

Dual-use and arms trade control

Away Day Presentation 7 February - van der Nootska

In this presentation DUAT identified a set of issues currently relevant the field of export controls. Within each set of issues the presenters developed some key points DUAT might want to address through medium and larger-sized DUAT programme projects or through wider cross-cluster and/or cross-institute projects. As such, it is possible that this may potentially lead to new longer-/medium-term projects being done in the Programme. Moreover, the presentation and the following discussion provided an opportunity to discuss within the cluster about possible cooperation within the cluster and also potentially across clusters or with other institutes.

The first set of issues identified relates to **the reduced state capacity that countries are investing in export control and the increased role of the private sector**. The human and financial resources invested in national and multilateral export control systems and mechanisms appears to be lower than before. Linked to this is the increasing role and responsibilities put on the private sectors in ensuring effective export controls. Within this larger area DUAT's research could focus on 3 specific points:

1. *Increased complexity of export controls*: This is a consequence of several factors: the range of states that are now involved; the range of technologies that is covered by export controls; and the wider set of activities now covered by export controls.
2. *Possible indications of lower levels of participation in international instruments*: This includes, lower level of participation of states in the reporting instruments, for example the ATT. Another trend relates to the fact that it is becoming more difficult to find states that want to chair multilateral forums, for example the export controls regimes with a rotating chair.
3. *Efforts to shift responsibility to the private sector*: Related to the above is the fact that the type of responsibility of the private sector is shifting. For example, it is noticeable that there is a growing use of open licences and also a growing emphasis on the role companies in export controls (this is also part of the wider discussion that EU member states are currently having in the process of a possible review of the EU Dual-use Regulation).

Looking at the broader context the points above could potentially be linked to a wider reflection on the crisis of multilateralism, for example, in the field of arms control and many other areas in general. At the Programme level this could link to:

- *Work around the ATT-assistance database*. This could involve using the data that we've collected to look at the effectiveness of efforts to build state-capacity in

SALW and arms transfer controls in particular states and regions. The ambition would be to work on this project with a longer-term grant. In terms of cross-cluster cooperation, following the Brown Bag Lunch on the MENA expansion of the database, Luc has suggested that a cross regional analysis of the ATT relevant assistance activities could be done in cooperation with the C&P cluster.

- *Looking at broader shifts in the respective roles of the state and the private sector in the formation and implementation of foreign and security policy.* This could be conducted in the framework of larger cross-cluster projects where DUAT could provide an export controls perspective.

Another set of issues identified by DUAT as currently affecting the export control domain is the **divergences over the ‘goals’ of export controls and the application of norms**. Broadly speaking, this could be linked to the wider crisis of multilateralism as mentioned above. Within this overarching framework DUAT could focus on:

1. *Lack of agreement about what goals states should be trying to achieve through the application of export controls:* there is an ongoing discussion on the different perception of goals that export control regimes should try to achieve (e.g. differences between Europe and US on Iran; disagreements within Europe and within the Wassenaar Arrangement about controls on cyber-surveillance technologies) and if these regimes are still successful.
2. *Lack of agreement about how norms and standards should be applied:* This issue is partially related to the point above and refers to the differences in how states interpret export control provisions. This is clearly the case in the EU and an issue the DUAT programme has traditionally focused on. Most recently, differences emerged within the EU about human rights and IHL (international humanitarian law) concerns when exporting arms (e.g. to Saudi Arabia).
3. *Increased focus by the major powers on domestic economic and security interests,* (e.g. shift in focus in US export controls and growing interest in China in applying US model): The United States has always been more focused on national security and to some extent economic interests when formulating and applying its export controls. Under the current administration this is becoming more obvious and is more openly communicated. This becomes particular apparent when we look at instruments at the intersection of export controls and other trade control measures such as the use of direct foreign investment controls as a means to help control technology transfers, something which we discuss in the 2019 Yearbook Chapter. We are increasingly seeing interaction between this national security and economic interest component and this is something to be examined by further research. Where do export control regimes fit as instruments within the current setting and how are they developing?

To sum up DUAT projects could focus on:

- *Looking at the future of export controls and current challenges to the existing system* (e.g. future of MTCR, controls on cyber-surveillance technologies, and EU debate on exports to KSA – Programme level);
- *The crisis of multilateralism/international cooperation or the challenges to IHL/HR based governance frameworks* where the contribution could provide a focus on export controls – Broader cluster wide discussion).

Finally, the third set of issues identified by DUAT as currently affecting the export control domain relates to **emerging technologies**.

The fact that technology changes and develops is not a new thing and something export controls has always struggled with. Therefore, emerging technologies is not an ideal term to adequately describe the issue and challenges that current developments hold for export controls. It is about keeping up with the pace of developments and export controls are very much focussed on technical parameters to define controlled items even while technology and military systems by their nature keep evolving. Kolja's work over the last year has been looking at AM/3-D printing which is a dual-use production technology. To a large extent, its applications have nothing to do with armaments, but there are also numerous possible and current military applications. On a more abstract level, the USA has launched a review of which emerging technologies present national security concerns or are foundational for strategic industries, as part of their export control reform effort. This review further involved a call for public comment that has yielded interesting responses from various stakeholders. This is a significant question and discussion that can be further explored. What is the role of the developers of these technologies? What are their responsibilities with regard to export controls? What is the impact and how do we view this in a larger frame? What can and cannot be achieved by export control instruments? DUAT have a lot of small, medium and even larger project ideas on these questions.

Especially when thinking about larger projects, looking at both the positive and negative relationships between export controls and particular technologies this could also be turned to look at not just the challenges but also the opportunities. There is quite some work others are starting to do in other institutes on what AI can do to help us improve or interlink our export control systems. This could be done in a similar format to what has already been done with the Bio Plus X project—thinking about governance of technologies beyond the export control framework. DUAT would be happy to analyse export controls but also taking it further and looking at other governance instruments: bottom up approaches with scientists including do-it-yourself communities, non-proliferation treaties etc., as well as bigger picture analyses. Not all of this is very new but it builds on work DUAT have done and developing this work and further raising the profile is the goal.

Comments/questions on presentation and responses from DUAT:

How well can you connect this work to the work of other clusters? E.g. foreign direct investment, technologies, and opportunities—how can DUAT link this with the P&D cluster? To what extent do arms exports controls if they are implemented for national interest and economic reasons have an impact on development? Controls on nuclear energy related technology and products make it harder for states to develop a nuclear energy sector which in turn may impact their development: this might be something to explore with P&D. It is a longstanding debate, also in the bio area. The question then is what is the new angle? Is technology going to change this? Bringing it into the P&D cluster might bring new angles or ideas.

Another idea: mapping how export controls have developed for major players—not only the Western powers but also countries like China and Russia. Other trends that might be worth exploring: Export regime principles being adopted or states declaring adherence without being part of the regimes; and some states who see more value now in being part of them make an effort to try and join. For instance, the case of India who

want to get into the NSG, which is probably their main objective but in the process of that have also joined other export controls regimes successfully.

With regards to the opportunities provided by emerging technologies not much has been done yet by DUAT. Other institutes are working on this and it is a topic that could be considered for DUAT to do more work on. In the past, the DUAT team particularly focused on application of export controls measures on cyber-surveillance technology and the provisions proposed in this regard in the framework of the current revision of the EU Dual-use Regulation. Mark wrote a paper on this sometime ago.

The bigger question that interlinks with AI and big data but also with cyber – what can we control? The move away from physical goods controls and focus on intangible technology controls is one of the big recent DUAT themes. Taking this further and applying it to specific technologies is something DUAT is thinking about. What can DUAT do right now with the time they have or what could be tied into a bigger project? The ideas pitched in this framework are part of possible projects funded by the EU Commission and implemented by the Network of Universities on Strategic Trade Controls (SIPRI is part of it) and led by the University of Liege. Building on past work the proposals submitted refer to projects mostly focussed on cyber surveillance technologies (more specifically the development of guidance on how to apply export controls on these items) and the issue of evolving definitions in the field of export controls (focusing in particular on the definition of ‘dual-use’, potentially being revised under the process of review of the EU Dual-use Regulation). If this goes forward DUAT will be looking into this. In general, DUAT thinks it would be helpful to develop some guidelines on how these types of technologies are controlled by different EU member states. In that sense DUAT look at national implementation. Our recent regional focus was more limited to EU but maybe DUAT could apply the same methodology to other countries and widen the regional perspective.

Previously dual-use export controls in practice meant conventional, chemical, nuclear but they did not really focus on bio. Working on the Bio Plus X study is more about technology governance and it was quite obvious that the traditional export control mechanism doesn’t work so well in that particular area. In the bio area, there is a tension not just between freedom of trade and security but also between freedom of academia and security. How can you find a governance framework that properly addresses these issue areas? In the past there was a lot of industry outreach, but if you just invite companies you leave out a key holder of sensitive technology: scientists. This is an angle we can further explore also in other technology areas.