

IV. Conventional arms and dual-use items

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Types of sanction

The USA has had comprehensive sanctions on transfers of conventional arms and dual-use items to Iran since the US Government designated Iran a 'state sponsor of terrorism' in January 1984.¹ These sanctions were expanded during the 1990s and 2000s to include restrictions on companies based outside the USA that were involved in assisting Iran's weapons of mass destruction or ballistic missile programme.

The UN Security Council imposed a range of nuclear-related sanctions on the transfer of arms and dual-use goods to and from Iran. In December 2006 UN Security Council Resolution 1737 prohibited the supply of 'all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities'.² The list of specified controlled goods covered all items on the Nuclear Supplier Group (NSG) list of nuclear programme-related goods and technologies but excluded equipment for light water reactors. Resolution 1737 also prohibited the transfer of items and technology which could contribute to 'the development of nuclear weapon delivery system'.³ The list of specified controlled goods was based on the control list of the Missile Technology Control Regime (MTCR).⁴

In March 2007 UN Security Council Resolution 1747 banned all states and groups from purchasing or receiving arms from Iran and called on all states to 'exercise vigilance and restraint' in their supply of any items covered by the UN Register of Conventional Arms (UNROCA) to Iran.⁵ In June 2010 UN Security Council Resolution 1929 banned the supply of major arms as defined by UNROCA—battle tanks, armoured combat vehicles, large calibre artillery, combat aircraft, attack helicopters, warships, certain missiles and missile launchers. It also banned the supply of spare parts, components for and services related to these major weapons.⁶ The reference to UNROCA meant that—unlike other UN arms embargoes—supplies of land-based surface-to-air missile (SAM) systems and most small arms and light weapons (SALW) were not covered by the restrictions. At the time the embargo was imposed, Iran had an S-300 SAM system on order from Russia, which was

¹ US Department of State, 'State Sponsors of Terrorism', [n.d.].

² UN Security Council Resolution 1737, 27 Dec. 2006.

³ UN Security Council Resolution 1737 (note 2).

⁴ Missile Technology Control Regime (MTCR), <<http://www.mtc.info>>. Also see chapter 19, section III, in this volume.

⁵ UN Security Council Resolution 1747, 24 Mar. 2007.

⁶ UN Security Council Resolution 1929, 9 June 2010.

not covered by the scope of UN arms embargo. However, Russia adopted legislation to enforce the UN sanctions on Iran that explicitly prohibited the delivery of the S-300 system.⁷

The EU matched—and in several areas expanded on—the UN restrictions on the transfer of arms and dual-use goods to and from Iran. In February 2007 the EU responded to UN Security Council Resolution 1737 by placing a ban on the export to Iran of all items on the NSG and MTCR control lists.⁸ In April 2007 the EU responded to UN Security Council Resolution 1747 by imposing a ban on the import from Iran and export to Iran of all items on the EU military list, that is all arms and military equipment.⁹

Separate from the sanctions related to the concerns over Iran's nuclear programme, in April 2011 the EU imposed sanctions on Iran in reaction to concerns about violations of human rights. These included restrictions on the export of items to Iran which might be used for 'internal repression', such as vehicles designed for riot control or prisoner transfers and razor barbed wire. In March 2012 the EU expanded these controls to include a ban on the export of 'equipment, technology or software' that would be used for monitoring or interception of Internet or telephone communications in Iran.¹⁰ The surveillance controls have affected supplies of telecommunications networks and services by EU-based companies to Iran.¹¹

Allegations of sanctions violations

During the years that they were in place, Iran was repeatedly accused of violating the UN-imposed restrictions on the import and export of arms and dual-use goods. In 2013 the UN Panel of Experts tasked with monitoring the UN sanctions on Iran 'found evidence of a wide procurement network to circumvent UN embargoes on export of arms or dual-use items'.¹² Nonetheless, the sanctions are credited with having—at the very least—slowed Iran's nuclear programme and significantly reduced its capability to develop, produce, maintain and modernize its medium- and long-range ballistic

⁷ President of Russia, 'Executive order on measures to implement UN Security Council Resolution 1929 on Iran', 22 Sep. 2010.

⁸ Council of the European Union, 'Council Common Position 2007/140/CFSP of 27 Feb. 2007 concerning restrictive measures against Iran', 27 Feb. 2007, *Official Journal of the European Union* L61, pp. 49–55.

⁹ Council of the European Union, 'Council Common Position 2007/246/CFSP of 23 Apr. 2007 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran', *Official Journal of the European Union*, L106, pp. 67–75.

¹⁰ Council Decision 2012/168/CFSP of 23 Mar. 2012 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran, *Official Journal of the European Union*, 24 Mar. 2012, p. 85.

¹¹ Stecklow, S., 'Special report: Chinese firm helps Iran spy on citizens', Reuters, 22 Mar. 2012.

¹² United Nations, Security Council, Final report of the Panel of Experts established pursuant to Resolution 1929 (2010), 3 June 2013, annex to S/2013/331, 5 June 2013, paras 24–25.

missiles.¹³ Iran could not import new major weapons, with the exception of small numbers of major arms that do not come under the UNROCA, to replace its ageing military equipment.¹⁴

Many of the reported violations concerned exports of conventional arms by Iran. In 2015 the Panel of Experts reported that ‘Iran’s arms transfers have actively continued’.¹⁵ The panel concluded that an offer by Iran to supply arms to the Lebanese army in support of the fight against terrorism was a violation of the UN embargo on arms exports from Iran. The panel also reported that Iran has given military support to the Huthi rebels in Yemen. However, due to the security situation it could not confirm continuing allegations that Iran was supplying weapons to Syria.¹⁶ The panel also concluded that in 2014 and 2015 Iran had supplied arms to Iraq in support of the Iraqi fight against Islamic State.¹⁷ The USA has openly stated that it was aware that Iran had supplied arms to Iraq.¹⁸

However, the UN panel noted that no state had formally reported an actual case of non-compliance by Iran, whereas in all previous reporting periods some cases had been reported by states. It noted that ‘the discrepancy between media reports of alleged arms transfers and the lack of reporting to the Committee could have a number of explanations’, including ‘a reluctance to report on the part of Member States’.¹⁹ Despite the open violation of the arms export embargo, no action was taken by the UN Security Council in response. In Iran it was observed that Iranian arms supplies to Iraq appeared to have been accepted by the international community, even if they violate the UN’s embargo on Iranian arms exports.²⁰

The Joint Comprehensive Plan of Action and arms and dual-use items

US national restrictions on transfers of conventional arms and dual-use items to Iran are unaffected by the JCPOA. In accordance with the JCPOA, the UN’s nuclear-related restrictions on the transfer to Iran of dual-use items on the NSG and MTCR control lists, items that could contribute to the development of nuclear weapon delivery systems, and items covered by the UNROCA, as well as transfers from Iran of all arms and related material,

¹³ Katzman, K., *Iran Sanctions*, Congressional Research Service (CRS) Report for Congress RS20871 (US Congress, CRS: Washington, DC, 21 Jan. 2016), pp. 47–48.

¹⁴ SIPRI Arms Transfers Database, <<http://www.sipri.org/databases/armstransfers>>.

¹⁵ United Nations, Security Council, Final report of the Panel of Experts established pursuant to resolution 1929 (2010), S/2015/401, 2 June 2015.

¹⁶ United Nations, Security Council, Final Report of the Panel of Experts established pursuant to Resolution 1929 (2010), 1 June 2015, annex to S/2015/401, 2 June 2015, pp. 12–14.

¹⁷ United Nations (note 15), pp. 12–13.

¹⁸ United States, Department of State, Daily press briefing, 17 Mar. 2015.

¹⁹ United Nations (note 15), p.12.

²⁰ Bakhtiari, B., ‘Iran arms exports to Iraq tolerated in fight against Isis says report’, *The Guardian*, 17 Feb. 2015.

were lifted on Implementation Day.²¹ However, any transfers have to be approved in advance—on a case-by-case basis—by the UN Security Council. This requirement for prior approval does not apply to transfers of technology and low-enriched uranium ‘for exclusive use in light water reactors’.²² Requests for approvals are to be sent to the Security Council Facilitator.²³ For items on the NSG control lists, supplier states have to ensure that they are ‘in a position to exercise effectively a right to verify the end-use and end-use location of any supplied item’ and notify the International Atomic Energy Agency (IAEA) within 10 days of the transfer taking place.²⁴ For items on the MTCR control lists and which could contribute to ‘the development of [a] nuclear weapon delivery system’, supplier states have to ensure that ‘the contract for delivery of such items or assistance includes appropriate end-user guarantees’ and that Iran commits to not use any items received for development of nuclear weapon delivery systems.²⁵

The prior approval requirement for transfers to Iran of items on the NSG control list will apply until Termination Day (18 October 2025) or until the IAEA submits a report confirming the Broader Conclusion, whichever comes first. The prior approval requirement for transfers to Iran of items covered by the MTCR control lists and any items which could contribute to ‘the development of nuclear weapon delivery system’ will apply until Transition Day (18 October 2023) or until the IAEA submits the Broader Conclusions report, whichever comes first. The prior approval requirement for transfers to Iran of items covered by the UNROCA and transfers from Iran of all arms and related material will apply until five years after Adoption Day (18 October 2020) or until the IAEA submits the Broader Conclusions report, whichever comes first.

Following the lifting of sanctions, reports indicated that Iran was interested in signing arms deals with Russia.²⁶ However, many of the items covered by these potential deals are included in the UNROCA and—as such—their transfer to Iran would require the prior approval of the UN Security Council until 2020.²⁷ Russia’s cancelled contract for S-300 missiles has been

²¹ UN Security Council Resolution 2231, 20 July 2015.

²² UN Security Council Resolution 2231 (note 21).

²³ UN Security Council, ‘Resolution 2231 (2015), Nuclear-related transfers and activities (procurement channel)’, [n.d.].

²⁴ UN Security Council Resolution 2231 (note 21).

²⁵ UN Security Council Resolution 2231 (note 21).

²⁶ Safronov, I. and Chernenko, E., [Iran is eyeing the Russian military], *Kommersant*, 15 Feb. 2015 (in Russian). Several reports also detailed Iran’s plans to acquire nuclear reactors from China and Russia. However, since these are light water reactors they are not covered by the UN sanctions. Rogers, D., ‘China, Iran agree two nuclear power stations and trade worth \$600bn’, *Global Construction Review*, 27 Jan. 2016.

²⁷ ‘Russian arms sale to Iran without approval would violate ban: US’, *Reuters*, 18 Feb. 2016.

resurrected. President Putin signed a decree in April 2015 stating the sale could proceed in recognition of the progress of the nuclear negotiations.²⁸

The way in which the newly created systems for approvals and notifications under the UN's sanctions work in practice—particularly the extent to which supplier states comply with their provisions, which transfers are approved or denied and how supplier states respond to denials—will contribute to the success or failure of the JCPOA. Equivalent systems for approval or notification have been attached to several other UN sanctions regimes in recent years and records of state compliance have often been weak or inconsistent. An analysis of the notification systems attached to the Democratic Republic of the Congo embargo found that many supplier states—including members of the UN Security Council—were failing to comply with its requirements.²⁹ Meanwhile, disagreements among UN Security Council states about which transfers should be approved or denied may lead to tensions between the JCPOA parties. As one critic of the JCPOA has noted, we may see ‘disconcerting global arguments over exports to Iran within the JCPOA’s Joint Commission, the IAEA and the UN Security Council’.³⁰ For example, it is possible to imagine significant differences of opinion between the five permanent members of the UN Security Council with regard to whether a particular transfer could contribute to ‘the development of nuclear weapon delivery system’. Since the JCPOA was finalized, there have already been disagreements about whether particular missiles being tested in Iran are capable of carrying nuclear weapons.³¹

The EU bans on the export to Iran of conventional arms and dual-use items will remain in place until Transition Day (18 October 2025).³² However, certain EU member states are likely to retain highly restrictive policies when it comes to licences for exports of conventional arms and dual-use items to Iran for the foreseeable future.³³ In addition, EU sanctions on the export of items to Iran which might be used for ‘internal repression’ are not affected by the JCPOA.³⁴

²⁸ ‘Russia ends ban on delivery of S-300 missiles to Iran’, Reuters, 13 Apr. 2015.

²⁹ Bromley, M. and Holtom, P., ‘Arms transfers to the Democratic Republic of the Congo: assessing the system of arms transfer notifications, 2008–10’, SIPRI Background Paper, Oct. 2010.

³⁰ Moore, T. C., ‘Iran: non-proliferation overshadowed’, *Survival*, vol. 57, no. 5 (Sep. 2015), pp. 53–58.

³¹ Charbonneau, L., ‘Iran’s October missile test violated UN ban: expert panel’, Reuters, 16 Dec. 2016.

³² European Union External Action Service, ‘Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)’, Brussels, 23 Jan. 2016. International Atomic Energy Agency, Communication dated 24 July 2015 received from China, France, Germany, the Russian Federation, the United Kingdom, the United States of America (the E3/EU+3) and the Islamic Republic of Iran concerning the text of the Joint Comprehensive Plan of Action (JCPOA), INF-CIRC/887, 31 July 2015. For the full text of the JCPOA see <http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf>.

³³ ‘Eyes on the prize: Are you ready for Iran?’, *World Export Control Review*, Mar. 2016, pp. 17–28.

³⁴ European Union External Action Service (note 32); and JCPOA (note 32).