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The Wassenaar Arrangement on Dual-Use Technologies

By Ananya Sharma and Abhishank Mishra

SYNOPSIS

India signed the Wassenaar Arrangement, an intergovernmental forum to facilitate information-sharing among participating states and set standards for export controls for conventional arms and dual-use technologies. However, reports regarding the alleged transfer of dual-use technologies from India to Israel bring into question the efficacy of such international arms control regimes. There is a need for states to revisit and strengthen the export control regimes regarding dual-use munitions.

COMMENTARY

The [International Court of Justice](#) in its order on 30 April 2024 about arms exports to Israel emphasised the international obligation of all states relating to transfer of arms to parties in an armed conflict to avoid the risks of such arms being used to violate the [Genocide](#) and [Geneva conventions](#).

The ongoing [war](#) in Gaza has brought into focus the [transfer of arms](#) from the United States and other western countries to Israel. Although the proliferation of dual-use technologies falls outside the traditional scope in scrutinising such transfers, it has significant strategic implications for international arms control efforts and regulatory frameworks.

The [Wassenaar Arrangement \(WA\)](#) is one of the four major export control regimes in the world along with the [Nuclear Suppliers Group](#), [The Missile Technology Control Regime](#) and the [Australia Group](#). There have been [reports](#) regarding the alleged transfer of dual-use technologies from India to Israel which bring into question the efficacy of international arms control regimes like the Wassenaar Arrangement.

It is important to bring attention back to the contentious and complicated use and implications of dual-use technologies within the framework of international conventions and to strengthen the moral opprobrium associated with such weapons.

Safeguards Through the Wassenaar Arrangement

[Dual-use technology](#) refers to goods, software or technical knowledge that can be used for both civilian and military purposes. Due to their varied and ambiguous nature, determining the intended use of these dual-use items is challenging, and they hold the potential for misuse in military applications.

The [Wassenaar Arrangement \(WA\)](#) signed in 1996, is the world's first multilateral agreement establishing a voluntary export control regime which seeks to contribute to regional and international security and stability by promoting transparency, accountability and greater responsibility among member states concerning the transfer of conventional arms and [dual-use goods and technologies](#) through regular information exchange.

The participating states, through their national policies, aim to ensure that such transfers do not result in “destabilising accumulations” or enhancement of military capabilities that undermine its objectives of maintaining regional and international security and stability.

The WA has [two control lists](#) on conventional munitions and [dual-use goods and technologies](#) and the latter is divided into tier 1 list with basic items and tier 2 list with two subsets: [sensitive and very sensitive items](#). The arrangement facilitates the harmonisation of national export policies and sharing of [best practices](#), ensuring cooperation among the member states on global security concerns.

India [joined](#) the WA on 8 December 2017 as the 42nd participating state and assumed the [plenary chair](#) in January 2023 for a one year term. India's membership of Wassenaar enhances its credentials in the field of non-proliferation, signaling its commitment to be a responsible power.

In December 2023, India voted at the UN General Assembly resolution [in favour](#) of a ceasefire in Gaza. However, four months later in April 2024, India abstained from a [resolution](#) by the UN Human Rights Council that called for an arms embargo urging the states to cease the sale, export, transfer and diversion of arms, munitions, surveillance goods, less lethal weapons and dual-use technologies to Israel in order to prevent violations of international humanitarian law and abuse of human rights.

India's Defence Ties with Israel Undermines Spirit of Wassenaar Arrangement

This change in position is being attributed to the Indo-Israeli defence partnership which is the cornerstone of their [close ties](#). India's Defence Research and Development Organisation (DRDO) and the Israeli Directorate of Defence Research and Development (DDR&D) signed a [bilateral innovation agreement](#) (BIA) in 2021 aimed at dual-use technologies development.

In a similar vein, [private actors](#) and partnerships like the [Adani-Elbit Advanced](#)

[Systems India Ltd](#), which is a joint venture between Adani Defence and Aerospace and Israeli Elbit Systems, have contributed in accelerating India's efforts to diversify its sources of defence equipment through indigenous production. There are two particular instances that bring up the exchange of dual-use technology between the two countries.

Firstly, [Munitions India Ltd. \(MIL\)](#), a public sector company established in 2021 under the Ministry of Defence, applied for clearance for exporting arms under a repeat order from Israel on 18 April 2024. The company was allowed to ship arms to Israel as recently as January 2024 and the license was approved by the [Directorate General of Foreign Trade \(DGFT\)](#).

MIL produces small, medium and high calibre ammunition, mortars, rockets and hand grenades along with initiatory compositions, propellants and high explosives. The products Israel procured were classified as dual-use items not explicitly for military use but as explosives and pyrotechnics, initiators, fuses and charges that can be claimed for use in non-military applications such as rock blasting, clearing mineral mines, tunnel excavations and other geo-engineering sectors.

In another instance, [Premier Explosives Ltd \(PEL\)](#), a Telangana-based company also producing dual-use items including emulsion and slurry explosives, cartridge explosives, plain detonators, instantaneous detonators, etc., exported these items to Israel on two occasions, on 20 November 2023 and 1 January 2024.

In both cases, products would fall under the [SCOMET munitions list](#) (category 6), i.e. Special Chemicals, Organisms, Materials, Equipment and Technologies, which require authorisation by the [Department of Defence Production](#) for exporting purposes. This is in tandem with the WA whereby the control lists are transposed to the Indian context through the national export list, SCOMET.

The SCOMET [license applications](#) to the Directorate General of Foreign Trade (DGFT) are approved by an Inter-Ministerial Working Group in alignment with the international treaties and conventions to which India is a state party. The applications for DGFT license to export items on the SCOMET list are mandated to be accompanied by an [End User Certification](#) that states that the "item will be used for the stated purpose" and that such use will not be changed nor the items modified or replicated without the consent of the Government of India. In the context of the current conflict in Gaza, it is difficult to establish credibility regarding the end use of dual-use items being exported to Israel.

Need for Better Oversight of Dual-Use Arms Export Control Regimes

The evolving nature of warfare necessitates a consensus on the need for revising the list of controlled items on WA. In wake of the Russian invasion of Ukraine, the West imposed economic sanctions and [stringent export controls](#) that were outside the ambit of the WA. The definitional ambiguity around dual-use technologies, whereby seemingly benign technologies can have military applications, has led to the normative architecture envisioned by WA being marred by inadequate enforcement mechanisms.

India is a party to both the Genocide and Geneva conventions as well as the WA and is bound by its obligations to uphold the underlying normative principles which has implications for India's image at the global stage. The burgeoning of India's defence industry elevates its status as a significant actor in global arms exports.

While economic incentives are at play, it is important to underscore the need to scrutinise the oversight mechanisms and control frameworks regarding dual-use technology. There are significant humanitarian costs associated with the use of dual-use technologies, exposing civilian populations to grave risks. States must work towards revisiting and strengthening the international export control regimes regarding the use of dual-use munitions to safeguard innocent civilians from unwarranted suffering.

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