Thirteenth Meeting of the Chaudfontaine Group

A new configuration of strategic trade control regimes?



This document is a synopsis of the discussion of the 13th Chaudfontaine Group Meeting, which took place in Chaudfontaine (Belgium) on 1-3 October 2023 and was funded by the European Commission.

The Chaudfontaine Group is a think tank gathering actors from academia, industry and (European, national, and regional) public authorities dealing with strategic trade control issues.

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European Studies Unit (ESU), University of Liège, January 2024

Introduction

The continuous progress of science and technology has often contributed to the emergence of new weapons and means of warfare in reason of their dual-use nature, giving rise to the arduous dilemma of strengthening controls over dual-use technologies while enhancing openness and international cooperation for their peaceful application.¹

This recognition led to the establishment of various multilateral treaties and arrangements aiming at regulating the transfer of these dual-use technologies (see Annexes 1 and 2 for an overview of countries' participation in the main multilateral export control regimes)² and to the adoption, in 2004, of the United Nations Security Council Resolution 1540 which imposes a universal obligation on all nations to "establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery".³

To cope more effectively with the rapid evolution of technologies, in June 2021, the European Union (EU) modernized its dual-use trade control system, broadened its scope, and enhanced its ability to control trade flows in sensitive new and emerging technologies.

This upgrade of the EU export control system took place in an international context characterized by geopolitical tensions—such as the trade war between the United States and China, the intensification of (re)actions over semiconductor trade controls,⁴ and the two draft resolutions submitted by China to the United Nations challenging the status quo and the legitimacy of the multilateral export control regimes (hereinafter MECRs) as sources of best practice and soft dual-use trade control rules in the name of liberalization of technology transfers.⁵ These tensions have been exacerbating over time, culminating in the series of sanctions against Russia following the invasion of Ukraine in February 2022.⁶

⁴ See: Larisa Kapustina, et al. "US-China trade war: Causes and outcomes." SHS Web of Conferences. Vol. 73 (2020): 01012, EDP Sciences; "America takes on China with a giant microchips bill", The Economist, July 29, 2022, https://www.economist.com/united-states/2022/07/29/america-takes-on-china-with-a-giant-microchips-bill (accessed on 20/11/2023); Stephen Nellis, Karen Freifeld and Alexandra Alper, "U.S. aims to hobble China's chip industry with sweeping new export rules", Reuters, October 10, 2022, https://www.reuters.com/technology/us-aims-hobble-chinas-chip-industry-with-sweeping-new-export-rules-2022-10-07/ (accessed on 20/11/2023).

¹Meier, O. (Ed.). (2014). Technology transfers and non-proliferation: between control and cooperation. Routledge.

² For instance, 1925 Geneva Protocol, Treaty on the Non-Proliferation of nuclear weapons (NPT), Nuclear Suppliers Groups (NSG), Australia Group (AG), Missile Technology Control Regime (MTCR), Wassenaar Arrangement (WA), Chemical Weapons Convention (CWC).

 $^{^{\}rm 3}$ United Nations Security Council Resolution 1540, S/RES/1540 (28 April 2004), 3.

⁵ United Nations General Assembly (UNGA) Resolution 76/234, "Promoting international cooperation on peaceful uses in the context of international security", A/RES/76/234 (24 December 2021); and UNGA Resolution 77/393, "Promoting international cooperation on peaceful uses in the context of international security", A/RES/77/393 (7 December 2022); See also: United Nations, "First Committee Considers Constraints on Dual-Use Technology Exports, Divergent Proposals for Countering Cyberspace Threats", 2 November 2022, https://press.un.org/en/2022/gadis3704.doc.htm (accessed on 20/11/2023).

⁶See: European Studies Unit, "LATEST UPDATES (12th package of EU sanctions): EU reaction to Russian invasion of Ukraine (regularly updated)", https://www.esu.ulg.ac.be/eu-reaction-to-russian-invasion-of-ukraine/ (accessed on 20/12/2023); Ministry of Foreign Affairs of Japan, "Measures based on the Foreign Exchange and Foreign Trade Act regarding the situation surrounding Ukraine", https://www.mofa.go.jp/press/release/press4e_003209.html (accessed on 20/11/2023); Department of Foreign Affairs and Trade of Australia, "Russia sanctions regime", https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime#:~:text=Australia%20imposes%20autonomous%20sanctions%20in,in%20 2015%2C%202022%20and%202023 (accessed on 20/11/2023).

While Russia's membership in three MECRs and its obstruction of consensus-based decision-making processes in response to sanctions from a significant number of MECR members is one of the reasons hampering the adoption of new controls, as recently stated by the European Commission's White Paper on export controls (a combined reading of Annexes 1 and 2 may contribute to a better understanding of such geopolitical situation within the MECRs),⁷ the technical complexities surrounding the definition of controls on cybersurveillance and challenges in concluding technical discussions on an emerging technology area such as quantum computing suggest that easily identifiable chokepoints for proliferation pathways are no longer available.

Consequently, this partial stalemate with MECRs (other activities of the regimes, such as guidance review or best practices exchange, proceed normally) favoured the adoption of national controls, as opposed to multilateral agreements, and fostered a growing fragmentation of the international export control landscape, as illustrated by the national control lists officially adopted by Spain on 31 May 2023, the Netherlands on 23 June 2023, and Lithuania on 28 June 2023 (then amended on 15 November 2023), introducing unilateral controls on, amongst others, quantum computing and additive manufacturing, machines for the production of semiconductors, and aircraft engines, machinery and electronic devices, respectively.8

In light of these recent geopolitical developments and the ensuing challenges to strategic trade control and discussions that emerged on a new configuration of strategic trade control regimes, the Chaudfontaine Group explored the potential consequences of the ongoing geopolitical transformations and fragmentations on the future of MECRs.

Methodology

The objective of this 13th edition of the Chaudfontaine Group Meeting was to explore potential future scenarios of strategic trade control regimes in the medium-term and to provide reasoned pros and cons for each scenario.

In view of that, firstly, the experts were asked to examine preselected potential scenarios for the future of MECRs and to suggest additional possible scenarios for the group's analysis.

The proposed scenarios were the following:

A. A series of miniature strategic trade control regimes, like the one de facto created by the US, Japan, and the Netherlands on advanced semiconductors (*i.e.*, a regime bound to a specific sector and created to target a specific country, similarly to the past Coordinating Committee for multilateral export control (COCOM)'s objective.

⁷ European Commission, White Paper on Export Controls, COM(2024) 25 final, Brussels, 24.1.2024, pp. 4-5.

⁸ Annex III.5 of the Royal Decree 679/2014 of 1 August 2014, with entry into force on 7 June 2023; Regulation of the Minister for Foreign Trade and Development Cooperation of 23 June 2023, no. MinBuza. 2023. 15246-27 introducing a license obligation for the export of advanced production equipment for semiconductors that are not mentioned in Annex I of Regulation 2021/821 (Regulation on advanced production equipment for semiconductors), with entry into force on 1 September 2023; and Resolution No. 512 of 28 June 2023, 'On the Application of National Control Measures Pursuant to Article 9 of Regulation (EU) 2021/821 of the European Parliament and Council (amended by Resolution No. 888 of 15 November 2023).

- B. A new alternative strategic trade control regime excluding countries that are non-compliant with the UN Charter. Such compliance would be derived from the United Nations General Assembly (UNGA)'s resolutions (e.g., the UNGA's vote on March 2, 2022, condemning Russia's aggression against Ukraine).
- C. A duplicate of the existing trade control regime(s) open only to countries respecting some conditions and/or set of values that would be defined in the new regime's founding document (such as a treaty or guidelines).
- D. Amending the decision-making process in the existing regimes, abolishing the consensus rule.
 - E. Status quo.
 - F. **Other scenarios** proposed by participants (see *infra*).

Secondly, the experts were invited to classify the proposed scenarios into four categories and provide justifications for their classification. Additionally, experts were requested to delineate the advantages and disadvantages associated with each scenario.

This classification process was predicated upon the consideration of two pivotal variables: the probability of occurrence (**likelihood**) and the **desirability** of each scenario.

Regarding the dimension of desirability, this has only been appreciated in terms of its effectiveness with respect to the non-proliferation objective of MECRs.

It was argued that MECRs might also pursue other objectives, such as the preservation of economic advantages and comparative technological lead. In particular, recent policy developments, for instance in the EU, indicate a trend towards the increasing focus on securing supply chains and ambitions for strategic autonomy. One of the latest examples of this is the European Union's adoption of the "European Economic Security Strategy" in June 2023.⁹

However, the non-proliferation objective is common to all participating states of the MECRs and, as such, for the purposes of this analysis, the desirability of a scenario was assessed solely in terms of its effectiveness in relation to the common non-proliferation objective of MECRs.

On the grounds of these two dimensions, the experts were tasked with assigning the proposed scenarios to the following four categories:

- 1. Less likely to happen.
- 2. Most likely to happen.
- 3. The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs.
- 4. The most desirable to ensure the effectiveness of the non-proliferation objective of MECRs.

⁹ European Commission, Joint Communication To The European Parliament, The European Council And The Council On 'European Economic Security Strategy', JOIN(2023) 20 final, Brussels, 20.6.2023.

The event was structured into working sessions devoted to exploring and examining each of the above categories.

Thirdly, the participants sharing the same classification of a scenario were divided during each working session into groups to discuss and then jointly present before the plenary their justifications for the classification of the scenario, as well as its pros and cons.

Synopsis of the discussions

The tables below are only a synopsis of the discussions of this 13th edition of the Chaudfontaine Group Meeting.

For each scenario, there are two tables. The first table points out the scenario's pros and cons that were discussed and agreed upon collectively, regardless of how each of the groups categorized the scenario, while the second table summarizes various groups' perspectives. In particular, the left column indicates the scenario's categorization defined by the different groups based on the two variables mentioned above, *i.e.* the likelihood and desirability of the scenario—it's noteworthy that no scenario was unanimously attributed to the same category—and the right column mentions the observations formulated by the group about the categorized scenario.

A) A series of miniature strategic trade control regimes

Pros	Cons		
 Highly desirable for (national interest) economic purposes. It allows for more effective export control coordination (of likeminded key players with supplying capabilities). It would be flexible and agile. Lower resource requirements as it involves fewer states. 	 "Too much flexibility" is not sustainable in the long term: deep differences in values and interests. Mini regimes may have a backlash 		

Categorization of scenario A	Observations
Most likely to happen	 De facto, it is already happing and affecting the status quo. "Small yard, high fence": the technical scope is clearly identified (fewer technical discussions) and a small group of key suppliers of controlled technology keep the edge over chokepoints.

Categorization of scenario A	Observations
The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs	 An increased fragmentation of export controls would deteriorate the global level playing field. Greater differentiation of export controls between EU Member States would increase the risk of other Member States' controls being undercut within the EU internal market due to the lack of internal borders control.

B) A new alternative strategic trade control regime excluding countries that are non-compliant with the UN Charter (such compliance would be derived from the UNGA's resolutions, such as the UNGA's vote on March 2, 2022, condemning Russia's aggression on Ukraine)

Pros	Cons	
 Sound basis for multilateralization of strategic trade controls (global level-playing field, extension of the membership). Clarifying conditions of membership. Greater ability to define common standards and definitions. It offers the possibility of choosing a decision-making system other than consensus, which can lead to more efficient and adaptable processes. Greater inclusiveness and legitimacy. Use of the enormous experience available within the 1540 committee. 	 Difficulties to commit certain states. Time-consuming and energy-intensive: the creation of new regimes requires a significant amount of time and resources. Exclusion of State Parties would not effectively address the broader range of challenges and issues posed by the current geopolitical landscape. 	

Categorization of scenario B	Observations
Less likely to happen	 Hard to identify a common scope of control for such a universal regime. Difficult to justify the new regime without having a Western-centric perspective that could jeopardize the regime's image in the eyes of other countries. It would be ineffective to exclude a State Party from the new regime if the country can continue to exchange sensitive technologies and goods. Establishing and updating standards for the implementation of controls requires consensus between the participating countries, which can be an even more complex and difficult process in such a large-scale regime.

Categorization of scenario B Observations The most desirable to ensure the The UN General Assembly is the effectiveness of the non-proliferation most legitimate world body, where objective of MECRs all countries come together as equals. Furthermore, as stated by UNGA Resolution 377 A (V) and reiterated by UNGA Resolution 498 (V), when the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security due to a lack of unanimity of the permanent members, the General Assembly shall seize itself of the matter. Regarding the configuration: Given the strategic nature of dualuse items and their potential use in conflict situations, non-compliance with the UN Charter would be a universal criterion for sanctioning a State Party that does not comply with the Charter by excluding it from the regime. It would be possible to set standards for common definitions, basic scope (inclusion of the MECRs' lists), assessment criteria, violations, verifying and enforcement mechanism against infringements (legally or politically binding) and a mechanism for revision (e.g., creation of a technical-political group) through a convention or UNGA resolution. It would be more inclusive, thus responding to the criticism concerning the exclusion of certain states despite the fact that these are aligning with MECRs policies or wish to join them.

Pros

Categorization of scenario B	Observations	
The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs	 Exclusion should not be a criterion (while sanctions are a punishment instrument, export control regimes should be a forum for discussion). The question of 'non-compliance' is debatable: in principle, it would be for the UN Security Council to establish whether or not a State complies with the UN Charter, although UN General Assembly Resolutions 377 A (V) and 498 (V) mitigate this analysis. Given that Security Council resolutions are binding under Article 25 of the Charter, could non-adherence to UN Security Council Resolution 1540 constitute non-compliance with the Charter? 	

C) A duplicate of the existing trade control regime(s) open only to countries respecting some conditions and/or set of values that would be defined in the new regime's founding document (such as a treaty or guidelines)

Cons

FIUS	Colls	
 Potential broader scope: it may broaden the scope of traditional MECRs by integrating and addressing other contemporary security issues (e.g., human rights considerations, military-civil fusion policies, etc). It offers the possibility of choosing a different decision-making system other than consensus, potentially leading to more efficient and adaptable processes. It may be more agile in responding to emerging/new threats. It would revive a certain multilateralism in strategic trade controls. 	 Duplicating MECRs could lead to redundancy and confusion in the international trade control landscape. The creation of duplicate regimes could weaken the effectiveness and coherence of existing MECRs, potentially diluting their impact and influence. Additional resource requirements: The extension of multilateral controls may require additional resources, particularly for the development and application of new policies. Time-consuming and energy-intensive: the creation of new regimes requires a significant amount of time and resources. Values as a basis for adherence to export controls can be problematic. Establishing new standards for control implementation requires consensus among participating countries, which can be a complex and challenging process (e.g. how to standardise catch-all and end-use controls). Major suppliers of sensitive technologies may be left out. 	

Categorization of scenario C	Observations
Less likely to happen	Values as a basis for adherence to export controls can be problematic even between like-minded countries.
The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs	 If certain countries, major suppliers of sensitive technologies, were excluded, how effective would the new regime be? Theobjectivesofthe MECRs go beyond the mere adoption of control lists and include such facets as informal consultations, dissemination of best practices, provision of guidance and awareness-raising.
The most desirable to ensure the effectiveness of the non-proliferation objective of MECRs	Replicating MECRs would facilitate the preservation of both the political and technical acquis, concurrently enhancing political cooperation among nations sharing similar perspectives.

D) Amending the decision-making process in the existing regimes, abolishing the consensus rule

Pros	Cons	
 Continuity of MECRs: Founded upon the technical achievements hitherto realized and leveraging existing platforms and established processes. Preserving the existing institutional and political structures. Less disruptive. Overcoming veto situations. Greater capacity to adapt to rapid technological advances. 	 MECRs are historically reluctant to change, and State Parties prefer consensus-based decision-making. The implementation of majority decision-making is likely to attenuate the inclination of participating states to comply with the prescribed (imposed) decisions or guidelines, given the voluntary nature of the existing regimes. Negotiations concerning majorities may give rise to new political tensions. The strategic search for a majority could leave less room for in-depth technical discussions. Potential "de facto" exclusion of certain players as a consequence of the dynamics inherent in the majority voting process. 	

Categorization of scenario D	Observations	
Less likely to happen	 Given the voluntary nature of political cooperation inherent in MECRs, the applicability of a majority vote system within such an international context is deemed unviable. The modification of the decision-making procedure requires unanimity, a condition which is unlikely to be met. 	
The most desirable to ensure the effectiveness of the non-proliferation objective of MECRs	• Preservation of the MECRs' institutional, political, and technical acquis.	
The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs	Given the voluntary nature of political cooperation inherent in MECRs, the viability of a majority vote system within such an international context would be ineffective.	

E) Maintaining the status quo

Pros		Cons	
•	The preservation of each of the regimes constitutes an achievement in itself. Most feasible: altering the current export control architecture requires significant resources, and reform efforts may face opposition from	•	No prospective for mid or long-term solutions. In the long term, neglect of strategic technological controls exacerbates the fallout. Inefficient and currently paralysed system: the system is inadequate to
•	major suppliers of dual-use items. MECRs are widely regarded as effective and enjoy relatively broad political legitimacy.		keep pace with the rapid evolution of technology, and the development of new standards is stifled (outdated lists of controls).
•	It avoids escalating tensions in the short term.	•	It incentivizes fragmentation and circumvention of export controls.
•	Not all MECRs are in crisis: while some MECRs are facing difficulties and are put on hold (notably, the Wassenaar Arrangement), others are still operational.	•	The current exclusion of certain countries, having the potential to assume a pivotal role as suppliers of dual-use items, poses a significant challenge.
•	There exists a vested interest in keeping key suppliers of dual-use items at the discussion table.	•	The preservation of the status quo would signify a missed opportunity for comprehensive reform, entailing the perpetuation of a certain rigidity in response to major global transformations and crises.

Categorization of scenario E	Observations
Most likely to happen	 Acceptance of a delay of several years and the lack of unanimity, accompanied by the reinforcement of the adoption or withdrawal of proposals at the national level where quasi-consensus prevails within MECRs.
The least desirable to ensure the effectiveness of the non-proliferation objective of MECRs	The current stalemate is leading to a proliferation of miniature regimes and unilateral controls, which engenders legal uncertainty and the fragmentation of export controls, thereby incentivizing circumvention and eroding the global level playing field.

F) Other scenarios proposed by participants

i. Proposed scenario for the category "The most desirable to ensure the effectiveness of the non-proliferation objective of MECRs": A UN (perhaps 1540 Committee) MECR based on an international-multilateral treaty could emerge, merging the control lists of the regimes and combining the often-overlapping guidelines and a constant secretariat

Pros	Cons
 Greater inclusiveness and global legitimacy (open to all states). Use of the enormous experience available within the 1540 committee (and other MECRs). Sound basis for multilateralization of strategic trade controls (level-playing field, extension of the membership). Greater ability to define common standards and definitions. 	 Loss of the MECRs' institutional and political acquis. Time-consuming and energy-intensive: the creation of a new global regime requires a significant amount of time and resources. The divide and mistrust among the country groups might/will re-emerge and political deadlock will occur in the decision-making process sooner or later slowing down progress. The fate of the existing MECRs, founded on political cooperation, would be under scrutiny. Possible duplication of resources, unless some MECRs dissolve.

ii. Proposed scenario for the category "Most likely to happen": The regimes remain unchanged and will be increasingly supplemented by (i) mini-lateral agreements on targeted controls between small groups of states, and (ii) increased allied coordination mechanisms, such as the deepening of the Trade & Technology Council (TTC) process

Pros

- The existing MECRs' system is preserved, but states show greater flexibility in the use of strategic trade controls as effective tools of statecraft in addition to common non-proliferation objectives.
- It could allow for effective export control coordination of like-minded key players.
- MECRs are widely acknowledged for their efficacy in mitigating the proliferation of WMDs, owing to their capacity to advance due to their non-highly political organizational structures and procedures.

Cons

- Miniature strategic trade control arrangements have less legitimacy, contribute to the fragmentation of the non-proliferation complex, and prove counterproductive in fostering a global level playing field.
- Maintaining the status quo would merely perpetuate the inefficiency of MECRs in adapting to the rapid technological development and the inclusion of new items into the control lists. Meanwhile, only marginal efforts would persist in the upkeep of these control lists.
- The existing operational framework, characterized by elements such as consensus and the concept of adherence, proves incongruent with the aspirations of emerging powers within the present intricate geopolitical milieu.
- Current geopolitical antagonism and tensions have nearly brought decision-making to an impasse in certain MECRs, posing a substantial risk of rendering these regimes obsolete.

Annex 1. MECRs' State Parties

The colour code refers to the votes of the UNGA Resolution of 2 March 2022 reported in Annex 3 (Red: vote against UNGR Resolution ES 11/1; Yellow: abstention).

Nuclear Suppliers Group's State Parties: 48	
1974	Australia, Canada, Czech Rep., France, Germany, Japan, <mark>Russia</mark> , Ukraine, USA
1978	Belgium, Italy, Netherlands, Poland, Slovakia, Sweden, Switzerland
1980	Finland
1984	Bulgaria, Denmark, Greece, Ireland, Luxembourg
1985	Hungary
1986	Portugal
1988	Spain
1989	Norway
1990	Romania
1991	Australia
1994	Argentina, New Zealand
1995	South Africa, Rep. of Korea
1996	Brazil, Ukraine
1997	Latvia
2000	Belarus, Cyprus, Slovenia, Turkey
2002	Kazakhstan
2004	Estonia, Lithuania, China, Malta
2005	Croatia
2009	Iceland
2012	Mexico
2013	Serbia

Australia Group's State Parties: 43		
1985	Australia, Belgium, Canada, Denmark, EU, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Portugal, Spain, UK, USA	
1986	Norway	
1987	Switzerland	
1989	Austria	
1991	Finland, Sweden	
1993	Argentina, Hungary, Iceland	
1994	Czech Rep., Slovakia, Poland	
1995	Romania	
1996	Rep. of Korea	
2000	Turkey, Cyprus	
2001	Bulgaria	
2004	Lithuania, Malta, Slovenia, Latvia, Estonia	
2005	Ukraine	
2007	Croatia	
2013	Mexico	
2018	India	

1987 Canada, France, Italy, Japan, Germany, UK, USA Australia, Belgium, Denmark, Luxembourg, 1990 Netherlands, Spain, Norway 1991 Austria, Finland, New Zealand, Sweden 1992 Ireland, Greece, Portugal, Switzerland 1993 Argentina, Iceland, Hungary South Africa, Brazil, Russia 1995 1997 Turkey Czech Rep., Ukraine, Poland 1998 2001 Rep. of Korea

2004

2016

Bulgaria

India

Wassenaar Arrangement's State Parties: 42

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal

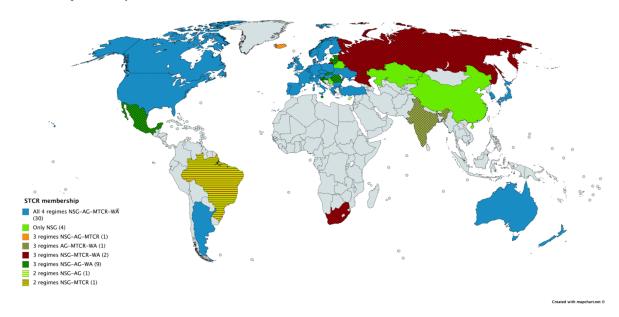
Rep of Korea (S. Korea), Romania, Russia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, USA

1996

2004	Slovenia
2005	Croatia, Estonia, Latvia, Lithuania, Malta, <mark>South Africa</mark>
2012	Mexico
2017	India

Annex 2. Map of MECRs' membership

Note: The map dates to July 2019.



Only NSG: Belarus, China, Kazakhstan, Serbia - All except WA: Island - All except NSG: India - All except AG: Russia, South Africa

Annex 3. Countries vote in favor of the United Nations General Assembly resolution of 2 March 2022 condemning Russia's invasion of Ukraine



The UN General Assembly resolution needed a two-thirds majority vote to pass, the Assembly having defined the issue as an "important question".

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