrangement Plenary, *Statement of Understanding on Arms Brokerage* (2002), <https://www.wassenaar.org/app/uploads/2019/consolidated/06Statement-of-Understanding-on-Arms-Brokerage.pdf>.

263. Wassenaar Arrangement Plenary, *Best Practices for Effective Legislation on Arms Brokering* (2003) (amended at the 2016 Plenary), <https://www.wassenaar.org/app/uploads/2019/consolidated/Best-Practices-for-Effective-Legislation-on-Arms-Brokering.pdf>.

264. Wassenaar Arrangement Plenary, *Elements for Controlling Transportation of Conventional Arms Between Third Countries* (2011), <https://www.wassenaar.org/app/uploads/2019/consolidated/4-Elements-for-Controlling-Transportation-of-Conventional-Arms.pdf>.

265. See Wassenaar Arrangement Plenary, *Best Practice Guidelines for Transit or Trans-shipment* (2015), <https://www.wassenaar.org/app/uploads/2019/consolidated/01Best-Practice-Guidelines-for-Transit-and-Trans-shipment.pdf>.

266. See Wassenaar Arrangement Plenary, *Best Practices for Export Controls / Disposal of Surplus or Demilitarised Military Equipment* (2000) (amended at the 2019 Plenary), <https://www.wassenaar.org/app/uploads/2019/12/Best-practices-for-disposal-of-Surplus-Demilitarised-Military-Equipt-web-version.pdf>.

267. *Criteria for the Selection of Dual-Use Items*, *supra* note 222.

268. *Id.* at 2.

269. *Id.* at 3.

270. Wassenaar Arrangement Plenary, *Extreme Vigilance: Sub-set of Tier 2 (VSL) Items "Best Practices"* (2000), <https://www.wassenaar.org/app/uploads/2019/consolidated/04Best-Practices-regarding-VSL-Items.pdf>.

Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies;²⁷¹ and (6) Statement of Understanding on Control of Non-Listed Dual-Use Items.²⁷²

As for industry and academia, the following two documents can be used as references: (1) Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies;²⁷³ and (2) List of Advisory Questions for Industry.²⁷⁴

As for end-use and end-user controls, the following three documents are available to be consulted: (1) Introduction to End User/End Use Controls for Exports of Military-List Equipment;²⁷⁵ (2) Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items;²⁷⁶ and (3) End-User Assurances Commonly Used Consolidated Indicative List.²⁷⁷ Moreover, a non-member nation interested in becoming a Wassenaar member can find the necessary application criteria in the Guidelines for Applicant Countries.²⁷⁸ Lastly, member nations can draft crucial export control policy

271. See *Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies*, *supra* note 251.

272. Wassenaar Arrangement Plenary, *Statement of Understanding on Control of Non-Listed Dual-Use Items* (2003), https://www.wassenaar.org/app/uploads/2019/consolidated/Non-listed_Dual_Use_Items.pdf.

273. *Best Practice Guidelines on Internal Compliance Programmes*, *supra* note 249.

274. Wassenaar Arrangement Plenary, *List of Advisory Questions for Industry* (2003) (amended at the 2018 Plenary), <https://www.wassenaar.org/app/uploads/2019/consolidated/Advisory-Questions-for-Industry-Amended.pdf>.

275. Wassenaar Arrangement Plenary, *Introduction to End User / End Use Controls for Exports of Military-List Equipment* (2014), <https://www.wassenaar.org/app/uploads/2019/consolidated/End-User-Use-Controls-Export-ML-Equipment.pdf>.

276. Wassenaar Arrangement Plenary, *Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items* (2007), <https://www.wassenaar.org/app/uploads/2019/consolidated/10Statement-of-Understanding-on-Implementation-of-End-Use-Controls-for-Dual-Use-Items.pdf>.

277. Wassenaar Arrangement Plenary, *End-User Assurances Commonly Used Consolidated Indicative List* (1999) (amended at the 2005 Plenary), <https://www.wassenaar.org/app/uploads/2019/consolidated/02End-Use-Assurances-Commonly-Used-Consolidated-Indicative-List.pdf>.

278. Wassenaar Arrangement Plenary, *Guidelines for Applicant Countries* (2014), <https://www.wassenaar.org/app/uploads/2019/consolidated/11Guidelines-for-Applicant-Countries.pdf>.

proposals on conventional arms and dual-use items in accordance with the above-mentioned best practice documents.²⁷⁹

E. *Old Wine in New Bottles?*

Today, the two distinctive Cold War camps have sunk into oblivion.²⁸⁰ The ideological divides in most parts of the world are seemingly less ominous compared to the Cold War years.²⁸¹ Still, even though the Wassenaar Arrangement is supposed to be a non-ideological framework promoting world peace, the Wassenaar Arrangement's primary focus is preventing unchecked military buildup and maintaining geopolitical balance.²⁸² To that end, it must be admitted that the Wassenaar Arrangement has indeed constructed a technically well-developed treasure trove toolkit for coping with, or at least nipping in the bud, any ostensible dangers on cross-border export control scenarios regarding conventional arms and dual-use items.²⁸³

In this respect, three essential factors have been highlighted as contributing to the Wassenaar Arrangement's regiment: (1) security concerns, (2) "self-interested bargaining among states," and (3) "norms of appropriate state behavior in the international community."²⁸⁴ In contrast, some of the Wassenaar Arrangement member nations might strongly favor more liberalized and democratized international trade practices.²⁸⁵ Some prospective export or re-export control systems may be somewhat relaxed when they should be strengthened.²⁸⁶ For instance, export or re-export control

279. See *supra* Section II.D. (identifying documents that outline the Wassenaar best practices).

280. See Blakemore, *supra* note 5.

281. See *id.*

282. See *About Us*, *supra* note 26.

283. See *id.*

284. Lipson, *supra* note 17, at 33.

285. See Cupitt & Grillot, *supra* note 57, at 387.

286. See *id.*

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systems proven to be non-military related or have member nations that act in a righteous or justifiable fashion could be the grounds for relaxation.²⁸⁷

Nevertheless, while replacing COCOM with a new model, such as the Wassenaar Arrangement, it is not necessarily putting old wine into new bottles; the Arrangement lacks the full authority to ensure enforcement.²⁸⁸ For that reason, replacing COCOM has been challenging.²⁸⁹ This is so, even though, from a technical perspective, the Wassenaar Arrangement has various sound instruments for imposing regulations free from prejudice or favoritism,²⁹⁰ unlike the ideological motivations of surviving the Cold War era behind COCOM.²⁹¹ Be that as it may, the Wassenaar Arrangement is, in essence, still a forum-style international round table unquestionably pushing determinant law enforcement prerogatives as far as it can.²⁹²

Though the Wassenaar Arrangement takes the form of a multilateral coalition that prevents or curbs unjustified arms proliferation, it cannot do anything adequately substantive besides creating a series of self-made technical specifications and thresholds.²⁹³ The Wassenaar Arrangement also promotes best practices among its member nations and, consequently, the Wassenaar Arrangement promotes best practices and uniformity among its member nations.²⁹⁴ Regardless of engaging in this type of promotional and organizational work as an export control mechanism that lacks enforcement capabilities, the Wassenaar Arrangement is susceptible to

287. *See id.*

288. Shehadeh, *supra* note 42, at 297–98.

289. *See id.*

290. *See supra* Sections II.A, II.B, II.C, II.D.

291. Oettinger, *supra* note 152, at 559–66.

292. *See* Anthony, *supra* note 66; Austin Lewis, The Effectiveness of the Wassenaar Arrangement as the Non-Proliferation Regime for Conventional Weapons 21–22 (May 2015) (B.S. thesis, Stanford University).

293. Shehadeh, *supra* note 42, at 297; *see* Ruohonen & Kimppa, *supra* note 242, at 169.

294. *See* Shehadeh, *supra* note 42, at 297–300, 313.

ridicule due to its malleable nature.²⁹⁵ Put simply, even though the Wassenaar Arrangement appears to be a strong transitional entity, it may be described as a tiger without teeth, at least at the present moment.²⁹⁶

III. THE WASSENAAR ARRANGEMENT: A REPETITIOUS MECHANISM?

Apart from the Wassenaar Arrangement, four other important export control regimes are nipping on the heels of one another, namely, the Zangger Committee, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime.²⁹⁷ Comparing these export control mechanisms may elicit suspicion that some of them could be repetitive compared to the Wassenaar Arrangement.²⁹⁸ In the event that such skepticism holds true, such unnecessary redundancies are ameliorable by synthesizing and combining the mechanisms.

A. *Exploring Other Frameworks*

As a forum-style transnational alliance, the Wassenaar Arrangement stands apart from four other noteworthy multilateral export control frameworks.²⁹⁹ These frameworks are equally active in the international arena and include: (1) the Zangger Committee, (2) the Nuclear Suppliers Group, (3) the Australia Group, and (4) the Missile Technology Control Regime.³⁰⁰ These frameworks were launched in 1971, 1974, 1985, and 1987, respectively.³⁰¹

295. *See id.*

296. *See id.*

297. *See OLSON, supra* note 27, at 21.

298. *See generally id.* at 22–25 (discussing all five Major Multilateral Export Control Regimes).

299. *See id.* at 21–25.

300. *See id.*

301. *Id.* at 21.

The Zangger Committee and Nuclear Suppliers Group focus on nuclear weapons and the associated supplies.³⁰² The Australia Group is principally concerned with chemical and biological weapons.³⁰³ The Missile Technology Control Regime is chiefly missiles-related.³⁰⁴ Similar to the Wassenaar Arrangement, these four peer schemes also function on a non-compulsory basis and their implementation process is purely governed by member nations' domestic laws and policies.³⁰⁵ The schemes do not include regime-based mandatory and legally binding instruments to achieve compliance uniformity and exercise sufficient enforcement power among member nations.³⁰⁶

In fact, long after the Zangger Committee, Nuclear Suppliers Group, Australia Group, Missile Technology Control Regime, and Wassenaar Arrangement came into being, the U.N. Security Council passed Resolution 1540 in 2004.³⁰⁷ U.N. Resolution 1540 was aimed at "committing [U.N.] member states to combat the proliferation of nuclear, chemical, and biological weapons and their delivery mechanisms"³⁰⁸ and additionally preventing "non-State actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems" by relying on U.N. member nations for assistance.³⁰⁹ The promulgation of U.N. Resolution 1540 did not extend to all the areas that the Zangger Committee, Nuclear Suppliers Group, Australia Group, Missile Technology Control Regime, and Wassenaar Arrangement oversee.³¹⁰ However, this was the

302. *Id.* at 21–23.

303. *Id.* at 23–24.

304. *Id.* at 25.

305. *Id.* at 21–25.

306. *See id.*

307. *See id.* at 21; S.C. Res. 1540 (Apr. 28, 2004).

308. *See OLSON, supra* note 27, at 25.

309. *Id.* at 25–26.

310. *See id.* at 21–26 ("The primary obligation of UNSCR 1540 is the criminalization of the acquisition, possession, development, transport, transference of WMDs and their means of

U.N.'s first endeavor to accelerate the standardization of rules and regulations, such as controlling transfers of weapons of mass destruction, under the political clout of a seemingly vehemently authoritative supranational organization.³¹¹

Unfortunately, the ramifications brought about by such U.N. efforts were short-lived. In 2011, Resolution 1977—a subsequent pertinent U.N. resolution—only extended the mandate obtained under Resolution 1540 to April 25, 2021.³¹² A similar scenario to the aftermath of Resolution 1540 seems to be circling back, presently epitomized by the original co-existence of the Zangger Committee, Nuclear Suppliers Group, Australia Group, Missile Technology Control Regime, and Wassenaar Arrangement, thus, maintaining the status quo as a group of outwardly unconnected, “closed-membership organizations,” without direct U.N. involvement.³¹³ In other words, these five multilateral export control mechanisms will operate independently and wade through unforeseen complications without any U.N. resolutions to rely upon, let alone any specific U.N. agency responsible for supervising their respective lines, operations, and potential discords.³¹⁴

Under such circumstances, it is important to note any likelihood of repetitive or redundant elements between the Wassenaar Arrangement and its other four export control counterparts.³¹⁵ Consequently, a more viable theory must be considered in order to determine whether a more rational next step should be initiated. First and foremost, the current

delivery and associated materials, and to provide for accounting and security surrounding such items, as well as to ensure related border and export controls.”).

311. See Matthew Fuhrmann, *Making 1540 Work: Achieving Universal Compliance with Nonproliferation Export Control Standards*, 169 *WORLD AFFS.* 143, 143 (2007).

312. Press Release, Security Council, Security Council Extends Mandate of 1540 Committee for 10 Years, Unanimously Adopting Resolution 1977, U.N. Press Release SC/10228 (Apr. 20, 2011); see also OLSON, *supra* note 27, at 26.

313. Fuhrmann, *supra* note 311, at 143; see also OLSON, *supra* note 27, at 21 (listing all five Major Multilateral Export Control Regimes).

314. Fuhrmann, *supra* note 311, at 143; see also OLSON, *supra* note 27, at 21 (listing all five Major Multilateral Export Control Regimes).

315. See generally OLSON, *supra* note 27, at 22–25 (discussing all five Major Multilateral Export Control Regimes).

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necessity of the Wassenaar Arrangement should be appraised, compared to the Zangger Committee, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime.³¹⁶ Simply put, the Wassenaar Arrangement may be more than necessary, in essence and in form, as it plausibly overlaps, to a certain degree, with any of its four counterparts.³¹⁷ It may be argued that the Wassenaar Arrangement, together with the Zangger Committee, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime, each play different roles, albeit with some redundant elements between them.³¹⁸ Still, it is virtually indisputable that none of the five frameworks currently possess an effective enforcement authority over member nations' domestic jurisdictions.³¹⁹ A lack of a proper enforcement mechanism is the same dilemma afflicting all the mainstream export control mechanisms in the world, not something merely affecting the Wassenaar Arrangement alone.³²⁰

B. *The Zangger Committee Seems to Make No Case About Comparability*

The core business of the Zangger Committee looks different from the Wassenaar Arrangement.³²¹ Members of the Zangger Committee are tasked with preventing and containing proliferation of nuclear supplies, unlike members of the

316. See generally *id.*

317. See *id.*

318. See *id.*

319. See *id.* at 21 ("All arrangements are voluntary and subject to national laws and regulations."); discussion *infra* Sections III.B, III.C, III.D, III.E.

320. See, e.g., Fuhrmann, *supra* note 311, at 144 ("Robust enforcement requires significant training, resources, and due diligence among government personnel. Consequently, very few countries are able or willing to sustain an effective system for export control enforcement."); ANN CALVARESI-BARR, U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-1135T, EXPORT CONTROLS: VULNERABILITIES AND INEFFICIENCIES UNDERMINE SYSTEM'S ABILITY TO PROTECT U.S. INTERESTS 1 (2007) ("State and Commerce have yet to clearly determine which department controls the export of certain sensitive items.").

321. See OLSON, *supra* note 27, at 22, 24.

Wassenaar Arrangement who deal with conventional arms and dual-use items.³²²

Established in 1971 and named after the then chairperson Claude Zangger, the Zangger Committee tends to commit its member nations to adhere to the relevant requirements set forth in the Nuclear Non-Proliferation Treaty (NPT)³²³ regarding safeguards and cross-border transfer controls.³²⁴

The Zangger Committee member nations are expected to exercise their rights and perform their duties in compliance with the NPT, which has laid out the obligatory foundation for controlling nuclear weapons.³²⁵ The NPT's objective is "to prevent the spread of nuclear weapons and weapons technology, promote cooperation in peaceful uses of nuclear energy, and further the goal of nuclear disarmament and general and complete disarmament."³²⁶ Under the NPT, the nuclear-weapon treaty signatories pledge not to supply nuclear weapons or related devices to any receiver;³²⁷ in contrast, the non-nuclear weapons treaty signatories agree not to receive any transferred nuclear weapons or associated supplies.³²⁸ The NPT

322. *Zangger Committee (ZAC)*, NUCLEAR THREAT INITIATIVE, <https://www.nti.org/learn/treaties-and-regimes/zangger-committee-zac/> (last visited Nov. 1, 2022) [hereinafter *Zangger Committee (ZAC)*, NUCLEAR THREAT INITIATIVE]; OLSON, *supra* note 27, at 22, 24.

323. Treaty on the Non-Proliferation of Nuclear Weapons [NPT], *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (entered into force Mar. 5, 1970).

324. *Zangger Committee (ZAC)*, NUCLEAR THREAT INITIATIVE, *supra* note 322; *Zangger Committee (ZAC)*, FED'N OF AM. SCIENTISTS, <https://nuke.fas.org/control/zangger/> (last visited Nov. 1, 2022) [hereinafter *Zangger Committee (ZAC)*, FED'N OF AM. SCIENTISTS]; see Schmidt, *supra* note 62, at 38–39. The Zangger Committee now has thirty-nine member nations: Argentina, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, the U.K., and the U.S. CTR. FOR NONPROLIFERATION STUD., MEMBERSHIP OF NONPROLIFERATION EXPORT CONTROL REGIMES, HCOC and PSI (2015), https://www.nti.org/documents/540/apmnecr_sQhT3r.pdf (Oct. 26, 2015); see *Zangger Committee (ZAC)*, NUCLEAR THREAT INITIATIVE, *supra* note 322.

325. See Schmidt, *supra* note 62, at 38, 41–42.

326. *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, U.N.: OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/wmd/nuclear/npt/> (last visited Nov. 1, 2022).

327. Treaty on the Non-proliferation of Nuclear Weapons, *supra* note 323, 729 U.N.T.S. at 171.

328. *Id.*

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proscribes transfers of “source or special fissionable material” and “equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by . . . Article [III].”³²⁹ Non-nuclear weapon parties to the treaty vow to only adopt

safeguards as set forth in an agreement . . . with the International Atomic Energy Agency [(IAEA)] in accordance with the Statute of the International Atomic Energy Agency and the Agency’s safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under [the NPT] with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.³³⁰

To tame the spread of nuclear weapons and related key technologies, the Zangger Committee uses a Trigger List that is published and updated from time to time by the Zangger Committee.³³¹ This Trigger List is composed of “items that would ‘trigger’ a requirement for safeguards and guidelines . . . governing the export of those items to [any non-nuclear weapon state] not [a] party to the NPT.”³³² Under the Trigger List approach, exporting or re-exporting any listed items to non-nuclear weapon states that are not parties to the NPT, triggers the IAEA safeguards mechanism.³³³ Then, three supply criteria must be met: (1) “a non-explosive use assurance,” (2) “an IAEA safeguards requirement,” and (3) “a re-transfer

329. *Id.* at 172.

330. *Id.*

331. See Zangger Committee (ZAC), NUCLEAR THREAT INITIATIVE, *supra* note 322; see also Schmidt, *supra* note 62, at 39–40.

332. Zangger Committee (ZAC), NUCLEAR THREAT INITIATIVE, *supra* note 322.

333. *Id.*

provision that requires the receiving state to apply the same conditions when re-exporting these items.”³³⁴

In terms of enforcement power, the Zangger Committee is relatively similar to the Wassenaar Arrangement.³³⁵ An international treaty did not establish the Zangger Committee; consequently, its recommended guidelines are not binding on member nations as the Committee lacks enforcement authority.³³⁶ Thus, any anticipated enforcement will entirely depend on the domestic legal system administered *ex parte* by the Zangger Committee’s member nations.³³⁷ Despite these few similarities, the Zangger Committee does not have much in common with the Wassenaar Arrangement, either in form, substance, or application.³³⁸

C. *The Nuclear Suppliers Group Might Deserve Further Probing*

Similar to the Zangger Committee, the Nuclear Suppliers Group (NSG) is nuclear-centered.³³⁹ Unlike the Zangger Committee and similar to the Wassenaar Arrangement, the NSG also has a “dual-use items” guideline, though this guideline focuses on nuclear-related items only.³⁴⁰

Historically, the NSG was created in 1974 “in response to the Indian nuclear test” conducted around that period, and it held its first meeting in London in 1975.³⁴¹ The NSG member nations

334. *Id.*

335. See MARK HIBBS, CARNEGIE ENDOWMENT FOR INT’L PEACE, *THE FUTURE OF THE NUCLEAR SUPPLIERS GROUP* 39 (2011).

336. See *id.* at 39; Schmidt, *supra* note 62, at 38.

337. See Schmidt, *supra* note 62, at 38–39.

338. See OLSON, *supra* note 27, at 22, 24; Samuel A. Evans, *Technological Ambiguity & the Wassenaar Arrangement* 129–30 (2009) (Ph.D. dissertation, University of Oxford).

339. See Evans, *supra* note 338, at 129.

340. See OLSON, *supra* note 27, at 22, 24; see also *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, *supra* note 1; Kyle Mathis, *The Nuclear Supplier Group: Problems and Solutions*, 4 ALA. C.R. & C.L. L. REV. 169, 172–73, 176 (2013).

341. *Nuclear Suppliers Group*, INSTAPEDIA, <https://www.insightsonindia.com/science-technology/nuclear-technology/nuclear-suppliers-group/> (last visited Nov. 1, 2022). The NSG presently has forty-eight member nations: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland,

may become nuclear suppliers when necessary, solidifying “the non-proliferation of nuclear weapons” as the top priority of the NSG.³⁴²

In general, the NSG requires its member nations to follow two sets of guidelines produced for the purpose of controlling “nuclear exports and nuclear-related exports.”³⁴³ The first set of Guidelines relates to “the export of items that are especially designed or prepared for nuclear use,” principally covering: (1) nuclear material; (2) “nuclear reactors and equipment”; (3) “non-nuclear material for reactors”; (4) “plants and equipment for the reprocessing, enrichment, and conversion of nuclear material and for fuel fabrication and heavy water production”; and (5) “technology (including software) associated with each of the above items.”³⁴⁴ The second set is designed to manage “the export of nuclear-related dual-use items and technologies, that is, items that can make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity, but that have non-nuclear uses as well, for example in industry.”³⁴⁵ The two sets of guidelines are compatible with a number of associated nuclear nonproliferation treaties, such as

France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Rep. of Korea, Russia, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, U.K., and U.S. *Participants*, NUCLEAR SUPPLIERS GRP., <https://www.nuclearsuppliersgroup.org/en/participants1> (last visited Nov. 1, 2022).

342. See *About the NSG*, NUCLEAR SUPPLIERS GRP., <https://www.nuclearsuppliersgroup.org/en/about-nsg> (last visited Nov. 1, 2022).

343. *Id.*

344. Int’l Atomic Energy Agency [IAEA], *Communication Received from the Permanent Mission of the Republic of Kazakhstan to the International Atomic Energy Agency on Behalf of the Participating Governments of the Nuclear Suppliers Group*, at 1, IAEA Doc. INFCIRC/539/Rev.7 (Nov. 5, 2019); NPT, *supra* note 323; Treaty for the Prohibition of Nuclear Weapons in Latin America [Treaty of Tlatelolco], *opened for signature* Feb. 14, 1968, 634 U.N.T.S. 281 (entered into force Apr. 22, 1968); South Pacific Nuclear Free Zone Treaty [Treaty of Rarotonga], *opened for signature* Aug. 6, 1985, 1445 U.N.T.S. 177 (entered into force Dec. 11, 1986); The African Nuclear-Weapon-Free Zone Treaty [Pelindaba Treaty], *opened for signature* Apr. 12, 1996, 35 I.L.M. 698 (entered into force July 15, 2009); Treaty on the Southeast Asia Nuclear Weapon-Free Zone [Treaty of Bangkok], Dec. 15, 1995, 1981 U.N.T.S. 129 (entered into force Mar. 27, 1997); Treaty on a Nuclear-Weapon-Free Zone in Central Asia [Treaty of Semipalatinsk], Sept. 8, 2006, 2970 U.N.T.S. 91 (entered into force Mar. 21, 2009).

345. *Id.*

the NPT, Treaty of Tlatelolco relating to Latin America and the Caribbean, Treaty of Rarotonga regarding the South Pacific Nuclear-Free Zone, Treaty of Pelindaba pertinent to the African Nuclear-Weapon-Free Zone, Treaty of Bangkok pertaining to the Southeast Asia Nuclear-Weapon-Free Zone, and Treaty of Semipalatinsk concerning the Central Asian Nuclear-Weapon-Free Zone.³⁴⁶

In principle, the NSG guidelines apply to arms transfers made to non-nuclear weapon states.³⁴⁷ The guidelines apply even if the state is not a party to the NPT as long as the transfers are lawful, conducive to peaceful nuclear cooperation, and do not contravene global nuclear non-proliferation measures.³⁴⁸ As in the case of the Wassenaar Arrangement, the NSG guidelines can only be enforced by NSG member nations individually, based on their domestic laws promulgated for this very purpose.³⁴⁹ Similar to the Wassenaar Arrangement, the NSG is not an international treaty-based framework, and its guidelines are persuasive rather than binding upon its member nations.³⁵⁰

On the other hand, much like the Zangger Committee, the NSG employs a similar trigger-list approach.³⁵¹ The NSG Trigger List makes sure that nuclear transfers are only for peaceful use, and will not result in “unsafeguarded nuclear fuel cycle or nuclear explosive activities.”³⁵² Furthermore, as mentioned previously, it must be noted that the NSG guidelines cover dual-use items, comprised of matters on “transfers of nuclear-related dual-use equipment, materials, software, and related technology,”³⁵³ whereas the scope of the Zangger Committee’s dual-use items list has not expanded into that

346. *Id.*

347. *See id.* at 1–2.

348. *See id.*

349. *See id.* at 10; Shehadeh, *supra* note 42, at 273.

350. IAEA, *supra* note 344, at 1, 3; Shehadeh, *supra* note 42, at 273; OLSON, *supra* note 27, at 21, 24.

351. *See* IAEA, *supra* note 344, at 4.

352. *Id.* at 3.

353. *Guidelines*, NUCLEAR SUPPLIERS GRP., <https://www.nuclearsuppliersgroup.org/en/guidelines> (last visited Nov. 1, 2022).

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sphere.³⁵⁴ Specifically, the dual-use items covered within the NSG are mostly nuclear-focused, and cover a number of categories such as industrial equipment, materials, “uranium isotope separation equipment and components (other than trigger list items),” “heavy water production plant related equipment (other than trigger list items),” “test and measurement equipment for the development of nuclear explosive devices,” and “components for nuclear explosive devices.”³⁵⁵

The Wassenaar Arrangement’s List of Dual-Use Goods and Technologies and the Munitions List do not encompass the nuclear-related items the NSG covers.³⁵⁶ The Wassenaar Arrangement’s two lists are exclusively concerned with conventional items rather than anything nuclear-related, either for military purposes or otherwise.³⁵⁷ However, the two Wassenaar Arrangement lists regulate a handful of sensitive items, such as radioactive materials, chemical warfare agents, and biological agents.³⁵⁸ Determining the possibility of any connection with, or bearing on, upholding the cardinal principle of nuclear nonproliferation rests upon a scientifically pinpointed and discipline-based examination, which is perhaps beyond a layperson’s capabilities.³⁵⁹

Apart from that, a valid claim that the Wassenaar Arrangement seems to overlap with the NSG, to any saliently important extent, can hardly be established.³⁶⁰

D. *The Australia Group Could Be Relevant in Terms of Comparability*

Unlike the Zangger Committee and the NSG, the Australia Group (AG) is an export control alliance that is not

354. See IAEA, *supra* note 344, at 4.

355. *Guidelines*, *supra* note 353.

356. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31.

357. See *id.*

358. *Id.* at 6, 188.

359. See *id.* at 1.

360. See *supra* Part II, Section III.C.

nuclear-focused but rather concentrates on chemical and biological weapons.³⁶¹ The AG attempts to synchronize domestic export control laws of its member nations to bridle any perilous increase of such types of lethal weapons.³⁶² Incidentally, several items enumerated in the Munitions List of the Wassenaar Arrangement could pertain to some relevant elements commonly identifiable in this area; whether they are remotely relevant or not will rest upon undergoing a carefully administered scientific assessment.³⁶³

Regarding the establishment of the AG seeking to rein in the proliferation of chemical and biological weapons, the origin of the AG could be traced back to the Iran-Iraq War in the 1980s.³⁶⁴ At that point in time, Iraq was suspected of manufacturing chemical weapons, and the outcome of the UN's corresponding reconnaissance evidentially suggested that Iraq did commit such heinous crimes based on the materials it acquired from international sources, thus contravening the 1925 Geneva Protocol.³⁶⁵ To prevent this sort of event from happening again, a number of countries put forward their national export licensing measures "to ensure that their industries were not, either purposely or inadvertently, assisting other States to acquire and use such [chemical] weapons in violation of

361. See *Australia Group (AG)*, NUCLEAR THREAT INITIATIVE, <https://www.nti.org/learn/treaties-and-regimes/australia-group-ag/> (last visited Nov. 1, 2022). The AG has forty-three members at present, including Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the U.K. and the U.S. *Id.*; see also *Zangger Committee (ZAC)*, FED'N OF AM. SCIENTISTS, *supra* note 323 ("The Zangger Committee was formed in the early 1970s to establish guidelines for implementing the export control provisions of the Nuclear Nonproliferation Treaty (Article III(2))."); IAEA, *supra* note 344, at 1 ("The aim of the NSG Guidelines is to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices, and that international trade and cooperation in the nuclear field is not hindered unjustly in the process.").

362. See *Australia Group (AG)*, *supra* note 361; OLSON, *supra* note 27, at 23–24.

363. See OLSON, *supra* note 27, at 23–24; *Founding Documents*, *supra* note 29, at 188–90.

364. See *Australia Group (AG)*, *supra* note 361.

365. See *id.*

international law and norms.”³⁶⁶ To address the issue of achieving “uniformity in scope or application,” Australia took the lead in an attempt to bring into harmony those countries’ respective export licensing measures.³⁶⁷ Those countries held their first meeting in Brussels in 1985, and they were designated “the Australia Group,” in order to illustrate Australia’s instrumental initial leadership.³⁶⁸ The export controls exercised by the AG subsequently started to cover biological weapons in 1990 because of the growing proof demonstrating transfers of dual-use items to troublesome biological weapons programs.³⁶⁹

All participating AG countries are signatories to the Chemical Weapons Convention, i.e., the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,³⁷⁰ and to the Biological and Toxin Weapons Convention, i.e., the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.³⁷⁰ The participating parties to the Chemical Weapons Convention must “chemically disarm by destroying any stockpiles of chemical weapons they may hold and any facilities which produced them, as well as any chemical weapons they abandoned on the territory of other [participating parties] in the past,” and they must also “create a verification regime for certain toxic chemicals and their precursors . . . to ensure that such chemicals are only used for purposes not prohibited under the Convention.”³⁷¹ Any

366. *Id.*

367. *Id.*

368. *See id.*

369. *See id.*

370. *See id.*; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, *opened for signature* Jan. 13, 1993, 1974 U.N.T.S. 45 (entered into force Apr. 29, 1997) [hereinafter CWC]; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, *opened for signature* Apr. 10, 1972, 1015 U.N.T.S. 163 (entered into force Mar. 26, 1975) [hereinafter BWC].

371. *Chemical Weapons Convention*, ORGANISATION FOR THE PROHIBITION OF CHEM. WEAPONS, <https://www.opcw.org/chemical-weapons-convention> (last visited Nov. 1, 2022); *see also* CWC, *supra* note 370, at 317–19, 325–27.

participating party to the Chemical Weapons Convention that is skeptical of another party's treaty compliance can demand an unconditional surprise inspection, and the suspected party will be denied any right to decline such an inspection.³⁷² The Biological Weapons Convention is known to be "the first multilateral disarmament treaty banning an entire category of weapons of mass destruction" and has achieved nearly a universal membership status as most of the countries are signatories.³⁷³

Under these circumstances, the AG's goal is to curb the proliferation of chemical and biological weapons by targeting chemical precursors, chemical and biological weapons equipment, and biological weapons agents and organisms.³⁷⁴ AG members may resort to licensing measures in connection with more than sixty chemical weapons precursors.³⁷⁵ It is worth exploring how these Committees are similar and dissimilar. Like the Zangger Committee, NSG, and Wassenaar Arrangement, the AG also has promulgated its own control lists as a sort of blueprint.³⁷⁶ However, unlike the Zangger Committee and the NSG, but similar to the Wassenaar Arrangement, the AG's control lists are known as Common Control Lists.³⁷⁷ The AG currently has six Common Control Lists in relation to the following: "1) CW [(chemical weapons)] precursors; 2) dual-use chemical manufacturing facilities and equipment and related technology; 3) dual-use biological equipment; 4) biological agents; 5) plant pathogens; [and] 6) animal pathogens."³⁷⁸ On the other hand, and almost the same as the Zangger Committee, NSG, and Wassenaar Arrangement, the AG member nations cooperate and share information but

372. *Chemical Weapons Convention*, *supra* note 371.

373. *Biological Weapons Convention*, U.N.: OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/biological-weapons> (last visited Nov. 1, 2022).

374. *See Australia Group (AG)*, *supra* note 361.

375. *See id.*

376. *See id.*; OLSON, *supra* note 27, at 22–24.

377. *See Australia Group (AG)*, *supra* note 361; OLSON, *supra* note 27, at 22–24; *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31.

378. *Australia Group (AG)*, *supra* note 361.

do not assume any legal obligations under the AG's general framework, and their respective control measures are totally of a domestic character.³⁷⁹ Nevertheless, whenever AG members need to check on chemical or biological weapons movements and implement domestic export control measures, they may attempt to achieve outcomes aligning with typical rationales rolled out by the AG as their specific membership-based barometers.³⁸⁰ These rationales include: "1) the measures should be effective in impeding the production of chemical and biological weapons; 2) [the measures] should be reasonably easy and economical to implement, and practical; and 3) [the measures] should not impede the normal trade of materials and equipment used for legitimate purposes."³⁸¹

Notably, the Wassenaar Arrangement's Munitions List contains target items, which are plausibly related to cases that must be reported to the AG, such as "[c]hemical agents, 'biological agents,' 'riot control agents,' radioactive materials, related equipment, [and] components and materials."³⁸² Pursuant to the Wassenaar Arrangement's Munitions List, these items may encompass: (1) "[b]iological agents' or radioactive materials selected or modified to increase their effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment"; (2) "[c]hemical warfare (CW) agents," involving CW nerve agents, CW vesicant agents, CW incapacitating agents, and CW defoliants; (3) "CW binary precursors and key precursors"; (4) "[r]iot control agents,' active constituent chemicals and combinations thereof"; and (5) "[e]quipment, specially designed or modified for military use, designed or modified for the dissemination of . . . [the] materials [or] agents" in relation to the above groups (1), (2) and (4), or CW agents composed of

379. See *id.*; *supra* notes 249–52, 335–37, 349, 362 and accompanying text; OLSON, *supra* note 27, at 22–24.

380. See *Australia Group (AG)*, *supra* note 361.

381. *Id.*

382. *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 188.

precursors in connection with the above group (3)] “and specially designed components.”³⁸³

In contrast, the Wassenaar Arrangement’s List of Dual-Use Goods and Technologies does not contain significant items warranting the AG’s scrutiny.³⁸⁴ The Dual-Use Goods and Technologies list includes items that can defend against the use of chemical and biological weapons, such as “protective and detection equipment and components, not specially designed for military use[,]” such as “biological agents,” “radioactive materials,” “chemical warfare (CW) agents,” and “riot control agents.”³⁸⁵ The Wassenaar Arrangement’s Munitions List also consists of certain defensive apparatuses, such as (1) “[p]rotective and decontamination equipment, specially designed or modified for military use, components and chemical mixtures”; (2) “[e]quipment, specially designed or modified for military use designed or modified for the detection or identification of materials” relating to “chemical agents, ‘biological agents,’ ‘riot control agents,’ [and] radioactive materials”; (3) “[b]iopolymers’ specially designed or processed for the detection or identification of CW agents . . . and the cultures of specific cells used to produce them”; and (4) “[b]iocatalysts’ for the decontamination or degradation of CW agents, and biological systems therefor.”³⁸⁶

Therefore, the relationship between the AG and the Wassenaar Arrangement could be surmised as somewhat relevant, thinly or otherwise.

E. *The Missile Technology Control Regime May Warrant a Deeper Analysis*

As another well-known export control scheme co-existing with the Zangger Committee, NSG, AG, and Wassenaar

383. *Id.* at 188–89.

384. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 5; OLSON, *supra* note 27, at 23.

385. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 5.

386. *Id.* at 188–90.

Arrangement, the Missile Technology Control Regime (MTCR) focuses on “missiles, unmanned air vehicles, and related technolog[ies].”³⁸⁷ Under the MTCR, missiles may cover “ballistic missiles, space launch vehicles (SLVs) and sounding rockets.”³⁸⁸ Unmanned air vehicles (UAVs) are meant to embrace “cruise missiles, drones, UAVs, and remotely piloted vehicles (RPVs).”³⁸⁹

More concretely, the MTCR’s objective “is to limit the risks of proliferation of weapons of mass destruction (i.e., nuclear, chemical and biological weapons) by controlling the transfers that could make a contribution to delivery systems (other than manned aircraft) for such weapons.”³⁹⁰ Hence, the MTCR’s areas of focus are comparatively wide, almost certainly to overlap with either the Zangger Committee, NSG, AG, or Wassenaar Arrangement.³⁹¹

Like the Zangger Committee, the NSG, the AG, and the Wassenaar Arrangement, the MTCR is not an international binding treaty; however, since the MTCR is an unofficial association, member nations must domestically implement and enforce its guidelines.³⁹² China, India, Israel, Romania, and Slovakia, though not yet MTCR members, have stated that they would act in accordance with the MTCR guidelines.³⁹³

As a whole, the MTCR framework is principally comprised of MTCR Guidelines and the Equipment, Software and

387. ACDA Fact Sheet on Missile Technology Control Regime, FED’N OF AM. SCIENTISTS (Nov. 15, 1996), <http://nuke.fas.org/control/mtr/docs/961115-467070.htm>.

388. *Id.*

389. *Id.*

390. *Missile Technology Control Regime (MTCR)*, NUCLEAR THREAT INITIATIVE, <https://www.nti.org/education-center/treaties-and-regimes/missile-technology-control-regime-mtr/> (last visited Nov. 1, 2022).

391. *See id.*; OLSON, *supra* note 27, at 22–24 (stating the Zangger Committee focuses on nuclear supplies, the NSG focuses on nuclear weapons, the AG focuses on chemical and biological weapons, and the Wassenaar Arrangement focuses on conventional arms and dual-use items); *supra* pp. 97–99 (discussing Wassenaar’s Munitions list containing chemical and biological items).

392. *Missile Technology Control Regime (MTCR)*, *supra* note 390; *see supra* notes 249–52, 335–37, 349, 362.

393. *See Missile Technology Control Regime (MTCR)*, *supra* note 390.

Technology Annex.³⁹⁴ The MTCR Guidelines have put forward a set of comprehensive rules to guide its member nations and any non-member countries that follow the MTCR.³⁹⁵ The Equipment, Software and Technology Annex has been devised to facilitate export controls over the related MTCR items.³⁹⁶ The Annex contains Category I and Category II items, pertinent to “a broad range of equipment and technology, both military and dual-use, that are relevant to missile development, production, and operation.”³⁹⁷

Category I items include: (1) “complete rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned air vehicle systems (including cruise missiles systems, target and reconnaissance drones) with capabilities exceeding a 300km/500kg range/payload threshold”; and (2) “production facilities for such systems;” and (3) “major sub-systems including rocket stages, re-entry vehicles, rocket engines, guidance systems and warhead mechanisms.”³⁹⁸ Category II items comprise of: (1) “complete rocket systems (including ballistic missiles systems, space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones, and reconnaissance drones) not covered in [Category] I, capable of a maximum range equal to or greater than, 300km”; and (2) “a wide range of equipment, material, and technologies, most of which have uses other than for missiles capable of delivering [weapons of mass destruction].”³⁹⁹

In accordance with the nuclear-focused Zangger Committee, NSG, and AG, which concentrates on securing the non-proliferation of chemical and biological weapons, the MTCR

394. See *MTCR Guidelines and the Equipment, Software and Technology Annex*, MISSILE TECH. CONTROL REGIME, <https://mtcr.info/mtcr-guidelines/> (last visited Nov. 1, 2022).

395. *Id.*

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.*

focuses on missiles.⁴⁰⁰ Category 9, as shown in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies, markedly narrows its focus on aerospace and propulsion.⁴⁰¹ A number of items mentioned under Category 9 on the List of Dual-Use Goods and Technologies may deserve special heed, such as (1) "[s]pace launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, spacecraft on-board systems or equipment, terrestrial equipment, [and] air-launch platforms";⁴⁰² (2) "[s]ystems and components, specially designed for liquid rocket propulsion systems";⁴⁰³ (3) "[s]olid rocket propulsion systems";⁴⁰⁴ (4) "[c]omponents specially designed for solid rocket propulsion systems";⁴⁰⁵ (5) "[h]ybrid rocket propulsion systems";⁴⁰⁶ (6) "[s]pecially designed components, systems and structures, for launch vehicles, launch vehicle propulsion systems or 'spacecraft'";⁴⁰⁷ and (7) "'Unmanned Aerial Vehicles' ('UAVs'), unmanned 'airships,' related equipment and components."⁴⁰⁸

Lastly, the Munitions List of the Wassenaar Arrangement should not to be overlooked.⁴⁰⁹ In military parlance, the Wassenaar Arrangement's Munitions List contains certain sensitive items, which may connect the scope of such items and associated activities to the MTCR.⁴¹⁰ In this connection, the MTCR should oversee those items and associated activities aimed toward spotting irregularities.⁴¹¹ Those items indicated

400. See OLSON, *supra* note 27, at 22–23, 25.

401. *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 157–69.

402. *Id.* at 158 (internal quotation marks omitted).

403. *Id.* at 159.

404. *Id.*

405. *Id.* at 160.

406. *Id.*

407. *Id.*

408. *Id.* at 161.

409. See generally *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 181–213 (providing the Wassenaar Munitions List which includes some of the following items: firearms, ammunition, bombs and missiles, and firearm detection equipment).

410. See *id.*; *supra* notes 394–408 and accompanying text.

411. See *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 181–213; *supra* pp. 98–102.

by the Wassenaar Arrangement's Munitions List are not sparse and include: (1) rockets;⁴¹² (2) missiles;⁴¹³ (3) "Aircraft Missile Protection Systems (AMPS)";⁴¹⁴ (4) "[r]ecovery vehicles and vehicles for towing or transporting ammunition or weapon systems and associated load handling equipment;"⁴¹⁵ (5) "energetic materials" and pertinent matters, such as "propellants," "pyrotechnics," various fuels (including aircraft fuels);⁴¹⁶ (6) "[e]ngines and propulsion systems . . . specially designed for military use and components therefor specially designed for military use";⁴¹⁷ (7) "[n]uclear power generating equipment or propulsion equipment";⁴¹⁸ and (8) "Unmanned Aerial Vehicles."⁴¹⁹

In such a sense, the Wassenaar Arrangement and the MTCR may share some commonalities.

IV. AN EXCLUSIVE UNITED NATIONS FRAMEWORK: THE WAY FORWARD?

There may be a tendency to disregard the comparability of the Wassenaar Arrangement as a mainstream multilateral export control mechanism and its counterparts in the world, namely the Zangger Committee, the NSG, the Australia Group, and the Missile Technology Control Regime.⁴²⁰ However, all of these noteworthy global export control systems are, in effect, dropping into the lower end of the international mechanism hierarchy, as opposed to the traditional U.N. system which can

412. *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31, at 185.

413. *Id.*

414. *Id.*

415. *Id.* at 187.

416. *See id.* at 191, 193–95.

417. *Id.* at 200.

418. *Id.* at 201.

419. *Id.* at 202.

420. *See generally supra* Section III.A (discussing the frameworks in place in addition to the Wassenaar Arrangement).

be made exclusively or highly authoritative in any of its designated areas of competence.⁴²¹

Although the post-World War II and Cold War eras have long faded away, leaving the prior Soviet-led coalition completely shattered, the world is still ineluctably facing various geopolitical competition and potential crisis.⁴²² Consequently, this could be of huge significance to those organizations like the Wassenaar Arrangement having a go at holding back latent confrontations as a key global export control association.⁴²³ At any rate, many countries' current situations seem to be nothing short of their geopolitical adversaries to varying degrees.⁴²⁴ Moreover, their intensified contention, even though maybe not yet massively militarily at the moment, is no doubt stoking up fears of nerve-racking uncertainties of world peace and national security, the protection of which ought to be always underway.⁴²⁵

Economist Milton Friedman once remarked that economists are practically unanimously convinced that free trade "is one of the necessary conditions for growth and development."⁴²⁶ Even though COCOM and the Wassenaar Arrangement are trade-related, their fabrics, characteristics, and roles appear to be barely congruous with such an assertion.⁴²⁷ To be more specific, while the Cold War between the Western bloc and the Soviet bloc has elapsed, NATO, as a unique transatlantic alliance

421. See generally *supra* Section III.A (discussing the frameworks in place in addition to the Wassenaar Arrangement).

422. See *The Top Geopolitical Risks and Trends of 2022*, LUMINAE GRP. (Dec. 16, 2021), <https://www.luminaegroup.com/top-geopolitical-risks-2022>.

423. See *Wassenaar Arrangement at a Glance*, *supra* note 216 (stating the Wassenaar Arrangement consists of forty-two members who "exchange information on transfers of conventional weapons and dual-use goods and technologies).

424. See Geoffrey Gertz & Miles M. Evers, *Geoeconomic Competition: Will State Capitalism Win?*, WASH. Q., Summer 2020, at 117, 117–19.

425. See, e.g., Vladimir Isachenkov, Dasha Litvinova, Yuras Karmanau & Jim Heintz, *Russia Attacks Ukraine as Defiant Putin Warns US, NATO*, AP NEWS (Feb. 24, 2022), <https://apnews.com/article/russia-ukraine-europe-russia-moscow-kyiv-626a8c5ec22217bacb24ece60fac4fe1>.

426. SIMON LESTER, BRYAN MERCURIO, ARWEL DAVIES & KARA LEITNER, *WORLD TRADE LAW: TEXT, MATERIALS, AND COMMENTARY* 20–21 (2008) (internal quotation marks omitted).

427. See *supra* Parts I, II.

forged between the U.S. and its intimate Western allies against communist nations *en masse*, is not decomposed.⁴²⁸ Julie Garey analyzed NATO's chronic existence from "utilitarian and identity-based approaches."⁴²⁹ According to such an analysis, utilitarian views attach great importance to NATO's well-formalized, fast-responding system deployed to handle possible crises and severe dangers, which may encroach upon the safety of Western democracies at any time.⁴³⁰ Identity-based opinions ascribe NATO's continued presence to the fact that NATO partner countries have "a shared interest in the perpetuation of Western values and the rising importance of multilateralism to its members."⁴³¹ Julie Garey, therefore, argued that recklessly attempting to maneuver the marginalization or the abandonment of NATO could fall into the trap of jeopardizing pursuit of values important to American policymakers including norm proliferation and legitimation, and end up with lacerating the Western bloc's capabilities to build up and show its military muscles when necessary.⁴³²

Needless to say, the Cold War DNA is yet to extinguish.⁴³³ The idiosyncrasies of the world's balkanization appear to not be vanishing at this moment, if not becoming more distinct in a true sense.⁴³⁴ The U.S. and other NATO nations may once in a while feel quite uneasy about their possible conflicts of interest come across from time to time.⁴³⁵ However, those conflicts are, in essence, solvable problems between nations and human

428. North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

429. JULIE GAREY, *THE US ROLE IN NATO'S SURVIVAL AFTER THE COLD WAR* 181 (Mai'a K. Davis Cross ed., 2020).

430. *See id.*

431. *Id.*

432. *Id.* at 29–30.

433. *See* M.E. SAROTTE, *NOT ONE INCH: AMERICA, RUSSIA, AND THE MAKING OF POST-COLD WAR STALEMATE* 6 (2021).

434. *See id.*

435. WALLACE J. THIES, *WHY NATO ENDURES* 18 (2009); Lindsay Lloyd, *NATO: Still Relevant in a Dangerous World*, *THE CATALYST*, Summer 2019, <https://www.bushcenter.org/catalyst/global-challenges/lloyd-nato-still-relevant-in-a-dangerous-world.html>.

beings, which are unlikely to derogate fundamental ideologies commonly adhered to by NATO member nations.⁴³⁶ More significantly, all NATO partners are acting as staunch supporters, encouraging one another to defend a better Western backyard, preparing to fare together, sometimes at loggerheads with their current geopolitical contenders.⁴³⁷ To illustrate this, Russian Foreign Minister Sergey Lavrov commented cynically that “NATO now is a purely geopolitical project on colonizing the territory that became unclaimed after the dissolution of the Warsaw Pact [Organization] and the break-up of the Soviet Union.”⁴³⁸ Russia thus views any hypothetical endeavors made by NATO to expand further eastward as a political and military time bomb planted at the Kremlin’s door, grimly imperiling the integrity of Russian sovereignty.⁴³⁹

Further, NATO’s supply of weapons to Ukraine is overtly exacerbating the antagonism between Russia and the West; however, NATO member nations, such as Germany, do not hold the same stance on this challenging issue.⁴⁴⁰ Initially, people around the world were holding their breaths to see whether Russia would invade Ukraine and wage war.⁴⁴¹ First, Moscow piled up a sizable troop along the Ukrainian border, planning to urge Kiev to part ways with the West and backtrack to the old path of succumbing to the orchestration of the Kremlin.⁴⁴² It was then startling to note that Moscow had

436. See THIES, *supra* note 435; Lloyd, *supra* note 435.

437. See ANIKA BINNENDIJK & MIRANDA PRIEBE, AN ATTACK AGAINST THEM ALL? DRIVERS OF DECISIONS TO CONTRIBUTE TO NATO COLLECTIVE DEFENSE 3–4 (2019).

438. *NATO Exists as Geopolitical Body to Colonize Post-Warsaw Pact/Ex-USSR Nations, Says Lavrov*, TASS (Dec. 27, 2021, 8:54 AM), <https://tass.com/politics/1381481> (statement of Russian Foreign Minister Sergey Lavrov) [hereinafter *Geopolitical Body*].

439. See *id.*

440. Kieran Devine, *Why is Russia Worried About NATO - and What Does it Have to Do with Ukraine?*, SKY NEWS (Jan. 29, 2022, 8:33 PM), <https://news.sky.com/story/why-is-russia-worried-about-nato-and-what-does-it-have-to-do-with-ukraine-12526809>.

441. See Edith M. Lederer & Yuras Karmanau, *Ukraine ‘Calmly Preparing’ for the Worst as US-Russia Clash at UN*, MIL. TIMES (Jan. 31, 2022), <https://www.militarytimes.com/flashpoints/ukraine/2022/01/31/ukraine-calmly-preparing-for-the-worst-as-us-russia-clash-at-un/>.

442. Melissa De Witte, *Kremlin’s Unwillingness to Recognize Ukraine as a Sovereign State Has Resulted in Major Strategic Failure for Russia, Stanford Scholar Says*, STAN. NEWS (Jan. 6, 2022), <https://news.stanford.edu/2022/01/06/understanding-russia-ukraine-crisis/>.

officially recognized the status of independence of the People's Republics of Donetsk and Lugansk—in Ukraine's rebel-controlled Donbas region—as each declared their separation from Ukraine.⁴⁴³ Unfortunately, on February 24, 2022, Russian military forces started to attack Ukraine.⁴⁴⁴ The Russian President originally stated that Russia's military operation would only target eastern Ukraine, where the two separated People's Republics are located.⁴⁴⁵ Dmytro Kuleba, Ukraine's Foreign Minister, indicated that Russia's action amounted to “a full-scale invasion of Ukraine.”⁴⁴⁶ The Russia-Ukraine war has broken out at last and has become the center of the international community's attention, though no one can precisely foretell what sort of lasting impact such a war may have.⁴⁴⁷ On the other hand, due to the 1999 NATO bombing of the Chinese embassy in Belgrade, China pushed back against NATO's request to reprimand the Russian invasion.⁴⁴⁸

However, Russia seems to lack any desire to enter into a quick security guarantee with NATO.⁴⁴⁹ Instead, Russia seems to be looking to the U.S. to play a crucial part in curbing any possible geopolitical nightmare from uncontrollably spiraling in either Ukraine or Russia.⁴⁵⁰ As to the U.S., the withdrawal from Afghanistan enabled it to reallocate its limited resources to dealing with Russia and China by “reviving a Cold War posture, but with distinctly 21st century contours and

443. Vusala Abbasova, *Russia Recognizes Independence of Donetsk and Lugansk Despite Warnings*, CASPIAN NEWS (Feb. 22, 2022), <https://caspiannews.com/news-detail/russia-recognizes-independence-of-donetsk-and-lugansk-despite-warnings-2022-2-22-16/>.

444. Ctr. for Preventive Action, *Conflict in Ukraine*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (Oct. 20, 2022) [hereinafter *Conflict in Ukraine*].

445. *See id.*; Abbasova, *supra* note 443.

446. *Conflict in Ukraine*, *supra* note 444.

447. *See id.*; *see also* Vibhuti Sanchala, *Russia's Aggression in Ukraine Is Turning Point of Our History*, *Decries French President*, REPUBLICWORLD, <https://www.republicworld.com/world-news/russia-ukraine-crisis/russias-aggression-in-ukraine-is-turning-point-of-our-history-decries-french-president-articleshow.html> (Mar. 11, 2022, 9:47 PM).

448. William Langley, *China Rejects Nato Appeal to Condemn Invasion*, FIN. TIMES (Mar. 17, 2022, 2:32 PM), <https://www.ft.com/content/c4f7b712-0ef7-4003-a89d-1ee058f897bb>.

449. *Geopolitical Body*, *supra* note 438.

450. *See id.*

challenges.”⁴⁵¹ Equally important, the U.S. must be careful not to underestimate the fatality of a geopolitical backlash in the energy fields, which could arise from global climate change.⁴⁵² The U.S. must also revitalize its dwindling influence in the Middle East and Central Asia, which are traditionally strategic strongholds that world powers have scrambled to control.⁴⁵³

According to the statements issued by the U.S. Department of State, “[t]he United States has long sought a full and constructive relationship with Russia,”⁴⁵⁴ and “supported Russia’s integration into European and global institutions and a deepened bilateral partnership in security cooperation to reinforce the foundations of stability and predictability.”⁴⁵⁵ Nevertheless, the U.S. appears furious at what Russia has done over the years “to undermine core institutions of the West, such as NATO and the EU, and to weaken faith in the democratic and free-market system.”⁴⁵⁶ The U.S., therefore, aspires to stand together with its close allies in order to dampen any of Russia’s likely unlawful intrusions.⁴⁵⁷ With respect to core national strength, as Dmitry Stefanovich commented, the two countries, at least presently, have “no parity . . . in terms of conventional warfare, and there can hardly be any global parity, given the difference in economic weight, scientific and technical potential and the size and structure of respective alliances.”⁴⁵⁸

Russia’s military visibility scatters over a handful of former Soviet territories, now sovereign states, Armenia, Tajikistan, and Kyrgyzstan, as well as the unrecognized breakaway

451. *The Top Geopolitical Risks and Trends of 2022*, *supra* note 422.

452. *See id.*

453. *See id.*

454. BUREAU OF EUR. & EURASIAN AFFS., U.S. DEP’T OF STATE, BILATERAL RELATIONS FACT SHEET: U.S. RELATIONS WITH RUSSIA (2021), <https://www.state.gov/u-s-relations-with-russia/>.

455. *Id.*

456. *Id.*

457. *Id.*

458. Alexey Gryazev, *The Last War: How a US-Russia Conflict Would Play Out*, RUSS. TODAY (Dec. 29, 2021, 2:57 PM), <https://www.rt.com/russia/544608-last-war-in-human-history/> (Dmitry Stefanovich is a research fellow at the Primakov Institute of World Economy and International Relations).

territories under Russia's sphere of influence Abkhazia, South Ossetia, and Transnistria.⁴⁵⁹ The U.S., however, is a different story. Apart from its NATO partners, the U.S. has other allies around the world as well.⁴⁶⁰ AUKUS, a newly established "trilateral security partnership between Australia, the United Kingdom, and the United States," is a typical example in this regard.⁴⁶¹ It is Australia's belief that, under today's circumstances, AUKUS actually expands Australia's endeavors "to build a network of international partnerships—such as with ASEAN, [its] Pacific family, Five Eyes partners and like-minded partners in the region, like the Quad."⁴⁶² AUKUS will specifically concentrate on strengthening cooperation in the areas of "cyber capabilities, artificial intelligence, quantum technologies and additional undersea capabilities."⁴⁶³ Australia has decided that procuring "at least eight nuclear powered submarines for . . . the Royal Australian Navy," will be the first representative deal to be accomplished under AUKUS.⁴⁶⁴

Aside from Russia, the U.S. will have to thread the needle in dealing with China. John Allen, president of the Brookings Institution, once claimed that "the U.S.-China relationship is 'the most consequential' bilateral relationship of the 21st century."⁴⁶⁵ But just as John West indicated, the two

459. *Id.*; see Astamur Achba, *Abkhazia–Russia's Tight Embrace*, EUR. COUNCIL ON FOREIGN RELS. (Sept. 1, 2016), https://ecfr.eu/article/essay_abkhazia_russias_tight_embrace/; Georgia's South Ossetia Region Might Vote on Joining Russia, NPR (Mar. 31, 2022), <https://www.npr.org/2022/03/31/1090015449/georgia-south-ossetia-region-russia>; *Transnistria: The Next European Republic to Rejoin Russia?*, RUSS. BRIEFING (July 24, 2022), <https://www.russia-briefing.com/news/transnistria-the-next-european-republic-to-rejoin-russia.html/>.

460. Gryazev, *supra* note 458.

461. AUKUS: *Trilateral Security Partnership*, AUSTL. GOV'T, <https://www.defence.gov.au/sites/default/files/2021-09/AUKUS-Factsheet.pdf> (last visited Nov. 1, 2022); see also Xavier Vavasseur, *AUKUS: Australia Signs Naval Nuclear Propulsion Information Sharing Agreement*, NAVAL NEWS (Nov. 22, 2021), <https://www.navalnews.com/naval-news/2021/11/aucus-australia-signs-naval-nuclear-propulsion-information-sharing-agreement/>.

462. AUKUS: *Trilateral Security Partnership*, *supra* note 461.

463. *Id.*

464. *Id.*

465. Zhao Huanxin, *Why the Bilateral Relationship Really Is 'the Most Consequential'*, CHINA DAILY, <https://www.chinadaily.com.cn/a/201811/01/WS5bdb141fa310eff303286069.html> (Nov. 1, 2018, 10:54 PM).

superpowers “disagree about most things these days.”⁴⁶⁶ Evidently, the U.S. and China have great difficulties handling their sharp differences of opinion in connection with scores of sensitive issues.⁴⁶⁷ For instance, issues like the territorial rows between China and neighboring countries over the South China Sea, Japan’s regulation of the disputed Senkaku Islands, Taiwan’s surging tension with the Chinese mainland concerning unification, Hong Kong’s quasi-self-governing status under the statutory promise of “[o]ne country, two systems,” as well as China’s substantial military investments in recent times.⁴⁶⁸ Furthermore, the U.S. is concerned about China’s foreign policy stance, which has strongly influenced forming the Asian Infrastructure Investment Bank, promoting China’s Belt and Road Initiative, developing BRICS, rolling out the 17+1 Initiative to form a union and carry out partnership efforts between China and Central and Eastern European Countries, and consolidating and enlarging the Shanghai Cooperation Organization.⁴⁶⁹ All these actions have the potential to substantively rebalance the world’s current geopolitical landscape, which threatens American influence in the Far East.⁴⁷⁰ On January 25, 2022, U.S. House Speaker Nancy Pelosi announced the America COMPETES Act of 2022.⁴⁷¹ China believes that the 2,900-page U.S. law will be used as a comprehensive playbook to stifle China’s future development.⁴⁷² This perception is further strengthened by U.S. President Joe Biden’s subsequent utterance that the America COMPETES Act would help the U.S. to “outcompete China and

466. John West, *Where Is the US-China Relationship Heading in 2022?*, MARSHMCLENNAN (Dec. 8, 2021), <https://www.brinknews.com/where-is-the-us-china-relationship-heading-in-2022/>.

467. *See id.*

468. *Id.*

469. *Id.*

470. *See id.*

471. *US Cannot ‘Be Invincible’ by Confronting China: Global Times Editorial*, GLOB. TIMES (Jan 28, 2022, 12:19 AM), <https://www.globaltimes.cn/page/202201/1250130.shtml>.

472. *Id.*

the rest of the world for decades to come.”⁴⁷³ Then, on February 4, 2022, by virtue of a 222–210 voting outcome, the House of Representatives passed the America COMPETES Act.⁴⁷⁴

On the other hand, China and Russia have further closed ranks.⁴⁷⁵ As early as 2001, the two countries signed the China-Russia Treaty of Good Neighborliness and Friendly Cooperation.⁴⁷⁶ According to the treaty, in the event either country encounters a situation endangering its security interests, they can set up a mechanism for carrying out meetings and discussions to see whether they can help each other by whatever means.⁴⁷⁷ In 2021, leading up to the 20th anniversary of entering into that treaty, Chinese President Xi Jinping and Russian President Vladimir Putin jointly announced extending the Treaty.⁴⁷⁸ The extension shows a strong indication that further strengthening such a unique bilateral bond under today’s geopolitical circumstances is agreeable to both China and Russia—a relationship which used to be highly close in the same ideological camp several decades back when the Soviet Union was still in the prime of life.⁴⁷⁹ More notably, China, Russia, and Iran completed their second joint maritime exercise in January 2022 in the Gulf of Oman.⁴⁸⁰ China’s Ministry of National Defense officially viewed this exercise as an attempt “to deepen practical cooperation among the three navies, and

473. *Id.*

474. United States Innovation and Competition Act of 2021, H.R. 4521, 117th Cong. (2022); Tuner Wright, *America COMPETES Act Passes House Without ‘Disastrous’ Provision on Crypto*, COINTELEGRAPH (Feb. 4, 2022), <https://cointelegraph.com/news/america-competes-act-passes-house-without-disastrous-provision-on-crypto>.

475. See ETHAN MEICK, U.S.-CHINA ECON. AND SEC. REV. COMM’N, CHINA-RUSSIA MILITARY-TO-MILITARY RELATIONS: MOVING TOWARD A HIGHER LEVEL OF COOPERATION 3 (2017), <https://www.uscc.gov/sites/default/files/Research/China-Russia%20Mil-Mil%20Relations%20Moving%20Toward%20Higher%20Level%20of%20Cooperation.pdf>.

476. *Id.* at 4.

477. *Id.*

478. See Xinhua, *Xi, Putin Announce Extension of China-Russia Friendly Cooperation Treaty*, CHINA.ORG.CN (June 29, 2021), http://www.china.org.cn/world/2021-06/29/content_77594080.htm.

479. See *id.*

480. Xinhua, *China, Iran, Russia Hold 2nd Joint Naval Exercise*, CHINA.ORG.CN. (Jan. 21, 2022), http://www.china.org.cn/world/2022-01/21/content_78002754.htm.

show the willingness and capabilities of the three countries to jointly safeguard maritime security and build a maritime community with a shared future.”⁴⁸¹ Those joint actions might, to a certain extent, clearly remind us whether a sort of newly coined Warsaw Pact Organization in the twenty-first century, on a far smaller and non-covenanted scale, is imminent.⁴⁸² Even so, they might still be somewhat different in nature to another freshly created pact entered between Australia and the U.K., the long-standing Commonwealth fraternal alliance, the Australia-United Kingdom Free Trade Agreement,⁴⁸³ which is equally impressive and may bring about long-term strategic implications for the world, especially for the West.⁴⁸⁴ Just from Australia’s perspective, this Australia-U.K. covenant entered in December 2021 ought to be acclaimed as “a gold standard trade agreement that represents a once in a generation deal for Australia and [a] historic moment in [Australia’s] relationship with the UK.”⁴⁸⁵ Australia is expecting this free trade agreement to produce enticing export and job opportunities, based on the already determined tariff holidays enjoyed by over ninety-nine percent of Australian goods imported into the U.K.⁴⁸⁶ Moreover, Australia’s service industries are also supposed to benefit a lot, by gaining more liberalized access to doing business in the U.K., particularly on the strength of mutual recognition of the professional qualifications between these two partner countries.⁴⁸⁷

This is only the tip of the iceberg in today’s bustling global geopolitical arena.⁴⁸⁸ In reality, especially the one teeming with

481. *Id.*

482. *See id.* (showing cooperation among these nations to increase maritime security, which may inspire agreements between other nations).

483. *Australia-United Kingdom Free Trade Agreement*, AUSTL. GOV.: DEP’T OF FOREIGN AFFS. & TRADE, <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/aukfta> (last visited Nov. 1, 2022).

484. *See id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. *See The Top Geopolitical Risks and Trends of 2022*, *supra* note 422.

problems too prickly to believe, one can hardly expect that such self-regulating, powerless export control mechanisms, like the Wassenaar Arrangement, will not further lose steam.⁴⁸⁹ Interestingly, even the two most distinguished U.N. treaties carrying out global export control mechanisms, such as the 2013 Arms Trade Treaty and the 2017 Treaty on the Prohibition of Nuclear Weapons, have not been granted a monopolistic U.N. mandate.⁴⁹⁰ That is to say, neither the Arms Trade Treaty on conventional arms nor the Treaty on the Prohibition of Nuclear Weapons can get rid of relying on their signatories' domestic enforcement mechanisms, other than the treaties becoming binding upon all signatories, which subjects them to an exclusively U.N.-dominated implementation plan and process.⁴⁹¹

In this regard, the U.N. Office for Disarmament Affairs (UNODA) is also not given any authority over accomplishing enforcement.⁴⁹² Rather, UNODA can merely give "substantive and organizational support for norm-setting in the area of disarmament through the work of the General Assembly and its First Committee, the Disarmament Commission, the Conference on Disarmament and other bodies . . . through dialogue, transparency and confidence-building on military matters."⁴⁹³ The UNODA can also offer "objective, impartial and up-to-date information on multilateral disarmament issues and activities to Member States, States parties to multilateral agreements, intergovernmental organizations and institutions, departments and agencies of the United Nations system, research and educational institutions, civil society, especially

489. Shehadeh, *supra* note 42, at 305, 318; *supra* Part II.

490. See *The Arms Trade*, *supra* note 61; *Treaty on the Prohibition of Nuclear Weapons*, *supra* note 61.

491. See *Arms Trade Treaty*, *supra* note 61, at art. 14; see *Treaty on the Prohibition of Nuclear Weapons*, *supra* note 61, at art. 12.

492. See U.N. Charter art. 2, ¶ 7.

493. See *generally About Us*, U.N.: OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/about/> (last visited Nov. 1, 2022) (providing background on the U.N. Office for Disarmament Affairs).

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non-governmental organizations, the media and the general public.”⁴⁹⁴

Therefore, there are reasons to say that while the U.N. is conventionally held in high esteem, it may not be as high as enabling the U.N. to possess super national command authority in the way that many of us take for granted.⁴⁹⁵ However, unless the U.N. is really being marginalized today, Richard Falk’s notion that “neither American values nor strategic goals should be construed to validate uses of force that cannot win support in the U.N. Security Council”⁴⁹⁶ may equally ring true for the Wassenaar Arrangement’s future.⁴⁹⁷ This is notably the case in terms of cardinal principles and the necessity of architecting an exclusively authoritative new U.N. agency, particularly after considering the historical significance of the transition from COCOM to the Wassenaar Arrangement and its implications for the world.⁴⁹⁸

CONCLUSION

Against today’s geopolitical backdrop, it cannot be denied that the Wassenaar Arrangement is meritorious in terms of its contributions to the buildup and development of the necessary technical benchmarking and best practices within its domain.⁴⁹⁹ More profoundly, as COCOM’s successor body, the Wassenaar Arrangement is not inclined to alienate any country opting out of accepting Western democracies and their governance paradigms.⁵⁰⁰ Such a multilateral export control mechanism is

494. *Id.*

495. *See infra* notes 502–05.

496. Richard A. Falk, *What Future for the UN Charter System of War Prevention?*, 97 AM. J. INT’L L. 590, 597 (2003).

497. *See supra* Section II.E.

498. *See supra* Part II; *see generally* Lipson, *supra* note 17, at 42–46 (explaining the Wassenaar Agreement’s implications).

499. *See supra* Part II; *Best Practice Guidelines on Internal Compliance Programmes*, *supra* note 249; *see generally* *List of Dual-Use Goods & Technologies & Munitions List*, *supra* note 31 (an example of the Wassenaar Agreement’s contributions listing best practices).

500. *See Background Documents and Plenary-related and Other Statements*, *supra* note 2, at 2, 12, 53.

in fact not an improvisation, but a well-thought-out system, at the least in the context of the post-Cold War 1990s.⁵⁰¹

Nevertheless, there remains no choice but to consider the very reality that the Wassenaar Arrangement itself is far from jurisdictionally powerful but rather is more of an international forum working hard to promote its best practices among member nations, basically in the same way as other multilateral export control regimes.⁵⁰² In the past, as well as under the present geopolitical climate, perhaps only the U.N. system can be looked to in ensuring the Wassenaar Arrangement's objectives continue until they are fulfilled.⁵⁰³ Thus, it might deserve contemplating whether a new U.N. agency ought to be formed at some time in the foreseeable future.⁵⁰⁴ As soon as such a demand becomes unyieldingly overwhelming, the U.N. should spearhead creating and enforcing a global export control mechanism by combining the Wassenaar Arrangement and similar multilateral export control mechanisms into a unified U.N. framework.⁵⁰⁵

If so, any federation with international legitimacy, like the Wassenaar Arrangement, will be required to retreat from the world stage while still having its key technical constituents selectively retained and strategically implemented into the prospective export control offshoot of the U.N.⁵⁰⁶ Furthermore, the U.S. may desire to get involved and help activate such an imposing overhaul.⁵⁰⁷ As the promoter of COCOM, a key member of the Wassenaar Arrangement, and an influential world power, the U.S. will face a responsibility to step up efforts to weigh in on the rationality of dissolving any less forceful or redundant external mechanism to create a homogeneously

501. *See id.* at 2; *see also supra* Introduction.

502. *See supra* Section II.A.

503. *See supra* Part IV.

504. *See supra* Part IV.

505. *See supra* Part IV.

506. *See supra* Section II.A, Part IV.

507. *See supra* Part IV.

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acceded, authoritative U.N. agency.⁵⁰⁸ Such a new U.N. agency ought to be granted a mandate to play an unchallenged, leading role in upholding justice and fairness.⁵⁰⁹ Given the established landscape of global governance and dominance, the U.N. is likely the only dependable enforcement authority capable of overseeing such a globally accepted regulatory system without triggering controversies arising from domestic interests.⁵¹⁰ Such a system would be a material change, by all means, but perhaps not a wrenching one from a long-term perspective.

508. *See supra* Section I.A, Part IV.

509. *See supra* Part IV.

510. *See supra* Part IV.