

House of Commons Standing Committee on
Foreign Affairs and International Development (FAAE)

Study on Granting of Arms Exports Permits

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Issue

In October 2020 it became apparent that Azerbaijan, in its conflict with Armenia over the enclave of Nagorno-Karabakh, was relying heavily on drones. This included Turkish-made drones, assembled with equipment from the United States, Germany and Canada. Of particular note are the exports of L3 Harris WESCAM surveillance targeting systems (approved for export to Turkey in April 2020) and Bombardier propulsion systems manufactured in Austria.

Drones were *the* key weapon system that enabled Azerbaijan to change the status quo in its conflict with Armenia over Nagorno-Karabakh, and this particular drone was arguably the most sophisticated among the different types of drones in this theatre of operations. In other words, at stake here is more than just a question of human rights; at stake is the fact that Turkey leveraged Canadian-supplied equipment to destroy the status quo of a frozen conflict – and may well do so again. Throughout early 2020, Turkey lobbied the Canadian government heavily and directly to permit the export of aforementioned drone components.

Was it predictable that granting a permit posed a high risk of being used in ways that may run counter not only to the permit but to Canadian interests? Without a doubt.

Arms exports to Turkey had been subject to heightened scrutiny by Canada and its allies since October 2019, following Turkey's incursion into northern Syria. Similarly, Turkey's intervention in Libya is, for all intents and purposes, at odds with NATO. In other words, Turkey has a track-record of asserting a sovereign foreign policy whose aims at times diverge from NATO.

Since this is public information, there is little doubt that the inter-departmental risk assessment provided to the Minister on this particular matter would have flagged that the granting of this particular permit was a high-risk proposition. At the time, Turkey was already conducting military exercises with Azerbaijan and encouraging Azerbaijan to change the status quo -- by military means. The Minister exercised discretion in approving the permit anyway. This is all the more paradoxical given the exceptional degree of scrutiny export permits have been subject to under the current government.

On the face of it, at issue is (1) whether Turkey complied with its obligations under Canada's export control regime and (2) the consequences that follow for Turkey – or, for that matter, any other country that might violate its obligations. Canada has a keen interest in ensuring that receiving countries meet their obligations *de jure* and *de facto*, for the sake of its own interests, for the sake of regional and global stability, and for the sake of the legitimacy of the aforementioned international arms control regimes and associated transnational norms.

However, what is really at stake is the discretion exercised by the Minister and government that naively took at face value assurances provided by Turkey over the likely advice it would have received by the civil service. Those assurances turned out to be a blatant lie: Canada would have never delivered the components to the third party in question for which the drones appear to have been intended in the first place. That is, the lobbying and transaction dates coincide conspicuously with the subsequent (arguably intended) use of the drones. In other words, this case is hardly a failure of the export control regime per se: the risk assessment would likely have shown that granting this particular permit is not in the national interest.

Moreover, the matter is critically important as comparable issues with Turkey now arise in other domains. By way of example, the Turkish navy is being deployed to protect Turkish hydrocarbon interests in the Mediterranean. These interests are at odds with interests and claims made by Greece, and conceivably other countries. Canadian defence technology that is destined for the Turkish navy henceforth runs a risk of being used to assert Turkish interests. This may of course run counter to Canada's and NATO's interests, potentially contributing to further regional instability. In other words, it is critically important for this committee to study export permits to Turkey, beyond the particular use of drone technology provided by Turkey to Azerbaijan in the Nagorno-Karabakh conflict.

Background

In November 2018 I testified before the Senate Standing Committee on Bill C-47 concerning Canada's accession to the Arms Trade Treaty (ATT). By acceding to the ATT in September 2019, Canada enshrined the ATT assessment criteria into Canadian law. That makes Canada a signatory and a party to the ATT; Turkey is a signatory but not a party to the ATT.

Canada and Turkey also both belong and adhere to the four principal arms export control regimes: the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Australia Group. NATO membership imposes additional constraints and obligations on both countries.

The [Export Control Division](#) at Global Affairs Canada explains Canada's export regime in the [Export and brokering controls Handbook](#) (2019). This Handbook provides

background on export controls and a primer on the actual application process. It has been updated to reflect the changes resulting from Bill C-47 and related regulations and processes.

The export control regime provides a minimum test and threshold for evidence, but the Minister of Foreign Affairs retains considerable discretion (and associated risk) in issuing permits. That is a recognition of the fact that defence exports are an instrument of foreign policy. The ATT narrowed discretion somewhat by increasing discipline for the Minister. The ATT's concept of brokering introduces the principle of end use. Rather than simply replicating standard export permits, implicit to the ATT is a recognition that not all allies have the same standards. Brokerage allows for lists and countries that may well, and do, differ from NATO+ or NATO++ schedules. Indeed, Turkey was intentionally omitted. As a result, even though Turkey is a NATO ally, defence exports to Turkey require a brokerage permit.

From the 1950s through the 1970s, when NATO had fewer members than it has today, member states developed what amounts to mechanism to fast-track exports in support of NATO operations. That was during the Cold War, when operations and interests were more clear-cut than they are today. Nowadays various NATO member countries are engaged in a range of conflicts, such as "counter-terrorism" and "counter-insurgency" missions. Many of these are neither NATO missions, nor are they missions that have been approved by NATO (through the Atlantic Council and member states).

In addition, supply systems have evolved: countries keep lower stocks, and more of the supply chain is in the hands of private vendors. As a result, governments have less control over exports. At the same time, exports of dual-use technology have become a major issue. As a result, the scope of delegated authorities has narrowed.

The basic question that informs Canada's export control regime is whether to trust what Canada is being told by the receiving country about the intended end user and end use. For what under the regime is known as an "open country", the minister has discretion as to whether to delegate authority to grant export permits (which ministers have conventionally done, with some exceptions), and the level of scrutiny to be applied. These decisions are not part of the legislation per se; rather whether, when and what questions to ask is a policy choice. That means leveraging Canadian intelligence and gauging the consequences of exports in the greater geostrategic context.

By and large, the Minister delegates to the civil service authority for approval of export permits to NATO allies based on the certificate of end use. Once trust is called into question, however, as in the case with Turkey, political approval is required. Defence exports to Turkey were never banned per se; rather, exports of kinetic weapons were frozen while other transaction depend(ed) on the nature of the good in question.

Options Analysis

1. A Minister could request a risk assessment on every transaction (and remove all discretion from the civil service). That would not have made a difference in this case: this decision already required approval by the political authority, and based on open source information we can conjecture the risk assessment that would have been provided to the minister.
2. Canada could request a bilateral verification mechanism to accompany certain or all export permits, but these mechanisms are cumbersome and of limited effect. Switzerland has such a system, but it is necessarily limited in scope: you can count arms, but how do you verify components such as computer chips? Under the Obama administration, the United States had a verification protocol with China for certain dual-use technology to count inventory provided to certain State-Owned Enterprises. Certain countries, including in the Middle East, have shown themselves sympathetic to such bilateral protocols, precisely because they know that abuses such those by Turkey put their own defence imports at risk.
3. A broad multilateral mechanism is unlikely, both because it would dilute the (fairly robust) Wassenaar Agreement and because countries such as Russia would be loath to sign on.
4. A plurilateral code of conduct for select jurisdictions and companies may be conceivable, but the scope would need to be carefully defined, such as distinguishing between military and dual use technology. To this end, drones are highly problematic, both because of the technology involved and because of their use: they are highly mobile, and, in the case of the particular drone in question, can be used for surveillance or to enable targeting.

Problem

Select Canadian interest groups with a long-standing agenda tend to capitalize on any Canadian export control controversy to call into question Canada's export regime wholesale, with the implicit normative implication and intent of stopping, or at least slowing, approval of weapons exports. That approach is highly problematic, for several reasons:

1. They fundamentally misread the international security environment. Like so many Canadians, they see the world for what they wish it were, rather than understanding the world for what it is. Ours is a world that is highly competitive and contested across all domains, where highly committed adversaries act persistently below the threshold of nuclear force, employing assertive political, economic and military tactics. We live in an age of permanent conflict across all domains. Canada's adversaries possess, deploy and are developing a spectrum

of capabilities and actions that are comprehensive and extremely threatening. Much of that threat is driven by technological change. Canada is no longer immune from sophisticated threats in a challenging world. Canada will be paying a very high price if it fails to pay attention. Technological innovation by means of a vibrant and robust security and defence industry is vital to effective deterrence: preventing the adversary's ability to achieve their aims. Canada also has an obligation to contribute to the security and defence of its allies and partners.

2. Canadian security and defence spending is too modest and its procurement system too cumbersome (not by consequence, but by design) to sustain a domestic security and defence industry on its own.
3. As the 10th largest economy in the world, Canada has domestic, continental, regional, international and global security interests at stake. Its standing as a top 10 arms exporter in the world is thus commensurate with its economic heft: 640 firms generated \$10.7B in defence sales in 2018. Canada's prosperity thus depends on both its ability to assert its interests, and its ability to nurture a high-tech security and defence industry. In 2018, the Canadian defence industry contributed over \$7B in GDP and generated almost 64,000 jobs, which are distributed across the country: 41% in Ontario, 23% in Quebec, 19% in Atlantic Canada, and 17% in Western Canada. It also generates some of the most important investments and developments in research, development and innovation in the country (\$415 million in 2018): 4.5 times that of the Canadian manufacturing average in 2018. Ninety percent of those firms have fewer than 250 employees: that is, slowing or halting their exports means the probable demise of these firms in relatively short order. In 2018, 46% of sales were in Canada, 24% in the United States, 7% in Europe, 5% in Asia and Oceania, and 1% to the rest of the world – and 17% in the Middle East and Africa, which is well below that region's share of global arms imports. In other words, over 80% of Canada's arms sales support NATO members and other close allies.

Challenge

1. Canada throttling or ceasing arms sales would have no impact on procurement by virtue of a displacement effect whereby purchasers would simply acquire services, technology and arms from other suppliers. Turkey procuring a Russian missile defence system after being rebuffed by allies is a case in point.
2. Weapons exports are an instrument of foreign policy. They give Canada some leverage over the use of that technology by recipient countries: if Canada got out of arms exports, those countries would still procure weapons, but at a heightened risk of procuring weapons from countries far less scrupulous than Canada. So, throttling or ceasing Canadian arms exports would actually make the world *less* safe and *increase* the prospect of human rights violations.

3. Throttling or ceasing arms exports would result in disproportionate harm to Canadian security and prosperity.
4. Canada's export control regime is robust. There is no systematic evidence to call the regime as a whole into question. Although Turkey is the fourth most important destination for Canadian military exports, sales of Canadian weapons technology to Turkey have long been disproportionately small relative to the fact that Turkey was the world's largest importer of major weapons between 1991 and 2017. Following Turkey's military incursion into northern Syria, all major European arms exporters (the Czech Republic, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK) along with Canada halted or restricted arms export license approvals for Turkey.

Conclusion

Turkey has built up a substantial defence industrial base that meets about 70% of domestic demand (much of it produced under licence) and has become a significant arms exporter, especially to Saudi Arabia, Turkmenistan and the UAE. Canada and allies have recognized that Turkey's own behaviour along with its export patterns pose a risk to Canadian interests, regional stability and human rights. The consequences of a ministerial decisions (that likely ran counter to advice received from the civil service) should not be borne by the export regime or the Canadian defence industry.

Further Action

It appears that the current government's apparently liberal use of redactions in documents provided to parliamentary committees may violate parliamentary sovereignty and the constitutional principles of responsible government and ministerial responsibility that are fundamental to the Westminster parliamentary system.

Critical parts of documents submitted by the government to the Committee for this study have been heavily redacted; consequently, the committee's deliberations confront important information gaps. The committee may want to consider referring this study to the NSICOP, not only to study this matter further, but also to ascertain whether the government complied with its obligations in the redactions of documents released to FAAE.