

and military objectives—may be targeted intentionally. Under the principle of proportionality, the anticipated collateral damage must not be excessive in relation to the anticipated military advantage. Finally, the principle of humanity requires us to use weapons that will not inflict unnecessary suffering.

These principles do not forbid the use of stealth or technologically advanced weapons. In fact, the use of advanced weapons may help to ensure that the best intelligence is available for planning and carrying out operations, and that the risk of civilian casualties can be minimized or avoided altogether.

Some have argued that the President is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of al Qaeda or associated forces. This is simply not accurate. “Due process” and “judicial process” are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process.

. . . .

The Constitution’s guarantee of due process is ironclad, and it is essential—but, as a recent court decision makes clear, it does not require judicial approval before the President may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war—even if that individual happens to be a U.S. citizen.

That is not to say that the Executive Branch has—or should ever have—the ability to target any such individuals without robust oversight. Which is why, in keeping with the law and our constitutional system of checks and balances, the Executive Branch regularly informs the appropriate members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.³

Twenty-Fifth Anniversary of the Missile Technology Control Regime

In April 2012, the U.S. Department of State issued a fact sheet marking the twenty-fifth anniversary of the Missile Technology Control Regime (MTCR). The MTCR, a nonbinding cooperative arrangement among thirty-four technologically advanced states, seeks to combat the spread of advanced missile and drone technology.¹ The Department of State document follows:

Formed by the (then) G-7 industrialized countries in 1987, the Missile Technology Control Regime (MTCR) is an informal political understanding among states that seek to limit the proliferation of missiles and related technology; it is not a treaty. Since its creation, 27 additional countries have joined the MTCR, and many other countries have adhered unilaterally to the MTCR Guidelines or otherwise control exports of MTCR Annex items.

Originally focused on restricting exports of nuclear-capable ballistic missiles and related technology, the Regime expanded its scope in 1993 to cover unmanned delivery systems capable of carrying all types of weapons of mass destruction (WMD)—chemical, biological, and nuclear. In 2002, the MTCR Partners (members) made terrorism an explicit

³ U.S. Dep’t of Justice Press Release, Attorney General Eric Holder Speaks at Northwestern University School of Law (Mar. 5, 2012), at <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>.

¹ For information about the MTCR, see <http://www.mtcr.info/english/index.html>.

focus of the Regime. Both of those steps were in direct support of the WMD nonproliferation objectives of the Biological Weapons Convention, Chemical Weapons Convention, and Nuclear Nonproliferation Treaty.

The MTCR seeks to limit the risks of proliferation of WMD by controlling transfers that could make a contribution to delivery systems (other than manned aircraft) for such weapons. More broadly, the MTCR Guidelines (export control policies) and Annex (list of export-controlled items) have become the international standard for responsible missile-related export behavior. The MTCR and its Annex were implicitly endorsed in UN Security Council Resolution (UNSCR) 1540 of 2004, which affirms that the proliferation of WMD delivery means constitutes a threat to international peace and security and requires all UN Member States to establish domestic controls against such proliferation. The MTCR Annex also forms the basis of the list of missile-related items prohibited from being transferred to Iran under UNSCRs 1737 and 1929, and to North Korea under UNSCR 1718.

Over the course of the Regime's 25-year history, the efforts of MTCR member countries have reduced the number of countries possessing missiles capable of delivering WMD, the global inventory of such missiles, and the number of countries interested in acquiring such missiles. The establishment by MTCR member and adherent countries of missile-related export controls has significantly reduced the availability to proliferators of support from the countries possessing the most and best technology. The export controls, information-sharing, and patterns of cooperation fostered by the MTCR also have resulted in the interdiction of numerous shipments of equipment intended for missile programs of concern. All of these measures have made it more difficult, time-consuming, and costly for proliferators to produce or acquire WMD capable missiles.

As it has done since 1987, the United States will continue to work through the MTCR to reduce the global missile proliferation threat by restraining the missile-related exports of an expanding number of countries and by increasing the pressure on proliferators to abandon their missile programs. The United States continues to encourage all non-member countries to support the MTCR's efforts and to unilaterally abide by MTCR standards in the interest of international peace and security.

The MTCR currently has 34 members: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Ireland, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Russian Federation, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.²

The MTCR's website provides further background information on the purposes and operation of the control regime.

The Missile Technology Control Regime is an informal and voluntary association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation. The MTCR was originally established in 1987 by Canada, France, Germany, Italy, Japan, the United Kingdom and the

² U.S. Dep't of State, Fact Sheet: Missile Technology Control Regime (MTCR) 25th Anniversary (Apr. 16, 2012), *at* <https://www.state.gov/t/isn/rls/fs/187935.htm>.

United States. Since that time, the number of MTCR partners has increased to a total of thirty-four countries, all of which have equal standing within the Regime.

The MTCR was initiated partly in response to the increasing proliferation of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. The risk of proliferation of WMD is well recognized as a threat to international peace and security, including by the UN Security Council in its Summit Meeting Declaration of January 31, 1992. While concern has traditionally focussed on state proliferators, after the tragic events of 11 September 2001, it became evident that more also has to be done to decrease the risk of WMD delivery systems falling into the hands of terrorist groups and individuals. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD.

The MTCR rests on adherence to common export policy guidelines (the MTCR Guidelines) applied to an integral common list of controlled items (the MTCR Equipment, Software and Technology Annex). All MTCR decisions are taken by consensus, and MTCR partners regularly exchange information about relevant national export licensing issues.

National export licensing measures on these technologies make the task of countries seeking to achieve capability to acquire and produce unmanned means of WMD delivery much more difficult. As a result, many countries, including all MTCR partners, have chosen voluntarily to introduce export licensing measures on rocket and other unmanned air vehicle delivery systems or related equipment, material and technology.³

SETTLEMENT OF DISPUTES

United States Initiates Suspension of Argentina's Trade Benefits Because of Nonpayment of U.S. Companies' Arbitration Awards

In the aftermath of its 2001 economic crisis, Argentina adopted measures that significantly impaired the value of investments by many U.S. and other foreign investors. The result has been over forty arbitration claims against Argentina at the International Centre for the Settlement of Investment Disputes (ICSID) and in other fora. Arbitral tribunals have found Argentina liable for breach of its legal obligations in many of these cases and have awarded damages totaling many hundreds of millions of dollars. Argentina has not paid any of these awards, contending that the award holders must seek enforcement in Argentina's courts.

In March 2012, following Argentina's sustained failure to pay ICSID awards totaling approximately \$300 million in favor of two U.S. companies, Azurix¹ and CMS Gas,² President Barack Obama drew on statutory authority under the Trade Act of 1974 to initiate suspension of Argentina's eligibility for U.S. trade benefits under the Generalized System of Preferences (GSP). His action became effective sixty days after publication in the *Federal Register*. An excerpt from the president's proclamation to suspend Argentina's eligibility for GSP follows:

1. Section 502(b)(2)(E) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462(b)(2)(E)), provides that the President shall not designate any country a beneficiary developing country under the Generalized System of Preferences (GSP) if such country

³ At <http://www.mtcrl.info/english>.

¹ Azurix Corp. v. Argentine Republic, ICSID Case No. ARB/01/12, Award (July 14, 2006).

² CMS Gas Transmission Co. v. Argentina, ICSID Case No. ARB/01/8, Award (May 12, 2005).