

Final Report
Review of Export Permits To Turkey

EXPORT CONTROLS

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Introduction

In October 2019, following Turkey's military incursion into northeastern Syria, the issuance of all new export permits to Turkey was temporarily suspended. This decision was based on Canada's concern that Turkey's military incursion could further destabilize the region, worsen the humanitarian situation, and roll back progress in the fight against Daesh. The suspension did not affect valid export permits, and Canadian companies holding valid permits were able to continue exporting to Turkey.

Following the October 2019 suspension, the department continued to monitor developments related to Turkey's incursion into Syria. As the situation stabilised, following the March 5, 2020 ceasefire agreement between Turkey and Russia, the department assessed that the new context warranted a change with regards to the temporary suspension on the issuance of new export permits. On April 16, 2020, the department announced a change in policy regarding the issuance of export permits to Turkey. This change was the result of a review of the situation in Syria, regional security and the overall bilateral relationship with Turkey. For Group 2 (military) items, the department considers on a case-by-case basis whether there are exceptional circumstances, including but not limited to NATO cooperation programs, that might justify issuing an export permit to Turkey. For all other groups on the Export Control List, permit applications destined to Turkey continue to be reviewed on a case-by-case basis under Canada's risk assessment framework, including against the Arms Trade Treaty assessment criteria. This was announced to exporters through a Notice to Exporters.

On October 5, 2020, the Minister of Foreign Affairs suspended all relevant export permits to Turkey after receiving a briefing on allegations regarding the possible export of unmanned aerial vehicles (UAVs) with Canadian sensors to Azerbaijan. The Minister was also informed of reports that Turkish-made Bayraktar TB2 UAVs – most likely equipped with Canadian sensors – may have been used in combat operations in Nagorno-Karabakh, Libya and linked to alleged violations of international humanitarian law in Syria. The same day, the Minister directed Global Affairs Canada to investigate these claims.

Accordingly, from October to December 2020, the department conducted a review of all suspended and valid export permits, and pending export permit applications for military goods and technology¹ destined to Turkey. On November 16, 2020, during the course of the review, the Minister suspended additional relevant export permits to Turkey. In addition to the suspended permits, there are currently a number of valid export permits to Turkey for a wide variety of military goods and technology including, but not limited to: components for the production of aircraft, software and technical data for flight simulators, satellite equipment, and firearm components.

The present review was conducted on the basis of the best and most comprehensive information available at the time. New or previously unknown information could alter the conclusions.

A. Have goods and technology exported from Canada to Turkey been used in conflicts in Nagorno-Karabakh, Libya and Syria?

The department assesses that there is credible evidence that certain Canadian military goods and technology exported to Turkey, namely sensors equipped on Turkish UAVs, have been used in the conflicts in Nagorno-Karabakh, Libya and Syria. However, the department is not

¹ The Minister is required, pursuant to subsection 7.3(1) of the EIPA, to consider certain mandatory criteria in deciding whether to issue a permit in respect of "arms, ammunition, implements or munitions of war". In the view of the department, "arms, ammunition, implements or munitions of war" should be interpreted as covering all goods and technology described in Group 2 of the Schedule to Canada's *Export Control List* (ECL), SOR/89-202. For the purpose of this review, references to "military goods and technology" apply to items controlled in Group 2 of the ECL.

[REDACTED]

aware that any other Canadian military goods and technology have been used in these conflict zones.

NAGORNO-KARABAKH

There is credible evidence that Bayraktar TB2 UAVs – equipped with Canadian sensors – have been used the conflict in Nagorno-Karabakh. The department is not aware of credible evidence that other Canadian military goods and technology have been employed in the conflict.

Official Accounts

Turkey: Following the October 5, 2020 permit suspension, Canada asked Turkey to provide any information that could assist in the review of allegations that Canadian exports were used in the Nagorno-Karabakh conflict. Turkey did not provide any such information.

[REDACTED]

Armenia: Beginning in September, the Armenian Ministry of Defence (MOD) claimed that Azerbaijan was using Turkish TB2 UAVs in Nagorno-Karabakh, along with Israeli reconnaissance and kamikaze drones. The Government of Armenia issued a [tweet](#)² on October 20, 2020, stating that Armenia had “some fragments of a Bayraktar drone, which confirm that it was manufactured in September, with an ultra-modern camera that was produced in Canada in June”. The same day, a former spokesperson for the Armenian MOD stated that the Turkish Bayraktar TB2 drone was shot down by Armenian air defence units during fighting in Nagorno-Karabakh and issued a [tweet](#)³ with an image of the alleged TB2 drone wreckage. Following the October 5, 2020 permit suspension, Canada asked Armenia to provide any information that could assist in the review of the allegations. Armenia did not provide any such information.

Azerbaijan: The Azerbaijani MOD has issued [counter-claims](#)⁴ to Armenia’s allegations that Turkish UAVs were shot down by Armenian defense forces. However, Azerbaijan has not denied the use of Turkish UAVs in the conflict. In early October, Azerbaijan’s President Ilham Aliyev, in interviews with [French](#)⁵ and [Turkish](#)⁶ media, was quoted as acknowledging the use of Turkish drones by the Azerbaijani military against Armenian military assets in Nagorno-Karabakh and noting that they were “making a difference” on the ground. No export permits for Canadian sensors were issued for Azerbaijan.

Open-Sources of Information

Canadian Media: Allegations made surrounding the use of Canadian military goods and technology in the Nagorno-Karabakh conflict have been widely reported in the media, including

² <https://twitter.com/armgov/status/1318519140194320385>

³ <https://twitter.com/ShStepanyan/status/1318512390728765441>

⁴ <https://twitter.com/wwwmodgovaz/status/1319716750066405378>

⁵ <https://www.france24.com/en/asia-pacific/20201014-azerbaijani-president-ilham-aliyev-we-never-deliberately-attacked-civilians>

⁶ <https://www.middleeasteye.net/news/armenia-azerbaijan-conflict-turkey-drones>

in *The Globe and Mail* on [September 30](#)⁷ and [October 30, 2020](#)⁸. The later Global and Mail article included images of a downed UAV that was allegedly equipped with Canadian sensors.

Turkish Media: Turkish media (*Daily Sabah*) reports allege that Azerbaijan purchased Bayraktar TB2 UAVs from Turkey. In an article dated [June 23, 2020](#)⁹, it was reported that Azerbaijan's MOD had publically announced, following parliamentary approval, that Azerbaijan was seeking to purchase Turkish-made UAVs. The article specifically referred to the Bayraktar TB2, produced by UAV platform developer Baykar. On [July 17, 2020](#)¹⁰, it was reported that Turkish Defense Industries Presidency (SSB) Chairman Demir publically stated that Turkey "will always back Azerbaijan with its UAVs, ammunition, missiles and electronic warfare systems".

Baykar's Product Catalogue: Canadian sensors are listed as the exclusive sensor technology for Baykar's UAVs as per its [catalogue](#).¹¹ This leads to the conclusion that Canadian sensors have most likely been deployed on Baykar's Bayraktar TB2 UAVs.

Social Media

UAV Footage by the Azerbaijani MOD: Beginning around [September 27, 2020](#)¹², with the outbreak in violence between Armenia and Azerbaijan, the Azerbaijani MOD began circulating UAV footage with geolocation via their official Twitter channel, allegedly demonstrating the use of armed TB2 UAVs to strike Armenian military assets. Although the Azerbaijani MOD did not confirm on Twitter that the footage was from a TB2, what looks to be the same footage was later [retweeted](#)¹³ by Baykar's CTO, and son in law of President Erdogan, Selçuk Bayraktar.

UAV Wreckage Footage and Images by the Armenian MOD: Armenian defense officials in turn, circulated [footage](#)¹⁴ and [photos](#)¹⁵ allegedly showing wreckage of destroyed Bayraktar TB2 UAVs by the Karabakh defence forces (the exact number of destroyed TB2 UAVs is difficult to corroborate), with at least [one of these images](#)¹⁶ showing a purported Canadian sensor and serial number on the tag of the allegedly destroyed TB2 UAV.

Company Response

L3Harris WESCAM: The department reached out to Canadian company L3Harris WESCAM to provide the company an opportunity to assist in the review of the allegations that its sensors were used in the Nagorno-Karabakh conflict. WESCAM provided further analysis. [While refraining from commenting on the authenticity of the images and videos, WESCAM confirmed that the external product representation contained in some of the publicly available video footage as well as the other images, seem consistent with a WESCAM produced [REDACTED] and that the crash scene seen in various tweets shows expected destruction of the aircraft. WESCAM also confirmed that the part number, product name and serial number on the [REDACTED] tag, shown in the image shared by Armenian defense officials, are consistent with WESCAM's naming conventions. WESCAM indicated that a system with this serial number was delivered [REDACTED] in September 2020 under permit number [REDACTED], approved in

⁷ <https://www.theglobeandmail.com/world/article-canada-wont-say-whether-target-acquisition-gear-for-drones-slipping/>

⁸ <https://www.theglobeandmail.com/politics/article-canadian-made-targeting-gear-used-in-air-strikes-against-armenians/>

⁹ <https://www.dailysabah.com/business/defense/azerbaijan-to-purchase-turkish-manufactured-combat-drones>

¹⁰ <https://www.dailysabah.com/business/defense/turkish-defense-industry-to-back-azerbaijan-with-uavs-tech-and-knowledge>

¹¹ https://baykardefence.com/upload/ingilizce/Baykar_catalog_eng.pdf

¹² <https://twitter.com/RALee85/status/1310181268143984644>

¹³ <https://twitter.com/Selcuk/status/1310320454201217027?s=20>

¹⁴ <https://www.youtube.com/watch?v=Hz86FI9jITo>

¹⁵ <http://asbarez.com/197714/artsakh-forces-down-turkish-bayraktar-drone/>

¹⁶ <https://twitter.com/RALee85/status/1318281456955916289>

September 2019, for the Turkish Naval Forces as the stated end-user. [REDACTED]

LIBYA

There is credible evidence that Turkey has supplied UAVs to the internationally recognized Government of National Accord (GNA), [REDACTED]. However, there is insufficient credible evidence to confirm whether UAVs supplied to the GNA during this period were equipped with Wescam sensors, though it is most likely, as the [REDACTED] is the advertised sensor package for the TB2 UAV. The department is not aware of credible evidence of other Canadian military goods or technology being used by Turkey in Libya.

There is credible evidence that, since January 2020, Turkey has been operating Bayraktar TB2 UAVs in Libya for the purpose of conducting airstrikes.¹⁷ The evidence suggests that these UAVs are most likely equipped with Wescam sensors but this cannot be confirmed. By operating these UAVs in Libya, Turkey would be in violation of the UN arms embargo.

UN Panel of Experts Report (2019): The UN Security Council has established a Panel of Experts to examine the implementation of the arms embargo on Libya. In [December 2019](#)¹⁸ the Panel issued a report, largely based on primary sources and in the department's view, possessing a high degree of credibility. The Panel of Experts wrote that "Jordan, Turkey and the United Arab Emirates routinely and sometimes blatantly supplied weapons, employing little effort to disguise the source." Several cases have also been documented by the Panel of Experts where Russian military items, such as anti-tank guided weapons, have been found on Libyan territory.

The Panel of Experts identified numerous instances in which Turkey supplied Bayraktar TB2 UAVs to the GNA during the period between May and December 2019, prior to Turkey's military intervention. The report noted that by November 2019, Turkey supplied at least 13 Bayraktar TB2 UAVs to the GNA, but likely more. Open-source assessments suggest that Turkey was likely operating the UAVs for the GNA, given the complexity of the system.¹⁹ However, the Panel of Experts' report does not provide sufficient evidence to determine whether UAVs supplied to the GNA during this period were equipped with Wescam sensors. As per UNSC resolution 2509 (2020), another UN Panel of Experts' report will be publicly released no later than March 15, 2021. It is expected that this report will cover the period from October 2019 to the present time (after Turkey's military intervention in Libya).

Project Ploughshares Report (2020): On September 20, 2020, Project Ploughshares – a Canadian non-governmental organization that focuses on disarmament issues – published a report entitled "*Killer Optics: Exports of Wescam Sensors to Turkey – A Litmus Test of Canada's Compliance with the Arms Trade Treaty*". In the report, Project Ploughshares alleges that the Turkish Armed Forces committed serious violations of international humanitarian law in Libya, particularly when conducting airstrikes using unmanned aerial vehicles equipped with Wescam sensors. Project Ploughshares also presented two images of a Turkish TB2 UAV, which was

¹⁷ <https://www.mei.edu/sites/default/files/2020-11/Turning%20the%20Tide%20-%20How%20Turkey%20Won%20the%20War%20for%20Tripoli.pdf>; <https://dronewars.net/2020/07/01/libyan-war-sees-record-number-of-drones-brought-down-to-earth/>

¹⁸ https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2019_914.pdf

¹⁹ <https://www.iiss.org/blogs/analysis/2019/11/mide-uavs-in-libyas-civil-war/>; <https://www.al-monitor.com/pulse/originals/2019/09/turkey-gulf-libya-is-becoming-a-scene-of-proxy-war.html>

reportedly supplied to the GNA and downed outside of Tripoli in December 2019. In these photographs, which have not been independently verified by the department, the downed UAV appears to be equipped with a Wescam sensor.

Other Open Source Reporting: There is a range of open source information documenting Turkey's military presence in Libya, which includes the use of UAVs²⁰. There is also credible evidence that, since January 2020, Turkey has been operating UAVs in Libya for the purpose of conducting airstrikes²¹. A November 2019 article by the Washington Post, entitled *Turkey's military campaign beyond its borders is powered by homemade armed drones*, included the testimony of a Mr. Omar Khamis Ali Abdulrahman who said that he had been injured in a suspected Turkish drone strike in June 2020. Mr. Abdulrahman alleges that the drone strike killed civilians, including a family of four, outside the city of Sirte²². In November 2019, the UN Support Mission in Libya (UNSMIL) also reported that between April – November 2019, there had been approximately 240 UAVs strikes in support of the GNA.

SYRIA

There is credible evidence that suggest that Bayraktar TB2 UAVs – most likely²³ equipped with Canadian sensors – have been used in Turkey's Syria-related military and security operations for surveillance and targeting.

The 2018 Operation Olive Branch²⁴ and the 2019 Operation Peace Spring²⁵ were mainly ground operations (supported by artillery) by Turkish military and Turkish-backed troops, where UAV technology was mainly, but not exclusively, used for intelligence and surveillance. [In contrast, there are indications that Turkey used UAVs to conduct airstrikes in Idlib during Operation Spring Shield²⁶.] [On April 13, 2020, the Minister of Foreign Affairs received assurances during a call with his Turkish FM counterpart Çavusoglu, that pending Wescam permit applications were to be used on UAVs in northwest Syria for Turkey's defensive activities in Idlib.]

B. With Respect to the Suspended Permits, did Turkish consignees or the Turkish Government comply with the end-use assurances they provided?

The department assesses that Turkey's alleged transfer of, most likely, Wescam-equipped Bayraktar TB2s to the Azerbaijani Armed Forces could be interpreted as being inconsistent with the end-use assurances provided by the Government of Turkey. However, based on the information available to the department, Baykar has not violated any of its end-use assurances.

Officials use end-use assurances provided by the permit applicant to assess the risk related to a proposed export. Whether a consignee acted inconsistently with the end-use assurances provided depends on who was responsible for transferring the items and the particular items transferred.

For all valid or suspended export permits for which Baykar is the consignee, Baykar provided an assurance in its End-Use Statements ("EUS") that it would not "divert, re-export or transfer" Wescam's ██████████ cameras to any third party not listed in Baykar's EUS. If the Bayraktar TB2s were delivered to the Azerbaijani Armed Forces by the Turkish Armed Forces, it would be unreasonable to conclude that Baykar acted inconsistently with its EUS. The EUS cannot

²⁰ <https://www.aljazeera.com/news/2020/05/28/largest-drone-war-in-the-world-how-airpower-saved-tripoli/>

²¹ <https://www.dailysabah.com/business/defense/turkeys-use-of-uavs-in-syria-libya-game-changing-uk-defense-secretary-says>

²² https://www.washingtonpost.com/world/middle_east/turkey-drones-libya-nagorno-karabakh/2020/11/29/d8c98b96-29de-11eb-9c21-3cc501d0981f_story.html

²³ "most likely" is concluded based on assessment of Baykar's Product Catalogue (p. 3) that Canadian Wescam sensors are listed as the exclusive sensor technology for Baykar's UAVs. Thus, Wescam's sensors are most likely being deployed on Baykar's Bayraktar TB2 UAVs.

²⁴ <https://www.dailysabah.com/defense/2018/03/23/domestic-uav-bayraktar-tb2-ensures-success-of-tsk-in-afrin>

²⁵ <https://www.aa.com.tr/en/science-technology/turkey-s-drone-use-puts-forward-new-military-doctrine/1755210>

²⁶ <https://www.aljazeera.com/news/2020/3/3/battle-for-idlib-turkeys-drones-and-a-new-way-of-war>

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██████████

reasonably be interpreted as imposing an obligation on Baykar to provide an assurance on how the customer, in this case the Turkish Government, will use the final product. Baykar cannot be held accountable for the actions of the Turkish Government in relation to Nagorno-Karabakh, Syria, Libya or elsewhere.

If, on the other hand, Baykar sold the Bayraktar TB2s directly to the Azerbaijani Armed Forces, or sent them to other theatres of conflict, whether Baykar contravened its assurance not to “divert, re-export or transfer” Wescam’s ██████████ cameras depends on the interpretation of these terms. Diversion is understood to be the use of an exported item in an unauthorized destination, or for an end-use or by an end-user not identified in the permit application. In this case, there is no indication that Baykar “diverted” Wescam’s ██████████ cameras to an unauthorized destination or to an unauthorized end-user. Rather, Wescam’s cameras were delivered to Baykar and were incorporated into the Bayraktar TB2, precisely as indicated by Baykar. As for Baykar’s assurance that it would not “re-export or transfer” the ██████████ cameras, based on how the concept of “re-export” is understood in the Canadian and U.S. export control regimes, Wescam’s ██████████ cameras would need to be exported from Turkey in the same state as previously imported in order for that export to be considered a “re-export”. In the present case, Baykar further processed Wescam’s ██████████ cameras so as to result in the production of a new good – namely, the Bayraktar TB2. As such, the export from Turkey of Wescam’s ██████████ cameras, as incorporated into the Bayraktar TB2, cannot be considered inconsistent with the end-use assurances.

In March 2020, the Vice President of Turkey’s Presidency of Defense Industries sent letters to Assistant Deputy Minister Peter MacDougall and DND Director General Joanne Lostracco requesting the lifting of the temporary suspension on the issuance of export permit to Turkey. Similar to Baykar’s EUS, these letters contain assurances that Wescam’s sensors “are not diverted, re-exported or transferred to any third party for any reason”. However, in contrast to Baykar, the Turkish Government does not receive Wescam’s ██████████ cameras in the same state as imported. Rather, as the ultimate end-user, the Turkish Government receives the ██████████ cameras incorporated into Turkish-built UAVs. However, it is not clear whether the assurances provided by Turkey were related to Wescam’s sensors or the Turkish-built UAVs. Accordingly, by transferring Wescam-equipped Bayraktar TB2s to the Azerbaijani Armed Forces a mere five months after providing an assurance that it would not “divert, re-export or transfer” Wescam’s sensors to any third party, Turkey’s actions may be interpreted as being inconsistent with these representations.

It should be noted, that once exported, it is extremely difficult to make the link between an item and the exact permit, and supporting end-use assurances, under which it was exported.

C. Is the continued export of Canadian military goods and technology to Turkey consistent with Canada’s obligations under the *Export and Import Permits Act (EIPA)* and the *Arms Trade Treaty (ATT)*?

The department assesses that there is no substantial risk that Canadian military goods and technology exported to Turkey would be used to undermine peace and security, or to commit or facilitate:

- *a serious violation of international humanitarian law,*
- *a serious violation of international human rights law,*
- *an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,*
- *an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or*
- *serious acts of gender-based violence or serious acts of violence against women and children.*

[REDACTED]
[REDACTED]

Therefore, there is no reason to take any action in relation to the remaining permits that are currently valid for Group 2 items to Turkey. Although there are concerns and risks related to certain aspects of Turkey's assertive foreign policy, the assessment and decision-making process for pending and future Group 2 permit applications destined to Turkey should continue on a case-by-case basis, as outlined in the April 2020 Notice to Exporters.

Legislative Framework

Mandatory Assessment Criteria

Under subsection 7(1) of the EIPA, the Minister of Foreign Affairs has the authority to issue or deny permits for the export of goods and technology listed on Canada's *Export Control List*.

The Minister's discretionary authority has been narrowed as a result of former Bill C-47, which amended the EIPA in order to enable Canada to accede to the ATT. Since September 1, 2019, the Minister is legislatively required under subsection 7.3(1) of the EIPA, to consider certain criteria in deciding whether to issue an export permit in respect of "arms, ammunition, implements or munitions of war". Specifically, the Minister must now take into consideration whether the goods or technology specified in the application for the permit:

- would contribute to peace and security or undermine it; and
- could be used to commit or facilitate
 - a serious violation of international humanitarian law,
 - a serious violation of international human rights law,
 - an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,
 - an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or
 - serious acts of gender-based violence or serious acts of violence against women and children.

Substantial Risk

The Minister is now required, under section 7.4, to deny issuance of a permit in respect of "arms, ammunition, implements or munitions of war" if the Minister determines, after considering available mitigating measures, that there is a "substantial risk" that the proposed export would result in any of the negative consequences referred to in subsection 7.3(1). Notwithstanding the foregoing requirement, the absence of a "substantial risk" does not mean the Minister is required to issue the permit, as there may be broader policy considerations that justify denying the permit.

"Substantial risk" is not defined under the EIPA. Based on the practice of other States Parties to the ATT and relevant Canadian and international jurisprudence, the department's position is that this concept requires a direct and foreseeable risk that the specific good or technology proposed for export would result in one or more of the negative consequences specified in subsection 7.3(1) of the EIPA. In order to establish "directness", there must be a rational connection between the good or technology proposed for export, on the one hand, and one or more of the negative consequences referred to in subsection 7.3(1), on the other hand. This should involve an assessment of the end-use and end-user of the good or technology, as well as the identification of a specific negative consequence. In terms of "foreseeability", the risk must be well-grounded in the evidence and must be something more than mere possibility, theory or suspicion. In most cases, the threshold of "substantial risk" will be satisfied when it is more likely than not that the export would result in any of the negative consequences specified in subsection 7.3(1) of the EIPA. However, the risk does not need to be highly likely. In assessing risk, the department should consider whether the intended end-user of the proposed export has previously used the same or similar weapons to commit or facilitate a "negative consequence".

However, the absence of evidence of prior misuse does not mean that there is no “substantial risk”.

Mitigating Measures

If it is determined that a proposed export poses a “substantial risk”, the Minister is required to consider “available mitigating measures” that could reduce the risk to below the threshold of “substantial”. Mitigation measures vary based on the circumstances of a particular application, and could include but are not limited to:

- end-use assurances provided by the end-user; or a more formal declaration regarding the intended use of the transferred goods or technology, accompanied by an undertaking not to use them for other purposes or in a manner that would run counter to the provisions of the ATT;
- post-shipment controls, such as delivery verification certificates or record-keeping requirements or checks;
- information exchange and transparency provisions between Canada and the government of the destination country, including the provision of information on weapons or items stolen, lost or otherwise unaccounted for
- training of relevant actors in the application of International Humanitarian Law and/or International Human Rights Law; or
- [REDACTED]

Ministerial Authority to Amend, Suspend or Cancel Existing Export Permits

In addition to the power to issue or deny export permits, the Minister has broad authority, under subsection 10(1) of the EIPA, to “amend, suspend, cancel, or reinstate any permit”. In this regard, it should be noted that the EIPA does not state that the Minister must apply the new criteria or the “substantial risk” test when exercising his or her authority to amend, suspend or cancel existing export permits under subsection 10(1), nor does it state that these new requirements apply retroactively to export permits issued before the amendments discussed above came into force. However, for the sake of policy coherence in this review, the department has chosen to apply the new criteria both to pending permit applications as well as valid and suspended export permits.

Sanctions Considerations

There are no sanctions in place in relation to the parties involved in the Nagorno-Karabakh conflict and Canadian sanctions in relation to Syria do not include a full embargo on the export of arms and related material. However, as discussed in this review, there is evidence to suggest a risk that Canadian military goods and technology exported to Turkey may be used in the conflict in Libya, [REDACTED]

As a first step in the review of export or brokering permit applications under the EIPA, officials must determine whether the proposed transaction would violate sanctions. While Canada’s sanctions regime is separate and distinct to the export controls set out under the EIPA, export permits will not be issued if a proposed shipment would contravene sanctions measures under the *Special Economic Measures Act (SEMA)*, *Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)*, or *United Nations Act*.



Sanctions implications in relation to Syria:

While the UN Security Council has not imposed sanctions in relation to Syria, Canada has implemented autonomous measures in relation to this country under the *Special Economic Measures (Syria) Regulations* (the “Syria Regulations”) under the SEMA. The Syria Regulations do not include a full embargo on the export of arms and related material to Syria such that all exports of Group 2 items would be prohibited. Prohibitions include a dealings ban on certain listed individuals and entities, controls on the import and export of goods and technical data, particularly those related to the production of chemical and biological weapons, as well as prohibitions on the provision and acquisition of financial services.

Sanctions implications in relation to Libya:

Pursuant to UN Security Council Resolution 1970 (2011), the UN Security Council has imposed an arms embargo on Libya, which provides that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, to Libya. Additionally, Resolution 1970 (2011) prohibits the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel in Libya.

Canada has implemented the UN arms embargo on Libya into domestic law through the *Regulations Implementing the United Nations Resolutions and Imposing Special Economic Measures on Libya* (the “Libya Regulations”), which prohibit persons in Canada and Canadians outside Canada from knowingly exporting, selling, supplying, or transferring arms and related material to Libya or to any person in Libya. The Libya Regulations prohibit any person in Canada or any Canadian outside Canada from knowingly doing anything to cause, facilitate or assist in, or that is intended to cause, facilitate or assist in, any activity prohibited by the Libya Regulations. In this regard, military goods and technology would fall within the scope of “arms and related material” for the purposes of the UN Security Council arms embargo, so the export of such items to Libya is prohibited.

Moreover, Article 6(1) of the ATT also prohibits transfers of conventional arms covered under Article 2(1), or transfers of ammunition/munitions (Article 3) and parts and components (Article 4), if the transfer would be in violation of a United Nations arms embargo.

Have Exports of Canadian Military Goods and Technology to Turkey been Diverted?

The department is not in a position to confirm the diversion of Canadian military goods and technology exported to Turkey. However, the Turkish Government’s actions could be interpreted as being inconsistent with end-use assurances provided to the Government of Canada in March 2020.

Article 11 of the ATT requires state parties involved in the transfer of the conventional arms covered under Article 2(1) to take measures to prevent their diversion. Article 11 does not apply to parts and components of conventional arms.

Diversion occurs when military goods and technology are used in a manner that is inconsistent with their authorized end-use or used by actors other than the authorized end-users. If the consignee provides false assurances regarding the final end-user, or uses the item in a manner contrary to the specified end-use, then diversion has taken place. In reviewing proposed exports, the department specifically considers whether the destination country exercises effective control over arms imported into its jurisdiction and whether there are concerns imported items will be diverted to an unauthorized destination, end-use, or end-user (see above for additional information on the end-use assurances provided in this context).

Turkey, a NATO ally with a professional army, has effective control over items imported for the army’s use and it is unlikely that these items would be inadvertently diverted. However, as outlined in this review, the Turkish Government’s transfers of Bayraktar TB2 UAVs (most likely

[REDACTED]

equipped with Canadian sensors) to the Azerbaijani Armed Forces could be interpreted as being inconsistent with end-use assurances provided to the Government of Canada in March 2020. It is also most likely that the Turkish Government deployed the TB2 UAVs in support of the GNA in Libya, but there is insufficient credible evidence to confirm whether such UAVs were equipped with Canadian sensors. Canada does not export complete UAV systems to Turkey. The Bayraktar TB2 is manufactured in Turkey. Therefore, the continued export of Canadian sensors for use on UAVs is not inconsistent with Article 11 of the ATT.

“Substantial Risk” Determination

[REDACTED]

As Canadian officials are not able to directly verify the use of Canadian military exports by Turkey, the department has relied on intelligence assessments and reporting provided by the department’s Intelligence Bureau (IND), the Privy Council Office Security and Intelligence Unit and the Department of National Defence and the Canadian Armed Forces (DND/CAF), as well as information reported by Canadian missions in the region and by Five Eyes (FVEY) partners. In applying the assessment criteria, Canadian officials have also reviewed reports from international organizations, specifically, the United Nations and non-governmental organizations, as well as traditional and social media.

This section assesses whether Canadian military exports to Turkey contribute to or undermine peace and security and whether there is a substantial risk that they would be or have been used to commit or facilitate serious violations of International Humanitarian Law (IHL) or International Human Rights Law (IHRL); acts of terrorism or trans-national organized crime; or serious acts of gender-based violence or violence against women and children.

Criterion 1: Is there a substantial risk that the military goods and technology exported to Turkey would undermine peace and security?

Taking into account the considerations set out below, the department assesses that, overall, there is no substantial risk that Canadian exports of military goods and technology to Turkey would undermine peace and security, either nationally or regionally.

Given that subsection 7.3(1) of the EIPA is modelled on Article 7 of the ATT, the department has examined how “peace and security” is interpreted in the context of the ATT. In the department’s view, the concept of “peace and security” necessarily includes an assessment of the risk posed by the proposed export to Canada’s national security, as well as regional and international peace and security.

Canada’s National Security: *The department assesses that there is no substantial risk that Canadian exports of military goods and technology to Turkey would pose a direct or indirect threat to Canada’s national security.*

Turkey is a NATO ally, bound by the North Atlantic Treaty to assist other NATO allies, including Canada, in case of an armed attack. Turkey’s membership in NATO significantly contributes to Canada’s national security. Turkish armed forces have been working side-by-side with the Canadian Armed Forces, including under NATO Mission Iraq, which Canada commanded for two years, as well as in NATO’s Kosovo Force (KFOR). Given this long-standing partnership, the likelihood that Turkey would use Canadian exports of military goods and technology against Canada, Canadians, or Canada’s allies is very low.

Regional and International Peace and Security: *The department assesses that, overall, Canadian exports of military goods and technology to Turkey contribute to regional peace and security, despite recent instances that warrant some concerns.*

In assessing whether a proposed export would contribute to or undermine peace and security, the department considers various factors, including the principles identified in the ATT. One of

[REDACTED]
[REDACTED]

these key principles is the inherent right of all States to individual or collective self-defence, as recognized in Article 51 of the Charter of the United Nations. As with any State, Turkey has a legitimate security interests in protecting its territorial integrity and defending itself from attacks, including terrorist attacks. Turkey's conflict with the Kurdistan Workers' Party (PKK) – designated as a terrorist organisation by Canada, Turkey, the United States and the EU – continues in south-eastern Turkey and northern Iraq. In northern Syria, Ankara and the People's Protection Forces (YPG), whom Turkey considers to be the PKK's Syrian affiliate, remain pitted against each other. The International Crisis Group assesses that since July 20, 2015, at least 5,161 people have been killed in clashes or terrorist attacks, as a result of PKK activities.

In Syria, Turkey aims to address the presence of Kurdish political and armed groups on the Syrian side of the border. Additionally, the ongoing Syrian conflict has generated waves of mass displacement and has destabilized border areas and neighbouring states in various ways, including through the creation of a significant humanitarian crisis.

In line with like-minded countries, Canada's assessment is that the Turkish military is a professional army that acts in accordance with its international obligations. Like most of our like-minded counterparts, Canada supports the position that Turkey, a NATO Ally, has legitimate security concerns, specifically related to the activities of the PKK. Turkey is also an important partner in the fight against terrorism and participates in the Global Coalition against DAESH, as well as NATO Mission Iraq. Some observers have also suggested that the UAV's imagery and targeting technology can help Turkey distinguish between military targets and civilian population or non-combatant entities with a view to reduce the risks of civilian casualties. [Turkey's actions in both Syria and Libya have served to stall Russian expansionism [REDACTED]
[REDACTED]
[REDACTED]

Prohibition on the Threat or Use of Force: *The department assesses that Canadian exports of military goods and technology to Turkey could be used to violate the general prohibition on the threat or use of force.*

In Libya: Turkey supports the internationally-recognised GNA and has provided it with military support. As Turkey's intervention in Libya was made upon the request of the internationally-recognized GNA, it is not in violation of the prohibition on the threat or use of force in Article 2(4) of the UN Charter. [REDACTED]

[REDACTED] Turkey has clearly indicated that it intends to continue supporting the GNA if fighting resumes.

In Syria: Turkey has used UAVs during its military interventions in Syria. In the Idlib region, there are increasing violations of the March 5, 2020 ceasefire between Russia and Turkey, and the Syrian regime is ultimately expected to resume its offensive. Given the ongoing security situation in Syria, and Turkey's perceived national security interests, potential/further use of force by Turkey cannot be ruled out.

Intervention in Matters within the Domestic Jurisdiction of another State: *The department assesses that Canadian exports of military goods and technology to Turkey could be used to illegitimately intervene in matters within the domestic jurisdiction of another State.*

In Syria: Since Turkey's 2016 Operation Euphrates Shield, Turkish security forces have occupied parts of northwestern Syria. However, following its military intervention, Turkey has provided basic services and made significant investments in infrastructure, including hospitals, schools, universities, and housing, as well as taken some measure of responsibility for local security affairs. There is no indication of when Turkey might withdraw from these areas.

Destabilizing or Excessive Accumulation of Arms: *There is no evidence to suggest that the Canadian exports of military goods and technology to Turkey have had any significant impact towards destabilizing the region.*

[REDACTED]
[REDACTED]

In Libya: Turkey's military support to the GNA was widely reported to have contributed to pushing back Libyan National Army (LNA) forces from Tripoli to Sirte and Al-Jufra in the spring of 2020. A de-facto ceasefire between the GNA and LNA ensued, during which period the United Nations Support Mission in Libya mediated security discussions between Libyan parties and advocated for the implementation of confidence-building measures. On October 23, 2020, a permanent ceasefire agreement was achieved by representatives of the GNA and LNA comprising the "5+5" Joint Military Commission. However, Turkish President Erdogan has indicated that the ceasefire is unreliable and noted that Turkey will continue to support the GNA should the LNA break the ceasefire.

In Syria: Turkey's 2018 Operation Olive Branch and 2019 Operation Peace Spring, aimed to prevent the YPG from establishing a contiguously controlled area across northern Syria. These were mainly ground operations (supported by artillery and airstrikes) by Turkish military and Turkish-backed troops, where UAVs – most likely equipped with Canadian sensors - were mainly used for intelligence and surveillance, but it remains possible that they were used to conduct airstrikes during Operation Peace Spring, alongside Turkish Air Force combat aircraft. These operations very likely would have proceeded even without the use of UAVs for intelligence. Given the role of UAVs in Turkey's 2020 Operation Spring Shield, it is not certain that Turkey would have initiated that operation had it lacked access to this technology. However, the national security interests of Turkey in this case were critical to its decision, and the operation ultimately prevented the Syrian regime and its allies, including Russia, from regaining control of Idlib. The operation was widely seen to have prevented a dramatic escalation of the already grave humanitarian crisis, the implications of which would have included increased internal displacement and regional instability and insecurity.

Criterion 2: Is there a substantial risk that military goods and technology exported to Turkey would be used to commit or facilitate serious violations of international humanitarian law (IHL)?

Taking into account the considerations set out below and after a review of UN and other open-source reporting, the department assesses that there is no substantial risk that Canadian exports of military goods and technology to Turkey would be used to commit or facilitate serious violations of IHL.

IHL, also known as the law of armed conflict, is the body of wartime rules that protect people who are not or are no longer participating in hostilities. IHL also restricts the means and methods of war. Its central purpose is to limit and prevent human suffering in times of armed conflict.

Canadian Exports of Military Goods and Technology and IHL

In Nagorno-Karabakh: In November 2020, the UN High Commissioner for Human Rights raised alarm with regards to indiscriminate attacks perpetrated by Armenia and Azerbaijan in populated areas of Nagorno-Karabakh, in contravention of IHL, and warned that these may amount to war crimes. There have been accusations and allegations made by both Azerbaijan and Armenia with regards to possible violations of IHL and reports of hostilities and civilian casualties on both sides, as a result of artillery strikes, rockets, cluster munitions, in addition to drone strikes.

While there is evidence that Turkey may have supplied UAVs, most likely equipped with Canadian sensors, to Azerbaijan and that the use of these UAVs has resulted in significant reported losses of Armenian armored vehicles, artillery battalions, and personnel; there is no credible evidence that the UAVs have been used by Azerbaijan to commit or facilitate serious violations of IHL.

In Libya: To date, the department is not aware of credible evidence that the military goods and technology exported by Canada to Turkey have been used to commit violations of IHL in Libya. However, both sides of the conflict are accused of committing IHL violations. In May 2020, UN

Secretary General Antonio Guterres stressed that attacks on civilians and civilian infrastructure in Libya violate IHL and may constitute war crimes. Hospitals, health facilities, medical personnel, and ambulances have repeatedly been targeted by precision airstrikes. In May 2020, the International Criminal Court (ICC) said there was “credible evidence that the majority of the shelling and airstrikes resulting in civilian casualties and damage to civilian infrastructure have been carried out by forces associated with the [Libyan National Army].” There have also been unconfirmed reports that Turkish drones have killed civilians in Libya and thereby contributed to violations of IHL. In June 2020, the United Nations Human Rights Council established a fact-finding mission to document alleged violations and abuses of international human rights and humanitarian law in Libya since 2016. The experts comprising the Fact-Finding Mission are expected to publish a comprehensive report on the situation of human rights in Libya in 2021.

In Syria: There are reports, including from the UN, of civilians killed as a result of Turkish military operations²⁷. These reports are limited to two out of the four recent military operations in Syria – Operation Olive Branch and Operation Peace Spring – in which Turkey relied extensively on the Syrian National Army (SNA) to conduct the ground offensive. While both operations resulted in the displacement of civilians, there is no clear evidence that suggests a deliberate targeting of civilians or civilian infrastructure and therefore of serious violations of IHL. The department is not aware of credible evidence that Canadian military goods and technology exported to Turkey have been used to commit or facilitate any alleged IHL violations by the Turkish armed forces in Syria. However, the SNA factions operating on the ground, which Turkey supports in various ways, stand accused of both IHL and human rights violations. The Turkish government insists that they do not exercise command and control over the SNA and claim that it falls under the authority of the Syrian Interim Government (SIG). While it is unclear how much command and control Turkey holds over the SNA, at the very least, the SNA is funded, trained and armed by Turkey. The UN’s reporting on these issues indicates the need for thorough investigation of alleged violations of IHL by the SNA.

Criterion 3: Is there a substantial risk that military goods and technology exported to Turkey would be used to commit or facilitate serious violations of international human rights law (IHRL)?

Taking into account the considerations set out below and after a review of UN and other open-source reporting, the department assesses that there is no substantial risk that Canadian exports of military goods and technology to Turkey would be used to commit or facilitate serious violations of IHRL.

IHRL is the body of international law designed to promote and protect human rights. In contrast to IHL, IHRL protects individuals and groups against the actions of the State at all times – both in peacetime and during armed conflict.

Overview of Human Rights in Turkey

Turkey is party to various human rights treaties, including the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social, and Cultural Rights* (ICESC) and the *European Convention on Human Rights* (ECHR).

Despite human rights challenges, Turkey is a country with strong democratic institutions and a culture of continued democratic resilience, including as evidenced by the political competitiveness in the 2019 Istanbul mayoral elections, the formation of new opposition parties, and an active, rich civil society.

²⁷ <https://www.amnesty.org/en/latest/news/2019/10/syria-damning-evidence-of-war-crimes-and-other-violations-by-turkish-forces-and-their-allies/>
<https://reliefweb.int/sites/reliefweb.int/files/resources/G1824615.pdf>
https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_43_57_AEV.pdf

Canada, alongside like-minded countries, has raised concerns about 'democratic backsliding' in Turkey, particularly following the 2016 attempted coup, including attempts by the government to crack down on opposition and freedom of expression, media restrictions and arbitrary detention. The PKK remains a top security concern for Turkey and the government has accused many opposition figures of links to the PKK. Turkish security forces have been using UAVs – most likely equipped with Canadian sensors – in their fight to counter the PKK inside Turkey. The Turkish Government also continues to crack down on opponents seen as linked to the Gülen's movement, called the Fetullah Gülen Terrorist Organization (FETÖ) by the government, accused of building a 'parallel state' and seeking government overthrow, particularly in the aftermath of the traumatic 2016 attempted coup. However, the department is not aware of credible evidence linking other Canadian military goods and technology to violations of IHRL in Turkey.

Canadian Exports of Military Goods and Technology and IHRL

In Nagorno-Karabakh: While there is evidence that Turkey may have supplied UAVs, most likely equipped with Canadian sensors, to Azerbaijan, which resulted in significant reported losses of Armenian armored vehicles, artillery battalions, and personnel, the department is not aware of credible evidence that the UAVs have been used by Azerbaijan to commit or facilitate serious violations of IHRL.

In Libya: To date, the department is not aware of credible evidence that the military goods and technology exported by Canada to Turkey have been used to commit or facilitate serious violations of IHRL. However, both sides of the conflict in Libya are accused of committing IHRL violations. In November 2020, the ICC reported a "pattern of violence" committed by LNA forces, reporting that LNA forces have "conducted indiscriminate airstrikes; abducted and tortured individuals in detention facilities; committed enforced disappearances; carried out extrajudicial killings; and pillaged civilian property." There remain security challenges across Libya, with the UN having reported grave human rights violations of migrants and refugees in official detention centres in Libya, as well as abductions and enforced disappearances by armed groups across Libya, including of professionals and civil society activists. As indicated previously, a UN Fact-Finding Mission is expected to publish a comprehensive report on the human rights situation in Libya in 2021.

In Syria: The department is not aware of credible evidence that Canadian military goods and technology exported to Turkey have been used by Turkish armed forces in Syria to commit or facilitate alleged violations of IHRL. Human Rights Watch, and others, have alleged that Turkey's suspension of water service from the Turkish-controlled Allouk water station in spring and summer of 2020 may have violated IHRL.²⁸ There are also accusations, including in a September 2020 UN Human Rights Council report, detailing large-scale human rights violations by Turkish-backed SNA in parts of northern Syria, including Afrin, that involved systematic looting and property appropriation, and widespread arbitrary deprivation of liberty.²⁹ There is no indication that Turkey held authority over these forces during these incidents, nor that Canadian goods and technology were used in committing these violations.

Criteria 4 and 5: Is there a substantial risk that military goods and technology exported to Turkey would be used to commit or facilitate acts of terrorism or transnational organized crime?

Based on the information available, the department assesses that there is no substantial risk that Canadian exports of military goods and technology to Turkey would be used to commit or facilitate acts of terrorism, or to commit or facilitate offences under international conventions and protocols relating to transnational organized crime.

²⁸ <https://www.hrw.org/news/2020/03/31/turkey/syria-weaponizing-water-global-pandemic>

²⁹ <https://undocs.org/A/HRC/45/31>

Terrorism and Terrorist Financing in Turkey

Turkey is an important partner in the fight against terrorism and is an active member of the Global Coalition to Counter Daesh, co-chairs the Defeat-ISIS Coalition Foreign Terrorist Fighters (FTF) Working Group, as well as NATO Mission Iraq. Turkey is also a member of the Global Counterterrorism Forum (GCTF), which Canada currently co-chairs with Morocco. The Financial Action Task Force (FATF) – the main international body for combating money-laundering and terrorism financing – has assessed that Turkey faces “significant money laundering and terrorist financing risks” from illegal activities of criminal organisations, terrorist organisations and foreign terrorist fighters seeking to exploit domestic and cross-border vulnerabilities given Turkey’s geographic location. Turkey also faces significant threats from terrorism and has suffered from a significant number of terrorist attacks. The FATF has noted that in recent years Turkey has significantly strengthened relevant laws and regulations and while there are gaps that remain to be addressed, Turkey has established a legal framework that can form the basis for achieving effective outcomes. The US State Department’s 2019 Country Report on Turkey notes that Turkey continues its efforts to defeat terrorist organizations both inside and outside its borders, including the PKK and Daesh, and that Turkey remains an active contributor in international counter-terrorism fora, including the GCTF. Turkey has unequivocally condemned terrorist attacks and violence perpetrated by terrorist organizations. The department assesses, consistent with like-minded countries, that the Turkish military is a professional army that acts in accordance with its international obligations and so is unlikely to provide military goods and technology to promote terrorism.

However, in Syria, Turkey has an evolving relationship with the terrorist group Hayat Tahrir al-Sham (HTS), which controls, militarily and administratively, the majority of the Idlib pocket that remains outside of regime control. Although their end objectives in northwestern Syria differ, media reports have highlighted Turkey’s coordination with HTS (e.g. the Turkish military relied on security cover provided by HTS when establishing observation posts into Idlib). Despite this seemingly tacit acceptance of HTS’ presence in Idlib, Turkey does not officially support or engage with HTS, preferring to continue military support to the National Front for Liberation (NFL), a rebel coalition part of the SNA, in the face of an intensified regime offensive. If a Syrian regime offensive resumes in Idlib, Turkey will likely be spurred to intervene to curb internal displacements towards its border. As Turkey has designated HTS as a terrorist group, it is highly unlikely that they will supply or support directly through the transfer of military goods and technology, although they may cooperate and/or work alongside this group, and/or may support opposition groups who cooperate more closely with HTS.

Transnational Organized Crime

Turkey is party to the *United Nations Convention Against Transnational Organized Crime*. The majority of Canadian-made military goods and technology is being sold to the Turkish Armed Forces which is unlikely to provide these items to transnational criminal organizations.

Criterion 6: Is there a substantial risk that military goods and technology exported to Turkey under the relevant suspended permits would be used to commit or facilitate serious acts of gender-based violence, or serious acts of violence against women and children?

The department is not aware of credible evidence linking Canadian military goods and technology to gender-based violence within Turkey and the surrounding region. Consequently, the department assesses that there is no substantial risk that the military goods and technology exported to Turkey would be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women within its territory.

Gender-Based Violence in the Context of the Conflicts in which Turkey is Involved

There are no indications that Turkey has deliberately targeted children, women, or civilians. Turkey is a party to the *Convention on the Rights of the Child* and as the world’s largest host of



refugees, Turkey has significantly contributed to humanitarian efforts in protecting refugees and asylum-seekers, including women and children.

Gender-Based Violence in Turkey (Domestic Context)

Turkey is a party to the *Convention on the Elimination of All Forms of Discrimination against Women* and was the first country to sign and ratify the Council of Europe's *Istanbul Convention* on preventing and combating violence against women and domestic violence in May 2011 and 2012 respectively. Despite a vibrant women's movement, Turkey ranked 130 out of 153 countries in the World Economic Forum's Global Gender Gap Index 2020 and gender-based violence remains a major challenge in Turkey, exacerbated in Turkey and globally in the context of the COVID-19 pandemic.