Origins and Development of the Hague Code of Conduct

HCoC Research Papers
No. 11

October 2022

Vann H. Van Diepen

The Hague Code of Conduct against ballistic missile proliferation (HCoC) is a multilateral instrument which aims at curbing the proliferation of ballistic missiles able to carry weapons of mass destruction (WMDs).

The HCoC was adopted in 2002 in the Hague and therefore completed 20 years of existence in 2022. This atypical component of the global non-proliferation and disarmament architecture was developed in the framework of the Missile Technology Control Regime (MTCR).

However, its drafting borrowed from various reflections and propositions that emerged at the time to address the security threat posed by the proliferation of ballistic missiles linked to WMD programs.

This paper recalls the state of ballistic missile proliferation at the time of the adoption of the Code, before delving into the genesis of the Code and especially the various reports and meetings that promoted the adoption of a supply-side multilateral instrument. It describes the conferences and diplomatic efforts that led to the Code in 2002. It also explains why the Code ended up the way it is today with modest ambitions but concrete outcomes.

HCoC
The Hague Code of Conduct

DISCLAIMER

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of the Fondation pour la Recherche Stratégique and can under no circumstances be regarded as reflecting the position of the European Union.

CONTENTS

Introduction

The 20th anniversary of the Hague Code of Conduct Against Ballistic Missile Proliferation (HCoC) is an appropriate time to recall what led to the effort to craft this global nonproliferation instrument and how it came into being. This paper will cover the status of ballistic missile proliferation in the years leading up to the HCoC; the history behind the effort to create what became the HCoC; how the Code was developed; and why the Code ended up as it did. In short:

- After successfully eliminating ballistic missiles from some 13 countries through the late 1990s, the remaining programs of proliferation concern increasingly were working around the Missile Technology Control Regime (MTCR) and missile-related export controls, seeking missiles and missile technology from non-member suppliers and seeking their own indigenous capability to produce missiles and key missile production inputs.
- The origins of the HCoC go back farther than commonly assumed, starting in 1987 with the initial consideration of globalizing the Intermediate-range Nuclear Forces (INF) Treaty, followed by a broad consideration in 1993 within the United States and MTCR of the future of missile nonproliferation, and then a series of real-world proliferation events and policy developments in 1998 and 1999 that crystallized the formulation of the first draft of the Code.
- That first draft was formulated from 1999-2001 in the MTCR. In 2001, the Code effort was separated from the Regime under the auspices of successive European countries, who hosted two multilateral meetings in the spring and summer of 2002. All countries prepared to subscribe to the Code attended a 'launching conference' in The Hague in November 2002, where the HCoC came into existence with 93 Subscribing States.
- The content and development process of the HCoC were very strongly determined by four key objectives of the most active developers of the Code: (1) an outcome implementable by all countries; (2) an outcome that did not inadvertently contribute to missile proliferation or 'legitimize' missile programs of proliferation concern; (3) an outcome that did not undermine the effectiveness of the MTCR and missile-related export controls; and (4) an outcome yielding definitive results in a relatively short time.

Central to achieving these objectives was the founders' decision to pursue a politically-binding arrangement rather than a legally-binding treaty, and to use a non-traditional negotiating process that incubated the arrangement within the MTCR.

Ballistic Missile Proliferation in the Run-up to the HCoC

Ballistic missiles have been seen as the most destabilizing potential delivery systems for weapons of mass destruction (WMD). This linkage was underscored by the recognition

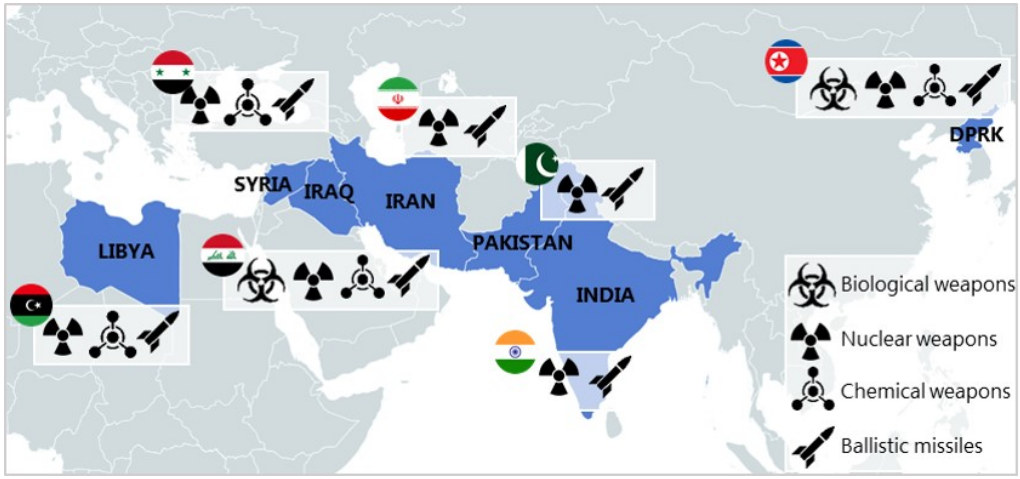


Figure 1: Key Eurasian countries with nuclear, chemical, biological weapons and ballistic missile programmes of proliferation concerns as of 1991 (initiated and actually deployed). Source: NTI . Credits FRS

that countries believed to be seeking WMD capabilities were also seeking to develop or acquire ballistic missiles.

Prior to the advent of the MTCR in 1987, the U.S. and other G-7 countries were important technology contributors (mostly inadvertently) to several WMD-linked ballistic missile programs. The first-time imposition of missile technology export controls via the MTCR essentially cut off that technology flow. This contributed directly to: (a) the ultimate termination of Argentina's Condor ballistic missile program in 1990[1] (along with plans to export Condor missile production technology to Egypt and Iraq); (b) Brazil's 1995 renunciation of military ballistic missiles;[2] and (c) the stagnation of Libya's indigenous missile development program.

Further successes in missile nonproliferation occurred with:

- The elimination of the bulk if not all of Iraq's Scud-based ballistic missiles, and the suppression of its extensive missile development program, under UN auspices after the First Gulf War.[3] (This was not fully realized until after the fall of Saddam's regime in 2003, however.)
- The removal of former Soviet strategic ballistic missiles from Belarus, Kazakhstan, and Ukraine during the 1990s as a result of the breakup of the USSR.
- The elimination in the 1990s and early 2000s of Soviet-supplied Scud and SS-23 ballistic missiles from Bulgaria, the Czech Republic, the

1. 'Argentina: Missile,' Nuclear Threat Initiative, updated April 2015. https://www.nti.org/learn/countries/argentina/delivery-systems

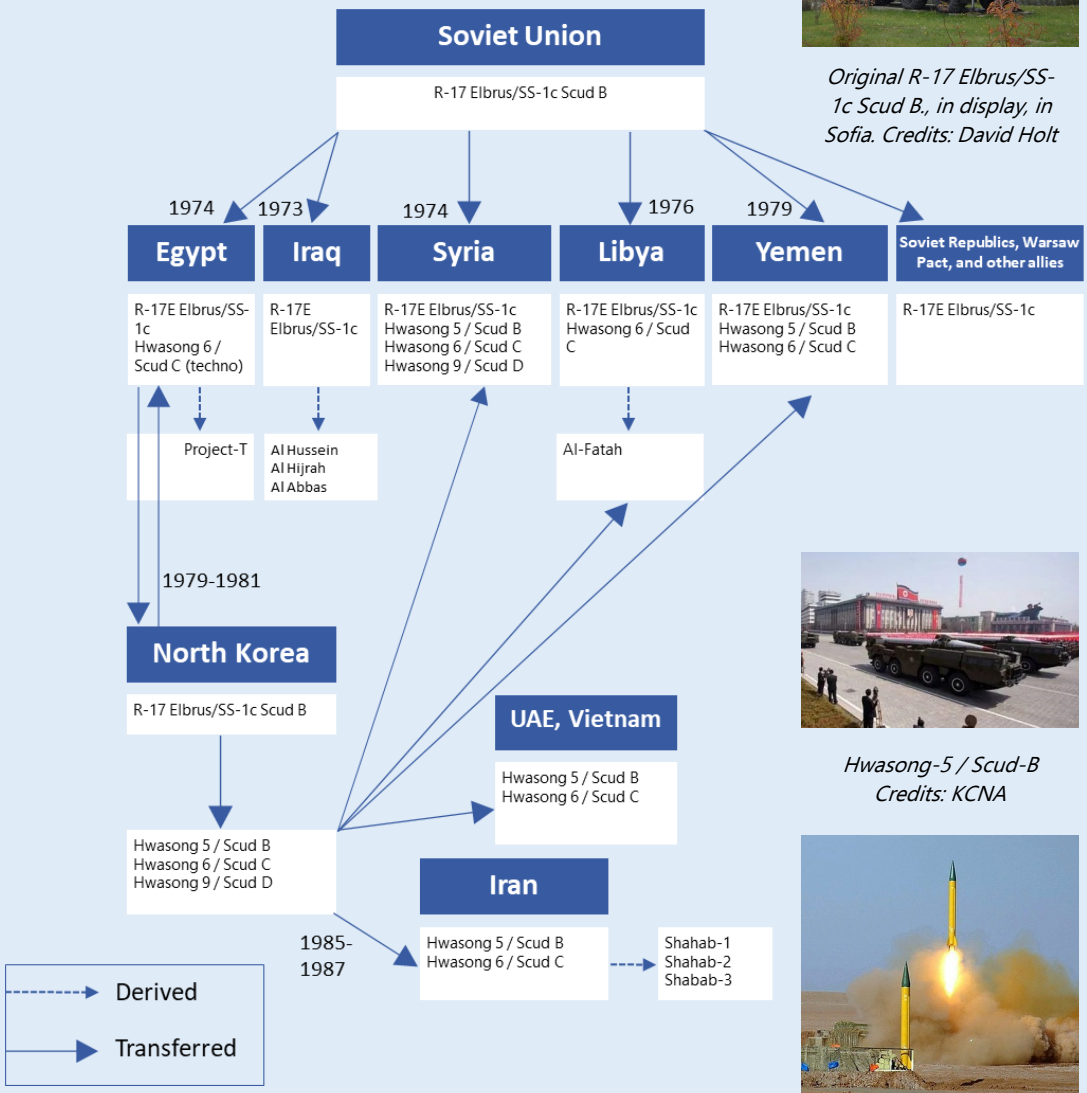
2. 'Missile Proliferation – Brazil,' Federation of American Scientists, updated September 12, 1996. https://fas.org/irp/threat/missile/brazil.htm

3. Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD With Addendums, September 30, 2004 (excerpted key findings), https://nsarchive2.gwu.edu/NSAEBB/NSAEBB418/docs/11%20-%20Duelfer%20report%20-%20excerpted%20key%20findings%209-30-04.pdf

The proliferation history of the Scud system (1957-2002)

In 1957, Korolyev OKB developed a weapon based on the design of the German V-2 rocket, first designed by NATO as 'Scud-A'. In 1961, the Soviet fielded the R-17 Elbrus / SS-1c Scud-B, a nuclear-capable short-range system. Its export has been at the root of an unprecedented proliferation chainlink. In the 2000s, as today, many programs of concerns had at their origin the 'Scud' technology.

Original R-17 Elbrus/SS-1c Scud B., in display, in Sofia. Credits: David Holt



Hwasong-5 / Scud-B Credits: KCNA

Shahab-1, Credits: YPA

former East Germany, Poland, Romania, and Slovakia after the collapse of the Warsaw Pact in 1991 – mostly in cooperation with the U.S.[4]

- South Africa's commitment in 1993 to refrain from developing long-range missiles, with the elimination by 1995 of the key components and infrastructure for its Apartheid-era 'space launch vehicle' program.[5]

Despite these successes, however, ballistic missile programs of proliferation concern continued in a number of countries, threatening stability in key regions.

- In a few cases, the MTCR's cut-off of Western technology came too late. Israel had already received enough technical assistance by 1987 (mostly from France in the 1950s and 1960s) to successfully pursue indigenous missile production.[6] India received enough of a boost from the West that it was able to pursue a substantial indigenous missile program, albeit with ongoing assistance in key areas from the USSR and then Russia.[7]
- North Korea reverse-engineered Soviet-built Scuds supplied by Egypt to begin its own indigenous missile program and then exported the production capability for Scud-based missiles to at least Egypt, Iran (which itself began exporting missiles), Pakistan, and Syria.[8]
- China sold CSS-2/DF-3A intermediate-range ballistic missiles (IRBMs) to Saudi Arabia in the 1980s. Beijing revitalized the Pakistani missile program, which had stagnated after 1987, by exporting M-11 short-range ballistic missiles (SRBMs) and production capability in the early 1990s,[9] followed by much other important missile technology. It also supplied Iran with solid-propellant and guidance technology in the early 1990s for sub-MTCR-class missiles, which Tehran built upon to develop an indigenous production capability for larger solid missiles (which it also exported). Iran and North Korea in particular have been able consistently over the years to obtain substantial missile technology from Chinese entities and through Chinese territory.[10]
- In the early 1990s, the break-up of

4. 'Office of the Nonproliferation and Disarmament Fund (NDF), U.S. Department of State,' https://2009-2017.state.gov/t/isn/offices/c55414.htm

5. 'South Africa – Missile,' Nuclear Threat Initiative, updated April 2015. https://www.nti.org/learn/countries/south-africa/delivery-systems

6. "Israel – Missile," Nuclear Threat Initiative, updated November 2012, https://www.nti.org/learn/countries/israel/delivery-systems

7. 'India – Missile,' Nuclear Threat Initiative, updated November 2019, https://www.nti.org/learn/countries/india/delivery-systems

8. Missile Defense Project, 'Hwasong-5 ('Scud B' Variant),' *Missile Threat*, Center for Strategic and International Studies, August 8, 2016, last modified January 21, 2020, https://missilethreat.csis.org/missile/hwasong-5

9. 'Pakistan – Missile,' Nuclear Threat Initiative, updated November 2019, https://www.nti.org/learn/countries/pakistan/delivery-systems

10. Adherence to and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments, US Department of State, August 2019, p. 42. Chinese Nuclear and Missile Proliferation, Congressional Research Service, Re

the USSR led to the apparently wide availability of former-Soviet technology to missile programs in China, Iran, and North Korea.[11] By the mid-to-late 1990s, the situation in Russia had stabilized, with better control over missile technology exports – except for apparent continued State-sanctioned support to India and possibly China. But persistent concern remained about Iran's and North Korea's ability to circumvent Russia controls and obtain technology for their missile programs.

By the mid-1990s, the MTCR and missile-related export controls continued to play an essential role in denying proliferators access to the most and best missile technology, and in impeding the development (especially quantitatively) of proliferant missile programs. But the remaining programs of proliferation concern were increasingly working around the Regime and export controls, seeking missiles and missile technology from non-member suppliers (especially North Korea and entities in China) and seeking their own indigenous capability to produce missiles and key missile production inputs. A missile proliferation situation that was moving beyond the grip of supply-side measures such as the MTCR and export controls provided an opportunity to reinforce those tools with demand-side measures.

Origins of the Code

The origins of the HCoC go back farther than commonly assumed, starting in 1987 with the conclusion of the INF Treaty and consideration of its globalization, and then a broad consideration in 1993 within the United States and then the MTCR of the future of missile non-proliferation. It was also fuelled by a series of real-world proliferation events and policy developments in 1998 and 1999 that crystallized the formulation of the first draft of the Code.

Ronald Reagan and Mikhail Gorbachev at The Signing Ceremony of Intermediate Range Nuclear Forces Inf Treaty, 1 June 1988 . Credits: White House Photographic Collection

Global INF. The first serious consideration

port IF11737, May 17, 2021. https://crsreports.congress.gov/product/pdf/IF/IF11737

11.'Director of National Intelligence, "Report to Congress on the Acquisition of Technologies Relating to WMD and Advanced Conventional Munitions", (Director of National Intelligence, 2011), p. 4. https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2011_report_to_congress_wmd.pdf. "Russia – Missile," Nuclear Threat Initiative, updated August 2014, https://www.nti.org/learn/countries/russia/delivery-systems. Tetsuro Kosaka, "North Korea threat shows Russia's role behind missile program," Nikkei, June 3, 2019. https://asia.nikkei.com/Spotlight/Comment/North-Korea-threat-shows-Russia-s-role-behind-missile-program. "New Sanctions Under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA)," Press Statement, US Department of State, March 24, 2022. https://www.state.gov/new-sanctions-under-the-iran-north-korea-and-syria-nonproliferation-act-inksna

of a global demand-side missile norm came during the signing of the US-Soviet INF Treaty in December 1987. The Soviets floated the idea of globalizing the Treaty at that time, but it did not garner US interest. In 1989-1990, the incoming US George H.W. Bush Administration studied the issue as part of an overall review of arms control and nonproliferation issues. It rejected the idea due to concerns about negotiability and verification, stating a preference for maintaining the original Treaty's scope. It was also concerned about how to handle space-launch vehicles (SLVs) and the impact on export controls and the MTCR.[12]

MTCR Consideration of post-Cold War missile proliferation.

In September 1993, the new US Clinton Administration concluded its review of proliferation issues. In the missile area, the review was shaped by the fact that, because of the MTCR's success in cutting off missile proliferation from its own members, the focus of proliferation had shifted largely to non-member suppliers and an increased emphasis by proliferant missile programs on indigenous production. To address that shift, the United States decided to:

- 'promote the principles of the MTCR Guidelines as a global missile nonproliferation norm';
- 'use the MTCR as a mechanism for taking joint action to combat missile proliferation,' not just ensure members' own exports are controlled;
- 'support prudent expansion of the MTCR's membership to… additional countries that subscribe to international nonproliferation standards, enforce effective export controls and abandon offensive ballistic missile programs'; and
- 'promote *regional* efforts [emphasis added] to reduce the demand for missile capabilities.'[13]

The United States took this agenda into the November/December 1993 Interlaken (Switzerland) MTCR Plenary, which featured an extensive discussion of 'the challenges of ballistic missile proliferation in the post-Cold War era' and 'planning the future of the regime.' The Plenary broadly endorsed the US agenda, agreeing to:

- 'build on…achievements in controlling the export of their missile-related technologies by giving emphasis to dealing directly with the critical missile proliferation threat emanating from those outside the regime';
- 'redouble… [efforts] to persuade potential exporters outside the regime to abide by the MTCR guidelines'; and
- 'take steps to encourage proliferating countries to act more responsibly.'[14]

12. David A. Cooper, 'Globalizing Reagan's INF Treaty,' *The Nonproliferation Review*, vol. 20, no. 1 2013, pp. 145-163, https://doi.org/10.1080/10736700.2013.769373

13. 'Nonproliferation And Export Control Policy,' White House Fact Sheet, September 27, 1993. https://www.rertr.anl.gov/REFDOCS/PRES93NP.html

14. 'Plenary Meeting Of The Missile Technology Control Regime – Interlaken, Switzerland – 29 November – 2 December 1993,' https://mtcr.info/plenary-meeting-of-the-missile-technology-control-regime-interlaken-switzerland-29-november-2-december-1993

In addition, Canada reportedly proposed that the MTCR seek a global treaty banning medium-range missiles. Although a majority of MTCR members preferred to pursue the measures ultimately agreed at Interlaken, Canada reportedly persisted with the proposal. In early 1995 it announced that it would host an informal 'seminar' for MTCR members to discuss the proposal further.[15] However, by the time the August 29 - September 1 seminar was held in Montreux (Switzerland)[16], it had become clear there was no support for the idea among other MTCR members. Canada reportedly withdrew the proposal and the seminar discussed in detail the many obstacles to a meaningful, negotiable, and verifiable global missile-ban treaty.[17]

1998-99: A confluence of events crystallizes interest in demand-side norms. North Korea's launch of the Taepo Dong-1 rocket over Japan in August 1998 was a shocking demonstration of the limitations of supply-side nonproliferation measures, and of the potential for increasingly indigenous proliferant missile programs to pose a global, not just regional, threat. In response, the US Congress mandated in May 1999 the establishment of a National Missile Defense system.[18] In June 1999, Russian President Yeltsin introduced the idea of a 'Global Control System for the Non-Proliferation of Missiles and Missile Technology' (GCS) at the Cologne G-8 Summit as an alternative to missile defense for addressing missile proliferation.[19]

G-8 Summit Leaders, 19 June 1999, Cologne. Credits: White House Photographic Collection

Also during 1999, various European MTCR members began considering different ideas for augmenting the MTCR with demand-side approaches, including:

- increased transparency mechanisms on production, holdings, and transfers;
- multilateral launch notification procedures and a notification/data center;
- consideration of verification measures;
- establishment of guidelines that seek to establish norms on missile production, transfer, and testing/

15. David A. Cooper, 'Globalizing Reagan's INF Treaty,' op.cit.

16. Message to the Congress on the Proliferation of Weapons of Mass Destruction, November 8, 1995. https://www.govinfo.gov/content/pkg/PPP-1995-book2/html/PPP-1995-book2-doc-pg1725.htm

17. David A. Cooper, 'Globalizing Reagan's INF Treaty,' op.cit.

18. Strobe Talbott, 'Unfinished Business: Russia and Missile Defense Under Clinton,' *Arms Control Today*, June 2002. https://www.armscontrol.org/act/2002-06/features/unfinished-business-russia-missile-defense-under-clinton

19. Matthew Rice, 'Russia Proposes Global Regime On Missile Proliferation,' *Arms Control Today*, May 2000. https://www.armscontrol.org/act/2000-05/news/russia-proposes-global-regime-missile-proliferation

launch;[20] and

- a UK idea for a politically-binding code of conduct to attempt to establish norms of national behavior.

These various ideas seemed to be motivated by a number of factors:

- an interest in 'balancing' the supply-side MTCR with a demand-side mechanism, as was the case with nuclear, biological, and chemical nonproliferation;
- an interest in a globally subscribed mechanism to address criticisms that the relatively small MTCR lacked 'legitimacy'; and
- a general interest in multilateral approaches to nonproliferation and disarmament issues,[21] as reflected in the relatively recent negotiation of the Chemical Weapons Convention (CWC) and the Comprehensive Test Ban Treaty (CTBT), and then-ongoing interest in a Fissile Material Cutoff Treaty (FMCT) and a verification Protocol to the Biological Weapons Convention (BWC).

Around mid-1999, the United States decided to stop opposing these various ideas – which it had previously seen as unrealistic and as detracting from the MTCR and other more traditional methods of missile nonproliferation.[22] It placed the issue of missile proliferation on the agenda of the Cologne G8 Summit,[23] which undertook 'to examine further individual and collective means of addressing this problem.'[24] And the United States began to work with the various European proposers to craft a single approach drawing elements from all of their ideas, formed around the UK idea for a politically-binding 'code of conduct.' These discussions were taken forward into the broader MTCR membership at the Noordwijk (Netherlands) MTCR Plenary in October 1999, which held 'an in depth discussion on possible new, qualitative responses to face the new proliferation threats,' to include 'Confidence and security building measures in the field of responsible missile behavior,'[25] such as policy declarations, transparency measures,

20. Robert MacDougall, 'New Approaches to Combating Missile Proliferation,' *Missile Proliferation and Defences: Problems and Prospects, Occasional Paper No. 7*, Center for Nonproliferation Studies/ Mountbatten Centre for International Studies, May 2001, p. 30. http://www.nonproliferation.org/wp-content/uploads/2016/09/op7.pdf

21. Mark Smith, 'The Hague Code of Conduct: Current Challenges and Future Possibilities,' *HCOC Research Papers No. 1*, Fondation pour la Recherche Stratégique, September 2017. https://www.nonproliferation.eu/HCoC/the-HCoC-current-challenges-and-future-possibilities

22. David A. Cooper, 'The United States and the Evolution of International Supply-Side Missile Non-Proliferation Controls.' *Missile Proliferation and Defences: Problems and Prospects, Occasional Paper No. 7,* Center for Nonproliferation Studies/ Mountbatten Centre for International Studies, May 2001, p. 20. http://www.nonproliferation.org/wp-content/uploads/2016/09/op7.pdf

23. Message to the Congress Reporting on the Proliferation of Weapons of Mass Destruction, November 10, 1999. https://www.govinfo.gov/

content/pkg/PPP-1999-book2/pdf/PPP-1999-book2-doc-pg2050.pdf

24. Cologne 1999 G-8 Summit Communique, June 20, 1999, paragraph 36. http://www.g8.utoronto.ca/summit/1999koln/finalcom.htm

25. 'Plenary Meeting Of The Missile Technology Control Regime – Noordwijk, The Netherlands – October 11-15 1999,' https://mtcr.info/plenary-meeting-of-the-missile-technology-control-regime-noordwijk-the-netherlands-october-11-15-1999

and incentives for foregoing missile programs.[26] The Plenary agreed to continue 'these discussions…in the spring' of 2000, and the Dutch MTCR Chair intended to 'formulat[e] recommendations for further action in time for the next Plenary Meeting' in Fall 2000.

How the Code was developed

The effort to develop a new multilateral instrument has to start somewhere,[27] and the development of the HCoC started within the MTCR. On the one hand, this was an unconventional choice, since such instruments previously were developed in the Conference on Disarmament or a similar UN-related forum. On the other hand, the MTCR countries were those with the most interest in and knowledge of missile nonproliferation. And the membership included representatives from every inhabited continent and from most of the key constituencies that would be needed for a viable multilateral missile instrument, including:

- major missile possessors like the United States and Russia;
- non-possessors with outstanding nonproliferation and disarmament credentials such as Australia, Austria, Finland, Ireland, the Netherlands, Norway, Sweden, Switzerland, and New Zealand; and
- prominent non-aligned countries Argentina, Brazil, and South Africa.

Although an instrument agreeable to all MTCR countries was not guaranteed to be broadly acceptable to non-members, one not supportable by the bulk of MTCR members clearly would not succeed.

The Dutch MTCR Chair continued consultations among the members, and various combinations of members continued to consult among themselves. The Regime came together again in a 'Reinforced Point of Contact' (RPOC) meeting – an intersessional mini-Plenary – on April 23-24, 2000 in Paris, during which the United States, United Kingdom, and France each reportedly offered up ideas including pre-launch notification and international missile standards.[28] In the wake of a March 16 meeting in Moscow among experts from 46 countries[29] that

Vladimir Putin and Bill Clinton, G-8 Summit, Okinawa, 21 July 2000. Credits: Kremlin.ru

26. Mark Smith, 'On Thin Ice: First Steps for the Ballistic Missile Code of Conduct,' Arms Control Today, July-August 2002. https://www.armscontrol.org/act/2002_07-08/smithjul_aug02

27. Robert MacDougall, 'The Prospects for Control: Missile Proliferation, the MTCR and the Broader World,' *Missile Proliferation and Defences: Problems and Prospects, Occasional Paper No. 7*, Center for Nonproliferation Studies/Mountbatten Centre for International Studies, May 2001. http://www.nonproliferation.org/wp-content/uploads/2016/09/op7.pdf

28. Matthew Rice, "Russia Proposes Global Regime On Missile Proliferation," op.cit.

yielded a lukewarm response to the Russian GCS proposal, the United States and Russia issued a Joint Statement in Okinawa in July 2000 including their commitment to 'work together on a new mechanism to supplement the MTCR,' which 'would integrate the Russian proposal for a Global Monitoring System, the US proposal for a missile code of conduct, as well as the mechanisms of the MTCR.'[30]

The two countries further agreed in September 2000 as part of their 'Strategic Stability Cooperation Initiative,' which also included missile defense issues, to 'work to reach consensus among MTCR partners… as well as with other countries, on plans for a global missile non-proliferation approach.'[31] Later in September, the MTCR discussed a synthesis of these various ideas at another RPOC meeting.[32]

In October 2000, the MTCR Helsinki Plenary agreed on an initial draft[33] of a 'code of conduct against missile proliferation,' and 'decided to approach countries outside the MTCR in order to engage them in a broader common effort to agree a multilateral instrument open to all States.'[34] Based on those 'extensive' approaches to non-members, the MTCR agreed at its September 2001 Ottawa Plenary on an 'augmented draft text' of an 'International Code of Conduct against ballistic missile proliferation.' The MTCR concluded its work 'per se' on the Code, turning it over to France to 'consult with all states to determine their interest in participating' in 'a transparent and inclusive negotiating process open to all states on the basis of equality,' the 'first negotiation session' of which would be hosted by France in 2002.[35]

That session occurred on 7-8 February 2002 in Paris, with 86 countries in attendance. After examining the draft ICOC text emerging from Helsinki, the session agreed to tone down references to existing nonproliferation treaties, and recast 'incentives' as 'cooperation.' Outstanding issues included concerns that the Code might inadvertently legitimize proliferant missile programs, the question of whether it should ban military ballistic missiles, the issue of how to preserve access to space via SLVs without promoting missile proliferation, and whether to include cruise missiles.[36]

29. Ibid.

30. Russia-United States Joint Statement on Cooperation on Strategic Stability, July 21, 2000. https://www.presidency.ucsb.edu/documents/russia-united-states-joint-statement-cooperation-strategic-stability

31. 'U.S.-Russian Strategic Stability Cooperation Initiative,' *Arms Control Today*, October 2000. https://www.armscontrol.org/act/2000-10/news-briefs/us-russian-strategic-stability-cooperation-initiative

32. Ibid. and Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate: Proliferation of Weapons of Mass Destruction, November 9, 2000. https://clintonwhitehouse5.archives.gov/library/hot_releases/November_9_2000_1.html

33. HCOC Chronology, HCOC Website. https://www.HCoC.at/what-is-HCoC/HCoC-chronology.html

34. 'Plenary Meeting Of The Missile Technology Control Regime – Helsinki, Finland – 10-13 October 2000,' https://mtcr.info/plenary-meeting-of-the-missile-technology-control-regime-helsinki-finland-10-13-october-2000

35.'Plenary Meeting Of The Missile Technology Control Regime – Ottawa, Canada – 25 – 28 September 2001,' https://mtcr.info/plenary-meeting-of-the-missile-technology-control-regime-ottawa-canada-25-28-september-2001

Spain, as EU President, offered to host the next negotiating session, which was held in Madrid on 17-19 June 2002. Ninety-six countries attended,[37] making comments on an updated draft of the Code compiled by France after the Paris session. Questions remained 'regarding confidence-building measures and whether the code's obligations go too far or not far enough.'[38] The text was taken forward by Denmark, succeeding Spain as EU President, which conducted intensive consultations over the next five months.[39]

As a result of these consultations, a final text of the Code was issued by Denmark, along with a general invitation for states to subscribe to that final text. Those states that planned to subscribe were invited to a 'launching conference' in The Hague on 25-26 November 2002. Some 85 states attended and subscribed, and another eight

Hague Conference launching the HCoC, November 2002. Credits: ANP Foto/ Wfa/dh/str. Dirk Hol

36. HCOC Chronology, op.cit., and Alex Wagner, 'States Meet to Discuss Ballistic Missile Code of Conduct,' *Arms Control Today*, March 2002. https://www.armscontrol.org/act/2002_03/mtcrmarch02

37. Mark Smith, 'Stuck on the Launch Pad? The Ballistic Missile Code of Conduct Opens for Business,' *Disarmament Diplomacy*, Issue No. 68, December 2002 - January 2003, http://www.acronym.org.uk/old/archive/dd/dd68/68op01.htm

38. Alex Wagner, 'States Hold Second Missile Code of Conduct Meeting,' *Arms Control Today*, July 2002. https://www.armscontrol.org/act/2002-07/states-hold-second-missile-code-conduct-meeting

39. Ian Davis, 'Low key launch of Hague code of conduct against ballistic missile proliferation,' BASIC *Notes*, British American Information Security Council, December 3, 2002. https://basicint.org/wp-content/uploads/2018/06/PUB031202.pdf

subscribed at that time but did not attend. About 40 subscribing states spoke on the first, ceremonial, day of the conference. A second day was devoted to implementation of the Code, including decisions to rename the 'ICOC' as the 'Hague Code of Conduct,' to make Austria the 'Immediate Central Contact' facilitating various aspects of the administration of the Code, to hold regular meetings, and to appoint The Netherlands as the first HCoC Chair.[40]

Why the Code ended up as it did

The content of the HCoC, and the process through which it was developed, were very strongly determined by four key objectives that the most active developers of the Code kept uppermost in their minds, and which not coincidentally addressed critical shortcomings seen in earlier ideas for global demand-side missile instruments:

- an outcome implementable by all countries;
- an outcome that did not inadvertently contribute to missile proliferation or 'legitimize' missile programs of proliferation concern;
- an outcome that did not undermine the effectiveness of the MTCR and missile-related export controls; and
- an outcome yielding definitive results in a relatively short time.

Implementable by all countries. The Code was intended to be global in scope, treating equally non-possessors and possessors of ballistic missiles – even those with missile programs of proliferation concern. But holding all countries to zero ballistic missiles would be unacceptable to current missile possessors relying on those systems for their national security, and endorsing ballistic missile possession by all countries would be promoting, rather than impeding, proliferation. So, the Code committed current possessors to 'exercise maximum possible restraint' and 'where possible, to reduce national holdings,' while committing both possessors and non-possessors to 'prevent and curb' ballistic missile proliferation and to not support missile programs 'in countries which might be developing or acquiring WMD in contravention of [international treaty] norms.' Likewise, the annual declarations required under the Code concerned each subscriber's 'policies' on ballistic missiles and SLVs, not their 'programs,' so that both possessors and non-possessors had something to declare.

Not inadvertently contributing to or 'legitimizing' missile proliferation. There is an inherent risk that a mechanism intended for all countries, including those with programs of proliferation concern, might be misused by the latter to obtain support for those missile programs or portray their membership as 'legitimizing' such programs. Because of this concern, the idea of providing 'incentives' for countries to forego ballistic missiles, which was quite

40. Ibid. and Paul Kerr, 'Code of Conduct Aims to Stop Ballistic Missile Proliferation,' *Arms Control Today*, January-February 2003. https://www.armscontrol.org/act/2003_01-02/icoc_janfeb03

prominent in the original discussions of the Code within the MTCR, ultimately was deemphasized and generalized in the final text of the HCoC,[41] which only has preambular language that States 'may wish to consider engaging in co-operative measures among themselves.' The Code also contains the warning that SLV programs 'may be used to conceal Ballistic Missile programs', along with a 'recognition' that there should not be such concealment, and a requirement to exercise 'vigilance' in considering assistance to SLV programs to prevent contributions to delivery systems for weapons of mass destruction. And the Code specifically provides that its Confidence Building Measures 'do not serve as justification for' missile programs.

Not undermining the MTCR and export controls. The developers of the Code understood that the MTCR and missile-related export controls were making the largest impact in missile nonproliferation, even if they were insufficient to do the entire job. They also recognized that the value of a global demand-side mechanism was as an addition to – not a replacement for – supply-side tools, as well as other nonproliferation tools such as interdiction, sanctions, and missile defenses. And the Code's developers were keenly aware of strong efforts made to dilute or eliminate export controls in the negotiation of the CWC (ultimately unsuccessful), and even stronger efforts being made in the then-ongoing discussions of a BWC Protocol.

Spawning the Code from within the MTCR was a critical way to ensure the new multilateral mechanism did not undermine the effectiveness of the Regime and of missile-related export controls. MTCR members were united in the idea that the Code should complement the Regime. At the same time, many non-Regime countries at that juncture (including any proliferant states that might consider subscribing to the Code) would not be prepared to endorse the MTCR. Those countries were accommodated in the course of the negotiations by modifying the Code to be compatible with the MTCR and missile-related export controls (as well as other nonproliferation tools) while not endorsing them outright. For example, the text referred to 'the need to continue pursuing appropriate international endeavors', 'the importance of strengthening, and gaining wider adherence to 'multilateral…non-proliferation mechanisms,' and 'curb[ing] and prevent[ing] the proliferation of Ballistic Missiles… through multilateral, bilateral and national endeavors.'

Yielding definitive results in a relatively short time. Finally, the developers of the Code wanted to avoid a situation where negotiation of a multilateral mechanism would drag on, all the while posing risks of undermining the MTCR and obtaining a result that did not have a positive impact on missile nonproliferation, if it ever produced

41. Mark Smith, 'Stuck on the Launch Pad? The Ballistic Missile Code of Conduct Opens for Business,' op.cit.

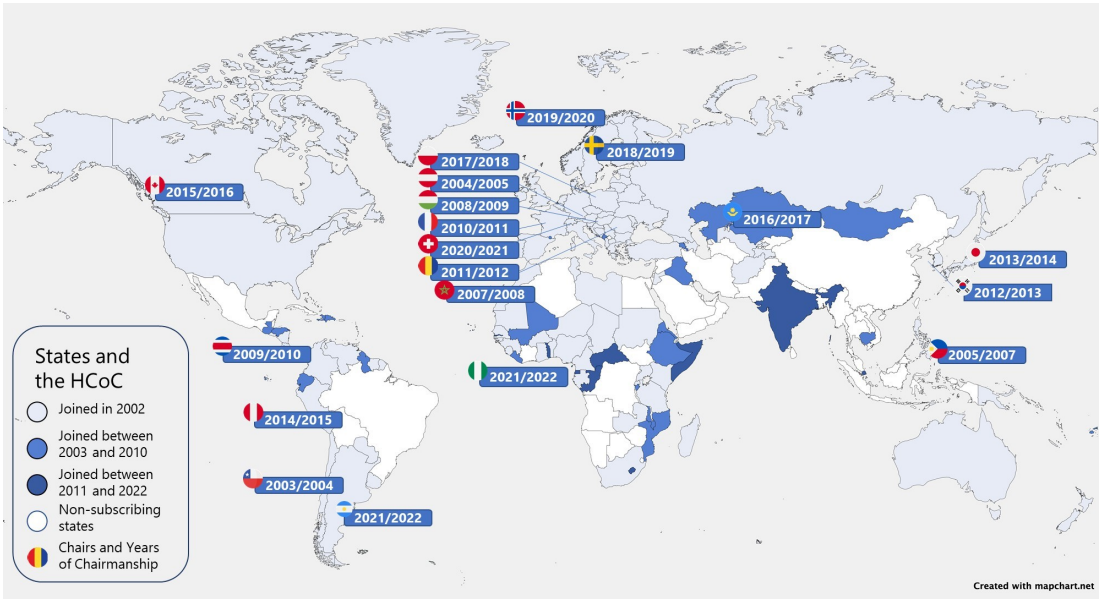


Figure 2: Evolution of the HCoC since 2002: subscribing states and rotating Chairs. Credits: FRS

results at all. The developers of the Code took two approaches to avoid these problems:

- First, they sought a politically-binding arrangement rather than a legally-binding treaty, which would require formal verification measures that would be difficult to negotiate and ratification that could be difficult to obtain.
- Second, they developed the novel approach of incubating the arrangement in the MTCR – a manageably-sized, relatively like-minded group – and then seeking the views and ultimately concurrence of a much larger group of states, while the MTCR still 'held the pen' on the document until a critical mass was deemed to be reached and the new mechanism brought into existence. Once so launched, its further development would be fully in the hands of the consensus decisions of all of its members.

These two approaches succeeded in meeting the objective of definitive results (the HCoC) in a relatively short time (three years from the Noordwijk MTCR Plenary), while also promoting the other three key objectives of the Code's developers. Indeed, these two HCoC approaches were so successful that the same model was followed in creating the 2003 Proliferation Security Initiative and the 2006 Global Initiative to Combat Nuclear Terrorism.

Twenty years of the HCoC

The HCoC succeeded in establishing the first, and thus far only, widely subscribed instrument opposing ballistic missile proliferation and supporting missile nonproliferation. It added a demand-side element to the previous spectrum of missile nonproliferation tools mostly focused on the supply side, as well as a pre-launch

notification system, and a forum where a large number of countries could share their views and concerns on the subject and learn about those of others. Because of its politically-binding form and a non-traditional negotiating process, the HCoC effectively provided these benefits while being implementable by all countries, not inadvertently contributing to missile proliferation or "legitimizing" proliferant missile programs, not undermining the effectiveness of the MTCR and missile-related export controls, and yielding definitive results in a relatively short time. The nonproliferation benefits of the HCoC and the four key objectives shaping its development remain relevant today, and the HCoC continues to merit the support of the minority of countries that have not yet subscribed. □

ABOUT THE AUTHORS

Vann van Diepen is an independent consultant. He has been principal deputy Assistant Secretary of State for International Security and Non-proliferation (ISN) from 2009 to 2017, including over two years as acting Assistant Secretary. From February 2006 to June 2009, he was National Intelligence Officer for weapons of mass destruction and proliferation in the Office of the Director of National Intelligence. From July 1991 to February 2006, he was an office director in ISN and its predecessor bureaus, overseeing policy for the non-proliferation of missiles as well as chemical and biological weapons. From December 1989 to July 1991 he analysed East-West arms control issues in the State Department's Political-Military Bureau. He served in the State Department's Bureau of Intelligence and Research analysing Soviet and other non-U.S. strategic forces from November 1982 to December 1989. He received a B.A. in international studies from The American University in 1981, and an S.M. from the Massachusetts Institute of Technology Defense and Arms Controls Studies program in 1983. In the fall of 2016, he received the Senior Executive Service Presidential Rank Award of Distinguished Career Executive

Previously published

HCoC Research Papers

- Emmanuelle Maitre and Sophie Moreau-Brillatz, 'The HCoC and Space', *HCoC Papers n°10*, FRS, March 2022.
- Katarzyna Kubiak, 'Harnassing Transparency Potential For Missile Non-Proliferation,' *HCoC Papers n°9*, FRS, December 2021.
- Antoine Bondaz, Dan Liu and Emmanuelle Maitre, 'The HCoC and China,' *HCoC Papers n°8*, FRS, October 2021.
- Kolja Brockmann, 'Controlling ballistic missile proliferation—Assessing complementarity between the HCoC, MTCR and UNSCR 1540,' *HCoC Research Paper n°7*, FRS, June 2020.
- Stéphane Delory, 'Ballistic missiles and conventional strike weapons: Adapting the HCoC to address the dissemination of conventional ballistic missiles,' *HCoC Research Paper n°6*, FRS, January 2020.
- Stéphane Delory, Emmanuelle Maitre & Jean Masson, 'Opening HCoC to cruise missiles: A proposal to overcome political hurdles,' *HCoC Research Paper n°5*, FRS, February 2019.

HCoC Issue Briefs

- Lauriane Héau, 'The HCoC and Northeast Asian States', *HCoC Issue Brief n°12*, June 2022.
- Emmanuelle Maitre & Lauriane Héau, 'The HCoC and Middle Eastern States,' *HCoC Issue Brief n°11* FRS, October 2021.
- Emmanuelle Maitre & Lauriane Héau, 'The HCoC and Southeast Asian States,' *HCoC Issue Brief n°10,* FRS, October 2021.
- Emmanuelle Maitre & Sabrina Barré, 'The HCoC and Space, *HCoC Issue Brief n°9,* FRS, September 2021.
- Eloise Watson, 'From Small Arms to WMD Arms Control: Linkages and Shared Benefits,' *HCoC Issue Brief n°8*, FRS, February 2021.
- Emmanuelle Maitre & Lauriane Héau, 'The HCoC and Caribbean States,' *HCoC Issue Brief n°7*, FRS, December 2020.

THE HAGUE CODE OF CONDUCT

The objective of the HCoC is to prevent and curb the proliferation of ballistic missiles systems capable of delivering weapons of mass destruction and related technologies. Although non-binding, the Code is the only universal instrument addressing this issue today. Multilateral instrument of political nature, it proposes a set of transparency and confidence-building measures. Subscribing States are committed not to proliferate ballistic missiles and to exercise the maximum degree of restraint possible regarding the development, the testing and the deployment of these systems.

The Fondation pour la Recherche Stratégique, with the support of the Council of the European Union, has been implementing activities which aim at promoting the implementation of the Code, contributing to its universal subscription, and offering a platform for conducting discussions on how to further enhance multilateral efforts against missile proliferation.

CONTACTS

Service européen pour l'action extérieure (SEAE)
EEAS Building, Rond-Point Schuman 9A
1040 Bruxelles, Belgique
https://eeas.europa.eu

Fondation pour la Recherche Stratégique
55 rue Raspail
92300 Levallois-Perret, France
www.frstrategie.org

USEFUL LINKS

www.hcoc.at

www.nonproliferation.eu/hcoc

This project is financed by the European Union

This project is implemented by the Fondation pour la Recherche Stratégique