

# The Global Exchange

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# **MEASURING THE BIG BANG: EVALUATING THE IMPLEMENTATION OF *STRONG, SECURE, ENGAGED***

5TH ANNUAL DEFENCE PROCUREMENT CONFERENCE

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# Introduction: Canada's Sovereignty in the 21<sup>st</sup> Century

by **ADAM FROST**

**T**he fundamental rules of conventional sovereignty are that states will refrain from intervening in the internal affairs of other states, are afforded the right to determine their own domestic authority structures and are freely able to decide what international agreements they choose to enter or not.

In principle these concepts have been widely accepted, but are often violated in practice.

While conventional sovereignty would appear favourable in theory, realistically, the domestic affairs and foreign policy decisions of states can and do have consequences for others. Poor governance in one state can produce regional instability, from uncontrolled migration across borders, uncontrolled arms trade and other illicit trafficking or the rise of militant nonstate actors. Economic, environmental and health policies of one state can affect the food, water, health and economic security of another. These transnational issues are increasingly complex because the world is more globalized than ever before. No state exists in a vacuum.

Therefore, it is often within a state's interest to influence the policy decisions of its neighbours. Pragmatism often trumps abstract theoretical ideals.

The lead package of this issue examines the challenges of securing Canada's sovereignty from modern threats.

When discussing Canadian sovereignty the Arctic will invariably be mentioned, and indeed is the focus of fully half of this edition. David Bercuson, Andrea Charron and James Fergusson argue that the perceived threats to

Canada's sovereignty in the Arctic are overblown, resulting in alarmist rhetoric. Robert Hage, Rob Huebert and Petra Dolata, however, content that Canada must be vigilant if it does not wish to erode sovereign control of its Arctic territory.

Going beyond the arctic circle, Hugh Segal and Heidi Tworek discuss the challenges of defending against hybrid threats and outline possible steps in response to such perils. From coordinating with our closest allies to no longer tolerate attacks against the integrity of our most valued institutions, to increasing transparency of activities and strengthen public trust in Canadian democracy via domestic measures.

Finally, this package concludes on the issue of border control. Vanja Petricevic discusses the shortcomings of Canada's current management of asylum seekers and how the concept of sovereignty is being adapted to address modern migration challenges. While Kyle Matthews asserts the importance of holding Canadian citizens responsible for their actions abroad because to do otherwise is not only dangerous, but an affront to Canadian ideals.

Contemporary transnational challenges are complex and dynamic. The climate is changing, technology is enabling previously unimaginable feats, and global demographics and migration are creating new points of contention. If Canada is to navigate these issues, and defend its sovereignty, it must work closely with its international partners and ensure that it is capable and willing to stand on guard for thee.

**ADAM FROST** is the Associate Research and Development Coordinator of the Canadian Global Affairs Institute.



# Canada's Sovereignty: The Threats of a New Era

by **DAVID J. BERCUSON**

**T**he concept of sovereignty is historically linked to the Peace of Westphalia, a series of peace treaties signed in Europe in 1648 which generally ended the wars of religion. The basic concept of the Peace of Westphalia was that national and religious authorities abandoned interference in the affairs of another state and most specifically to pursue religious goals. The Peace of Westphalia did not freeze boundaries as they were in 1648 but gave the concept of national governance a huge boost by effectively declaring that states would not interfere in the internal affairs of other states.

Canadian sovereignty in 2018 is based on the principle that the national government in Ottawa controls the laws and political

procedures within the political and geographical boundaries of Canada. Canada's principle political boundary is that with the United States from the Atlantic Provinces through to the Strait of Juan de Fuca and along the boundary between Alaska and British Columbia and the Yukon. The exercise of Canadian law sets our geographical boundaries over the Arctic archipelago and the seas in between the archipelago's islands. The "Northwest Passage" (in fact, there are two versions of the passage) is an exception which the United States claims as an international waterway. There are one or two more disagreements over sea boundaries, such as in the Beaufort Sea.

There are, at present, no threats to Canadian sovereignty in any part of our boundaries; at least, not in the traditional way that "threat" has been defined for most of recent history. Our small dispute with Greenland (Denmark) over Hans Island is a tiny quibble that does not threaten Canadian sovereignty no matter how it is eventually resolved. The same situation applies to the Beaufort Sea disagreement. As far as the Northwest Passage is concerned, it does not matter

whether the passage is admitted as an international waterway, and thus not subject to Canadian sovereignty, or an internal Canadian waterway. At the end of the day, Canada will manage the passage because all the waters leading to and from it are Canadian. Therefore, Canada must be responsible for the passage's maintenance, for search and rescue, and for providing navigational and other information (such as sea/ice conditions) to any ship that proceeds there.

In fact, as an earlier [Canadian Global Affairs Institute study](#) showed, there is virtually no chance that the passage will be used for regular freight traffic for many years due to the unpredictability of ice conditions there in the summer, let alone the winter. No company will issue insurance for passage in those waters until there is a high predictability of sea/ice conditions from season to season, which is certainly not the case now.

Why then are Canadians so focused on the notion of “sovereignty”? Why has so much been written about it? Why is there so much debate over the question of how many resources should be allocated to sovereignty protection, let alone the security of the Far North? Whom do we have to worry about?

We are today a nation that has evolved from colonies (New France and then British North America) which themselves had no self-government until the mid-19<sup>th</sup> century. The earliest boundaries were arbitrary ones marked by this plaque or that marker which gave witness that some explorer or trader had passed that way and claimed the land for his monarch. As the colonies evolved (New France to British North America) through military conquest, the boundaries changed because the metropolitan power decided to change them, for whatever reason. As the colonial subjects of British North America slowly gained more control over their own local political affairs, they gained the power to express their views to London to change their own boundaries or to convince their colonial masters to grant them pieces of the colonial empire and

attach them to Canada. The expansion of British North America after Confederation was in part the result of local colonies deciding to join other colonies or parts thereof, the Dominion government's purchase of a large swath of the northwest from the Hudson's Bay Company after Confederation, or the granting of the far northern lands (and the Arctic archipelago) to Canada from British control in 1925.

Put simply, in Canadian minds, there is uncertainty as to Canada's legal hold on the Far North even though such doubts are based on ignorance of international law. In the past Canada has made dubious claims via the sector principle that our sovereign territory extends to the North Pole. But many countries do not recognize the sector principle and recognition is the key concept that underlines sovereignty.

All this, however, is based on the idea that a nation controls the space within its boundaries and that other nations recognize and accept those boundaries. That was certainly true before the rapid expansion of globalization after the Second World War and the development of computer and internet technology since the 1980s. We arm our forces to protect us from nations that would ostensibly test our sovereign boundaries. However, the real challenges to our sovereignty – and to the sovereignty of virtually every other nation on Earth – come not from dangers from over our borders but from cyber-threats, theft of intellectual property, espionage carried out in non-traditional ways, the spread of propaganda through think tanks and other institutions, and election meddling. The dangers also arise when Canadian citizens willingly allow themselves to become actors of another state or are coerced into doing so.

Cyber-security is probably more important to Canadian sovereignty than control of the airspace over the Canadian land mass. Potential enemies penetrate computer security to plant computer viruses or other agents that can have control over key parts of our social and industrial infrastructure. In the traditional wars of the past, nations,

empires or other political entities claimed key geographic features that could make them stronger – an island, a strait, a mountain range – such as the Sudetenland of Czechoslovakia that Adolf Hitler demanded in 1938. Hitler was prepared to back up his demands with armed force. Today, a cyber-attack on the electrical power system, the communication system or transportation of the target country or territory would accomplish the same goal of undermining law and order in the disputed territory. However, it would happen without the “mess” that comes with war – killing, widespread disruption and the need for post-conflict occupation. War between major nation-states such as the United States, Russia or China would be prohibitively expensive in lives and treasure. Why risk such conflict when cyber-attacks offer a cheaper and less messy way of conducting aggression?

The widespread theft of intellectual property, and not just military intellectual property but new technological developments in any field, costs the target countries (and their industries) huge sums of money spent on developing and commercializing new products. Stealing such property through cyber-theft or plain old-fashioned industrial espionage saves the perpetrating country huge sums and great amounts of time, and robs the target country or industry of massive developing sums. Is there any real difference in challenge to our sovereignty if such theft occurs quietly, without violence, over many months or even years, via the internet, or if a large gang of armed attackers crossed our border, seized a factory, denuded it of its intellectual property and then retreated to another country?

Our sovereignty is being undermined in other ways. Large sums of money have been pouring into Canada to help groups who oppose new infrastructure construction, particularly pipelines. At a time when Canada has one of the world's largest proven reserves of oilsands, natural gas, etc., political lobbying, court cases and civil disobedience have severely challenged the construction of pipelines to move these

products to international markets. Non-Canadian funds have financed much of that activity to interfere in our political processes. Many polls have illustrated that Canadians want to expand sales opportunities to markets other than the United States, but the regulatory, political and judicial system has slowed to the point where virtually nothing is getting done. Canada's reputation as a nation that can produce something is being severely undermined while sales of Canadian hydrocarbons to the United States at ridiculous discounts rob Canada of its rightful share of one of its most important exports.

Funds from abroad are being channelled into think tanks and institutions such as the Confucius Institutes, which exist primarily to push the People's Republic of China line inside the borders of Canada and other nations. This too is a violation of Canadian sovereignty. Although the results of these foreign-funded enterprises may take longer to take hold of political discourse in different parts of Canada, they are no less damaging to our internal debate. Some experts refer to such activities as “hyper war” but there is really nothing new about these efforts. Non-kinetic efforts to influence another nation's behaviour are at least as old as Biblical times but modern technology makes them easier and allows results to emerge more quickly.

Kinetic dangers to Canadian sovereignty are few and far between. Canada may not have the assets to defend its vast territory against foreign invaders, but there are almost no foreign invaders to worry about. What is the greater danger to Canadian sovereignty: Russian bombers flying over Northern Canada, perhaps even carrying nuclear weapons, or – in the event of some tragedy in Canadian northern waters – Russian icebreakers coming to the aid of a Scandinavian cruise ship because Canada has no means to respond properly to such a catastrophe? It is as true today as it ever was that the ability to keep citizens or even visitors safe while travelling inside Canada is a measure of our ability to claim sovereignty and to exercise it. To what extent is one's claim to sovereignty valid if one cannot exercise sovereignty within one's

own boundaries? Here are the real dangers to Canadian sovereignty.

No nation on Earth is completely sovereign within its own domain. The United States, still with the most powerful military on Earth, certainly can defend its sovereign territory as it might have at the end of the Cold War, but the challenges that face Canada today in non-conventional threats to our sovereignty also face the United States. Americans are rightly concerned about foreign, particularly Russian, intervention in the 2016 presidential election. No one has yet attempted to map out such intervention in earlier elections or studied the extent to which Russian, Chinese, Iranian or North Korean interventions in daily American life may be swaying the American political system in directions its citizens do not wish to go. Such interventions fool them into believing that other American citizens have a legitimate interest in these departures from the norms of American politics. Those considerations apply equally to Canada and to other nations.

As our social and political systems get more sophisticated – computer voting from home, for example, – they will become more open to outside interference and manipulation. The challenges of maintaining our sovereignty grow with each day. It is especially difficult in a democracy where freedoms of speech, assembly, the press, etc., are so important, making us vulnerable to outside elements interfering in our internal affairs. The idea of sovereignty now needs to be separated from the traditional ideas of standing on our borders and protecting our nation from foreign invasion. Invasions of our sovereignty are taking place constantly; we need to devote the time and resources to keep ourselves as free as possible.

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Lead image: **Andreas Rentz / Getty Images**



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# Arctic Sovereignty: Preoccupation vs. Homeland Governance and Defence

by **ANDREA CHARRON AND JAMES FERGUSON**

**I**nevitably, Canadian foreign policy scholars are either asked, or feel compelled, to write about the Arctic.<sup>1</sup> More often than not, their writings include the nebulous topic of Arctic sovereignty and it is usually assumed to be under threat. Yet, foreign policy scholars from other Arctic states are not fixated on sovereignty. They are concerned about their ability to defend their homelands from a variety of (especially) state-based threats. Indeed, analysts from other Arctic states are simultaneously fascinated and confused as to why Canadian

foreign policy scholars and Canadian political discourse writ large spend so much time narrowly focused on Arctic sovereignty rather than homeland governance and defence. The answer revolves around a misunderstanding of today's concept of sovereignty and a reluctance to talk about threats to the homeland. The former is a legacy of a Canadian need to navigate great powers and allegiances (read the U.K. and U.S.) and the long and difficult history of securing title to the territory.<sup>2</sup> The latter is to avoid U.S.-type language and the (false) assumption that Canada is still "fire-proof". The result, however, is debates in Canada, which use out-dated arguments to simultaneously address and avoid conversations about potential, real threats to Canada, which have nothing to do with the Arctic and wider issues about governance. This article returns to the basics to define sovereignty and then applies it in the Arctic context. We finish with a few thoughts on what might be a way forward.

## Sovereignty

Never underestimate the ability of academics to take a relatively straightforward concept



A map used by Canada's official NATO Twitter account (left) to contest Russia's annexation of Ukraine's sovereign territory of Crimea. Russia's official NATO Twitter account tweeted the map on the right in reply. As the authors note, this annexation is a rare example of *de jure* sovereignty being unaligned with *de facto* sovereignty. (Source: Canada at NATO/Russia at NATO)

and unnecessarily complicate it with intended and unintended consequences. Add political agendas and one can quickly lose focus and obfuscate issues. Certainly, international relations enthusiasts are used to wrestling with the multi-faceted conceptual treatments of sovereignty.<sup>3</sup> As the fundamental organizing principle of the modern state system, sovereignty refers to the absence of any higher authority. In other words, a sovereign state, or more accurately its government, regardless of political nature or stripe, recognizes no higher authority to make decisions about the state. Certainly, a state may cede some of its authority through formal international agreements, such as treaties, but these almost always contain provisions for a state to withdraw, and such decisions do not erode a state's sovereignty.

The scope of a sovereign state's authority, in turn, applies to all of its territory, which includes the land, the maritime approaches, the airspace above both, and to its continental shelves. Today, this scope is the product of *de jure* recognition primarily through full membership in the United Nations (i.e., a seat and vote in the General Assembly), and as embodied in international law. Historically, however, the acquisition of sovereignty in the process of the evolution of the modern state system also entailed the

state's ability to control its territory – *de facto* sovereignty. This normally meant the ability to defend physically, hence control, one's territory by military might from armed state invaders (war), or armed internal forces contesting government authority (rebellion/revolution).

Thus, sovereign states face two distinct threats to sovereignty: the possible withdrawal of (*de jure*) recognition, and the loss of (*de facto*) control over part or all of its territory, which was not agreed to or arranged via treaty/act of Parliament. For most sovereign states, *de jure* and *de facto* sovereignty go hand in glove. There have been rare occasions in recent times when this has not been the case. For example, Ukraine is still recognized by the overwhelming majority of the community of sovereign states as possessing *de jure* sovereignty over Crimea, even though Russia now possesses *de facto* sovereignty of this territory. How this anomaly will be ultimately resolved remains to be seen.

Nonetheless, this situation is the exception in today's world – the result of two world wars and the evolution of international law. Moreover, it is also extremely rare in the modern system that control over territory is contested through the threat or use of force

by other sovereign states. Rather, the use of force between states is about governance of the state – either by whom or how. For example, the objective of the United States-led coalition that invaded Iraq in 2003 was to overthrow Saddam Hussein's dictatorship and replace it with a liberal, democratic government. *De jure* sovereignty remained with Iraq within its recognized territorial borders; it maintained, for example, its seat on the UN General Assembly. The civil war that followed was an internal contest for control of the government. Elements within the Kurdish population sought to obtain recognition of part of the Iraqi northern territory as a separate, independent Kurdish state with *de facto* control of northern Iraq (which was also desired by Kurds in parts of Syria). However, they have found little to no support from the sovereign states of the region, or the larger international community of sovereign states. In effect, the principle of territorial integrity or the sanctity of sovereign borders is largely uncontested by the international community.

This support for the “rigidity” of borders can be traced back to the period of decolonization following the Second World War. (Canada can trace it back a little earlier to 1931, with the passing of the Statute of Westminster when Canada had full foreign and defence policy decision-making ability separate from the U.K.) The newly independent sovereign states tacitly agreed that existing boundaries would be maintained inviolate, even though they transcended historical ethnic and tribal lines. To do otherwise would open a Pandora's Box and more world wars. Of course, there have also been rare cases when a sovereign state has ceded *de jure* (or recognized) sovereignty over part of its territory as a function of civil war, creating a new sovereign state, which the international community has in turn recognized. This has been the case for Indonesia with the creation of Timor Leste and most recently, Sudan and South Sudan. Even so, their territorial area of authority or control has been established within existing boundaries of the former state. In each case, the UN General Assembly, after being blessed by the UN

Security Council, voted to accept their applications as full members of the UN.

In effect, the extant relationship between *de jure* and *de facto* sovereignty has changed significantly over time. In the formative centuries of the modern sovereign state system, *de facto* sovereignty (or a state's ability to repel would-be foreign invaders and the need, for example, for massive standing armies) has been more significant than *de jure* sovereignty, reflecting the contested nature of state borders in the evolution of states. Over the last century, this relationship has been reversed with *de jure* (recognition) now dominant and *de facto* sovereignty assumed and enforced via measures short of force or via international courts of law. This reversal is vital to understanding why no Arctic sovereignty problem confronts Canada, even if one applies older ideas about the primacy of *de facto* sovereignty and assumes this is best shown by military projection.

### Canada's Arctic Sovereignty

This brief exposition of the sovereignty question provides the backdrop for understanding the Canadian Arctic sovereignty preoccupation. While one might contest the legality of the transfer of *de jure* sovereignty of Arctic territory from the United Kingdom to Canada in 1880 by Order in Council,<sup>4</sup> no one in the international community has contested or challenged Canada's legal sovereign status over the area. Nor has any sovereign state provided a *de facto* challenge (i.e., seized control of part of the territory) to Canadian sovereignty over its Arctic territory.<sup>5</sup>

Of course, the status of the Northwest Passage (NWP) is regularly portrayed as a threat to Canadian *de jure* and *de facto* sovereignty. While one may debate whether the passage should be legally treated as an international strait, this debate is not about Canadian sovereignty *per se*, no more than other recognized international straits are about the sovereignty of the adjacent states. In fact, ironically, the *de jure* principle of recognition reinforces Canadian sovereignty

relative to the NWP. If the Canadian government decided to act outside of this principle, and, for example, unilaterally close the passage, this would create the conditions for a sovereignty challenge. Similarly, the issue of the Canadian *de jure* status is in dispute with the United States over the Beaufort Sea and into the Arctic Ocean relative to its exclusive economic zone. However, it is not a threat to its sovereignty, simply because the status of both has not been decided through international recognition. In other words, Canada's sovereignty in these cases cannot be threatened because it doesn't possess *de jure* sovereignty over these areas.<sup>6</sup> The process is similar for all Arctic states. Until the international community through the UN Convention on the Law of the Sea (UNCLOS), or the United States and Canada in the case of the Beaufort Sea, reach a negotiated agreement – recognized by the international community and embedded in international law – no one has sovereignty, and thus it cannot be threatened.

This, of course, raises the question of *de facto* challenges, and underpinning this question in Canada is the lack of capabilities to control the vast expanses of the Canadian Arctic. Canada, in reality, does not need to control the territory, because there are no challenges to its *de jure* sovereignty. While many point to Russian Arctic military capabilities, their simple existence does not translate into a *de facto* threat to Canadian sovereignty. Russian aggression is evident across the world but we have yet to see Russian designs to take over and control Canadian Arctic territory. Even with the resumption of Russian military flights over the Arctic Ocean approaching Canadian territory, Russian pilots have been cautious to respect Canadian airspace knowing the potential consequences of a significant, lingering breach. Canadian Arctic sovereignty is not at stake. Rather, bona fide threats to Western states as a function of Russian designs on territory in Eastern Europe and former Soviet republics must be discussed in the context of homeland protection. The Canadian Arctic remains a

pathway to key potential targets in the south (especially in the U.S.).

The idea that Russia, or other states, would invade and seize Canadian Arctic territory, which would result in a loss of sovereignty, is not the concern. It could happen by stealth if we are not vigilant about the amount of territory purchased by foreign state-based companies, but that would be entirely Canada's fault. The issue is the rapid pace of technology and denial-of-access tactics Russia and China use in key areas in other parts of the world that requires a serious conversation about how Canada can defend itself and its allies but which Canadians are reluctant to have. As evidence is testimony that former deputy commander of NORAD, Canadian Lt.-Gen. Pierre St. Amand, gave to the House of Commons' Standing Committee on Defence. Observers gaped when he stated frankly the (public and stated) limits of the U.S.'s Combatant Command USNORTHCOM protection of Canadian territory from a North Korean ballistic missile.<sup>7</sup> Canadians are not in the habit of talking about threats to the homeland but we are very practiced at suggesting there are threats to sovereignty. A ballistic missile attack, however, is not a sovereignty threat; it is the quintessential homeland security threat. Canada would carry on if a missile were to strike, but the devastation to Canada's people, infrastructure, environment and economy would be catastrophic.

Despite legitimate concerns about the reach and potential destruction of cruise missiles, hypersonic weapons and insufficient defences for both, when Canadians write about sovereignty it is usually with reference to the Arctic and a perceived, nebulous loss of "sovereignty". For example, when China's Xuelong ship transited the NWP in 2017, it did so with the Canadian government's express permission, which, in reality, was actually a courtesy (along with practical considerations), rather than a *de jure* requirement. We are skeptical that China's voyage was only for scientific research, but China is not the only country that has stated and hidden agendas – some would call this

diplomacy – and the NWP is no more or less Canadian than it was before and after the Chinese transit.

Similarly, when NORAD fighters (Canadian and American) rise to meet Russian bombers approaching Canadian airspace, they are portrayed as protecting Canadian sovereignty. In a narrow sense, this is correct; we do not want any foreign state to seize territory by coercion and take control of the country. NORAD's mission, in this regard, is about much larger deterrence and defence considerations within the overarching strategic political relationship between Moscow, Ottawa and Washington. In other words, the Russian flights and NORAD response have little to do with Arctic sovereignty.

At the same time, the dispatch of Canadian military forces into the Arctic on training exercises is also portrayed as a sovereignty mission but is more accurately called interoperability exercises (both between other Canadian agencies and among invited allies). Referencing sovereignty might make for good domestic politics; after all, it is a motherhood-and-apple-pie statement that one wouldn't dare denounce or analyze critically. Canadian Arctic territory, however, is not contested by the U.S. or any foreign power, save managed disputes with close allies in the Beaufort Sea, Lincoln Sea and Hans Island. In other words, Canadian military activity in its Arctic territory is not about sovereignty; it is about homeland defence as part and parcel of NORAD commitments, regular surveillance, search and rescue, aid to the civil powers and a ready solution to an unforgiving and vast territory which few other agencies have the equipment and liability to reach.

The misuse of the concept of sovereignty in the Arctic context hinders progress on relations with Indigenous communities. The Inuit Circumpolar Council's definition of sovereignty identifies threats not from foreign elements outside the state, but inside the state: "issues of sovereignty and sovereign rights must be examined and assessed in the context of our long history of struggle to

gain recognition and respect as an Arctic indigenous people having the right to exercise self-determination over our lives, territories, cultures and language".<sup>8</sup> Reflecting this, the Nunavut Youth Council circulated a poster at the height of Arctic sovereignty concerns in the 2000s. The poster featured a picture of an Inuk youth in traditional clothing, with the caption "Sovereignty includes me". This is not, of course, a challenge to Canadian Arctic sovereignty. Rather, self-determination is a call for greater political autonomy and political inclusion in decisions governments make over direction and management in the Arctic. These are indeed the most important issues facing the governments of Arctic states, especially for Canada. In this regard, one should conclude that Canada's Arctic sovereignty preoccupation about suspect external threats detracts attention from these more important political issues.

## Conclusion

Referencing "Arctic" and "sovereignty" in the same sentence is generally a recipe for alarmist and precipitous action. It is usually translated into a demand for a more military presence, which, while a ready answer for the Canadian government, ignores the fact that sovereignty issues today are settled in courtrooms. There are no *de jure* or *de facto* threats to Canadian Arctic sovereignty. If Russia is a real threat, it is to Canada and its allies as a whole. Indeed, the Arctic is the one issue area in which Russian co-operation has been tremendously helpful. Certainly, as the balance between *de facto* and *de jure* sovereignty has changed over time, one cannot predict how it might change in the future. For now, however, Canadians should replace Arctic sovereignty with homeland defence and devote attention to issues which relate to how the federal government exercises its sovereign authority over the people who live in its Arctic territory and how it will work with allies now and in the future to defend Canada.

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#### End Notes

<sup>1</sup> The authors would like to thank Dr. Ted McDorman for his useful input. All errors and omissions remain the fault of the authors.

<sup>2</sup> Janice Cavell's history of the process is the best for ready access to the primary sources, *Documents on Canadian External Relations: The Arctic, 1874–1949*. (Ottawa: Global Affairs Canada, 2016); and Janice Cavell, "The Sector Theory and the Canadian Arctic, 1897–1970," *The International History Review*, 2018: 1–26.

<sup>3</sup> Stephen Krasner, *Sovereignty as Organized Hypocrisy*, (Princeton: Princeton University Press, 1999).

<sup>4</sup> "... From and after September 1, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the Colony of Newfoundland and its dependencies) become and be annexed to and form part of the said Dominion of Canada; and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto. (sgd) C. L. Peel." Imperial Order in Council (July 31, 1880). See in C.O. 42, vol. 764, p. 329; also *The Canada Gazette*, vol. XIV, no. 15 (Oct. 9, 1880), p. 389.

<sup>5</sup> And of course this sidesteps the *de facto* and *de jure* seizure of (now) Canadian territory from Indigenous peoples.

<sup>6</sup> The problem with ocean space is that states may have "shared jurisdiction/sovereignty" – the NWP, for example, is unquestionably under Canadian sovereign authority but perhaps not for all purposes (if the NWP is an international strait, then other states have a passage right). The *de jure/de facto* terminology does not truly capture this nuance but the main argument remains.

<sup>7</sup> Lt.-Gen. St. Amand, "Evidence on 14 September 2017 to the Standing Committee on National Defence" found at <http://www.ourcommons.ca/DocumentViewer/en/42-1/NDDN/meeting-58/evidence> St. Amand's statement was: "We're being told in Colorado Springs that the

extant U.S. policy is not to defend Canada. That's the policy that's stated to us, so that's the fact that I can bring to the table."

<sup>8</sup> Inuit Circumpolar Council "Sovereignty", <http://www.inuitcircumpolar.com/sovereignty-in-the-arctic.html>2.1

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# Rights of Passage: It's Time the U.S. Recognizes Canada's Arctic Claim

by **ROBERT HAGE**

**G**eorge Bernard Shaw once said the Irish will do anything for their country but live in it. While Canadians seem to have a passion for the Arctic, few will visit it, let alone live there. Nevertheless, the Arctic, particularly the Northwest Passage, has long held a place in the country's collective imagination.

Indeed, over the past decades Canada's Arctic has been a place where popular opinion has taken the lead urging various Canadian governments, sometimes reluctantly, to take a stand against the

United States. In 1970, a long-time Canadian diplomat said a piece of Canadian legislation "led to what may be one of the most acerbic exchanges in the history of diplomatic communications between Canada and the United States".<sup>1</sup> This was Canada's 1970 extension of maritime jurisdiction through the *Arctic Waters Pollution Prevention Act* (AWPPA).

While Canada and the United States have been duelling over the status of the waters of the Northwest Passage ever since, new challenges have emerged which both nations have to consider. Before last June's NATO summit, a CBC analysis warned, "Russian advances in the Arctic are leaving NATO behind", and that "the Russian bear has pursued a steady march forward much closer to Canada in the Arctic."<sup>2</sup>

China poses another challenge as it looks to exploit the Passage as a shortcut from the Pacific to the Atlantic. When Beijing published its [356-page Arctic Navigation Guide](#), Northwest Passage, in July 2016, it declined to state its position on Canada's claim that the Passage constitutes its internal waters. Time Magazine entitled [its article](#)

“China Could Be Preparing to Challenge Canada’s Sovereignty over the Northwest Passage”.

Surprisingly, the United States’ position opens the door not just to challenges to Canada’s security but to North America’s. The dispute between Canada and the United States was triggered by the discovery of oil in Alaska in the 1960s and Humble Oil’s decision to determine whether oil could be transported through the Northwest Passage to East Coast refineries. The tanker *Manhattan* made the transit in 1969, although not without the aid of a Canadian Coast Guard icebreaker aptly named *Sir John A. Macdonald*. Neither the company nor the U.S. government requested Canadian permission to do so. This was then, and is now, the key legal question: does Canada have the right to determine access to the Northwest Passage? <sup>3</sup>

While former Prime Minister Lester B. Pearson had told the House in 1963 that Canada was prepared to use straight baselines in the Arctic to define its sovereignty claim,<sup>4</sup> the government decided on another approach to respond to the public outcry from the *Manhattan*’s passage. It opted for something dubbed “functionalism”; the notion that Canada’s offshore authority be limited to what was functionally necessary to achieve a particular goal.<sup>5</sup> This is in contrast to exercising Canadian sovereignty over Arctic waters, although the minister of External Affairs in endorsing functionalism in the House made clear Canada was not abandoning its sovereignty claims.<sup>6</sup>

The *AWPPA* created a 100 nautical-mile pollution prevention zone, the world’s first, allowing Canada to impose strict safety and environmental requirements on all shipping. This was the first time a country outside Latin America claimed jurisdiction to an area beyond the territorial sea. The Americans did not like any of it.

Canada, with the world’s longest coastline and one of its largest continental shelves, played a leading role in the Third United

Nations Conference on the Law of the Sea which opened in 1972. It fulfilled one of its objectives by obtaining Article 234, the so-called Arctic exception, which recognized the rights of coastal states to adopt and enforce pollution prevention measures in “ice-covered” areas out to 200 miles. Both the United States and the former USSR supported it.

During the conference, cabinet decided that, once the conference concluded, Canada would remove any doubt about the historic status of the Northwest Passage by drawing straight baselines around the Arctic archipelago. When the convention was signed in 1982, government officials began drafting a memorandum to cabinet that would make that happen.

The memorandum made its way through the bureaucratic process involving a number of departments and arrived on the desk of then -External Affairs minister Mark MacGuigan for signature. Then, two messages arrived. The first was from Canada’s ambassador for the law of the sea, Alan Beesley, in Geneva, who knew of the decision to proceed to cabinet but was now having second thoughts. He argued that drawing baselines was no longer necessary because the “functional approach” had worked and Article 234 was in place to protect Canadian interests. Explicit recognition of Canadian sovereignty was no longer required. The second message was from then ambassador Allan Gottlieb in Washington who strenuously opposed the proposal, maintaining it would damage relations with the United States. The minister did not sign the memorandum.

“The Americans,” Sir Winston Churchill once said, “always do the right thing in the end, after exhausting every other alternative.” MacGuigan’s decision might have remained had the United States not sent the U.S. Coast Guard icebreaker, the *Polar Sea*, through the Passage in 1985. The U.S. advised Canada that it was sending the vessel “as an exercise in navigational rights and freedoms not requiring prior notification.”<sup>7</sup>

Canadian public reaction to the sailing was so intense that the new Mulroney government finally acted to draw straight baselines around the archipelago. In announcing the government's decision, then-External Affairs minister Joe Clark said, "these baselines define the outer limit of Canada's historical internal waters."<sup>8</sup> There is no better exponent of that claim than the Inuit who have used these waters since time immemorial and treated the ice and the land as one.

With the rising Russian military threat in the Arctic, melting Arctic ice and the possibilities of Chinese and other cargo ships using the Passage to shorten the route between Asia and Europe – along with cruise ships bringing tourists on Arctic adventures – the waters' status continues to be a question. In April 2015 the *Globe and Mail* published an article entitled "[Canadians' Support for Northwest Passage Claim Collapsing, Survey Shows](#)." It cited an Ekos Research survey which indicated that only 45 per cent of Canadians still believe the Northwest Passage is within Canadian waters, a dramatic drop from 74 per cent five years previously. The journalist attributed this to the "dawning realization that no other country, and in particular the United States, which regards the Northwest Passage as an international strait no different from the Strait of Hormuz in the Persian Gulf, accepts Canada's claim."

That is simply incorrect. The Northwest Passage is entirely different from the Strait of Hormuz, which has always been used for international navigation. Under international law one of the indices of the validity of a state's historic maritime claims is acceptance by other states.

When Canada drew the baselines, it received only two indications of non-acceptance. The United States dealt with the subject in a letter of Feb. 26, 1986 from the assistant secretary of state to Maryland Senator Charles Mathias and the other was a note from the U.K. purportedly acting on behalf of the European Community. A reference to both can be found in a 1992

State Department document.<sup>9</sup> The British note was dated July 1986, almost a year after baselines were proclaimed and before the European Community had established its common foreign and defence policy permitting joint action on political and defence questions. The rest of the world has not objected.

In 1988, then-prime minister Brian Mulroney and then-president Ronald Reagan agreed on an Arctic co-operation agreement in which the U.S. would seek Canada's consent before its icebreakers navigated in waters Canada claimed as internal. Canada undertook to facilitate their passage.

In 2004, following the 9/11 attacks, then-U.S. ambassador Paul Cellucci said "we are looking at everything through the terrorism prism... So perhaps when this (the Northwest Passage) is subsequently brought to the table again, we may have to take another look." He later said he had asked the State Department to re-examine its position that the Passage is an international strait "in light of the terrorist threat". After he left Ottawa, Cellucci told the *Toronto Star* in 2007 that it was in the United States' security interests "that the Northwest Passage be considered part of Canada."<sup>10</sup>

Ships aren't the only concern. Under the U.S. position, aircraft, including military aircraft, could exercise their legal rights to overfly international straits. The United States should ask itself whether it wants an unregulated international strait across the top of North America or one controlled by a friend and ally. This is particularly important at a time when Vladimir Putin's Russia is taking more aggressive steps in the Arctic and autocratic China, with its agenda for world leadership, is eyeing an important Arctic role.

Cellucci got it right in maintaining that having the Northwest Passage under Canadian control would allow the Canadian military to intervene if necessary to counter any security threats.<sup>11</sup> Canada has a solid historic claim to these waters now enclosed by straight baselines. In many ways, they are

there because the Canadian people, especially the Inuit, have led and governments have followed. In this way, Canada can safeguard its fragile Arctic environment, take measures against security and terrorist threats, overuse and smuggling, establish ports and search and rescue facilities, and work with the Inuit to ensure their rights over the land and sea are respected. No other nation can do so.

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#### End Notes

<sup>1</sup> Ted McDorman, *Salt Water Friends*, Oxford University Press, 2009, 67.

<sup>2</sup> Ernie Regehr, "NATO's Brussels Summit and the Arctic," Arctic Security Briefing Papers, The Simon Foundation, July 18, 2018.

<sup>3</sup> McDorman, 68.

<sup>4</sup> Lester Pearson, Prime Minister, House of Commons Debates, June 4, 1963, 621.

<sup>5</sup> McDorman, 75.

<sup>6</sup> Mitchell Sharp, Minister of External Affairs, House of Commons Debates, April 17, 1970, 6014-15

<sup>7</sup> Michael Byers, *International Law and the Arctic*, Cambridge University Press, 2013, 136.

<sup>8</sup> Joe Clark, Minister of Foreign Affairs, House of Commons Debates, Sept. 10, 1985, 6463.

<sup>9</sup> Byers, 138 n47.

<sup>10</sup> Byers, 140, 141 n60.

<sup>11</sup> Ibid., 141 n60.

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## NATURAL RESOURCES IN ACTION: CANADA'S INDUSTRIAL COMPETITIVENESS WITH BRAD WALL

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# Protecting Canadian Arctic Sovereignty from Donald Trump

by **ROB HUEBERT**

**C**anada needs to brace itself for a possible renewed Arctic sovereignty challenge. Since the mid-1980s Canadians have come to believe government officials who repeat the mantra that the Canadian Arctic is ours “lock, stock and barrel” – as former prime minister Brian Mulroney liked to put it. However, the absence of any challenges since 1985 has not been the result of the Americans or the international community accepting Canada’s claim of sovereignty, but rather of the special relationship that has been an enduring element of the Canadian-American partnership. Since the dark days of the Second World War, Canadian and American relations have been based on an understanding of shared interests, values

and friendships. That is now all changing under Donald Trump’s presidency. This has already had a serious impact on trade relations between the two countries and it is clear that all relations are about to get worse. No one should expect that those involving the Arctic will somehow avoid being affected.

Following the 1985 sovereignty “crisis” when the American icebreaker *Polar Sea* transited the Northwest Passage without explicit Canadian permission, successive Canadian governments have told the public that the sovereignty dispute is over, and that Canadian sovereignty over the lands and waters of the Arctic has been accepted. However, Canadians will soon find that this was a pleasant fiction when it comes to the Arctic waters. The dispute over Canadian Arctic waters appeared to be solved because Canadian officials were able to come to an understanding with their American counterparts in 1988 on how to manage the issue. Both sides pretended that the 1988 Arctic Water Co-operation Agreement resolved the issue in their respective favours. The Americans did not want to set the precedent that accepting full Canadian sovereignty over the Northwest

Passage would mean elsewhere in places such as the Strait of Hormuz. However, the Americans also did not want to win an international court challenge regarding the Northwest Passage, because to do so would mean that countries such as Russia would then have the clear international right to transit the passage. Canada simply did not want the Canadian public to think it had lost the right to control the entry and behaviour of foreign vessels. The reason the two countries could come to such an understanding was largely due to the special relationship that has allowed Canadian and American officials to reach understandings that are impossible between other countries.

The Trump administration has now made it clear that the benefits of the special relationship mean nothing to him, and all foreign policies are to be judged by what they win for the United States. History and shared values are meaningless in such a calculation. At the same time, Trump has also made it clear that the construction of strengthened borders around the United States is one of his most important policy objectives. While much of his attention has been on building borders to keep out Mexicans and Muslims, signs are developing that he is also intent on strengthening the northern borders. This has included putting up new trade barriers to protect American industries from their Canadian counterparts. It has also included increasing American enforcement of borders that include disputed areas with Canada. The recent actions of American officials in June off the Machias Seal Island, off the coast of Maine and New Brunswick, show that the Americans are no longer willing to keep to the existing gentlemen's agreement regarding disputed waters. The Americans are now beginning to stop Canadian fishers, looking for possible illegal immigrants. Until this happened, officials from each side did not enter the other's zone of dispute. Few other countries could show such restraint and co-operation and it has largely been attributed to the special relationship between the two countries.

So far, Trump has shown little interest in the Arctic. This has probably been a good thing for Canada. However, two factors are going

to change this. First, his administration is moving forward with reopening the development of Alaska oil in the Arctic National Wildlife Refuge (ANWR). There are no guarantees if or when oil will be found, but should this happen, there could be an increase in Arctic shipping to service any such development. Second, despite Trump's beliefs to the contrary, climate change is occurring and the Arctic ice is melting. Shipping will be coming on an increasing basis. Maersk announced this summer that it will send its first container vessel through the northern sea route later this year on a trial basis. If and when this new shipping starts to come to the Northwest Passage, will these vessels ask Canadian permission? To date, all vessels that have transited the Northwest Passage have done so. But the vast bulk of these ships have been either tourist or research vessels, which have a special interest in keeping good relations with Canada.

Prior to Trump's election, the state department was beginning to restate its position that it views the Northwest Passage as an international strait. When the Harper government made the Arctic shipping reporting system (NORDREG) mandatory, the Americans issued a diplomatic protest on March 19, 2010 in which they restated their position that in their view "the Northwest Passage constitutes a strait used for international navigation." This means that they do not believe that Canada has the right to unilaterally impose such a requirement on international shippers and that such action can only be taken if the International Maritime Organization proposes and adopts it. In other words, Canada cannot unilaterally assert control over the passage. American officials have looked the other way when Canadian officials worked with international shipping companies in transiting the NWP and were required to seek permission. Given all of Trump's actions to date, does anyone really believe that he will be willing to continue to look the other way? If transit shipping for the purposes of servicing Alaskan oil development or providing

goods for American cities were to begin, does anyone really believe that he will not attempt to assert the American position?

So if the United States is no longer willing to support the status quo, is there anything that Canadian officials can do? Since Trump has made it clear that co-operation is only possible when the Americans win, what can Canada do to provide for such a payoff in order to protect its Arctic sovereignty? The answer is to offer something to the Americans that they want – the protection of American borders – or in the case of the Arctic, the protection of North American boundaries. Canada can do this in two ways. First, it needs to ensure that the Americans understand that commissioning of the new Arctic offshore patrol ships (AOPS) offers an entirely new North American Arctic enforcement and surveillance capability. Prior to the arrival of the *Harry de Wolf* class there has not been an Arctic-capable naval vessel in either the Canadian or American navies. It is true that the American *Wind* class icebreakers were armed, but these were Coast Guard vessels and not naval units. Furthermore, the vessels were all decommissioned a long time ago. Today, neither the USN nor USCG has armed surface vessels that can operate in any type of ice conditions. Canada will soon have an ability that the Americans will not. The Americans need to understand what this means in patrolling the northern borders now.

Canada also now has the opportunity to offer the use of these vessels in terms of modernizing the NORAD agreement. Both Canada and the U.S. realize that NORAD needs updating. The Liberal government made this very clear in its defence policy. As Canada now moves forward to engage the Americans on this front, Canadian officials have the chance to use Trump's fixation on securing American borders by integrating the AOPS's new capabilities into the NORAD system. This is also in keeping with the 2006 NORAD agreement that called for an increased maritime dimension to the agreement.

However, Canadian officials need to make it clear that in return for adding this new capability to the mix, it expects the status quo regarding the Northwest Passage to be maintained. The United States would not change its official policy, but would neither encourage nor support any international shipper that does not wish to follow Canadian regulations when transiting the passage. Trump does not understand the special relationship, but he does understand the deal.

Ultimately, if Trump were to remain unwilling to work with Canada on this issue, then the AOPS will become even more important. They will provide Canadian officials with the means of actually stopping any ship that does not want to ask Canadian permission to enter the Northwest Passage.

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# A Global Arctic? Chinese Aspirations in the North

by **PETRA DOLATA**

**O**n Jan. 26, 2018 the Chinese government released a white paper announcing its first Arctic policy.<sup>1</sup> Presenting China as a “near Arctic state”, the paper outlined Chinese interests in the region. According to the document, these interests are based on China’s existing involvement in the Arctic through scientific research, resource exploration and shipping activities. The white paper also explained how the impacts of climate change on the Arctic would affect the entire world and the reasons why China should be concerned. As a responsible international actor, China argues that it should be involved in addressing these global challenges. The white paper frequently mentions co-operation, and the Chinese government

envisages increasing its involvement in Arctic governance structures as well as bilateral projects to be funded by Beijing. Recent examples include the Yamal LNG project in the Russian Arctic,<sup>2</sup> an LNG pipeline in Alaska,<sup>3</sup> the Kouvola-Xi’an freight train railroad connecting Finland and China,<sup>4</sup> and infrastructure and mining investments in Iceland and Greenland. The paper also mentions the Chinese Communications Construction Company International Holding Ltd.’s attempted acquisition of Aecon, Canada’s largest construction company.<sup>5</sup>

China’s new Arctic policy is the latest addition to its Belt and Road Initiative, which Beijing touts as an economic initiative but which many see as a strategic move to acquire influence throughout the region. Steeped in historical references to the ancient Silk Road connecting China and Europe, the initiative was introduced in 2013 to connect China and Central Asian countries. The 2015 One Belt, One Road (OBOR) Initiative promises to connect Asia, Europe, the Middle East and Africa through infrastructure projects both on land (the Belt) and at sea (the Road). These two silk roads (the Silk Road Economic Belt and the 21st

Century Maritime Silk Road) are more than routes; they are infrastructural networks. To realize this ambitious network, the Chinese government plans to invest US\$900 billion in infrastructure projects including railways, pipelines, ports and power plants. According to the Mercator Institute for China Studies, China had already invested more than US\$25 billion by 2018. The initiative was put on a more permanent footing through its introduction into the Chinese Communist Party's constitution in late 2017. China experts interpret the expansion of the Belt and Road Initiative's geographical reach to include the Arctic, as an indication of how this economic and trade initiative has become an integral part of China's overall foreign policy.<sup>6</sup>

China's new Arctic policy adds a polar Silk Road to the grand scheme. Chinese media also like to refer to this northernmost addition to the Belt and Road Initiative as the "Silk Road on Ice". This vision has led many observers to warn of China's attempt to get a stronger foothold in the Arctic. However, it is rather the policy manifestation of existing Chinese activities in the Arctic. Already in 2013, Beijing became an observer to the Arctic Council. In 2014, President Xi Jinping announced in a speech that China wanted to become a "polar great power".<sup>7</sup> For years now, Chinese companies have invested in numerous infrastructure, mining and drilling projects in the Arctic. In the summer of 2017 Beijing tested the commercial viability of the Northern Sea Route along the Russian coast and the Northwest Passage. The Chinese research icebreaker MV Xue Long (Snow Dragon) traversed through Canadian and European Arctic waters supporting scientific research but also collecting knowledge that will be useful for future cargo shipments.<sup>8</sup> The state-owned China Ocean Shipping Company (COSCO) is already shipping goods through the Russian Arctic to European consumers.<sup>9</sup>

For Canada, the significance of the polar Silk Road initiative does not lie so much in the potential threat of Chinese commercial shipping through the Northwest Passage nor the purchase of Canadian Arctic ports.

Experts agree that the Northern Sea Route along the Russian coast with existing port facilities and the geographical proximity between Russia and China will always make that route a more attractive one for China. It should also be mentioned that, even though China's Arctic investment nowhere near matches the billions that Beijing spends in Africa or Latin America, no other outside player is investing so much money in the Arctic, as the region is characterized by high costs and slow payoffs. There are a number of northern communities that welcome any capital, especially independence-minded political actors such as the Partii Naleraq in Greenland, which would prefer such investment over money from Denmark.<sup>10</sup> Of course, the Canadian government should be vigilant about any future Chinese large-scale infrastructure investment in the North, not least because the United States may be actively opposed to such activities within its continental security perimeter.

In terms of foreign policy, it will be more important for Canada to interpret China's Arctic policy as yet another articulation of interest in Arctic matters by a global player. The EU did so much earlier using similar language. A closer reading of the white paper reveals these similarities. The Chinese argued in 2018 that "the Arctic is gaining global significance" and that changes in the region have "a vital bearing on the interests of States outside the region and the interests of the international community as a whole, as well as on the survival, the development, and the shared future for mankind".<sup>11</sup> This echoes the arguments that the European Union put forward in its policy documents in 2008: "In view of the role of climate change as a 'threats multiplier', the Commission and the High Representative for the Common Foreign and Security Policy have pointed out that environmental changes are altering the geo-strategic dynamics of the Arctic with potential consequences for international stability and European security interests calling for the development of an EU Arctic policy."<sup>12</sup> In both cases, increasing accessibility of energy and mineral resources, as well as climate change, have been used as justifications for

conceptualizing the Arctic as a region that has attained global political meaning beyond its limited geographical space. Ottawa will have to accept that any state which sees itself as playing a role in international politics will want to be somehow involved in Arctic matters. This is not dissimilar from China becoming a contracting party to the Svalbard (1925) or Antarctic Treaty (1983). The Arctic's global significance over the past 10 years means Canada must avoid other conflicts spilling over into the Arctic. So far, tensions between the United States or Canada and Russia over the annexation of Crimea have not substantially affected co-operation in the Arctic Council.<sup>13</sup>

Usually, Canada's foreign policy within the hemisphere is very much influenced by its relations to its neighbour to the South. Due to the current U.S. administration's latent disinterest in Arctic matters – especially since the shale revolution diminished the lure of oil and gas resources in the Arctic – international governance and politics in the Arctic will be driven by discussions of global challenges including energy security and climate change and facilitating the entry of non-Arctic states into these debates. This development will only intensify as climate change further impacts the Arctic region.

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#### End Notes

- <sup>1</sup> The State Council Information Office of the People's Republic of China. "China's Arctic Policy." Jan. 26, 2018. [http://english.gov.cn/archive/white\\_paper/2018/01/26/content\\_281476026660336.htm](http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm)
- <sup>2</sup> Atle Staalesen. "China's National Oil Company Looks at Russian Arctic LNG," *The Barents Observer*. <https://thebarentsobserver.com/en/industry-and-energy/2018/06/chinas-national-oil-company-looks-russian-arctic-lng>
- <sup>3</sup> Yereth Rosen. "Alaska Officials Still Bullish on China Nat Gas Partnership," *Reuters News*, July 12, 2018. <https://www.reuters.com/article/us-china-lng-alaska/alaska-officials-still-bullish-on-china-nat-gas-partnership-idUSKBN1K2060>

- <sup>4</sup> "First China-Finland Train Connection Launched," *China Daily online*, Nov. 11, 2017. [http://www.chinadaily.com.cn/world/2017-11/11/content\\_34404277.htm](http://www.chinadaily.com.cn/world/2017-11/11/content_34404277.htm)
- <sup>5</sup> "Canada Blocks Chinese Takeover of Aecon on National Security Grounds," *Reuters News*, May 23, 2018. <https://www.reuters.com/article/us-aecon-group-m-a-canada/canada-blocks-chinese-takeover-of-aecon-on-security-grounds-idUSKCN1IO3F2>
- <sup>6</sup> Thomas S. Eder. "Mapping the Belt and Road Initiative: This is Where We Stand." June 7, 2018. <https://www.merics.org/en/bri-tracker/mapping-the-belt-and-road-initiative>
- <sup>7</sup> "China Wants to be a Polar Power," *The Economist*, April 14, 2018. <https://www.economist.com/china/2018/04/14/china-wants-to-be-a-polar-power>
- <sup>8</sup> Michael Byers. "Northern Voyage Opens a New Channel in Diplomacy with China," *Globe and Mail online*, Nov. 15, 2017. <https://www.theglobeandmail.com/opinion/northern-voyage-opens-a-new-channel-in-diplomacy-with-china/article36988971/>
- <sup>9</sup> Janne Suokas. "China's Cosco to Step up Arctic Shipping This Summer," *Global Times*, June 21, 2018. <https://gbtimes.com/chinas-cosco-to-step-up-arctic-shipping-this-summer>
- <sup>10</sup> Mia Bennett. "Controversy over Greenland Airports Shows China Still Unwelcome in the Arctic," *Eye on the Arctic*, Sept. 12, 2018. <http://www.rcinet.ca/eye-on-the-arctic/2018/09/12/greenland-airports-china-controversy-politics-arctic-security-denmark-usa-military/>
- <sup>11</sup> The State Council Information Office of the People's Republic of China. "China's Arctic Policy." Jan. 26, 2018. [http://english.gov.cn/archive/white\\_paper/2018/01/26/content\\_281476026660336.htm](http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm)
- <sup>12</sup> Commission of the European Communities. Communication from the Commission to the European Parliament and Council: The European Union and the Arctic Region. COM(2008) 763 final. Nov. 20, 2008. [http://eeas.europa.eu/archives/docs/arctic\\_region/docs/com\\_08\\_763\\_en.pdf](http://eeas.europa.eu/archives/docs/arctic_region/docs/com_08_763_en.pdf)
- <sup>13</sup> Eilís Quinn. "Arctic Council Nominated for Nobel Peace Prize," *CBC News online*, Jan. 16, 2018. <https://www.cbc.ca/news/canada/north/arctic-council-nobel-peace-prize-1.4490427>

Lead image: **USNI News**



# Canada's NATO Mission: Realism and Recalibration

by **HUGH SEGAL**

**R**eflecting constructively on what is next for Canada and NATO is not only about the depth or superficiality of the American president's transactional obsession with who spends how much. NATO's mission is containing the Russian strategic threat to its members in Eastern Europe, the Arctic, the Middle East and North Atlantic, including threats to NATO residents. A rational point of departure requires understanding how successful hostile Russian initiatives have already been. The reality of damage done to NATO members and potential partners cannot be overstated and should not be minimized:

- In Ukraine, Russia used infiltration, false flag tactics, cyber-attacks, virulent disinformation, violence against civilians and electronic hostilities to kill hundreds,

down civil air traffic and seize territory (Crimea) in violation of international law;

- In the Middle East, where NATO members have vital national interests, Russian diplomatic and military (Special Forces, land, air and sea) engagement with the regime in Syria supported Bashar al-Assad's endless war crimes, the civilian deaths of hundreds of thousands, the use of chemical weapons, the barrel bombing of children and the forced migration of millions of refugees. Russian forces used civilian bombing runs to test new weapons and continue to prop up the Assad regime;
- Russian collusion with the Iranian regime engaged alliance-building initiatives with Turkey, all seeking to destabilize NATO's Eurasian flank;
- Millions have migrated from the region, precipitating refugee pressure on the EU and NATO;
- Russian cyber-hostilities, disinformation, state troll-sponsored disinformation and blatantly hostile political, social and

online media intervention, (including direct financial support of extreme, xenophobic and divisive political forces) have attacked European democracies and distorted the U.K.'s Brexit vote. These actions have also sought to foment the weakening of democratic cohesion domestically and internationally among NATO members, including the United States and Canada, where online Russian tactics have sought to magnify racial and ethnic differences;

- The present 24/7 American media and political obsession with what Russia did or did not attempt on its own or through collusion in the lead-up to November 2016, at some level paralytic to the Executive Branch, is already a massive destabilizing victory for Russian state intelligence;
- President Vladimir Putin's stated "Eurasian culture" goal of destabilizing the West's politics to diminish restraints on his revanchist tactics of broadening territorial, strategic and economic influence and enhanced Russian intimidation, has been measurably advanced;
- Through cyber- and political instruments, Russia is very much at war in eastern and northern Europe from Norway to Estonia, the North Atlantic to Poland, Latvia and Lithuania, in border zones, in the air, on and under the seas, through economic pressure, diplomatic engagement and the active support of nationalist extremism. Its armed and Special Forces are testing sea lanes, land border proximities and airspace. Russian submarine traffic in the North Atlantic is at an all-time post-Soviet high;
- Russia-sourced nerve agents, contrived Interpol "red notices" and other instruments are being used outside of Russia to kill, intimidate and detain opponents of Russia's illegal and hostile extraterritorial initiatives and domestic corruption;

- With the absence of any NATO or neighbouring country with the intention to attack Russia, the [VOSTOK 2018](#) military exercise planned for mid September is about intimidating eastern and Western Europe. The largest exercise since the Cold War, involving three hundred thousand Russian troops - supported by Chinese and Mongolian forces - 1000 military aircraft, 36 000 armoured vehicles, and the entire airborne fleet is a show of kinetic force in support of spreading fear and anxiety. Old style Russian imperialism and authoritarian militarism at its finest.

Whatever the American president's motivation, his decision to use the spending issue as a crude sandpaper assault on NATO's complexion is profoundly helpful to the Putin regime, which has always sought to avoid confronting strong-willed alliances. Putin knows full well that a resolute NATO contributed to the end of the Soviet Union and the last Cold War without a shot being fired. Today, the Putin state apparatus is deployed on TV networks like RT, Russian troll farms and disinformation, in military adventurism in the Middle East, new expenditures on arms and military technology, and political disinformation battles in NATO countries. Putin's apparatus aims at and would benefit immensely from a weakened NATO and a diminished EU. Russia's preferred option has always been to deal with European neighbours on a one-by-one basis.

While a specific kinetic NATO Article 5 military attack on a NATO member has yet to take place since 9/11, certainly the non-kinetic equivalent across a wide range of NATO targets has. Canada's stance inside NATO councils and beyond should be clear and precise on this point. Continued Russian impunity is not an option. It is important to note that Putin's grand plan was ably, if unwittingly, assisted by former president Barack Obama's abdication of his own red line on Syrian chemical weapons. Impunity for Assad meant impunity for Putin. NATO's success in containing Soviet Union adventurism in the past was helped by

Soviet understanding that it was not immune from NATO response, including tactical theatre nuclear weapons.

Canada should urge a robust “no impunity” posture on NATO, addressing the new forms of non-kinetic war Russia has unleashed. General Valery Gerasimov, Russia’s then-senior military officer, laid out this new Russian battle strategy clearly in 2013. It is tied to creating as close to chaos as possible in competing countries using science, hacking, intelligence, psy-ops, fake news and oligarch financial networks. NATO’s greater military depth and capacity have forced Putin’s crowd to use asymmetric assets to great effect. A “no impunity” posture should scope, anticipate and be launch-ready with similar non-kinetic NATO attacks on organizations, institutions, media, network and social media infrastructure vital to Putin’s power base. Canadian Forces and other NATO allies’ forces in Eastern Europe, patrolling the North Atlantic and NATO airspace, constitute a tripwire for a robust response to any Russian border violation. The Russians’ non-kinetic battle deployments must be addressed in an engaged and persistent way.

Canada should commit to a multi-million dollar spend directly with NATO and through in-kind tasking of existing Canadian security and intelligence, Special Forces and deployable communications security assets to increase NATO capacity on these non-kinetic, active measure, cyber-defence fronts.

Russia has no incentive to consider treaties on “no cyber first use” or “illegal political intervention in other countries” until it understands the genuine price its society and power structure will face should it not. Working on what those treaties might cover should coincide with robust engagement with the Russian aggressor. Treaties are only attractive to an aggressor, when its aggression is no longer effective.

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# Communications and the Integrity of Elections

by **HEIDI TWOREK**

**T**he ability to conduct free and fair elections without foreign interference is a basic marker of democracy. A well-conducted campaign period and election showcase the vitality and quality of a democracy. An election also demonstrates sovereignty on the international stage by showing that a nation can choose its government without interference from foreign actors.

Communications by political parties and discussions among citizens lie at the heart of electoral campaigns. But the rapid rise of disinformation may stymie the chances of free and fair debate among Canadian voters. While the Canadian government has started to address this problem, much more might still be done to uphold the communications element of electoral integrity.

Conducting free and fair elections is not, and never was, a simple enterprise. The robocall scandal of the 2011 election is just one recent example. Free and fair debate before an election, participation in voting and a secure electoral system all create and maintain trust in political institutions. If citizens do not trust the process and outcome of an election, that can undermine any and all policy initiatives by a legitimately elected government.

The aftermath of the U.S. presidential campaign of 2016 placed the spotlight on myriad Russian activities from hacking to pushing disinformation on social media. The best-known outfit, the Internet Research Agency (IRA), took a scattershot approach to activities online. Among other efforts, IRA employees tried to stoke violence by organizing rallies through Facebook. They also created profiles of “real Americans” who commented on political events on Twitter. These efforts sought to exacerbate existing tensions within American society, ranging from gun rights to NFL players kneeling during the national anthem.

The IRA's multi-faceted activities reverberated from social media into media outlets. Thirty-two out of 33 major American news organizations [embedded](#) tweets the IRA had created. These outlets ranged from National Public Radio (NPR) and the *Washington Post* to BuzzFeed and Salon. We cannot understand how disinformation spread so rapidly without tracing how it moved across multiple platforms and media outlets.

It thus makes sense to frame the problem as an ecosystemic issue of online communication and the current media landscape. The barrier to entry on social media platforms is incredibly low; anyone with a device connected to the internet anywhere in the world can make viral material. Russia's efforts have shown one version of a playbook to disrupt democratic elections. While researchers still dispute the effects of Russian interference, the fact that the dispute remains front and centre of American politics nearly two years later already serves Vladimir Putin's purposes to undermine the transatlantic alliance and trust in democracy. Saudi Arabia's ham-fisted tweets trying to stoke Indigenous resentment and Québécois separatism served as a reminder that social media platforms have become a go-to arena for escalating diplomatic disputes.

A robust response from Canada would focus less on a particular adversary, and more on how to strengthen electoral integrity and communications. These efforts require a multi-pronged approach. On the one hand, the government should disincentivize behaviours that manipulate the electoral process. On the other hand, it should seek to incentivize informed, deliberative discourse and participation among Canadians.

The government introduced Bill C-76, the *Elections Modernization Act*, in spring 2018. Among other things, the bill creates new rules limiting third-party spending, introduces a pre-writ period and makes voting more accessible for people with disabilities. The bill rightly focuses on both

preventing interference and bolstering voter participation. Still, Michael Pal, a law professor at the University of Ottawa, has [noted](#) that the bill is "actually quite cautious, from a constitutional point of view" in the proposed length of the pre-writ period and the limited attempts to address the rise of the permanent campaign.

A two-day [retreat](#) for Prime Minister Justin Trudeau's cabinet in late August included serious consideration of how to expand C-76. The cabinet heard testimony from three experts, including Ben Scott, who had served as an advisor on policy innovation in the administration of former U.S. president Barack Obama. There was not enough time to tackle the ecosystemic issues fully before the election, but the government could still pluck the "low-hanging fruit," Scott told the cabinet.

Scott specifically [suggested](#) two policies. First, the government should require transparency for all political advertisements online. This would mean including a pop-up message disclosing the funder and why a person had been targeted with that particular ad. Second, platforms should be required to label every automated account (or "bot"). This would make it clear when a bot was being used to amplify a message, for example through favourites and retweets on Twitter.

The cabinet also heard testimony from University of British Columbia professor Taylor Owen, one of the co-authors of a Public Policy Forum (PPF) [report](#), "Democracy Divided: Countering Disinformation and Hate in the Digital Public Sphere". The report was released on Aug. 15 and built on months of consultation and workshops in Ottawa that included experts from the United States and Europe as well as Canada. (I attended one of those workshops and co-organized the [other](#) with support from a Partnership Engage Grant awarded by the Social Sciences and Humanities Research Council). Authored by Owen and PPF president Ed Greenspon, the report offered a menu of policy options for "responding to the rapid emergence of

digital risks to democratic institutions and social cohesion.” The report’s menu provided dozens of recommendations grouped into four main courses: rebuilding information trust and integrity, bolstering civic infrastructure, reforming the regulation of information markets and updating governance of data rights.

One problem for policy-makers in choosing which policies to explore is that we still have surprisingly little evidence of how online communications function and their effects. Twitter is the best-researched platform because its data are the easiest to access. However, only [25 per cent of Canadians use Twitter](#), while 67 and 63 per cent respectively use Facebook and YouTube. All the top platforms in Canada are owned and operated by American companies that do not make large amounts of data specifically on Canada easily available.

It is particularly important to collect political advertisements during an election campaign and to make them publicly accessible. This enables researchers and civil society organizations to conduct studies during a campaign and before an election is decided. Real-time collection and research can ensure that losing parties do not use the findings as a cudgel after the election. Conversely, it can ensure that winning parties don’t dismiss concerns as coming from “sore losers”.

One solution to enable access to evidence is a mandated research repository. This has already been suggested for the United States in a [white paper](#) by Democratic Senator Mark Warner. A research repository would not require companies to release trade secrets, like their algorithms. It would, though, build on long-standing academic methods for assessing projects and providing access to data. Canadian researchers can already receive approved access to confidential health-care data, for example, and have robust methods of ensuring privacy.

A research repository could be part of a broader effort to create an open and

transparent record of online political advertising in Canada. Facebook [announced](#) plans last year to improve ad transparency and create an archive of advertisements as part of an election integrity initiative in Canada. For the first time, Facebook is now participating in a mechanism for academics to access some of its data. Called [Social Science One](#), the idea is to have committees of leading academics approve applications for research. This is a step in the right direction to facilitate previously impossible research but raises questions about sustainability and the nature of access. There does not seem to be any academic from a Canadian university sitting on any committee. The initiative also only seems to address Facebook and not other Facebook-owned companies like Instagram and WhatsApp. These questions are particularly important for “dark social” like WhatsApp, where forwarding incendiary messages has already led to multiple deaths in India.

While research repositories are important for posterity, the Canadian government also needs to ensure greater responsiveness from online media companies during an election. This is the perfect time to develop a stronger dialogue and more robust consultation processes with social media companies. Twelve of the largest American tech companies met secretly in August to [discuss](#) how to prevent manipulation of information and how to protect the U.S. midterms. It is clear that the companies and their employees want to learn from their mistakes during previous elections but are not quite sure how. The Canadian government can use this opportunity to establish dialogue. At least for now, the government is pushing on a far more open door than ever before.

The government should require companies to designate specific point people at social media and tech companies who would deal with the Canadian election. These people could act as direct, rapid response channels to ensure that any issues reported by Canadian citizens or electoral officials are swiftly examined and resolved. Long in advance of the election, the Canadian

government could also establish a procedure by which the companies would make public any attempts at interference, hacking or exceeding limits on third-party spending.

Such measures may require hiring new staff who are dedicated to Canada. This is not too much to ask. After a new law requiring social media companies to enforce the German criminal code on hate speech came into effect in January 2018, Facebook [recruited](#) 65 employees just to process complaints filed under the new law. The German law only applies to companies with over two million users in Germany. Canada may not introduce the same legal measures; it can use the German example to show that companies can quickly beef up their staffing when fines are threatened.

With just over a year before the next federal election in October 2019, there is still debate about whether C-76 will be passed and implemented in time. Either way, Canadians cannot afford to throw their hands up despairingly and do nothing. [Digital threats to democracy](#) in Canada are very real, even if their impact remains unclear. There are many potential policies to counter online threats to democratic communications, while retaining and bolstering free speech and a robust free press. This is not about government controlling the online space, censoring it or curtailing free expression. Rather, it's about figuring out how we foster free and fair participation in elections, where all Canadian citizens can have a chance to discuss.

The 2019 election still offers an opportunity for Canada to show the world its democratic strength by running a well-executed election and making it the start of broader reforms to the communications landscape. The menu of options is there. The question now is what the government will order. And it should not just be a small starter.

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# Unwanted Immigration: Has the Concept of State Sovereignty Become Obsolete?

by **VANJA PETRICEVIC**

**T**he number of migrants worldwide reached 258 million in 2017, which is an increase over the past 17 years, up from 173 million in 2000. International migrants' preferred destination countries have mostly been the Western powers, with 58 million new arrivals in 2017 making North America the third largest destination.<sup>1</sup> In the midst of the recent changes in trends of migration patterns as well as immigrants' characteristics, there is an overall contentious environment in which public debates over immigration are being held. The arena is split between advocates of

open borders and those who pursue restrictive immigration policies. The middle ground is filled with those who like to cherry-pick policy proposals of both. However, these debates are timely and need to be held in light of the increasing number of migratory movements and decision-makers' zeal to place the topic of state sovereignty at the forefront of the immigration discourse. The question then becomes: have recent waves of unwanted immigration made states' sovereignty obsolete?

The conceptual starting point lies with the very definition of state sovereignty. Reaching as far back as the Treaty of Westphalia (1648), the underlying principles that characterize the concept of state sovereignty include being an internationally recognized entity, not being under submission to external actors and their authority structures, and possessing relative control over the territorial domains of one's own state.<sup>2</sup> There is an argument to be made that state sovereignty in the 21st century has been stretched or even modified to adjust to 21st century challenges. Yet, these challenges have not tamed the critics of global governance. Instead, statist claims have

increasingly resurfaced and are further bolstered by recent waves of unwanted immigrants.

In the case of unwanted immigration – specifically refugees – the state is not becoming irrelevant. Quite the opposite could be argued as evidenced by a growing number of countries providing physical barriers for migrant entry. The generation that once loathed the Berlin Wall and took a painstaking journey toward its demise finds itself, once again, in an environment surrounded by border fences. There are four times as many fences being erected on countries' borders than when the Berlin Wall fell.<sup>3</sup> Some may see these fences as theatrical acts, but they are certainly a sign of sovereign assertiveness for the purpose of serving as a psychological, if not physical, deterrent.

In a world of “complex interdependence”,<sup>4</sup> neoliberal institutionalists in particular place an emphasis on international institutions as the beacon of facilitating states' collaboration. Within that realm, states' sovereignty becomes subsumed to supranational forces for the purpose of collective resolutions anchored in the projected effects of such institutional frameworks. It is assumed that institutions “constrain and shape [state] behavior”.<sup>5</sup> Yet, while these platforms may exert some influence on states, “they do not necessarily affect states' underlying motivations”.<sup>6</sup> Instead, decision-makers tend to use the underlying principles of sovereignty to their own political advantage as they act, more often than not, according to the “logic of expected consequences” than the “logic of appropriateness”.<sup>7</sup>

International refugee protection instruments present moral principles that, unfortunately, carry little legal weight and impose only limited, if any, constraints on states. The 1951 Refugee Convention and its 1967 Protocol<sup>8</sup>, among other instruments, constitute the cornerstone of refugee protection in the international system and impose a humanitarian obligation upon states. While they have been established

with the aim of proper and effective refugee protection as well as resettlement, the states ultimately hold the upper hand in that regard. For example, Canada signed the convention 18 years after its adoption and implemented its obligations in 1976 (through the *Immigration Act* of 1976).<sup>9</sup> States may take their time to utilize and reform refugee determination procedures and states' compliance with these international frameworks is rather on a voluntary basis. In the majority of cases, it is the states rather than the UNHCR that implement procedures for vetting, admitting and resettling refugees onto their territories.<sup>10</sup> During these procedures, states and their respective agencies may “dispute the identity of those claiming international protection, doubt the validity of their claims and fear that they are security risks.”<sup>11</sup> It is the state that decides whom to admit and whom to deny entry and thus holds power over the determination procedure and the faith of those seeking asylum. It is unsurprising that host states vastly differ in their refugee recognition rates even with individuals of the same nationality who are seeking refuge under the same conditions.<sup>12</sup>

States also have the power to impose numerical caps on refugee admissions. As the international system continues to face the “highest levels of displacement on record”,<sup>13</sup> the U.S. State Department decided to cut refugee admission to 45,000 in FY 2018, which has been considered a historic low and an abandonment of its leadership on refugee resettlements (in addition to the rampant anti-immigration rhetoric the current U.S. administration employs).<sup>14</sup> Canada, on the other hand, may be an example to follow. The Trudeau government is expected to increase not only the government-assisted refugee admission caps by 2020 but there is also an expectation that the private sponsorships of refugees in Canada are as likely to rise by then.<sup>15</sup> While these countries have taken drastically different positions on refugee resettlement and border control, even the Canadian government's arguably altruistic nature has shown its limits. Despite the spike in refugee claims, Canada has not opened up its borders entirely and has

deviated from its projected course in refugee management to mitigate the impact of the refugee crisis. In fact, it has been argued that “Canada is harsher and more effective at preventing asylum seekers from arriving”<sup>16</sup> and has come under pressure from human rights activists for detaining asylum seekers in detention centres that bear a resemblance to medium-security prisons.<sup>17</sup> In addition, Canadian officials are further trying to discourage individuals from seeking refuge in Canada with a warning that they might be deported.<sup>18</sup>

Countries may also bypass international instruments of refugee protection by creating bilateral agreements to reinforce border controls. The Safe Third Country Agreement between the United States and Canada does not allow individuals to apply for asylum in both countries but instead forces them to apply for asylum in the first country of entry.<sup>19</sup> Therefore, the agreement allows Canada to single-handedly return asylum seekers to the United States who attempt to cross the land border. Designating the United States as a safe third country, Canadian officials are relying on the assumption that the refugee recognition rates and determination procedures will be similar to those in Canada and that the United States will not return potential asylum seekers to their country of origin. However, concerns have been raised about making these assumptions as some argue that the United States has failed to meet the standards of a safe third country.<sup>20</sup> In the wake of the current crisis over immigration in the United States and tightening restrictions on asylum claims, these concerns are more pronounced, potentially leading to the key principle of the 1951 Refugee Convention – non-refoulement – to be easily and uncaringly violated. The agreement has come under heavy criticism in Canada as an instrument that is “discriminatory and [one that] violates Canada’s Charter of Rights and Freedoms.”<sup>21</sup> However, the Trudeau government has not shown signs of succumbing to the political pressures and calls for its removal, while the current U.S. administration has only displayed

fervent devotion to keeping any physical barriers to refugee entry and ideas of such alive.

While one can observe a surge in states’ tenacious actions to protect their borders, states’ commitment to collective responsibility in refugee protection should not be neglected. A time of unprecedented forced displacement worldwide demands states’ active engagement and their commitment to those fleeing political violence and persecution.<sup>22</sup> Their call to action should be vigorously reinforced at the international level. The power vacuum created by the U.S. withdrawal from the international refugee domain should continue to be filled with those willing to take their humanitarian obligations more seriously. At the same time, states need to be willing and capable to address their own institutional weaknesses that paralyze timely refugee admissions and resettlement.

The 2018 review of the Canadian Immigration and Refugee Board provides a glimpse into the institutional shortcomings that deserve further attention. Some of the institutional flaws identified include a backlog in cases being processed, complexity of the refugee management system, ineffective removals of asylum claimants who have been found ineligible for protection and insufficient operational funding. To remedy the shortcomings the report has included several recommendations, some of which speak to creating clear performance expectations and productivity mechanisms, developing annual asylum budgets, formalizing the monitoring processes of actors involved, possibly centralizing the refugee management by creating an integrated refugee system and simplifying the information acquisition process.<sup>23</sup> These, of course, are only a snippet of reforms proposed specifically for Canada although one cannot deny the fact that other states are facing similar, if not greater, challenges with the recent refugee crisis.

State sovereignty in the 21st century has been altered to adjust to new challenges, yet

it has not lost its appeal or its underlying elements. States continue to be viewed as key players in the international political system – a view, which they vehemently protect. While states have chosen to place their focus on border controls, their focus should also be within their territories. They should place equal attention on those individuals who have been granted refugee status and are potentially on their way toward making significant contributions to the building blocks of the very sovereign state, which has tried to impose limitations on their entry.

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## End Notes

<sup>1</sup> "International Migration Report 2017," United Nations, [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017\\_Highlights.pdf](http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf)

<sup>2</sup> Stephen Krasner, "The Durability of Organized Hypocrisy," in *Sovereignty in Fragments – The Past, Present and Future of a Contested Concept*, eds. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2011), 96.

<sup>3</sup> Simon Tomlinson, "World of Walls: How 65 Countries Have Erected Fences on Their Borders – Four Times as Many as When the Berlin Wall was Toppled – as Governments Try to Hold Back the Tide of Migrants," *Daily Mail*, Aug. 21, 2015, <http://www.dailymail.co.uk/news/article-3205724/How-65-countries-erected-security-walls-borders.html>

<sup>4</sup> Robert Keohane and Joseph S. Nye. *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown & Co., 1977).

<sup>5</sup> Lisa Martin and Beth Simmons, "Theories and Empirical Studies of International Institutions," *International Organization* 52, no. 4 (1998): 743.

<sup>6</sup> Margaret Karns and Karen Mingst, "The Theoretical Foundations of Global Governance," in *International Organizations – Politics and Processes of Global Governance*, 2nd edition (Boulder: Lynne Rienner, 2010), 39.

<sup>7</sup> For further information about the logic of expected consequences and the logic of appropriateness, see James March and Johan Olsen, "The Institutional Dynamics of International Political Orders," *International Organization* 52, no. 4 (1998): 943-969.

<sup>8</sup> "1951 Refugee Convention Relating to the Status of Refugees and its 1967 Protocol," United Nations High Commissioner for Refugees, <http://www.unhcr.org/en-us/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

<sup>9</sup> "Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum," Government of Canada, April 10, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/report-independent-review-immigration-and-refugee-board.html>

<sup>10</sup> "Asylum and Refugee Status Determination," UNHCR Statistical Yearbook 2014, <http://www.unhcr.org/56655f4cb.html>

<sup>11</sup> Elspeth Guild, "Asymmetrical Sovereignty and the Refugee: Diplomatic Assurances and the Failure of Due Process, Agiza v. Sweden and Alzery v. Sweden," in *Critical Issues in International Refugee Law*, ed. James Simeon (Cambridge: Cambridge University Press, 2011), 124.

<sup>12</sup> Martina Burmann and Madhinee Valeyatheepillay, "Asylum Recognition Rates in the Top 5 EU Countries," ifo DICE Report 2/17, Volume 15, <https://www.cesifo-group.de/DocDL/dice-report-2017-2-burmann-valeyatheepillay-june.pdf>

<sup>13</sup> "Refugees," United Nations, <http://www.un.org/en/sections/issues-depth/refugees/>

<sup>14</sup> Phillip Connor and Jens Manuel Krogstad, "For the First Time, U.S. Resettles Fewer Refugees than the Rest of the World," Pew Research Center, July 5, 2018, <http://www.pewresearch.org/fact-tank/2018/07/05/for-the-first-time-u-s-resettles-fewer-refugees-than-the-rest-of-the-world/>

<sup>15</sup> Aaron Hutchins, "Canada Could Lead World in Resettling Refugees by 2020, Passing U.S.," *Maclean's*, July 12, 2018, <https://www.macleans.ca/news/canada/canada-could-lead-world-in-resettling-refugees-by-2020-passing-u-s/>

<sup>16</sup> Sigal Samuel, "There's a Perception that Canada is Being Invaded," *The Atlantic*, May 26, 2018, <https://www.theatlantic.com/international/archive/2018/05/theres-a-perception-that-canada-is-being-invaded/561032/>

<sup>17</sup> Benjamin Shingler, "Canada 'Working Very Hard' to Curb Number of Migrant Children Held in Detention," CBC News, June 21, 2018, <http://www.cbc.ca/news/canada/montreal/canada-detention-children-united-states-goodale-1.4715588>

<sup>18</sup> Sara Schaefer Muñoz and Alicia A. Caldwell, "Canada Says It's No Safe Haven for Immigrants Losing U.S. Protection," *The Wall Street Journal*, Sept. 27, 2017, <https://www.wsj.com/articles/canada-says-its-no-safe-haven-for-immigrants-losing-u-s-protection-1506504600>

<sup>19</sup> "Exceptions to the Safe Third Country Agreement with Canada," UNHCR, <http://www.unhcr.org/en-us/5952a3c54.pdf>

<sup>20</sup> Teresa Wright, "Canada Faces Mounting Pressure to End Safe Third Country Agreement with U.S.," *The Canadian Press*, June 21, 2018, <https://www.ctvnews.ca/politics/canada-faces-mounting-pressure-to-end-safe-third-country-agreement-with-u-s-1.3984274>

<sup>21</sup> David Ljunggren and Anna Mehler Paperny, "Canada PM Pressured to Suspend U.S. Refugee Agreement in Face of 'Unacceptable' Policy," *Reuters*, June 20, 2018, <https://www.reuters.com/article/us-usa-immigration-canada/canada-pm-pressured-to-suspend-u-s-refugee-agreement-in-face-of-unacceptable-policy-idUSKBN1JG24B>

<sup>22</sup> "What is a Refugee," UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

<sup>23</sup> "Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum," Government of Canada, April 10, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/report-independent-review-immigration-and-refugee-board.html>

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# Justice for the Victims: How Canada Should Manage Returning “Foreign Fighters”

by **KYLE MATTHEWS**

## Executive Summary

The U.S.-led international coalition has dislodged the Islamic State in Iraq and Syria (ISIS) from the cities it had occupied and controlled, namely Mosul and Raqqa. But while the group is weakened, it lives on and remains dangerous. Both the U.S. Department of Defense and the UN estimate that approximately 30,000 ISIS fighters remain in those countries.

At the same time, a significant number of “foreign fighters” have fled Iraq and Syria. Numerous countries are struggling to find policy solutions with regards to managing

the return of their nationals who had joined the group. The Canadian government has stated publicly that it favors taking a comprehensive approach of reintegrating returnees back into society. Very few foreign fighters who have returned to Canada have been prosecuted.

Canada has both a moral and legal duty to seek justice and uphold the most basic human rights of vulnerable populations. ISIS and other jihadist groups engaged in systematic mass atrocities against minorities in Iraq and Syria, including Christians and Shiites. ISIS has demonstrated a particular disdain for the Yazidi minority in Iraq, and the Canadian government has recognized the group’s crimes against the Yazidis as genocide.

As a State Party to the Rome Statute of the International Criminal Court and a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, Canada has a responsibility to uphold these international legal conventions when formulating carefully crafted policy responses that deal with returning foreign fighters. Canada should attempt to

prosecute its nationals in domestic courts using the Crimes Against Humanity and War Crimes Act.

Open trials can serve as means by which to lay bare ISIS' narrative and to help counter violent extremism and future atrocities. They can also serve as a deterrent and warning to other Canadians who might try to join ISIS as it mutates and moves to other countries in the world, such as Libya, Afghanistan, Egypt, the Philippines, Pakistan, or heaven forbid, in Mali where Canadian peacekeepers have recently been deployed.

If Canada truly stands for multiculturalism, pluralism, the rule of law, global justice, human rights, and the liberal international order, then we must stand firm and take a principled stand to prosecute those who have fought under the ISIS banner. That includes our own citizens.



This past August marks the four-year anniversary since the Islamic State in Iraq and Syria (ISIS<sup>1</sup>) attacked the Yazidi minority in the Sinjar region of northern Iraq. Then-U.S. president Barack Obama ordered airstrikes against ISIS to stop them from reaching thousands of Yazidis who were trapped on Mount Sinjar and faced slaughter and starvation.<sup>2</sup> Thousands were saved and it marked the beginning of a major international military operation to degrade and destroy one of the deadliest non-state actors the world has ever seen.

Four years later, the U.S.-led international coalition has dislodged the group from the cities it had occupied and controlled, namely Mosul and Raqqa. Now countries are struggling to find policy solutions with regards to managing the return of their nationals who had joined the group and are frequently referred to as "foreign fighters".

There is, however, little to no international consensus on what should be done regarding the return of ISIS fighters to their home countries. While the core leadership and fighters are comprised of Iraqi and Syrian nationals, with the UN estimating it

still has upwards of 30,000 members in those two countries,<sup>4</sup> the group has managed to recruit "41,490 international citizens from 80 countries" to join it in Iraq and Syria, according to a recent report titled "From Daesh to Diaspora: Tracing the Women and Minors of Islamic State".<sup>5</sup>

In certain cases, coalition countries, including France, the United Kingdom and Australia, have said publicly that they would target their own citizens on the battlefield in Iraq and Syria. The logic among some of Canada's allies appears to be that it is better to eliminate and destroy the "soldiers of the Caliphate" in Iraq and Syria than allow them to return home and wreak havoc, commit terrorist attacks and indoctrinate others to their ideology and cause. The Canadian government has announced that it is not pursuing this strategy; Public Safety Minister Ralph Goodale stated that "Canada does not engage in death squads."<sup>6</sup> Instead, Canada is focusing on disengagement and reintegration support, with the intention of ensuring returning foreign fighters do not become a threat in Canada.

Other countries, including the U.K. and Australia, have passed legislation and withdrawn the citizenship of dual nationals believed to have joined ISIS and other violent jihadist groups.<sup>7</sup> At present, the government of Canada is against applying such a policy to any of its dual-national citizens.

### **Canada's Strategy: Ahead by a Century?**

Compared to countries such as Tunisia, France, the U.K. or Belgium, Canada does not have anywhere near the same high number of citizens who joined ISIS. The Canadian government estimates that no more than 180 Canadians joined ISIS and other jihadist groups globally, with approximately 60 having already returned. Some believe that most Canadians were killed and that the number of those who have returned home is much lower.<sup>8</sup>

In Canada, the issue of how to manage the return of foreign fighters has resulted in

highly political debates, demonstrating strong partisan differences on policy choices and strategies to keep Canadians safe.<sup>9</sup> The Liberal government has been accused of being soft on terrorism and national security, while the Conservative opposition has been charged with “fear mongering” and “Islamophobia” for wanting a tougher approach, namely prosecuting returnees.

The issue of how to deal with foreign fighters returning to Canada is of public concern. At a Hamilton town hall held in early 2018, Prime Minister Justin Trudeau was asked about his government’s approach and stated “despite concerns over returning ISIS fighters, Canadians were safe in their country and could rely on the security and intelligence services to keep them that way.”<sup>10</sup> Later, Goodale remarked the government is “focused on monitoring returning fighters and helping them to reintegrate, when possible, into Canadian society.”

While the Canadian public was generally quiet with regards to the government’s approach of managing returning foreign fighters to Canada, a podcast series produced by *New York Times* journalist Rukmini Callimachi soon had people asking questions. Callimachi interviewed a Canadian man and former ISIS fighter named Abu Huzaifa, also known on social media as Abu Huzaifa al-Kanadi (which translates as Abu Huzaifa the Canadian). During the interview, which was conducted after Huzaifa had already returned to Toronto, he admitted to killing two people execution-style while fighting for ISIS in Syria.<sup>11</sup> The podcast fuelled further debate and once again brought attention to the Canadian government’s strategic approach, focused exclusively on rehabilitating and reintegrating Canadians who are suspected of having fought for ISIS and other extremist groups, rather than prosecuting them.

Herein lies the dilemma. Like many other countries, the Canadian government has stated publicly that it favours taking a comprehensive approach of reintegrating returnees back into society. However, very

few foreign fighters who have returned to Canada have been prosecuted. Is this the correct approach, given there is little evidence rehabilitation programs actually work?<sup>12</sup> Do the collective crimes of ISIS warrant a harder and more aggressive approach, namely prosecution? Does Canada’s commitment to international legal instruments and human rights require that we adopt another strategy?

### **Understanding ISIS and its Crimes: Reflection Points for Canadian Policy-Makers**

ISIS has committed numerous atrocities, including abusing the human rights of children as set out in the Convention on the Rights of the Child. The Romeo Dallaire Child Soldiers Initiative has found ample evidence that the group recruited young children to become soldiers.<sup>13</sup> It has indoctrinated children by forcing them to witness public executions, amputations, floggings, and watching videos of extreme violence, including beheadings. It has trained children in the use of light and heavy weapons, rocket-propelled grenades, explosives and other military tactics. It trained children as executioners and forced them to participate in acts of murder. Furthermore, it forced children to participate in suicide missions, either by wearing suicide belts or by riding as passengers in vehicles loaded with improvised exploding devices.

In addition, the group has kidnapped, forcibly detained, tortured and murdered journalists and humanitarian aid workers. ISIS held journalists and aid workers in special prisons allegedly run by foreign fighter cells. During their captivity, victims were subjected to cruel and inhuman treatment. Captors made death threats to victims on camera in advance of execution. American photojournalist Matthew Schrier was kidnapped and held hostage by al-Qaeda in Aleppo, Syria in 2012 and claims three of his abductors were Canadian, with a connection to Montreal.<sup>14</sup>

ISIS and other jihadist groups also engaged in systematic mass atrocities against

minorities in Iraq and Syria, including Christians and Shiites. ISIS has demonstrated a particular disdain for the Yazidi minority in Iraq. A June 2016 report titled “They Came to Destroy: ISIS Crimes Against the Yazidis” (mandated by the United Nations Human Rights Council)<sup>15</sup> determined ISIS’ abuse of Yazidis amounts to crimes against humanity and war crimes. Following this report, various countries, including Canada, have recognized ISIS’ violence against the Yazidis as genocide.

Current UN Goodwill Ambassador Nadia Murad has been travelling the globe urging countries to help bring justice to the Yazidis by prosecuting ISIS members. Murad knows of what she speaks. Four years ago, ISIS attacked her village. Six of her brothers were killed. She was kidnapped and sold into slavery where she was raped and tortured.

In a recent article detailing her experience, Murad credits her lawyer, Amal Clooney, and Yazda, a global Yazidi rights organization, for helping her highlight the cause internationally. “Last September, the UN Security Council passed Resolution 2379 which led to the establishment of an international team that will now investigate and help the prosecution of those responsible for the atrocities of Islamic State,”<sup>16</sup> she writes. “This will include exhuming the dozens of mass graves containing Yazidi victims discovered so far in Iraq.”<sup>17</sup>

“Yazidi women are the latest in a vast network of survivors of rape and misogyny. We, and the Yazidi community generally, need more than sympathy,” she pleads.

Canada has both a moral and legal duty to uphold the most basic human rights of vulnerable populations. As a state party to the Rome Statute of the International Criminal Court (ICC) and a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, Canada has a responsibility to uphold these international legal conventions when formulating carefully crafted policy

responses that deal with returning foreign fighters.

The definition of genocide in the Rome Statute of the ICC, which is also outlined as [article II of the genocide convention](#), is:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.<sup>18</sup>

Article I of the genocide convention states “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”<sup>19</sup> Article III states the following acts shall be punishable: a) Genocide, b) Conspiracy to commit genocide, c) Direct and public incitement to commit genocide, d) Attempt to commit genocide, and e) Complicity in genocide.

Finally, Article IV stipulates that “Persons committing genocide or any of the other acts in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.”<sup>20</sup>

It would appear that Canada has a responsibility to prosecute its citizens who have fought overseas as ISIS fighters. Certainly, the legal grounds to do so exist. What is lacking is political will.

### **Where is the Political Will for Prosecution?**

Western countries, Canada in particular, appear reluctant to prosecute nationals who joined ISIS and subsequently returned home. To boot, national governments and

the international community appear to have no overarching strategies in place to do so. Around the world, civil society groups are working in parallel with Murad in trying to change this discussion, and building political will is key.

At the international level, the Montreal Institute for Genocide and Human Rights Studies, in partnership with the Stanley Foundation and Parliamentarians for Global Action in 2018, convened the Milan Forum for Parliamentary Action in Preventing Violent Extremism and Mass Atrocities. With a large number of parliamentarians from various countries in the Middle East and North Africa seeking support, knowledge and best practices in preventing ISIS' brand of extremism, a group of over 140 elected officials and human rights and counter-terrorism experts agreed to a plan of action in dealing with this global scourge. Most notably, the plan of action recognizes "that impunity for perpetrators of mass atrocities serves to increase the likelihood of new crimes and we underline the importance of national and international jurisdiction. We recognize that all states have a duty to prosecute or extradite suspects and alleged perpetrators of international crimes in national or international jurisdictions."<sup>21</sup>

Following the forum, legislative tools were prepared and shared with Parliamentarians for Global Action's network of over 1,400 elected officials with the objective that they would be a catalyst for global justice. A model parliamentary resolution was prepared that notes "alleged mass atrocities committed by ISIL members amount to genocide, crimes against humanity or war crimes when they fulfill the legal requirements of the definition of each crime under International Law, and that such crimes shall be punishable offenses under each national Criminal Law in accordance with the States' obligations under the UN Convention on Prevention and Punishment of the Crime of Genocide (1948), the Geneva Conventions (1949) and other relevant treaties."<sup>22</sup> Individual parliamentarians are empowered across

numerous democracies to show leadership in prosecuting returning fighters.

Another outcome of the Milan Forum was that one of Canada's leading counter-extremism experts, former Canadian Security Intelligence Service official Phil Gurski, authored a handbook for parliamentarians that serves as a guide for preventing violent extremism and mass atrocities. Launched at the Parliament of Canada last May, one of the key messages is that parliamentarians need to "pressure their governments to prosecute returning foreign fighters and ensure that evidence and documentation concerning the perpetration of crimes under International Law is collected and preserved in respect to all relevant situations in such a way so as to make such evidence and documentation available for trials and other accountability processes aimed at putting an end to impunity for crimes that threaten the peace, security and well-being of the world."<sup>23</sup>

Internationally, pressure to prosecute is building. A number of civil society groups have come together to pressure the ICC to prosecute ISIS for crimes committed against women and sexual minorities. The Human Rights and Gender Justice Clinic of the City University of New York School of Law, the Organization of Women's Freedom in Iraq, and the NGO MADRE launched a petition that argues ISIS fighters should be prosecuted for crimes committed on the basis of gender, including discrimination based on sexual orientation and gender identity.<sup>24</sup>

In Europe, the [Parliamentary Assembly of the Council of Europe](#), which consists of parliamentarians from 47 European countries, adopted Resolution 2091 (2016), Foreign Fighters in Syria and Iraq, which recognized the atrocities committed by ISIS as "genocide and other serious crimes punishable under international law."<sup>25</sup>

### **Pathways to Prosecution: International and Domestic**

How and where should ISIS be prosecuted? Numerous Canadians who fought for ISIS are in custody in Kurdish areas of northern

Iraq, which is where Iraqi nationals and many foreign suspects captured on sovereign territory will most likely be tried. But what about those who escaped Iraq or have returned home?

The most logical place to prosecute ISIS foreign fighters would appear to be through the ICC. While this seems simple, because neither Syria nor Iraq are signatories of the Rome Statute, the ICC does not have the jurisdiction to investigate or prosecute. Only a UN Security Council resolution, with the support of all Permanent 5 members, could authorize the ICC to begin investigating.

Unfortunately, the UN Security Council has not given the ICC the green light. In 2015 the ICC's chief prosecutor, Fatou Bensouda, issued a statement that the court would not be opening an investigation. "The information available to the Office also indicates that ISIS is a military and political organisation primarily led by nationals of Iraq and Syria. Thus, at this stage, the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited,"<sup>26</sup> the statement announced.

It is important to clarify that under the Rome Statute, the primary responsibility for the investigation and prosecution of perpetrators of mass atrocity crimes rests, in the first instance, with the national authorities. The Iraqi government is taking the lead in prosecuting ISIS fighters whom it captured on its territory.

But when it comes to returning foreign fighters, it is worth noting the ICC gives state parties the first right of response in prosecuting individuals. In other words, if Canada begins prosecuting its nationals in domestic courts using the *Crimes Against Humanity and War Crimes Act*,<sup>27</sup> it will promote the treaty's universality.

While the hammer of justice should come down against self-avowed recruits who joined voluntarily, such as the now infamous Huzaifa of Toronto, we must also not take our eyes off of the recruiters who

indoctrinated and lured prospective Canadians to join ISIS.

## Conclusion

In choosing not to prosecute returning ISIS fighters, Canada is effectively abandoning its responsibilities as a signatory of the Convention for the Punishment and Prevention of the Crime of Genocide as well as its commitment to uphold the Responsibility to Protect, the Convention on the Rights of the Child and the International Convention Against Torture. Canada is turning a blind eye to sexual slavery and the trafficking of women and children, ignoring our country's responsibility as a state party to the Rome Statute and a founding member of the International Criminal Court. Worse, Canada is failing to bring justice to the victims of ISIS, some of whom are now living in Canada, including a sizeable Yazidi refugee population that was resettled to Canada quite recently.

Foreign fighters who are Canadian citizens should not only be considered as being a danger because they joined a terrorist group and may have committed or engaged in terrorism. It is far worse than that. There is evidence to suggest that ISIS fighters have committed the most heinous human rights violations, including crimes against humanity and genocide. Due to the severity of these well-documented atrocities, these Canadians should not be allowed to return home without being held accountable for what they have done or how their direct actions empowered ISIS and enabled it to commit such unspeakable horrors.

ISIS is not dead. Canada should not fall into a complacent policy response to it. "ISIS has lost control of most of the territory it once held. But it is not defeated and is morphing into an international movement, inspiring more attacks,"<sup>28</sup> warns scholar Shiraz Maher.

Open trials can serve as means by which to lay bare ISIS' narrative and to help counter violent extremism. They can also serve as a deterrent and warning to other Canadians who might try to join ISIS as it mutates and

moves to other countries, such as Libya, Afghanistan, Egypt, the Philippines, Pakistan, or heaven forbid, in Mali where Canadian peacekeepers have just been deployed.

There is much at stake and the world is watching. If Canada truly stands for multiculturalism, pluralism, the rule of law, global justice, human rights and the liberal international order, then we must remain firm and take a principled stand to prosecute those have fought with ISIS. That includes our own citizens.

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His work focuses on human rights, international security, the Responsibility to Protect, global threats, and social media and technology, and global cities. He works closely with the Canadian All-Party Parliamentary Group for the Prevention of Genocide and has advised Members of Parliament on issues related to international peace and security. He previously worked for the United Nations High Commissioner for Refugees, where he was posted to the Southern Caucasus (Tbilisi), the Democratic Republic of the Congo (Kinshasa) and Switzerland (Geneva). Prior to that he worked for CARE Canada in Albania and later at its headquarters in Ottawa, where he managed various humanitarian response initiatives and peace-building projects in Afghanistan, Sub-Saharan Africa and the Middle East.

In 2011 he joined the New Leaders program at the Carnegie Council for Ethics in International Affairs. He is a member of the Global Diplomacy Lab, a member of the BMW Foundation's Global Responsible Leaders network, and recently joined the United States Holocaust Memorial Museum's advisory board on transatlantic cooperation for atrocity prevention. He is active member of the University Club of Montreal, the Montreal Press Club, the Montreal Council on Foreign Relations, the Canadian International Council and the Federal Idea, a think tank devoted to federalism. He is currently a Research Fellow at the Canadian Research Institute on Humanitarian Crises and Aid, and fellow at the Canadian Global Affairs Institute.

#### End Notes

<sup>1</sup> The Islamic State in Iraq and Syria is often referred to as ISIS, but also ISIL, IS or Daesh.

<sup>2</sup> Dana Ford and Josh Levs, "'Heroic' Mission Rescues Desperate Yazidis From ISIS," CNN, Aug. 16, 2014 <http://www.cnn.com/2014/08/11/world/meast/iraq-rescue-mission/index.html>

[rescue-mission/index.html](http://www.cnn.com/2014/08/11/world/meast/iraq-rescue-mission/index.html)

<sup>3</sup> Although ISIS has lost control of Mosul and Raqqa, the group is still dangerous and has conducted numerous attacks in both Syria and Iraq. Both the U.S. Department of Defense and the UN estimate that approximately 30,000 ISIS fighters remain in those countries. See Agence France Presse, "Counting Islamic State Members an Impossible Task," Aug. 27, 2018 <https://www.france24.com/en/20180823-counting-islamic-state-members-impossible-task>

<sup>4</sup> Liz Sly, "Islamic State May Still Have 30,000 Fighters in Iraq and Syria Even After Setbacks," *The Washington Post*, Aug. 14, 2018 [https://www.washingtonpost.com/world/islamic-state-may-still-have-30000-fighters-in-iraq-and-syria-even-after-setbacks/2018/08/14/f929cbe2-9fd6-11e8-a3dd-2a1991f075d5\\_story.html?noredirect=on&utm\\_term=.32756b31acfa](https://www.washingtonpost.com/world/islamic-state-may-still-have-30000-fighters-in-iraq-and-syria-even-after-setbacks/2018/08/14/f929cbe2-9fd6-11e8-a3dd-2a1991f075d5_story.html?noredirect=on&utm_term=.32756b31acfa)

<sup>5</sup> Joana Cook and Gina Vale, "From Daesh to Diaspora: Tracing the Women and Minors of Islamic State," July 23, 2018, The International Centre for the Study of Radicalisation <https://icsr.info/2018/07/23/from-daesh-to-diaspora-tracing-the-women-and-minors-of-islamic-state/>

<sup>6</sup> Evan Dwyer, "'Canada Does Not Engage in Death Squads, While Allies Actively Hunt Down their own Foreign Fighters,'" CBC, Nov. 17, 2017 <https://www.cbc.ca/news/politics/isis-fighters-returning-target-jihadis-1.4404021>

<sup>7</sup> Jacqueline Williams, "ISIS Fighter's Australian Citizenship Is Revoked Under Antiterror Laws," *The New York Times*, Feb. 13, 2017 <https://www.nytimes.com/2017/02/13/world/australia/citizenship-isis-khaled-sharrouf.html>

<sup>8</sup> Amanda Connolly, "Number of Returned Foreign Fighters Essentially the Same as 2 Years Ago," *Global News*, Nov. 23, 2017 <https://globalnews.ca/news/3877256/number-of-returned-foreign-fighters-essentially-the-same-as-2-years-ago-ralph-goodale/>

<sup>9</sup> Graham Slaughter, "Plan to Deal with Returning ISIS Fighters Sparks Fiery Exchange between Scheer, PM," CTV, Nov. 28, 2017 <https://www.ctvnews.ca/politics/plan-to-deal-with-returning-isis-fighters-sparks-fiery-exchange-between-scheer-pm-1.3698183>

<sup>10</sup> Peter Zimonjic, "Justin Trudeau Tells Hamilton Town Hall Canadians Can Feel Safe Despite Returning ISIS Fighters," CTV News, Jan. 10, 2018 <https://www.cbc.ca/news/politics/hamilton-trudeau-town-hall-1.4481025>

<sup>11</sup> Rukmini Callimachi, "Caliphate," *The New York Times* <https://www.nytimes.com/interactive/2018/podcasts/caliphate-isis-rukmini-callimachi.html>

<sup>12</sup> Evan Dwyer, "Federal Government not Tracking Interventions with Returning ISIS Fighters," CBC News, Nov. 23, 2017 <https://www.cbc.ca/news/politics/deradicalization-canada-isis-fighters-program-1.4414999>

<sup>13</sup> Shelley Whitman, "ISIS and Child Soldiers," Romeo Dallaire Child Soldiers Initiative, 2015 <https://www.childsoldiers.org/en/555/>

<sup>14</sup> Stewart Bell, "Matthew Schrier was Kidnapped by al-Qaida in Syria. He Believes Canadians were Involved," *Global News*, March 29, 2018 <https://globalnews.ca/news/4108550/matthew-schrier-kidnapped/>

<sup>15</sup> "'They Came to Destroy': ISIS Crimes Against the Yazidis," Human Rights Council, Thirty-second session Agenda item 4, Human Rights Situations that Require the Council's Attention, June 15, 2016 <https://www.ohchr.org/Documents/HRBodies/>

[HRCouncil/ColSyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](https://www.hrcouncil.org/ColSyria/A_HRC_32_CRP.2_en.pdf)

<sup>16</sup> Nadia Murad, "I was Kidnapped by Islamic State, Sold into Slavery and Endured Rape, Torture and Humiliation," *Thejournal.ie*, Aug. 5, 2018 <http://www.thejournal.ie/readme/islamic-state-kidnapped-un-goodwill-ambassador-and-author-of-the-memoir-the-last-girl-4159099-Aug2018/>

<sup>17</sup> Ibid.

<sup>18</sup> Rome Statute of the International Criminal Court [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

<sup>19</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Office of the High Commissioner for Human Rights <https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>

<sup>20</sup> Ibid.

<sup>21</sup> "Milan Plan of Action on Preventing Violent Extremism and Mass Atrocities," The Montreal Institute for Genocide and Human Rights Studies, Nov. 28, 2017 <https://www.concordia.ca/content/dam/artsci/research/migs/docs/Milan-Plan-of-Action.pdf>

<sup>22</sup> "Model Parliamentary Resolution: Providing Justice to the Victims of ISIS/ISIL/Daesh," Montreal institute for Genocide and Human Rights Studies [http://www.concordia.ca/content/dam/artsci/research/migs/docs/Model%20Parliamentary%20resolution%20on%20returnees%20\(ISIL-ISIS-Daesh\).pdf](http://www.concordia.ca/content/dam/artsci/research/migs/docs/Model%20Parliamentary%20resolution%20on%20returnees%20(ISIL-ISIS-Daesh).pdf)

<sup>23</sup> Phil Gurski, *Preventing Violent Extremism and Mass Atrocities: A Handbook for Parliamentarians*, The Montreal Institute for Genocide and Human Rights Studies, May 2018 <https://issuu.com/migsinstitute/docs/380461454-preventing-violent-extrem>

<sup>24</sup> Lisa Davis, "Prosecuting ISIS Crimes Against Women and LGBTIQ People Would Set a Crucial Precedent," *OpenDemocracy*, Feb. 1, 2018 <https://www.opendemocracy.net/5050/lisa-davis/activists-seek-prosecution-isis-crimes-women-lgbtq-persons>

<sup>25</sup> Parliamentary Assembly, "Resolution 2091 (2016) Foreign Fighters in Syria and Iraq," Council of Europe, Jan. 27, 2016 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22482&lang=en>

<sup>26</sup> "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS," International Criminal Court, April 8, 2015 <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>

<sup>27</sup> See Article VI for Offences Outside Canada that states: "Every person who, either before or after the coming into force of this section, commits outside Canada genocide, a crime against humanity, or a war crime, is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8." *Crimes Against Humanity and War Crimes Act* <http://laws-lois.justice.gc.ca/eng/acts/C-45.9/page-2.html#h-5>

<sup>28</sup> Shiraz Maher, "How the Islamic State Caliphate was Lost," *The New Statesman*, Aug. 8, 2018 <https://www.newstatesman.com/world/middle-east/2018/08/how-islamic-state-caliphate-was-lost>

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# Hedging Our Bet: A Diversification Strategy for Canadian Trade

by **BRIAN KINGSTON**

**C**anada's trade strategy is at a critical juncture. The NAFTA negotiations are making little progress, casting continuing uncertainty on Canada's largest trade and investment relationship, while an increasingly protectionist U.S. administration is damaging Canada-U.S. trade and investment with arbitrary tariffs on key exports. At the same time, Prime Minister Justin Trudeau's recent missteps in Asia demand a rethink of Canada's overall trade objectives in the region.

Since coming to power in 2015, the Liberal government's trade strategy has been based on the Global Markets Action Plan introduced by former trade minister Ed Fast. Now is the time to develop a modernized

global trade strategy that positions Canada for success in increasingly uncertain times.

## Why Trade Matters

Since the end of the Second World War, trade has been the principal means by which countries around the world have grown and prospered. As trade has flourished, incomes have increased and workers have benefited from new opportunities.

From Canada's early days of the fur trade through today, where trade of goods and services represents 64 per cent of gross domestic product (GDP), Canadians have relied on international trade to prosper. According to Global Affairs Canada, one in every five Canadian jobs is directly linked to exports.

Trade not only creates jobs, it improves productivity through greater competition. Trade and trade-enhancing policies have improved Canada's productivity performance, particularly in the manufacturing sector. From 1974 to 2010, the 35 per cent of manufacturers that were exporters were responsible for more than 72

per cent of total manufacturing employment and 79 per cent of total manufacturing shipments. Canada's trade agreement with the U.S. is estimated to have singlehandedly raised Canadian manufacturing productivity by 13.8 per cent over the period from 1988 to 1996.

Recognizing the importance of trade to the Canadian economy, successive governments have negotiated free trade agreements (FTAs) to enable companies to access new markets around the world. Put simply, trade agreements create a level playing field for companies to compete in foreign markets. They open markets to Canadian businesses of all sizes by reducing trade barriers, such as tariffs, quotas or non-tariff barriers. They create more predictable, fair and transparent conditions for businesses operating abroad.

Many of Canada's newer FTAs go beyond traditional trade issues to cover areas such as services, intellectual property, investment, e-commerce, labour and the environment. The recently provisionally implemented Canada-EU Comprehensive Economic and Trade Agreement (CETA) includes a chapter on trade and sustainable development that promotes sustainable development through the co-ordination and integration of labour, environmental and trade policies.

Canada now has 14 free trade agreements in force and is an original member of the World Trade Organization (WTO), the international organization that deals with the global rules of trade between nations. Once Canada ratifies the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP), we will have free trade with more than 60 per cent of the global economy. This would give Canadian companies preferential access to nearly 90 per cent of existing export markets, making Canada the only G7 nation with free trade access to the U.S., the Americas, Europe and the Asia-Pacific region, including three of the world's four largest economies.

### **The Case for Diversification**

Protectionism is on the rise around the world. Since the outset of the global financial

crisis in 2007, G20 countries have implemented more than 1,200 new trade restrictions. The Trump administration has escalated trade tensions globally by slapping tariffs on steel and aluminum imports and imposing and/or threatening tariffs on US\$450 billion in imports from China and US\$335 billion in imported cars and parts from around the world.

In this increasingly hostile environment, Canada's support of the liberal trade system is more important than ever. This can be achieved through active engagement at the WTO and an aggressive trade liberalization strategy.

Despite recent efforts to diversify trade, Canada has much work to do. Nearly 76 per cent of Canada's exports went to the U.S. in 2017. While our export dependence on the U.S. has declined from 87 per cent in the early 2000s, it remains stubbornly high. Just like any business, relying heavily on one customer responsible for 76 per cent of total sales is a risky proposition.

Over the past decade, the share of Canada's total exports destined for emerging markets has risen slowly from around four per cent to 10 per cent. This, despite the fact that emerging markets are expected to account for 65 per cent of global GDP in the next five years. Canada must do more to take advantage of opportunities in rapidly growing markets if we are to lessen our trade dependence on the U.S.

Canada's trade performance continues to be heavily dependent on the U.S. Given our geographic proximity this will not change dramatically. But at a time when NAFTA is under threat and our largest trade partner is imposing unilateral tariffs, we must aggressively pursue a plan B.

### **Global Trade Strategy**

#### **1. Pivot to Asia**

With growing protectionism in the U.S., the need to diversify has never been clearer. Asia is the growth engine of the global

economy and Canada must be positioned to take advantage of it. Despite the region's importance to the global economy, Asia-Pacific nations collectively account for only 17 per cent of Canada's goods trade and 11 per cent of Canada's services trade.

Last year, Asia was responsible for much of the recovery of world merchandise trade on both the export and import sides. According to the WTO, Asia contributed 2.3 percentage points to global export growth of 4.5 per cent, or 51 per cent of the total increase. Asia also added 2.9 percentage points to world import growth of 4.8, or 60 per cent of the overall increase.

Expanding Canada's trade and investment in Asia could be achieved with the following actions:

- *Launch trade negotiations with China* – The government has established a goal of doubling trade with China before 2025. To achieve this ambitious goal Canada needs to launch and conclude FTA negotiations. Achieving a comprehensive trade agreement with China that addresses the numerous trade and investment barriers facing Canadian companies won't be easy and could take nearly a decade, requiring that negotiators get to work as soon as possible.
- *Ratify the CPTPP* – Canada should move to implement the CPTPP agreement as quickly as possible. It is critical that Canada be among the first six countries to ratify the agreement. This will give Canadian companies a first-mover advantage in lucrative markets such as Japan. When the CPTPP is fully in force, Canada will have preferential market access to 51 countries with nearly 1.5 billion consumers and a combined GDP of US\$49.3 trillion.
- *Boost trade and investment with ASEAN* – An Asia-Pacific trade deal should include efforts to bolster Canada's trade and investment with the

fast-growing countries that comprise ASEAN. According to the International Monetary Fund (IMF), six of the 10 fastest growing economies in 2016 were in Asia including three members of ASEAN: Cambodia, Myanmar and Laos. Research by the Asia Pacific Foundation suggests that a Canada-ASEAN free trade agreement could generate between C\$4.8 billion and C\$10.9 billion in additional bilateral trade, benefiting a wide range of companies and workers.

Asia can be an important alternative market for Canadian products and services that traditionally were exported to the U.S. For example, if it weren't for the fact that Canadian lumber producers doubled their combined market share in China and Japan in the past decade, Canada's lumber industry would be even more exposed than it already is to protectionist measures south of the border.

## 2. Enable SMEs exports

Few small and medium-sized businesses have the capacity and resources to be the first movers into new international markets; most often, big businesses lead the way. If Canada is to improve its trade performance, we need to find ways to support SMEs and encourage them to trade, particularly in emerging markets.

The evidence shows that Canadian SME exporters generally have better chances of surviving in emerging markets if they are older when they enter, export to an advanced economy first, introduce new products more often, have access to financing and export to more destinations. Technology-enabled SMEs selling through online platforms are much more likely to export and to reach more foreign markets than even traditional, large multinationals, although their sales, of course, are generally much smaller.

Helping SMEs effectively sell their products on Tmall and JD.com – Chinese e-commerce platforms with hundreds of

millions of active users – would be a powerful way to diversify Canada's trade. But using e-commerce platforms alone will not guarantee success. SMEs need to develop an in-depth understanding of new markets and the challenges they will face with the support of the Trade Commissioner Service (TCS).

### 3. Expand trade promotion efforts

Canada's TCS does an admirable job of promoting Canadian exports abroad. Diversifying Canada's trade will require a new approach and more resources:

- *Co-ordination* – Efforts should be made to better co-ordinate Export Development Canada (EDC), responsible for export financing, and the Business Development Bank of Canada (BDC), responsible for supporting small and medium-sized businesses, with the TCS. EDC and BDC service offerings in support of going global should be complementary and include a direct link to the services offered by the TCS. While progress has been made on co-ordination in recent years, there exists no explicit protocol between EDC, BDC and the TCS to ensure that Canadian exporters are made aware of the full range of services available to them.
- *Flexibility* – The TCS should be given more flexibility to respond to global trends and manage resources. For example, making the TCS a Crown corporation would allow the organization to quickly deploy human resources where required and utilize private sector expertise as needed. Permitting the TCS to charge for premium services could enhance service delivery and provide another mechanism to raise revenue.
- *Resources* – The TCS would be able to help more firms take advantage of Canada's FTAs and access global markets if it had additional resources.

Australia, with a smaller population than Canada, spends nearly double on its trade promotion efforts through Austrade. Significant new funding, with a portion dedicated to enhancing the TCS's digital service offerings, should form a critical component of Canada's trade diversification efforts.

Canada's impressive suite of free trade agreements, including the recently implemented CETA, will be more beneficial to Canadians if there is broad awareness of the deals and there are tailor-made services available to exporters to take advantage of the preferential access negotiated. The TCS has an important role to play in this endeavour.

### 4. Attract investment

A global trade strategy should include efforts to grow investment in Canada. Foreign affiliates play an important role in the Canadian economy and Canada's international trade. In fact, foreign affiliates are responsible for nearly half of Canada's exports despite controlling only 17 per cent of all corporate assets in Canada.

Last year, total inflows of foreign direct investment (FDI) into Canada declined by 36.4 per cent to C\$31.5 billion. Reversing this trend and enhancing Canada's attractiveness as an investment destination will create jobs in Canada while helping to grow exports. This could be achieved by restoring Canada's corporate tax advantage vis-à-vis the U.S., reducing regulatory barriers facing new investments by implementing a clear policy of "one project, one approval" and empowering and resourcing the new Invest in Canada agency to incentivize foreign companies to consider Canada as an investment location.

### Conclusion

Canadian prosperity depends on global trade. With access to our most important trade partner under threat, now is the time for a renewed global trade strategy that aims to reduce our exposure to a single market.

This can be achieved but only with considerable effort and resources. The strategy outlined above can help put Canada on the right track.

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