

THE MAGAZINE OF THE MACDONALD-LAURIER INSTITUTE

# INSIDE POLICY

OCTOBER 2017

## The Dragon at the Door

The future of Canada-China relations

### Also INSIDE:

NAFTA  
negotiations

Canada's struggling  
economy

National security  
and justice reform

Kurdish  
independence





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THE MAGAZINE OF THE MACDONALD-LAURIER INSTITUTE

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## From the editors

The Canada-China relationship remains a contentious subject in this country. In the eyes of some, the government remains overly keen to engage economically with Beijing, while China's intentions remain opaque and some of its behaviour troubling.

We are happy to introduce our *Dragon at the Door* project, with articles from leading experts exploring some of the distressing realities of 21<sup>st</sup> century China. As **Shuv Majumdar** notes in his introductory essay, Canadians need to recognize that much of what they hear about China “occupies a narrow space between calculated dishonesty and aggressive deception.”

A good case in point can be found in the government's recent Defence Policy Review statement. As **Eric Lerhe** notes, that document has surprisingly little to say about the potential military threat of China in the Indo-Pacific. One needs to only look at how China has approached India in recent years, as revealed by **Harsh Pant**, also in this issue.

The dangers posed by China are not only overseas. One can see China's strategy at work in the behaviour of Chinese state-owned enterprises and how it approaches free-trade deals, issues explored by **Duanjie Chen** and **Charles Burton**. As a complement to the series, **Hugh Stephens** says that Canada must trade with China but will need to work to protect Canadian intellectual property.

The government also contends with a number of other global issues – from what to do with the North Korean threat, explored further by **Jim Fergusson**, to what Shuv Majumdar has called the “long-delayed dream of a free Kurdish state.” National security and justice reform are also on the agenda, with **Scott Newark** exploring the content behind Bill C-59 and **Ben Perrin** looking at the need to deal with social media crimes.

Yet, perhaps dwarfing all these current issues, is the renegotiation of NAFTA. **Stanley Hartt**, who was involved in negotiating the Canada-US FTA advises the government against the public blow-by-blow we've been getting so far. And the challenges facing the negotiations are explored in more detail by **Laura Dawson**.

Almost two years into its mandate, it seems a good time to assess the government's promise of “real change.” Yet, as noted by **Sean Speer**, its overall record has been generally underwhelming. Despite recent reports on Canada's “hot” economy, **Philip Cross** argues that the country is still struggling economically. And, as **Brian Lee Crowley** points out, the continuing high cost associated with trade barriers between provinces has not helped this economic situation.

Even on Indigenous affairs, notes **Dwight Newman**, the government has made important missteps when it comes to its commitment to the *UN Declaration on the Rights of Indigenous Peoples*.

The government's approach on tax fairness has been more ideological than effective, as pointed out by **Speer**. Equally ideological has been its approach to legislating tobacco use, as noted by **Crowley**. Policy makers have tended to prioritize abstinence over real harm reduction.

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Renée Depoens

## Skip the NAFTA blow-by-blow

*Negotiators of the original Canada-US FTA knew that constant well-publicized announcements are not the way to go. They'd also have other tips for today's NAFTA talks.*

### Stanley H. Hartt

**F**or those of us who participated in the negotiations of the original Canada-US Free Trade Agreement (FTA), the serial public announcements telling us that negotiators would be meeting for various of the planned seven rounds of North American Free Trade Agreement (NAFTA) talks have been jarring. The whole concept of negotiating in public is inimical to the kind of horse trading that has to go on between countries whose interests diverge, however friendly and united they may be in their common objective of modernizing the 23-year old treaty.

Setting up the news media by pre-arranged appointments to “negotiate”

invites the need to comment about “progress.” But negotiations don’t work that way; they don’t advance by small increments until a perceptible “whole” emerges; tiny, unimportant issues can be resolved and put in the bin for signed-off and agreed clauses, but all of the important provisions will be discussed and debated, and consensus withheld until each side gets the most of what it expects or hopes to achieve.

Thus, the agreement is done when it is done and watching it in its stages of gestation is even less useful than waiting for a pot of water to boil. In this case, it may actually prevent it from ever achieving that state. The reason for this is simple: the issues between the three amigos can be quite contentious. Yes, a good deal needs to be good for all

participants, but not every concession to gain a desired advantage is popular with every constituency back home. Speculation about such things won’t help earn negotiators the support of those affected.

And that is true even when all parties are in fact trying their best to achieve a common goal. One never knows with President Trump, who has vigorously promised to tear up the document and the relationship in pursuit of a better deal for the US. But it is a certainty that selective “announcements” about the subject matters to be discussed in the first, second, third or what-have-you round, together with speculation about the demands of one side or the other, is the antithesis of how to ensure public endorsement for the process or the end product.

During the FTA process, by contrast, numerous groups of industry and subject matter experts beavered away in total and utter discretion about vastly contentious issues with no thought whatsoever about feeding the media machine with regular updates. Intensive consultations were carried on with a very large variety of interested parties, from industry associations, to consumer groups and trade experts to estimate the impact of this or that potential outcome, but absolutely outside the glare of regular publicity.

In fact, back then, the only memorable departure from this sensible practice of remaining under the radar was the entirely stage-managed walk-out of Canadian negotiators. Simon Reisman, our hard-nosed and time-tested chief FTA negotiator, recommended the move when he sensed that Peter Murphy, the chief negotiator for the Office of the US Trade Representative, was not treating the remaining unresolved matters with the urgency that was required if we were to meet the deadline mandated by the fast-track authority Congress had given to President Reagan. Simon, who had famously once stubbed his cigar out on the desk of US Treasury Secretary John Connally (the desk had originally belonged to Alexander Hamilton), knew that we needed to generate some political will behind the FTA or it would not get done. It worked. Then Vice-President George H.W. Bush was dispatched to Ottawa to assure Prime Minister Brian Mulroney that the US would do whatever was necessary to finish the job. A new team was assembled on each side, Canada's led by the Prime Minister's Office Chief of Staff Derek Burney and the Americans' by Treasury Secretary Jim Baker. The rest is history.

So what would Simon do in the current atmosphere? Here is what I believe Simon would say:

- Stop negotiating in public. Stay in continuous session and don't lure the press into expecting newsworthy breakthrough

or breakdown sound bites from what is essentially a snail-like process of groping towards a sensitive combination of concessions and compromises.

- Read *Understanding Trump*, Newt Gingrich's new book about how to deal with the President's special personality. Take away the lesson that confronting "The Donald" nose to nose is a bad strategy. He loves (needs) victories that he can claim are his idea. Help him appear to keep promises.

- So, for example, if the US is demanding that a greater proportion of the content of autos and auto parts originate in North America and that an unsustainable

proportion of these are from the United States itself, prepare a small victory for the President by starting from the proportions satisfying the current Rules of Origin requirements and enhance slightly the North American requirement, but make no concession as to US content.

- Then, make it a condition that to be eligible to be counted in this newly available potential space, the country of actual origin would have to meet certain criteria under the two supplements to NAFTA, originally added at the insistence of President Clinton as a condition of proceeding with ratification of the treaty negotiated under his predecessor, Bush 43, the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC).

- This would have two effects: One, it would give our current Liberal government the ability to say that two of its priorities had been given greater standing by becoming incentives instead of nice-to-haves. Second, it would ensure that Mexico actually had

to step up to the plate in order to enjoy the investment in plant and equipment it has benefitted from otherwise by maintaining a low wage economy and third world environmental standards. The incentives would have to be realistic and could be set up to increase over time, so as to ease Mexico into a more level competitive playing field. Opportunity for Mexico, modest victory for Trump, and potential benefit for Canada.

- On the US demand that we rid ourselves of our dairy, poultry, turkey and egg marketing boards by 2027, and that we massively increase quotas for imports on those products from the US in the

*...watching it in its stages of gestation is even less useful than waiting for a pot of water to boil.*

meantime, remember that we faced a similar starting position in the Trans-Pacific Partnership (TPP) where we managed to persuade our 13 partners that the expectations needed to remain within the Earth's gravitational pull. We ended up with a quite acceptable concession of 3.25 percent of market share.

- Rather than respond with phrases like "outrageous" and "non-starter," we should be quietly assessing the benefits to Canadian consumers if a combination of enhanced foreign imports available in our country and reciprocal dismantling of price support measures practiced by the Americans were to be simultaneously applied. It is clear that the immediate disappearance of our supply management regimes would be a very difficult political sell, but remember that the Australians accomplished exactly such a goal by purchasing the quotas of dairy farmers at fair market value. This might be impossible to achieve in one fell swoop given the size of the cheque that would be required. But adjustment measures to ease the burden

# NAFTA FAST FACTS



**January 1, 1994**

Date NAFTA came into effect

## member states



Canada



Mexico



United States



**less than 7%**  
of the world's population or,  
**450 million+ people**



**\$20.7 trillion\***

combined GDP for Canada,  
the US and Mexico (2015)

**28%**

of the world's gross domestic  
product (GDP) generated  
by NAFTA partners (2015)



**1 in 5**

jobs in Canada in part linked  
to international trade

\* in US dollars

[international.gc.ca](http://international.gc.ca) ; [trade.gov](http://trade.gov); [naftanow.org](http://naftanow.org)

on affected industries should always be included in our calculus of whether to offer some more modest mechanism to increase US access while preserving and even enhancing the efficiency of our industry and the profitability for its participants.

and the Chapter 19 panels have proven their worth indescribably, which is why the Trump trade representative is trying so hard to eliminate them. Not to put too fine a point on it, the record shows that, as early as 1991, the US administration had succumbed to political pressure

“Think of how the wine industry flourished after the FTA and NAFTA.”

• Think of how the wine industry flourished after the FTA and NAFTA and how the grain industry adapted to the abolition of the Canada Wheat Board. Above all, get something huge in exchange for any significant concession on this issue, say the preservation of the existing regime in Chapter 19 (Dispute Resolution), on which more below.

• Free Trade is meant to be free trade, so accommodation on actually enhancing the competitive access for our partners in industries like the ones referred to above needs to be exchanged for the abandonment of proposals that actually are not free trade.

• Canada should expect the Americans to bend on US proposals for “Buy American” protectionism for public works projects; a proposed sunset clause, which can be used to bully partners into fearful concessions if some future US Chief Executive threatens to pull the rug out from under the entire relationship; and, above all, the demand that US Courts be the place where US adherence to its own trade laws be tested, rather than the independent international dispute settlement panels. The price should be our willingness to actually increase the “F” and the “T” in NAFTA.

• The natural protectionist instinct in America will never entirely dissipate

where, in order to “encourage” three Senate votes in favour of extending fast track negotiating authority, it had agreed to request an Extraordinary Challenge Committee (a review on alleged errors of law and the only form of “appeal” from otherwise binding Chapter 19 bi-national panels) where three retired justices (two Canadian, one American) unanimously ultimately rejected the proposed countervailing duties on Canadian pork.

• This highly-politicized interpretation of American law is precisely what the panels were created to protect against and Canada should insist on retaining (and even be willing to trade for, as long as the price is freer access to markets in all three countries, including ours). ✱

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**Stanley Herbert Hartt, OC, QC** is a lawyer, lecturer, businessman, and civil servant. He currently serves as counsel at Norton Rose Fulbright Canada. Previously Mr. Hartt was chairman of Macquarie Capital Markets Canada Ltd. Before this he practised law as a partner for 20 years at a leading Canadian business law firm and was chairman of Citigroup Global Markets Canada and its predecessor Salomon Smith Barney Canada. Mr. Hartt also served as chairman, president and CEO of Campeau Corporation, deputy minister at the Department of Finance and, in the late 1980s, as chief of staff in the Office of the Prime Minister.



Justin Trudeau on the campaign trail in Halifax, NS in 2015.

# Assessing the Trudeau government's promise of “real change”

*Taking stock after two years: some real accomplishments, but much left to do.*

**Sean Speer**

The Trudeau government has recently reached the mid-point of its four-year mandate. It seems like only yesterday that the Liberals went from third-party status to majority government and were sworn in to enact their “real change” agenda. Much has happened since those initial days. Some expected. Some unexpected. It’s a reminder that statecraft is in large part controlled by exogenous forces and a four-year mandate can go by in a flash. Lofty rhetoric and good intentions will only get a government so far. Ultimate judgments rest on its record and results in an uncertain and evolving world.

How is the Trudeau government doing on this score? Has it delivered “real change”? These types of mid-term assessments tend to fall along partisan lines. There’s ample

evidence – including positive economic growth and low unemployment on one hand, and stagnant business investment and declining manufactured exports on other hand – to form divergent answers to these questions. Political verdicts are invariably in the eyes of the partisan beholder.

This short essay does not aim to provide a definitive answer. But it does seek to test the government against its own stated objectives and the attendant policy recommendations that the Macdonald-Laurier Institute (MLI) put out in its *Mandate for Change* series in the government’s first 100 days. The outcome is a mixed bag. There has been some positive progress, some disappointments, and plenty of outstanding questions. The overall picture is generally underwhelming. Rhetoric and signalling has thus far mostly trumped positive action.

## ***Mandate for Change***

The Liberal Party won election in October 2015 with an ambitious message of “real change,” including with regards to middle-class opportunity, Indigenous empowerment, refugee settlement, climate action, health-care reform, pension modernization, and so on. Its ambition was a virtue rather than a vice. Canadians seemed drawn to Mr. Trudeau’s activist predisposition and his positive vision. But it was clear that the real question was whether the newly-elected government could translate its impulses and predispositions into concrete policies rooted in evidence. A mandate is one step. A governing plan is another.

MLI’s essay series, *Mandate for Change*, sought to help in this transition. The series took as its starting point the Liberal Party’s objectives in key areas. We then drew on the ideas and analysis of leading public



policy thinkers including MLI Munk Senior Fellow Ken Coates, Canada Institute director Laura Dawson (also a Munk Senior Fellow), and infrastructure policy expert Brian Flemming. The goal was to put forward clear, concrete recommendations that would make incremental progress in Ottawa's key priorities. There were ultimately 14 essays, 12 authors, and more than 50 recommendations to deliver on a growing economy, rising living standards, a greener environment, and a new defence and security agenda.

Generally, the recommendations were received in the positive spirit in which they were conceived. This was not about relitigating the government's mandate or priorities. It was about developing a set of policies that would increase the chances Ottawa would succeed in meeting its objectives. MLI authors were subsequently invited to parliamentary hearings, public roundtables with Ministers and MPs, and private meetings with public servants and political staff.

The 2016 and 2017 budgets, the new Fall Economic Statement, and other government policy announcements saw some of our recommendations translated into action, including:

- Focusing on asset management plans at the local level to help ensure that public infrastructure spending is rational and productive;
- Restoring Parliament's responsibility for approving government borrowing to improve the functioning of our democracy;
- New resources for basic infrastructure and early childhood learning in Indigenous communities to support Aboriginal opportunity;
- Increasing Old Age Security/ Guaranteed Income Supplement as a targeted policy to help low-income seniors – particularly widows – cover their living costs.
- Placing an emphasis on private sponsorship in its refugee settlement policy;
- An expansion of benefits for families to defray the costs of raising children;

- A significant expansion of the Working Income Tax Benefit to reduce work disincentives for low-income Canadians;

- Revisiting the government's plan to fully adopt the *United Nations Declaration on the Rights of Indigenous Peoples* and instead focusing on building on the current legal framework to bolster Aboriginal opportunity; and

- Maintaining the previous government's changes to the Canada Health Transfer and calling for "structural reform" to improve the Canadian health-care system.

These examples represented progress on the government's overarching goals. But, there has been little movement on a number of MLI recommendations. The majority of them in fact remain incomplete and still relevant. The issues on the government's desk continue to grow as well, in light of new and emerging challenges such as the NAFTA renegotiations, instability in the Korean peninsula, and growing numbers of asylum seekers. MLI has sought to keep up. There have been several subsequent recommendations in MLI studies including with

and Canada Caregiver Credit are good steps in simplifying the previous mix of child-care and caregiving-related policies and ensure that public resources are dedicated to those who need them most.

Yet this should not overshadow areas of considerable disappointment as well. The timidity of the government's tax reform exercise represents a missed opportunity that has only caused political conflict. An ongoing flippancy about deficit spending and debt accumulation is also a major cause for concern.

Then there is the matter of outstanding or unfulfilled promises. Sometimes these so-called "flip flops" or cases of inaction should be lauded, to the extent that they reflect a sensible departure from wrong-headed campaign promises. Electoral reform is a good example. Implementing the *UN Declaration on the Rights of Indigenous Peoples* is another. We should praise cases where the government has rightly changed its mind in light of compelling evidence. Lamenting it as infidelity to past pronouncements only encourages bad policy outcomes.



## Canadians seemed drawn to Mr. Trudeau's activist predisposition and his positive vision.

regards to tax reform, foreign policy, Cancon rules, the innovation file, an opportunities agenda (including for Indigenous peoples), and so on. It's a target-rich environment, as we like to say at our Chapel Street offices.

### **Real Change versus Mandate for Change**

How has the government performed in such an environment?

There have been some positive developments. For example, the new consolidated and now indexed Canada Child Benefit

Yet there is a growing sense that high-level principles and directional statements are wearing thin in certain areas, particularly Indigenous policy. The expectations game was always going to be a challenge for this government. But it has made things worse by a tendency to emphasize style over substance. The result is a growing number of media stories about frustration and disillusionment with Ottawa's inaction on key files. It's a reminder that the transition from an electoral mandate to a governing plan, with real-world trade-offs and exogenous forces, is a challenge.



The good news is that the government still has two years left to make progress. It ought to use the fall session to begin to move forward on several fronts. A recent announcement on cultural policy is a good start. Similar ambition is needed in other areas if the Trudeau government is to deliver on its vision of “real change.”

### Next Steps

The ongoing focus will likely be on (1) tax and fiscal policy, (2) climate change, (3) the Indigenous file, and (4) Canada-US relations, with a particular focus on the NAFTA renegotiations. I’ll just briefly address the first one here.

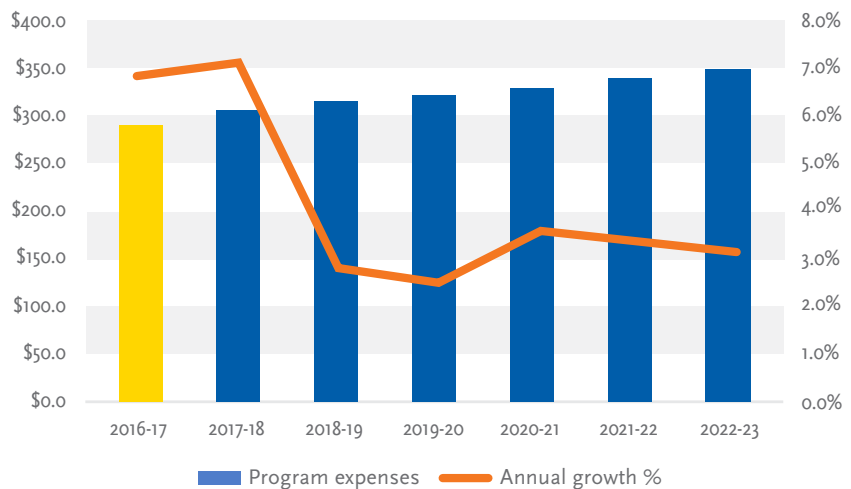
Tax policy has suddenly risen to the top of the federal policy agenda in light of the brouhaha caused by the government’s small business tax changes. It’s counter-intuitive but Paul Boothe’s recent idea that it could prompt broader tax reform to balance out the controversial proposals is so crazy it may just work. The Department of Finance conducted a review of the federal tax system last year. The first step ought to be releasing the findings of the review including which tax expenditures are worth preserving, which should be reformed, and which should be eliminated outright, as MLI recommended in February 2017. The next is designing a revenue-neutral “tax swap,” whereby inefficient or ineffective tax expenditures can be eliminated in exchange for lower or flattened tax rates.

The ongoing budgetary deficit is also bound to remain a hot topic, notwithstanding recent news that the 2016-17 deficit was lower-than-projected and the Fall Economic Statement’s positive revisions to budget projections in other years. It will persist as an issue for two reasons.

The first is last year’s lower deficit was driven not by permanent savings but delays in infrastructure spending and it’s not as if this will produce a lasting improvement to the fiscal picture. This is especially the

(Chart 1)

## Year-over-year change in federal program expenses – 2016-17 to 2022-23 (\$ billions)



Source: Government of Canada. 2017. Progress for the Middle Class: Fall Economic Statement 2017. Available at [budget.gc.ca/fes-eea/2017/docs/statement-enonce/fes-eea-2017-eng.pdf](http://budget.gc.ca/fes-eea/2017/docs/statement-enonce/fes-eea-2017-eng.pdf).

case since the Liberal Party platform raised this issue and promised that communities will not be “shortchanged.” It thus requires some cognitive dissonance on the part of the government to boast about its better-than-projected fiscal results and at the same time assure cities that the source of the improvement will not be “allowed to lapse.”

The second is that the government has still not set out its plan to restore budgetary balance. There’s good reason to believe that it will stretch out well beyond its current four-year mandate. Indeed, the Fall Economic Statement continues to anticipate a drop in year-over-year spending growth over the medium term with no explanation (see chart 1). The yellow bars represent final figures and the blue ones are projections. Does anyone really believe that annual program spending growth will fall from a two-year average of 6.1 percent to 2.3 percent in the final years of the mandate? There is good reason to be skeptical

– especially since the Fall Economic Statement announced new, off-cycle spending with minimal short-term costs but considerable long-term ones. There is a real risk that this is a sign of things to come. The more likely scenario may therefore be that spending growth remains strong or even grows due to reprofiling of infrastructure funding and new spending (to say nothing of electioneering) and in turn the budgetary deficit persists and risks growing.

There will invariably be other issues that pop up in the next two years. That’s the nature of governing. But it’s important that the government begins to make greater progress on its key priorities. MLI will continue to provide support in the form of policy analysis and recommendations. It’s bound to remain a target-rich environment. ✨

Sean Speer is a Munk Senior Fellow at MLI.

# Criminal justice system struggling to adapt to social media

*It should not require expert evidence to explain basic concepts such as retweets on Twitter.*

## Benjamin Perrin

Orthman Ayed Hamdan's recent acquittal by the BC Supreme Court on terrorism-related charges for alleged pro-Islamic State posts on Facebook is the latest example of the challenges of investigating and prosecuting crime committed on social media.

As Mr. Hamdan's case illustrates, our criminal-justice system is struggling to adapt to the social-media environment. Criminal law can be lethargic in reacting to technological change. It took Parliament 85 years after the invention of the telephone to update the Criminal Code's uttering-threats offence to ensure that death threats made by phone were included, as opposed to just threats made in something quaint called a "letter."

Canada is a digital country with more than 20 million people active on one or more social-media networks: 59 percent of adults are on Facebook and 25 percent have a Twitter profile. The proportion of 18- to 34-year-olds is even greater with 75 percent on Facebook and 36 percent on Twitter, while Snapchat is accessed by 41 percent of 16- to 24-year-olds. Adoption rates are highest among young people.

Social media's perceived anonymity, virtual nature and ability to amplify communications globally present real issues for national criminal laws. It promises benefits for commerce, education, political expression, associating with others and advocacy. But research shows social-media crime is increasing, and this borderless digital commons is rife with sexism, racism and Islamophobia.

Our preliminary research has found social media is increasingly relevant in reported judicial decisions in criminal cases, including 1,844 cases referring to Facebook (launched in 2004), 149 involving Twitter (launched in 2006) and 15 related to Snapchat (launched in 2011). Some of these include charges stemming from social-media activities involving sexual offences, uttering threats, criminal harassment and terrorism-related offences.

While our analysis into these decisions has only just begun as part of a new UBC study, we're seeing some intriguing potential trends.

Establishing the identity of online perpetrators continues to be a continuing issue in the prosecution of certain social-media crimes, particularly sexual offences. Many accused claim someone else made the impugned postings. At times, courts have acquitted on this basis due to a reasonable doubt, but others have rejected these claims in light of common sense and circumstantial evidence. Proving identity is always required and police have used creative ways in establishing it.

A significant challenge is proving the accused had the necessary mental fault or mens rea for their social-media postings. It's not enough for an uttering-threats conviction to prove that someone made a threat of death or bodily harm. Prosecutors must also prove beyond a reasonable doubt that the accused intended the threat to be taken seriously, or to intimidate. Mental fault is an essential element of every offence and tough to discern online. It's a major reason why many prosecutions, including Mr. Hamdan's, fall apart.

Many judges are unfamiliar with, or lack an understanding of, social-media networks. It's clear from many judgments that some judges have never stepped foot on social media platforms. Judges should walk the streets of the communities in which they are adjudicating. It should not require expert evidence to explain basic concepts such as a retweet on Twitter. In addition to more judicial education, digital immersion is key. Judges should sign up for a social-media account and explore their interests within the bounds of appropriate judicial conduct.

*...our criminal-justice system is struggling to adapt to the social-media environment.*

Also, social-media evidence is not being consistently and adequately collected by police and presented by Crown prosecutions. The technology of capturing social media content is steadily improving but reported decisions show a gulf between some police forces who use modern technology to capture reams of potentially relevant data related to the context of individual posts and others, as in the Hamdan case, who reportedly just

*Continued on page 32*

# New national security bill gets a lot of things right

*The government should be commended for Bill C-59  
but the committees that review it still have important work to do.*

## Scott Newark

Few pieces of legislation during the Harper government years were more controversial than C-51, introduced and passed after the October 2014 terrorist attacks in Ottawa and Saint-Jean-sur-Richelieu.

As the Macdonald-Laurier Institute reported at the time, C-51 did include some significant changes, such as authorizing operational “disruptive” activities for the Canadian Security Intelligence Service (CSIS), criminalizing terrorism ‘propaganda’ that advocated or promoted terrorist offences, and a reduction in the evidentiary standard for courts to subject suspects to preventive terrorism peace bonds.

The criticism of C-51, however, was focused not so much on what these changes would authorize as on the lack of an explanation for why they were needed, and how they would be balanced against privacy interests and civil rights. This seemingly deliberate lack of clarity or rationale also fuelled controversy over the supposedly increased degree of information-sharing and the implied Charter violations in the new CSIS powers.

C-51 also failed to deal with the long-identified need for improved independent oversight and review of intelligence activities; the Harper government flat-out rejected the creation of a specially mandated Parliamentary Committee for that purpose. While there were significant changes – and improvements – to the Canadian national security system in C-51, much of the controversy about the Bill was created by the former government itself.



Ceremony at the National War Memorial marking the anniversary of the October 2014 terrorist attacks in Ottawa and Saint-Jean-sur-Richelieu.

While the Liberals supported C-51 at the time, they made clear during the subsequent 2015 election campaign that, if elected, changes would be made to address the concerns raised about C-51. This process began in June 2017 when Bill C-59 was introduced in Parliament.

C-59 addresses many of the issues surrounding C-51 and, to the government’s credit, it also offers a far clearer description of the purpose of enhanced authorities for security agencies such as CSIS, as well as clearer mandate

descriptions, while balancing privacy and civil rights considerations.

The bill also introduces targeted actions to improve ongoing independent oversight of intelligence and security activities by creating the Office of the Intelligence Commissioner, which will cover several Canadian security agencies. Further, C-59 acts on years of recommendations by creating the National Security and Intelligence Review Agency, which also has a multi-agency mandate and specific review and reporting responsibilities. Both will help support the necessary balancing of interests inherent to national security activities.

C-59 also authorizes the Communications Security Establishment (CSE) to take action to eliminate a hostile entity’s offensive cyber capability, rather than simply blocking attacks. This articulation of authority is appropriate to the modern environment in which the CSE operates.

The bill modernizes how the government approaches the ‘No Fly’ list, terrorist entity listings and information sharing within government with defined purposes and required reporting. The bill also will repeal the unused “investigative hearings” sections of the Criminal Code and require subsequent statutory review of defined powers so that they will lapse after five years if they cannot be justified.

While the bill gets a lot right, we should be very concerned that C-59 amends the “terrorism propaganda” offence section by raising the evidentiary standard to “counseling another person to commit a terrorism

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# Don't be fooled, Canada is struggling economically

*Things are not as rosy as the headlines suggest.*

## Philip Cross

As anyone who's recently followed the news knows, Canada's economy continued to surpass expectations in the first half of 2017. But things are not as rosy as the headlines suggest. Several factors explain why the first-half upsurge of growth does not represent a break from Canada's chronic slow growth of about two percent. Transitory factors temporarily boosted growth. More fundamentally, the long-hoped-for shift to business investment and manufactured exports has not taken hold. Already exports fell a total of 10 percent in June and July, reversing all of the gains earlier in the year.

Growth was buttressed by inventory building in the auto industry on top of relief from cost-cutting in the oil industry. Broadly speaking, the upturn of growth in the first half of 2017 was the mirror image of the near-recession in the first half of 2015. At that time, the shutdown of auto plants in Canada for extensive retooling compounded the deepening slump in the oil industry. The lesson of both 2015 and 2017 is that Canada's \$2 trillion economy is still small enough to be significantly affected by the actions of one or two of its leading industries, which may not reflect the underlying course of the total economy.

The Macdonald-Laurier Institute's leading indicator clearly points to the unsustainability of the upturn of growth. After a peak rate of increase of 0.8 percent, the index has slowed to 0.2 percent or less in the last three months. Most of the slowdown originated in the housing

and manufacturing sectors, which had led growth in the first half of the year. Housing already is reeling from measures taken to cool the market. Meanwhile the auto industry implemented long-planned shutdowns starting in July.

It is worth reflecting on why the Bank of Canada had begun to raise interest rates

of this weakness, saying in mid-June that "We have been working hard to understand the forces behind the data" on exports.

The apparent recovery of business investment is even more shallow than for exports. Investment gains in the first half of the year were concentrated in oil and

*Housing already is reeling from measures taken to cool the market.*

for the first time in seven years. Publicly, Governor Stephen Poloz said that rates were hiked because lower rates had "done their job." However, recall that the bank for years had said that low interest rates were intended to encourage an upturn in exports and business investment that would lay the groundwork for more sustainable growth. While the surprise cut in interest rates early in 2015 had the desired effect of lowering the exchange rate, the expected rebound in exports and business investment remains elusive.

Manufacturing exports continued to struggle in the first half of 2017. Virtually all of the increase in exports originated in energy and autos, the latter driven by inventory-building in the US before production is cut. Exports of non-auto manufacturing goods continued to weaken. Declines were posted for all other exports except industrial materials. Bank of Canada Deputy Governor Carolyn Wilkins offered no explanation

gas after two years of severe cuts. As well, investment was artificially inflated in the third quarter of 2016 by the arrival of the main drilling platform for the Hebron offshore project. With the passing of this one-time event, investment spending plunged in the fourth quarter. As a result, much of the apparent gain in 2017 simply represented a return to more normal levels of investment. Business investment remains quite weak by historical standards, little changed from the level of a year ago and well below its level before the boom in the oil and gas sector ended late in 2014.

The housing-market bubble began to unwind in the second quarter after the average price of a house reached nearly \$1 million in both Vancouver and Toronto. House prices in Vancouver and Toronto took off early in 2015 due to the confluence of three factors interrelated

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# The high cost of trade barriers between provinces

*Finally we can start to put a price on the destructive barriers that threaten to impoverish Canadians.*

**Brian Lee Crowley**

When I appeared before a Senate committee last year studying the issue of what to do about barriers to trade erected by the provinces, there was a distressingly common theme from many of the other presenters. That theme was best summed up by a gentleman from the trade union movement who denied that such barriers even exist and that no action was therefore required to root them out.

By contrast I was there making the case that such barriers exist, that they matter a lot and that Ottawa had the constitutional, moral and economic duty to tear them down.

Governments have to spend some political capital to tackle barriers, because the barriers exist for a reason: to protect powerful provincial economic interests from competition from Canadians in other provinces. Naturally, then, politicians want strong evidence that the barriers exist and are causing real harm before taking up the cudgels on behalf of Canadians' right to exercise their trade and sell their goods and services in every part of Canada.

I think I gave the senators lots of good examples of persistent and destructive barriers that impoverish Canadians while undermining their economic rights. But now we have new and compelling evidence of the damage barriers do from one of the most authoritative sources in the country. Statistics Canada has just published a report that offers no comfort to national leaders who think that a token nod in the direction of free trade within Canada is all



that is required because the barriers are the stuff of myth.

Statcan intelligently didn't go looking to compile a list of barriers. That's a mug's game. Barriers are often subtle and buried in complex regulations. Nor is any list ever likely to be complete, because the premiers are always inventing new ones, like recent claims to have the power to stop pipelines crossing their territory. The justified fear that a successful business will cause neighbouring provincial authorities to obstruct them with new barriers may be just as trade-dampening as the list of ones already in place.

Instead Statcan looked for evidence that there is less trade across provincial boundaries than one would expect given the kind of economy and infrastructure and other factors we enjoy. And they found plenty of such evidence. In fact they found that the barriers

to trade within Canada were equivalent to roughly a seven percent tariff.

That's a shocking number. Just to make clear what Statcan was trying to say, their research says that obstacles to trade within the country were so great it was equivalent to erecting customs booths at every provincial border and charging a seven percent tax on all goods arriving at their final destination. Naturally that's a tax that local producers wouldn't face serving their domestic provincial market. It's also an average: Statcan estimates the effective tariff on wine and brandy at 56 percent.

What many people don't realise is that in 1867 when we created Canada there were precisely such customs booths at the borders between colonies and Confederation was in large measure justified by the

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# US “get-tough” agenda threatens to derail NAFTA negotiations

*NAFTA negotiations are being challenged by those in the US seeking to pursue instruments of protectionism.*

**Laura Dawson**

In trade negotiations, the sum of polar opposite views does not always yield a happy medium – especially when one side refuses to move and the other side won't accept a deal worse than the status quo. This is the situation being reported by observers of the third round of NAFTA 2.0 negotiations.

The negotiations have split into two separate tracks: one that is focused on modernizing and improving areas common interest, and one that is characterized by differences so irreconcilable that they threaten to derail the negotiations.

The modernization track is streamlining customs clearances, digital modernization, regulatory alignment, and facilitating trade for small and medium-sized enterprises. Much of the easy consensus is the product of Trans Pacific Partnership text that has already been approved by the three parties.

Ironically, these relatively non-contentious issues could deliver the biggest competitiveness gains to the North American economy. Border facilitation, e-commerce and regulatory alignment not only reduce transaction costs across the board, they make it easier for small traders to effectively compete in the market.

However, factions that seek to dismantle the NAFTA are focused on advancing instruments of protectionism and turning back the clock to an era where might made right, and short term political gains were more important than investor stability, manufacturing efficiency, and regional comparative advantage.



PM Trudeau met with US President Trump in Washington earlier this year.

(pm.gc.ca/eng/photos)

Some of the most problematic issues are:

- The proposed NAFTA sunset clause will dissolve the agreement after four years if US expectations to reduce the trade deficit are not met. This will create terrible conditions for investors and producers whose livelihoods require predictability for decision making.

- Dismantling investor protections against expropriation by a foreign government and eliminating the right of appeal against dumping claims similarly destabilizes the North American economy.

- The US proposal on government procurement offers a deal much worse than the current NAFTA or WTO (World Trade Organization) arrangements. Canada will not agree to this and Ontario Premier Wynne may be forced to make good on her threat to impose a Buy Ontario rule to block US suppliers from Ontario government contracts.

- While there is room to update and improve these hot-button issues, US negotiators are positioning their offers

as take-it-or-leave-it. If so, Canada and Mexico may have no choice but to leave the negotiations, opening up the possibility that President Trump will launch formal withdrawal procedures. If this occurs, officials in Canada and Mexico will work with US allies on strategies to block or delay a full US withdrawal from the agreement.

In addition to the challenge of delivering a presidential trade agenda that promises to leave the NAFTA shaken and stirred, United States Trade Representative (USTR) is coping with new Congressional trade promotion authority measures. These are intended to create greater transparency and encourage interagency consensus and buy-in from legislators, but instead the process is adding sand to the gears.

In theory, having proposed text vetted by responsible agencies and legislators seems like a very good idea. The reality, however, is that with only a week or two between negotiating rounds, US personnel

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# How the Canadian government bungled the idea of “tax fairness”

*The government relies on superficial, class-based critiques that result in ideological entrenchment and political divisiveness.*

## Sean Speer

The recent small-business tax controversy in Ottawa isn't just a matter of tax wonkery and technicalities. It's rooted in deeper issues of “tax fairness,” concepts of “fair shares,” and the tensions between efficiency and equity.

These questions have long dominated our politics and they're bound to continue doing so. This isn't necessarily unhealthy. Trade-offs between freedom and equality are central political questions reflecting different values and preferences. It's natural that our politics seek to adjudicate these matters.

A recent intellectual and political emphasis on equity and progressiveness over all considerations is, however, making it more difficult to reconcile these differences. The room for compromise or a balanced view of competing principles is diminished. The truth is, the Trudeau government is largely to blame for this state of affairs.

It's widely accepted that government spending and taxation should be equitable and progressive. Those with abundance should pay more. Scarce public resources should be dedicated to those who need them most. No real mainstream voices contend this proposition.

But in recent years this expectation seems to have shifted. The goalposts have moved. It's no longer adequate for overall spending and taxation to be equitable and progressive. Now, the new test seems to be that every spending and tax measure must be equitable and progressive. The scope for compromise is increasingly nil in such a zero-sum world.

This is a mug's game. It ignores the importance of economic incentives. It narrowly defines equity as between two people with different incomes rather than considering one's circumstances as a parent or a caregiver or an entrepreneur. It excludes the billions of dollars of government programming and services that

for taxation purposes. Never mind that income splitting sought to address a structural inequity between families or that the government's overall tax and transfer policies had enhanced the system's overall equity and progressiveness. According to Mr. Trudeau, the Harper government was in the tank for the so-called “wealthy,”



*One could have argued against income splitting on various policy grounds but the Liberal Party didn't bother.*

rightly target those who need help. And it's divisive: It creates class-based divisions for ideological purposes or political gain.

The Trudeau government has regrettably fallen victim to this strategy and tactics at times. It has, in fact, contributed to its growing political fecundity.

Let me explain. The Harper government enacted dozens of tax and transfer-policy changes over its nearly 10 years in office. The totality of its policies was indisputably equitable and progressive. A 2014 Parliamentary Budget Office report found that middle-low income earners (specifically those earning between \$12,208 and \$23,261) accrued the greatest financial benefit of the government's tax policies.

Yet, then-Opposition Leader Justin Trudeau accused the government of a “give-away to well-off families with billions of dollars of taxpayer money” because of its policy of income splitting for families

because one of its tax policies had sought to address a structural inequity and, in turn, skewed slightly in favour of high-income earners.

One could have argued against income splitting on various policy grounds but the Liberal Party didn't bother. It resorted to superficial, class-based critiques. This is how our capacity to reconcile political differences diminishes. This is a recipe for ideological entrenchment and political divisiveness.

The same goes for the recently proposed (and now backtracked) small-business tax changes. The government's proposal may or may not have a policy basis: Some economists and policy commentators have made a compelling argument about tax neutrality. But that's not how Ottawa opted to sell them. It once again resorted to class-based formulations about so-called

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# Canada's "do nothing" policy on North Korea

*Canada should engage in ballistic missile defence in the face of the North Korean threat.*

## James Fergusson

Canadian policy on the situation on the Korean peninsula studiously avoids any direct reference to the defence of Canada. Instead, the Prime Minister not surprisingly condemns the recent North Korean nuclear test, seeks a diplomatic solution through meaningful dialogue, supports UN Security Council resolutions, and expresses a willingness to work with regional partners and the international community.

Even though North Korea has successfully tested an intercontinental ballistic missile capable of striking North America, and it is only a matter of time, if not already the case, until it equips these missiles with nuclear warheads, North Korea is not seen as a threat to Canada. Indeed, in recent testimony to the "emergency" meeting of the House of Commons Standing Committee on National Defence on the North Korean issue, a senior intelligence official from National Defence publically stated this belief, even adding that North Korea sees Canada as a potential "friend."

Of course, one may take North Korea at its word. Its nuclear forces are only to deter an invasion by imperial America and its allies. One may also take solace in the fact that the North Korean regime has not mentioned Canada in its threatening rhetoric directed at South Korea, Japan and the United States. Perhaps the regime truly differentiates between Canada, the "peaceful kingdom," and imperialist America – despite its alliance relationships, North American defence cooperation as a pillar of Canadian policy, and shared values

and common interests between Canada and the United States.

The situation on the peninsula apparently is all a great misunderstanding to be solved by diplomacy. Indeed, much of the tenor of the questions and testimony at the Committee hearings – remembering that the Committee is dominated by a Liberal majority – reflected Trudeau's call for meaningful dialogue. Canada should become diplomatically engaged, and provide its good offices to diffuse the situation. Of course, beyond Canadian "hubris," why anyone would (or should) believe that Canada could have any influence in Pyongyang, or any meaningful diplomatic role in a region is a mystery. One should be a little more suspect of North Korean motives relative to its apparent view that Canada is a potential "friend."

The real elephant in the Committee room and for the government is the fear that a North Korean threat would force Canada to reverse policy and seek to participate in the US ballistic missile defence program. Here resides a remarkable all party consensus, which places not just the North Korean threat on the margins of the real issue. According to this consensus, no one, including North Korea, would directly target Canada. Rather, the debate is about Canada as an accidental target. (No one gives any credence to the possibility that Canada might be a demonstration target to signal resolve and will to the United States.)

As for North Korea in particular, given the rudimentary state of its missile technology, a North Korean launch targeting the continental US might fall short, striking

Canada by mistake. The track of a warhead targeted for the continental US flies over Canada, albeit through outer space, as would launches from China, Russia, and possibly in the future Iran.

While Lieutenant-General Pierre St. Amand, the Deputy Commander of NORAD, made it clear that it is not American policy to employ its missile defence to defend Canada, he also noted that under certain circumstances, it may have to do so. The close proximity of major Canadian cities to major American cities would leave the United States with no choice, not least to avoid radioactive fallout from a detonation in Canada.

*In effect, Canada is defended, just not all of Canada.*

In effect, Canada is defended, just not all of Canada. Basically, Vancouver (Seattle), southern Ontario perhaps extending east as far as Montreal and north to Ottawa (Detroit, Cleveland, Buffalo, Boston and New York) would be protected by the American system. As for the rest of Canada, unspoken Canadian policy is to rely upon moral guilt, NATO's Article 5, and the implications for other allies if the United States doesn't defend Canada.

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# The West should support Kurdish desire for independence

*Every secession movement should be considered on its own merits.*

## Shuvaloy Majumdar

The cause of Kurdish independence is one of the great taboos of western diplomacy. Regardless of where one's sympathies lie, it's a topic more consistently avoided than engaged. Yet, the recent historic referendum saw three quarters of the population participate. More than 90 percent voted for an independent Kurdistan. This expression of the democratic will cannot be ignored.

On some level, global reluctance to accept an independent Kurdistan – which is also opposed by the Iraqi government in Baghdad – is a natural outgrowth of the anxiety many of us feel about the broader prospect of nations breaking up. This apprehension is informed by memories of civil war in the Balkans, genocide in Sudan, the partition of India, and countless other bloody battlefields of contested borders. Many western nations, including Canada, have active separatist movements of their own, which only feeds nervousness about equipping overseas secessionists with rhetoric and precedents that may someday be used against us.

Yet any nation that seeks to dissolve political bonds between itself and another is proposing a unique idea. Every secession movement occurs in a context particular to itself, bearing its own particular challenges and opportunities, and deserves to be considered on its own merits.

An objective analysis of present conditions in Iraq makes clear that the Kurdish desire for sovereignty is not an arbitrary or ill-considered fancy, but the logical and appropriate conclusion to an

unsustainable, eight-decade status quo of political failure. The West can add resolve to the Kurds' efforts by fully endorsing their long-delayed dream of a free Kurdish state.

Since the fall of Saddam Hussein in 2003, Iraq has faced unimaginable challenges in crafting a workable, federal democracy from a society left broken and demoralized by one of the most hideous dictatorships of the 20th century. Current Iraqi Prime Minister Haider al Abadi is more independent of Tehran than was his predecessor, Nouri al Maliki, yet the political environment that al Abadi must navigate remains heavily controlled by Iran's sectarian influence. Iraq's character as a free nation

to Kurdish forces confronting ISIS, and attempting to starve the Kurdish treasury by stalling oil revenue transfers.

Since the end of the first Gulf War, Kurdistan has managed its own largely autonomous government – originally protected by a US/UK-enforced no-fly zone – and in 2005, this authority was incorporated into Iraq's first democratic constitution. Under the longtime leadership of Iraqi Kurdistan Region President Massoud Barzani (who recently agreed to step down), Kurds have used their quarter-century of self-governance to build an inspiring success story in a part of the world where such things are too rarely seen.



*A strong Kurdistan has always been in Iraq's national interest.*

was destined to take many difficult years to solidify, and the conversation regarding what sort of constitution is best suited to its complex and diverse population remains ongoing, and led – appropriately – by the Iraqis themselves.

A Kurdistan operating as a self-governing “region” within an Iraqi system of federalism could never hope to be more than an interim solution to a dilemma dating back generations. For the Kurds, the compromise to participate within a federal Iraq had been brokered in good faith. Stability in the near term would lead to long term independence. Baghdad has broken with that faith, most recently by failing to ensure the expeditious supply of weapons

Economic prosperity has flowed to the region through the Kirkuk-to-Ceyhan pipeline, a testament to the leaders' ability to overcome historic animosities with neighbouring Turkey in favour of mutually beneficial trade. Intelligent investments of the ensuing wealth, in turn, have provided Kurds with a society equipped with impressively modern social and physical infrastructure, and a safe standard of living that in many cases exceeds that of their neighbours.

Though their contentious political ambitions have proven a persistent obstacle to completely normal diplomacy,

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# Abstinence-only policy on tobacco should give way to real harm reduction

*Canadians should gain access to knowledge about tobacco use products.*

**Brian Lee Crowley**

**S**hocking, I know, but the sorry truth is people are going to have sex. That includes teenagers. That's why a government sex-education policy based solely on promoting abstinence and hiding from kids information that reduced sex-related risks would be not just be laughable. It would rightly be condemned as irresponsible, prizing inflexible ideology over practical harm-reduction.

Alas what turns out to be a foolish way to protect people from the risks of sex turns out to be exactly how governments in Canada want to protect us from the harms associated with tobacco. Abstinence is the only officially-approved message, despite the fact that technological advances are rapidly transforming the tobacco landscape.

Everyone knows smoking kills and is rightly discouraged as the single largest cause of preventable death in Canada. What many people fail to realise, however, is the health risks arise chiefly from the burning or combustion of tobacco and not from the consumption of nicotine, which is largely benign.

The distinction between combustion ("smoking") and tobacco use is not a trivial one. Many people derive comfort and pleasure from a hit of nicotine that in itself is no riskier to your health than lots of other completely legal stimulants like coffee, alcohol and (soon) marijuana. You'd think, therefore, that technological advances that allowed people to indulge their nicotine habit while largely eliminating the health risks associated with tobacco combustion would be welcomed by the



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same people for whom "harm-reduction" is a byword when dealing with various other vices.

The reverse is the case. So great is the animus against tobacco in the minds of health authorities that they are actively trying to prevent, by law, Canadians gaining access to knowledge about products that could significantly reduce the harm to which tobacco use might otherwise expose them.

Legislation passed by the Senate and now awaiting consideration by the Commons will limit the sellers of various forms of e-cigarettes (e.g., "vaping") to making only yet-to-be-authorized government approved claims about the relative health benefits

of their product compared to cigarettes. Worst still, tobacco products that eliminate combustion, such as Swedish snus (which is taken orally, and has been shown to have comparatively minor risks) and ones that release nicotine by heating tobacco but not burning it, will be forbidden to make similar claims even when the scientific evidence supports them. Violators risk not just hefty fines but jail time.

Contrary to what some argue, this is not just an issue of free speech for the tobacco companies. These draconian rules will apply to us all, and trample on the right of Canadians to hear information that might allow them to reduce significantly the effects on their health of their tobacco use if they find abstinence unrealistic.

Far more sensibly the US Food and Drug Administration has recently announced it will regulate tobacco products along a so-called "continuum of risk," with government policy aiming to encourage people to move to lower-risk products wherever possible, which means non-combustibles, whether snus, vaping, heated tobacco or other such products. This policy wisely takes aim, not at tobacco, but at the combustion which is at the heart of the health problems associated with tobacco use.

Canada's approach remains that any tobacco product is beyond the pale and may not be promoted, even to the extent of informing Canadians about scientific evidence of how they could indulge their nicotine habit while significantly lowering their health risk. This policy makes an

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# A sly turn by Ottawa endangers Indigenous relations

*The government's subtly reworded text appears to lower the standard for Indigenous approval rather than raise it.*

## Dwight Newman

Discussion over free, prior and informed consent (FPIC) for development on Indigenous land has taken a sly turn in Canada. While federal politicians have loud intentions to implement consent on a broad basis, a recent government document has gone so far as to rewrite text from the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) to set out a lesser standard. That may be the right choice in policy terms, but it needs to be discussed and debated transparently.

By way of context, the Supreme Court of Canada's July 26 decision on Chippewas of the Thames re-emphasized that Canadian law requires meaningful consultation with Indigenous communities about developments on their traditional territories. However, it does not generally make Indigenous consent a legal requirement.

The requirement of consultation is a constitutional minimum. Apart from government consultation, many industry partners already go further than the law requires in developing relationships with Indigenous communities and negotiating win-win agreements for Indigenous economic participation.

Similarly, it would be open to governments to develop policies containing a higher standard or even to legislate requirements of consent for certain projects. For a while, that looked like what the Trudeau government was promising. In an Aboriginal Peoples Television Network virtual town hall before the 2015 election, Justin Trudeau indicated that a "no" from an affected Indigenous community would "absolutely" result in a pipeline project being cancelled.

Although some postelection comments have been more limited, senior cabinet ministers have continued to speak of FPIC implementation in broad terms. Appearing at the UN Permanent Forum on Indigenous Issues in May, 2017, Minister of Indigenous Affairs Carolyn Bennett garnered applause with statements such as implementing UNDRIP "shouldn't be scary" and FPIC was now "being built" into Canadian legislation.

On July 14, 2017, the federal government released its 10 principles on the government's relationship with Indigenous peoples. Directed principally to the federal bureaucracy, these principles draw together a lot of established policy and law in one document.

On the issue of FPIC, the 10 principles "recognize that meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when Canada proposes to take actions which impact them and their rights." In a subsequent portion, it copies parts of Articles 18, 19 and 32 of UNDRIP that refer to the FPIC requirement.

However, the drafters of the 10 principles make some subtle changes. The text of UNDRIP largely speaks of an obligation of consulting and co-operating with Indigenous peoples "in order to obtain their free, prior and informed consent." The 10 principles have an altered text that refers to consulting and co-operating "with the aim of securing their free, prior and informed consent."

To the average reader, these words may look very similar. But they matter immensely to lawyers, bureaucrats and Indigenous communities. The language used in UNDRIP has occasioned a debate on whether it imposes a requirement of obtaining consent

or simply mandates seeking consent in good faith but permitting various developments to proceed if it is not obtained.

The 10 principles copies much of the text from UNDRIP but changes the words on this key point. Its choice of language has the effect of resolving this debate in favour of the lesser expectation – consultation, with no requirement of obtaining consent.

The UNDRIP language actually supports this lesser expectation – which, to me, offers a reconciliation between Indigenous and non-Indigenous interests that seeks to be fair to all. (Fairly enough, my view on this point has been challenged, given the ongoing debate on the issue of consent.)

The problem is that the Trudeau government gave signals of going toward the higher standard, therefore setting up equally high expectations. It has now tried to reverse that position through sly rewriting of legal language, without being transparent and willing to debate that position. When expectations come crashing down, it is unclear what the implications are for reconciliation and relationships with Indigenous communities.

Process matters. There is still a lot of good will about this government's very genuine efforts, but that good will could easily be lost. The government needs to improve the clarity, consistency and openness of its communications on these issues, or risk serious damage in its relations with Indigenous communities. ✦

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*Dwight Newman is a Munk senior fellow at MLI and Canada Research Chair in Indigenous Rights at the University of Saskatchewan College of Law. This article first appeared in the Globe and Mail.*



# China: The Dragon at the Door

Shuvaloy Majumdar

**M**ost of what Canadians read and hear about modern China, from their press, political leaders, and especially China itself, occupies a narrow space between calculated dishonesty and aggressive deception.

An economy still overwhelmingly run through politicized structures of command and control is portrayed as an inspiring hub of free enterprise. A state ruled by a despotic clique of self-interested apparatchiks is sold as a forward-thinking leader of the global community. A regime bent on deploying technology to control the behaviour of its people at home and wage cyber warfare abroad, is featured as a bastion of technological marvels. A country that holds little genuine affinity for Canada, beyond what will serve its own interests, is presented as a loyal, unambiguous friend.



That China is a different nation today than it was 40, 30, or even 10 years ago is undeniable, but there exist few nations for which this cannot be said. Unqualified praise for the lessons Beijing belatedly learned in the late 20th century must not be used to conceal the multitude of ways in which China remains captive to a deeply regressive governing ideology – a mixture of Communism, chauvinism, mercantilism, and colonialism – and the threat this march of values represents to all nations committed to a world order of democratic principles, free markets, and the rule of law.

of international law, and an aggressive defence of the so-called “Chinese model” of development unburdened by “foreign” notions of democracy and human rights.

With China’s industrialization, forays into globalization and technological innovation, the country’s economic interests have never been more globally engaged, and today they correlate directly to its more formidable military and strategic ambitions. China is no longer willing to hide its strength and bide its time, as the architect of its state capitalist model Deng Xiaoping had recommended long ago. Instead,

pursue their project not from ignorance but in spite of knowledge.

It is clear, however, that broad public ignorance of Chinese truths works in Ottawa’s favour. It allows the government to dodge tough questions and dismiss appropriate skepticism. Global Affairs Canada, partisan journalists, and taxpayer-funded think tanks thus produce a relentless deluge of spin, half-truths, and happy talk about our Chinese friends, while condemning even the mildest voices of concern as paranoid, “Red Baiting,” or even racist. The result is an intellectual atmosphere in which honest dialogue about one of the most substantial and complex foreign policy challenges of our time is chilled, constrained, and stagnant.

It is in this context we offer *The Dragon at the Door*, a collection of critical essays by credible experts from across the globe on the distressing realities of 21st century China. Only a selection of articles appear in this issue of *Inside Policy*. Others will be released in coming weeks, and all of them will soon be compiled in a special edited collection. We hope to offer readers an honest guide to the unflattering truths of a country whose reputation Canada’s present leaders insist on shielding as they tighten bilateral ties.

Collectively, their articles paint a vivid portrait of a nation whose guiding spirit is not the thoughtful pragmatism of a promising superpower, but the calculated cynicism of an insecure state. In the complex characteristics of the dragon state, the foreign policy challenge for Canadian leaders is to pursue a policy of engagement of China, not submission to it.

Individually, each essay offers a unique glimpse into a consequence of China’s role in the world that, while not always malevolent, is rarely benign. Collectively, they provide a bracing reminder to see China as it actually is, and not as some may wish it to be. ✦

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Shuvaloy Majumdar is a Munk Senior Fellow at MLI.

## “President Xi is shifting China’s posture... toward seizing the strategic advantage.”

Indeed, in many ways the defining story of the last few years has been the steady eclipse of Beijing’s much-vaunted, and supposedly irreversible agenda of “reform” by a resurgent and unapologetic pursuit of geo-political self-interest explicitly at odds with those of its supposed western partners.

The rise of President Xi Jinping, an ultra-establishment hardliner who openly aspires, in both style and substance, to be China’s most significant strongman since Mao, has been particularly revealing. His short rule has already made clear that the People’s Republic of the next decade will be animated not by the optimistic fantasies of western Sinophiles, but rather the blunt solidification of one-party rule, entrenchment of a neo-Communist command economy, and consolidation of a vast empire of interests abroad, chiefly in the easily-exploited developing world. Persistently troubling trends show no sign of slowing – or even being critically reevaluated – by the regime, including the increasing “weaponization” of Chinese commerce to elicit geopolitical submission, rigid alliances with rogue states, self-serving distortions

President Xi is shifting China’s posture from strategic patience toward seizing the strategic advantage. This time, Xi is rapidly developing China’s digital, economic, political and military arteries around the world, with Beijing as the beating heart of a rising and reinvigorated Middle Kingdom.

The Trudeau government is not the first in Canadian history to view China’s strength and size with reckless excitement, but they’re certainly the first to channel this enthusiasm into a policy goal as substantive as free trade. Free trade with China, which Ottawa pursues with a dogged determination they’ve been unable to muster for much else, is marketed as a panacea to alleviate virtually everything that ails modern Canada, from sluggish economic growth to traditional insecurities of “American dependence.”

In the pursuit of these dreams, much will be sacrificed by Canadians. Whatever other criticisms one can offer, the government’s project cannot be dismissed as naive. The men and women staffing the senior levels of the Canadian government no doubt fully grasp the realities of the Chinese regime and its motives, and



Photo: combatmenet.forces.gc.ca

## Why is Canada giving China a free pass?

*The Trudeau government's recent foreign and defence policy statements reveal a continuing passivity towards China.*

**Eric Lerhe**

Observers of Canada's foreign policy and defence announcements were impressed by the more "hard hitting" and "muscular" tone taken by the Trudeau government. Foreign Minister Chrystia Freeland bluntly criticized Russia's "illegal seizure of Ukrainian territory," stating that this was not "something we can accept or ignore." Action backed this up as she outlined the Canadian Armed Forces will soon depart for Latvia in support of NATO. Moreover, free riding on US military power was rejected as it would "make us a client

state." Separately she declared the policy was "about us standing on our own two feet."

The government's Defence Policy Review echoed elements of this more vigorous approach and added a significant, if delayed, defence budget increase. Russia was again critiqued for its "illegal annexation" of the Ukraine with a second entry cautioning all as to the potential for Russian forces to "project force" from its Arctic bases into the North Atlantic sea lanes.

The only disconnect here, and it was quickly seized on, was the failure to discuss China in any detail. Minister Freeland only referred to it as part of an Asia rapidly

emerging on the world scene. In the Defence Policy Review statement, China's island building in the South China Sea only merited an indirect reference that called on "all states in the region" to peacefully manage and resolve disputes. China's complete rejection of the 2016 Permanent Court of Arbitration at The Hague finding against her activities there received no mention. Where 450 Canadian troops are being sent to Latvia, backed up by rotations of our frigates and fighters, on top of 200 Canadian military trainers already in Ukraine, Canada will only dispatch ships and aircraft to exercises and some high-level

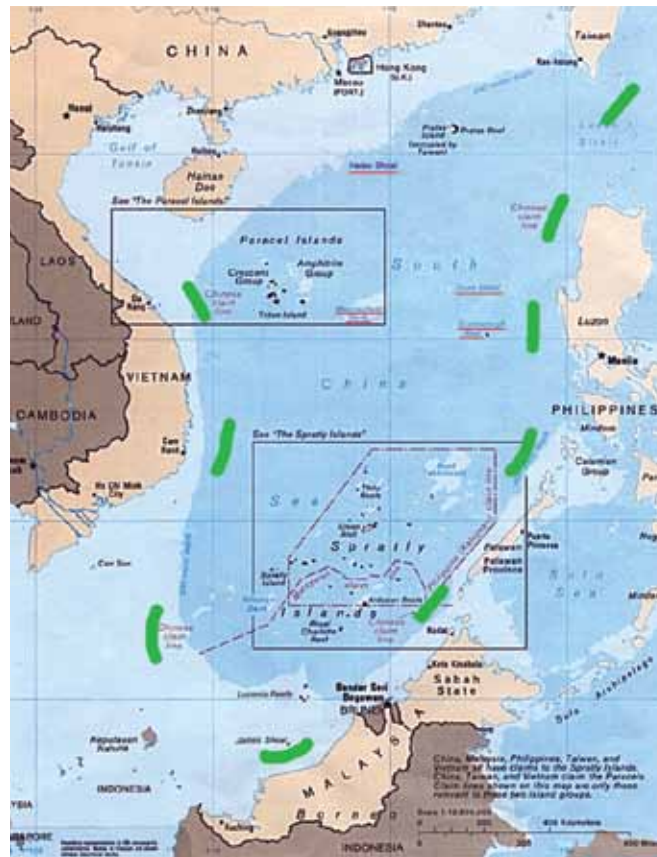
visits by officials to the Indo-Pacific, according to the new policy.<sup>1</sup>

This passive approach to the Pacific is not new and stretches back at least two decades. However, that passivity regarding China now stands in stark contrast to the vigour of our new foreign and defence policies. Here two points are salient. Foreign Minister Freeland first called for Canada to support a US ally that was showing signs of weariness over its global defence burdens. Then she outlined that the middle powers need to step forward so as not to leave the resolution of all security issues to the great powers. The defence policy specifically mentioned that Canada needs to work with Australia and New Zealand on Indo-Pacific security issues in addition to the US.

Yet Canada's new policies do not seem to offer these nations much support, even in terms of rhetoric, let alone actual assistance. At the June 2017 Shangri-La Dialogue, Defence Minister Harjit Sajjan's sole comment on China involved reminding all that we had established diplomatic relations with her 1970. The contrast to Australian Prime Minister Malcolm Turnbull's address could not be starker:

*A coercive China would find its neighbours resenting demands they cede their autonomy and strategic space and look to counterweight Beijing's power by bolstering alliances and partnerships between themselves and especially with the United States.*

China's media heavily critiqued Prime Minister Turnbull's address while their government protested a combined New Zealand-Japanese statement released in May 2017 that called on states to resolve their disputes in the South China Sea in line with the last year's 2016 Hague Arbitration Court ruling. Singapore faced



China's Nine-Dash Line, claiming most of the South China Sea.

(Public domain, US Central Intelligence Agency. 1988. Asia Maps - Perry Castaneda Map Collection: South China Sea [Islands])



*Canadian caution has everything to do with the...drive to achieve a free-trade agreement with China.*

similar Chinese critiques for supporting the ruling, perhaps explaining why China snubbed the city-state by not inviting her to its prestigious Belt and Road Forum earlier this year. Yet nowhere in Canada's new policies is there a similar call for states to respect the Permanent Court's decision.

China's anger with any state that supports the Court's decision is likely less due to an offended sense of sovereignty than it is for that decision's potential to disrupt her long-term strategy in the region. China has used her always dubious Nine-Dashed Line (see the green dashes in the image above) to claim most of the South China Sea, seize key rocks and outcroppings, and then build

major military installations on them. Peter Layton, writing for the Australian Strategic Policy Institute, argues that these facilities will extend Chinese air power dominance over its neighbours as far south as Borneo.

While Australia and New Zealand have provided diplomatic support, the only direct assistance to the challenged states has come from United States, which must also focus on the danger from North Korea. Despite the occasionally erratic turn provided by President Trump, his administration has unambiguously supported the Permanent Court's ruling. It has warned China not to build on the Scarborough Shoal, which today is the last unfilled gap

<sup>1</sup> For the suggestion to compare the Canadian response to China with its actions towards Russia, I owe Danny Lam.

in their air and sea control of the South China Sea, and this appears to have briefly restrained her. The United States has also directly challenged China's now unambiguously illegal claims of territorial seas and economic exclusion zones about those islets with the most complete freedom of navigation exercises to date. Both those actions were significantly more robust than the Obama administration's confusing and halting efforts.

However, the increasing reputation of the Trump administration for a transactional foreign policy has resulted in regional states remaining worried over the potential for the US to place a higher priority on getting China to restrain North Korea than on restraining China in the South China Sea. That presented

regard to reassuring allies in the South China Sea dispute or demonstrating Canadian leadership, noting the Royal Canadian Navy exercise participation in the region has increased significantly this year.

In seeking to explain how Canada can be "muscular" towards Russia, yet passive toward China, recent events are starting to very strongly suggest Canadian caution has everything to do with the Liberal Party's drive to achieve a free-trade agreement with China, quickly and in Conservative MP Tony Clement's view, "almost at any cost." One of the costs appears to be silence on China's actions in the South China Sea. Earlier, Brock University's Charles Burton has argued the reason Canada's did not "openly and firmly" stand

*and Mail* declaring "the government appears to have put China's interests ahead of those of its allies, the US included." David Mulroney, our former ambassador to China, nicely concluded this episode by referring back to the just-released defence policy and asking "What is the point of elaborating an expensive defence procurement plan if you're not doing the basics to counter other threats to national security?"

To be clear, there is no rational argument against Canada carefully negotiating a free-trade agreement with China. Australia and New Zealand both have trade agreements with her. What is being questioned in Canada is, in Andrew Coyne's critique, the "pell-mell rush," and one-sided readiness to appease China on this topic at the cost of our allies.

At the same time, the government must recognize that the credibility of its well-received defence and foreign policies is at risk for the same reasons. They hold Russia to account while giving China a free pass. More seriously, its claim that Canada is ready to support allies and provide leadership as a middle power is being revealed to only apply under the same lopsided calculus.

Canada can only reverse this by adopting the same semi-permanent stationing of our air and sea forces to the Indo-Pacific as it does in Europe. Similarly, the call to cooperate with Australia and New Zealand in security building efforts in the region must be expanded to include most importantly Japan, but also with Korea, Singapore and the Philippines. Only by adopting an active, more muscular approach in the Indo-Pacific will Canada finally be treated seriously as a security partner in the region. ✪

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Dr. Eric Lerhe served in the Royal Canadian Navy for 36 years with his last post as Commander Canadian Fleet Pacific. His PhD was awarded in 2012 and he continues his research into security issues as an independent scholar.

“This passive approach to the Pacific is not new and stretches back at least two decades.”

Canada a perfect opportunity to put into action Foreign Minister Freeland's vision of Canadian middle power leadership. Indeed, Edward Luttwak, arguably America's greatest modern strategist, recently argued that Canada, as "the most globally significant of all middle powers," should do much more to counter China while encouraging her towards a less destabilizing posture.

Defence Minister Sajjan's Shangri-La Dialogue address in June provided a list of reasons why we should, including the increased role of the Indo-Pacific in providing most of Canada's recent immigrants, our rising trade with the region, our forty-year membership as an ASEAN dialogue partner, and our long Pacific Coastline. Yet our recent foreign policy and defence announcements all suggest Canada will do very little with

up for the Permanent Court's decision on the South China Sea was connected to Canada's efforts to join the Chinese-led Asian Infrastructure Investment Bank. This type of linkage might also explain the bizarre NORSAT sale in the view of many. Here the government allowed the sale of a Canadian company doing extensive defence sales to the US without a formal security review and without being able to back up its claim it consulted with the US.

According to the *Globe and Mail*, Commissioner Michael Wessel of the US-China Economic and Security Review Commission, which reports to Congress, indicated that "Ottawa appears to be willing to sacrifice the national-security interests of its most important ally in exchange for a bilateral free-trade deal with China." Both Canadian national dailies questioned this sale, with the *Globe*



# Engaging China poses potential risk to Canada's national security

*Closer ties with China might not be in Canada's national interests.*

**Charles Burton**

China's extraordinary post-Mao economic development has captivated Canadian politicians at the federal and provincial level since the Chrétien-era Team Canada Missions of the 1990s. Many anticipated China's entry into the World Trade Organization (WTO) in 2001 would lead to significantly enhanced opportunities for Canada in the Chinese market. But overall economic engagement between Canada and China has fallen far short of expectations, total annual exports to China today being about \$20 billion compared to over \$300 billion to the US.

The Chinese government has strongly advocated a free trade agreement between Canada and China. They have offered assurances that Canada will thereby significantly increase exports of Canadian goods and services to China and narrow the current 3:1 trade imbalance with China. The prospect of achieving significant diversification of the Canadian economy away from strong dependence on the United States cannot be overlooked. China, for its own geopolitical reasons, would also like to see a more China-oriented Canada.

The previous government had been reluctant to respond meaningfully to the Chinese approaches on free trade. Yet Liberal leader Justin Trudeau strongly supported Canada enhancing relations with China across multiple domains – and, once in office, the current government has moved quickly to do just that. In September 2016, Canada and China announced



Meeting with Chinese Premier Li Keqiang in Ottawa in 2016.

(pm.gc.ca/eng/photos)

exploratory talks on free trade with China. A three-month period of public consultations on Canada negotiating a Free Trade Agreement (FTA) with China has just been completed, which will likely pave the way for formal binding negotiations.

In the short and medium term, the Government of Canada has expressed strong interest in interim agreements designed to enhance Canada's economic integration with China. These include facilitating getting Canada's oil sands product to tidewater via pipeline from Alberta to the BC Coast for transshipment to China, as well as removing restrictions on Chinese state investment in the Canadian natural resources sector.

But China's interest in Canada goes beyond trade to a commitment to establish a "strategic partnership" between our nations. This encompasses a broad range of non-economic elements, raising the possibility of Canada becoming more economically reliant on Chinese trade and investment.

The asymmetry of relations with China, one of the major economic powers of the contemporary age, and the incompatibility of Canadian and Chinese political, social and economic institutions have raised concerns about potential threats to Canada's national security. While the Canadian side focuses on promoting prosperity, Beijing sees free trade as a tool to facilitate its overall geopolitical interests, as part and parcel of China's comprehensive rise to power.

Prior to initiation of exploratory talks on free trade, Beijing had complained that Canada's national security review process of foreign takeovers of Canadian firms under the Investment Canada Act unfairly targets China. China's Ambassador Lu Shaye characterized it as "tantamount to trade protectionism." Subsequently, China's Premier Li Keqiang engaged Prime Minister Trudeau on this issue in a personal telephone call.

The Liberal government, in turn,

overturned the previous government's cabinet order that prevented a Hong Kong company, partly owned by the Chinese government, from taking over a Montreal firm developing technology applicable to fibre-laser directed energy weapons. It undertook its own assessment process and attached conditions to the deal, but little details have been provided on either.

## *Beijing sees free trade as a tool to facilitate its overall geopolitical interests.*

Later, the Canadian government permitted a Shenzhen firm to acquire Norsat International, a provider of satellite communication systems used by military customers, including the Pentagon and the Government of Taiwan, without apparently doing an in-depth national security review.

The asymmetry in power between the two countries has in the past led to a lot more take than give on the Chinese side. In addition to allowing the above high-tech transfers, Ottawa is unlikely to spoil the FTA talks by reiterating its support for the Permanent Court of Arbitration's decision that declared China's expansive claims over the South China Sea as illegal under the UN Convention on the Law of the Sea; or demanding China halt its pervasive cyberespionage of Canadian government and business servers; or expelling Chinese security agents alleged to be furthering Beijing's interests by harassment and intimidation here in Canada.

There are other incentives to comply with China's demands of Canada. China's threat last summer to halt \$2-billion in annual imports of Canadian canola seed is instructive. FTA negotiators will know the agreement for China to keep accepting our canola seeds expires in 2020.

Indeed, concerns that free trade will increasingly lead to Canadian compliance

with China's business culture cannot be discounted, given that Chinese businesses tend to seek political patrons through exchange of favours. Australia's experience here provides a potential lesson in that regard.

An investigative report released earlier this year revealed that former Australian trade minister Andrew Robb, who had negotiated the terms of the Australia-

China FTA, received \$880,000 a year as part of a "confidential" consultancy with a Chinese billionaire and member of China's National People's Consultative Conference. The billionaire, Ye Cheng, had also controversially acquired a 99-year lease for the Port of Darwin in 2015. Less than three months before his consultancy arrangement, Mr. Robb visited China with an Australian delegation and, in his official capacity as trade envoy, facilitated Australian collaboration in a major project in the port city of Rizhao, Shandong.

Australian media also reported that an ethnic Chinese billionaire resident in Australia, Huang Xiangmo threatened to withdraw a promised \$400,000 donation to the Australian Labor Party in response to a statement by their defence critic that Australia's defence force should be able to conduct freedom of navigation operations in the South China Sea. The following day, a Labor senator, Sam Dastyari, who had received donations from the same billionaire, in an apparent split from his Party's policy told the Chinese media that Australia shouldn't interfere with China's activities in the South China Sea.

There is no sign that either Australian politician had done anything illegal. But, tellingly, Australian Prime Minister Malcolm Turnbull ordered a major inquiry into the nation's espionage and foreign

interference laws, including whether the espionage offences in the criminal code are adequate.

Comparisons with what is now happening in Canada should raise concerns. Earlier this year, photographs of Prime Minister Trudeau at fundraisers in the homes of Chinese-Canadians appeared in Canadian media – and in a newspaper in China published by the Chinese Communist Party's Overseas Chinese Work Department. They showed Mr. Trudeau posing with Chinese-Canadian donors and with non-Canadian Chinese citizens, with the flags of both countries prominent in the background.

Over 80 guests got their pictures taken with Mr. Trudeau at the \$1,500 per ticket event. Attendance figures suggested that the Liberal Party collected up to \$120,000 per event from ethnic Chinese donors meeting with Mr. Trudeau in a private setting. The appropriateness of displaying a foreign flag at a Canadian political party fundraising event is worthy of consideration.

Canada may receive potential economic benefits in engaging with China. But such benefits can also come with strings attached, presenting a challenge for Canadian security along many dimensions. The concerns expressed by former Canadian Security Intelligence Service (CSIS) director and national security advisor Richard Fadden over politicians under possible foreign influence remain salient.

Given the government's strong interest in enhancing economic relations with the People's Republic of China, we need to be especially vigilant that such engagement does not come at the cost of our national security – or indeed our values. ✦

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# How China's state-owned enterprises are disrupting free markets

*Canada needs to guard against “unfettered” access by China's state-owned enterprises.*

**Duanjie Chen**

As the Canadian government consults on a possible Canada-China free trade agreement, it is troubling to see that we still have to encounter the false argument that China's state-owned enterprises (SOEs) are “equal” to their private enterprises and should therefore be allowed “unfettered access” to all key sectors of the Canadian economy.

Without doubt, all the SOEs around the world, including Canadian Crown corporations, are created as tools to meet

their governments' policy ends. SOEs are intended to serve the national interest, to operate in sectors featuring natural monopoly or political sensitivity. It is the very essence of SOEs that they operate outside a free market economy rooted in private property rights. Therefore, one should not bolster the legitimacy of SOEs by equating them with private enterprises.

China's SOEs go even further than most: They are the cornerstone of the so-called “China model,” which has been a disruptive force to the global free market system. To prove this observation, one only

needs to look at how China's GDP-driven state-owned steel companies, with their stubborn overcapacities, have caused a prolonged global steel trade conflict.

To properly understand China's SOEs, let's take three concrete steps.

First, let's compare China's SOEs with our Canadian Crown Corporations, given that both of them are government's creatures:

- Canadian Crown Corporations (CCCs) are not allowed to enter any business sector in which there is no issue of market failure. In contrast, China's SOEs



are the dominant force in its economy and are encouraged to pursue profit globally with the government's financial backing.

- While CCCs are accountable to taxpayers represented by our government within a democratic system, China's SOEs are accountable only to their one-party state. Therefore, China's SOEs and our Crown Corporations play by very different sets of rules.

- CCCs operate at arm's length from the government on their day-to-day business with no partisan alignment. This is not so with China's SOEs – they are the property of the Chinese Communist Party (CCP). The CPP openly advocates strengthening its leadership as the “political core” within all SOEs to make them “bigger, stronger, and superior” around the world.

Second, let's examine the trajectory of China's SOEs against the three basic principles for free trade: property rights and contract rights, competitive neutrality, and reciprocity.

China's SOEs were established and have been sustained by the government's general denial of private property rights and, in their infancy, by massive confiscation of privately owned business and appropriation of foreign-invested companies. China's entry to the World Trade Organization (WTO) in 2000 was supposed to bring about fundamental SOE reform to help transform China into a market economy. But the government only further consolidated its SOEs' dominance across a broad range of strategically important sectors that do not allow free entry of private enterprises, domestic or foreign.

During global financial crises, China's SOEs deepened their internationalization by buying up cash-strapped Western companies, in accordance with the government's strategic plans. Equally important is China's recent Belt and Road Initiative – a massively ambitious infrastructure program with nearly US \$1

trillion in planned investment (with an even higher eventual target) for building roads, bridges, pipelines, ports, and railways in Asia and beyond to create a “Silk Road Economic Belt” around China. This initiative will only further promote an environment for speeding up its SOEs' globalization.

*China's SOEs deepened their internationalization by buying up cash-strapped Western companies.*

In the meantime, by enforcing its negative list of strategically important business sectors, China has never allowed any foreign firm free access to its domestic market. Even worse, the government sometimes plays tricks to aid its national champions, SOEs or not. For instance, China's search engine Baidu is a well-known “state-gifted Internet monopoly,” despite its non-SOE status, thanks to the government's kicking out Google by enforcing its political censorship.

With its growing economic power, China has become even bolder in controlling how foreigners run their businesses within its borders. The latest move in this regard was to harness big data to “create the world's most extensive system of corporate surveillance and control,” which a German think tank calls “IT-backed authoritarianism.”

And finally, let's look at some official statistics from China's Ministry of Finance and from Statistics Canada to pinpoint the driving force behind the incredible growth and globalization of China's SOEs.

Over the five-year period of 2012-2016, China's GDP growth rate averaged 7 percent. In contrast, China's non-financial SOEs grew 13 percent annually in their total assets and 14 percent in total debt! But

their business performance over the same period was dreadful, with an annual growth rate of barely 3 percent in revenue and 2 percent in profit.

At the company level, the number of Chinese SOEs that have entered the *Fortune 500* has increased 27 percent from 70 in 2012 to 89 in 2016. It is noteworthy

that the six state-owned steel giants were steadfast on the list year by year, with combined annual gross revenues hovering above \$210 billion. That is, the global slump in steel market barely shook these steely SOEs in China.

From an international perspective, at the end of 2016 the total assets of China's non-financial SOEs were about \$19.3 trillion, a 50-percent growth from 2012, which is larger than the US GDP, and their total revenue was \$6.7 trillion, more than quadruple our Canadian GDP.

All these numbers indicate that despite their extreme low profitability, China's SOEs as a whole can sustain and expand wherever and whenever they want; the only limit is their government's will, which contradicts more than complements market forces.

Given the Chinese government's unwavering financial support for its SOEs' global expansion and its traditional stand against competitive neutrality and reciprocity, it is imperative for Canadians to guard our free market system by rejecting China's demand that its SOEs gain “unfettered entrance” to a small open economy like ours. ✦

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# Turbulence in Sino-Indian Relations

*India is becoming more confident and realistic in its dealings with China.*

## Harsh Pant

Relations between two rising powers in Asia – China and India – are passing through a difficult phase and these tensions see no sign of abating any time soon. As Indian Prime Minister Narendra Modi consolidates his power over the nation's political landscape, his government seems to have recognized that China, rather than Pakistan, poses the most significant strategic challenge to India.

This point has only been underscored by the recent stand-off between the Indian and Chinese militaries in the Doklam region of Bhutan, near the India-China-Bhutan tri-junction. This stand-off from mid-June to early September 2017 was one of the most serious in the last three decades and came at a time of multiple stress points on the relationship.

Despite diplomatic engagements at the highest levels, the two countries continue to be at loggerheads on a range of bilateral issues. Indeed, the stances on both sides have only hardened, with China showing no signs of budging on key issues that matter to India.

For instance, there has been no change in Beijing's policy of blocking efforts by India at the UN to get Pakistan-based militant Maulana Masood Azhar added to a UN Security Council terrorist group blacklist. New Delhi holds Azhar responsible for numerous terrorist acts in India, including the 13 December 2001 attack on its parliament.

China has also been largely obstructionist to India's effort to become a permanent member of the UN Security Council. India recently suggested that it was willing, in exchange for induction,



Indian Prime Minister Narendra Modi and Chinese President Xi Jinping before the start of a meeting at the Shanghai Cooperation Organisation Council of Heads of State in 2016.

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via commons.wikimedia.org

to surrender the important veto right to which permanent members are entitled. Yet, even with this new step, China's response has been lukewarm at best. India, alongside Brazil, Germany and Japan (the G-4) have been calling for a change in the UN Security Council permanent membership in light of the changing global order. China also remains opposed to India's entry into the Nuclear Suppliers Group (NSG), linking it with Pakistan's entry into the grouping.

Despite China's outreach, India was also one of the few powers that completely boycotted China's Belt and Road Forum in May after it was left asking Beijing to explain how it can take part in the summit when the \$54 billion China-Pakistan Economic Corridor (CPEC) passing through Pakistan violates India's sovereignty. The CPEC, the Belt and Road Initiative's flagship project that connects China's Xinjiang province with Pakistan's Balochistan province, runs through contested territory of what India calls Pakistan Occupied Kashmir and Pakistan claims as the areas of Azad Kashmir and Gilgit-Baltistan.

For its part, the Indian government continues to seek greater access to the Chinese market but with no real success so far. India has been pushing China to further open up sectors like information technology software, pharmaceuticals, and agricultural products. For the second year in a row, India's trade deficit with China is set to cross the US \$50 billion mark in 2016-17, the highest with any single country.

There has been some positive engagement on the unlikeliest of issues – Afghanistan. China reportedly expressed its admiration for India's assistance efforts in Afghanistan and the two sides have explored the possibility of joint development projects. This came against a backdrop of the growing threat of the so-called Islamic State to China. The Islamic State released a video in May 2017 of Chinese Uighur Muslims vowing to return home and "shed blood like rivers."

A rattled China is calling for greater global cooperation against the Islamic State, which is also a reason why China has joined

*Continued on page 35*

# Negotiating a Canada-China trade agreement: What about IP?

*Canada needs a more pro-active approach to strengthen IP protection abroad.*



## Hugh Stephens

Expectations are high for an announcement this fall that Canada and China will take the next step toward negotiating a trade agreement, either a full-blown FTA (Free Trade Agreement) or, more likely, some form of sectoral liberalization agreement, where both sides will seek opportunities in specified sectors without necessarily making all concessions reciprocal.

The Trudeau government has been engaged in public consultations to seek the views of Canadians about whether and how to achieve closer economic ties with China. According to most surveys, including the annual poll conducted by the Asia Pacific Foundation of Canada, Canadians are ambivalent, with concerns expressed about the extent of Chinese investment in Canada, possible access to Canada

by Chinese contract labour, and China's human rights situation. Most business groups are supportive but among business the question of intellectual property (IP) rights looms large, given China's reputation as a country where IP theft is common and China's growing appetite for western technology. How big a concern then should the IP issue be for Canada as it embarks on negotiations with China?

Intellectual property is as important for Canada as it is for any advanced industrialized nation, despite the talk about a Canadian "innovation gap," meaning that relatively little home-grown IP is successfully commercialized, and that Canadian intellectual property in the form of successful patents is often sold to offshore companies rather than being further developed at home. Canada generally lacks well-known international trademark brand

names that are flagships of commercial presence for the US, Japan, Korea and many European countries. Likewise, the copyright industries in Canada – publishing, film-making, music, etc. – are generally less well developed than in some other countries, particularly the US.

For all these reasons, and perhaps some others, Canada, in comparison to the United States and indeed the EU, has not been particularly aggressive in pushing an IP agenda in its trade negotiations with other countries. In fact, in past trade negotiations Canada has often seen IP as a defensive issue, where instead of seeking concessions it has sought to fend off demands from other trade partners. This was seemingly the case in the TPP (Trans-Pacific Partnership) negotiations, where IP "concessions" were used to obtain advantage in other areas (even though those "concessions" were good for Canadian creators of intellectual property). For understandable reasons, the United States has always put intellectual property objectives high on its list of priorities when negotiating trade agreements, given the key role the US plays in industries with high IP content.

The view that Canada is more of an IP-consuming than an IP-producing economy has driven Canada's negotiating approach to IP issues in past trade agreements, but it is high time this approach changed. A future agreement with China would be a good opportunity to take a more offensive as opposed to defensive approach. If Canada doesn't push for better IP protection in an agreement with China, it is unlikely that China will. If Canada wants to nurture its IP intensive industries, it has to take a more pro-active approach

toward using trade negotiations to strengthen IP protection abroad, with a concomitant benefit of strengthening respect and protection for IP at home.

Protecting the intellectual property of foreign companies in China has traditionally been a challenge. Although China signed on to the TRIPS (Trade Related Aspects of Intellectual Property) Agreement when it joined the World Trade Organization (WTO) in 2001, implementation has been spotty and sporadic. Horror stories of foreign IP being appropriated by Chinese competitors (some of them the erstwhile partners of the foreign investor) in order to launch competing, but cheaper products in the Chinese market, are legion. China made content piracy into an international industry, not only allowing open sale of pirated DVDs on the streets of its major cities, but becoming the centre of production for the distribution of pirated content globally. Pirating of DVDs in largely a thing of the past, however, with

from the original. Chinese producers are very good at “piggybacking” on someone else’s brand recognition. Attempts to challenge this hijacking of brand names, or to get local authorities to crack down on production of openly counterfeited or pirated goods, has been difficult and often unsuccessful. On its website, Canada’s Trade Commissioner Service has a long list of recommendation for companies on how to protect their IP in China. Care and due diligence is a must.

Why is China so difficult? China, of course, is not the only Asian country with a weak IP regime, but it is a unique combination of a huge, potentially lucrative market, combined with a loose, decentralized legal and administrative system where local authorities in many matters (those not considered strategically important by the Central Government) are given wide degrees of latitude, and a creative entrepreneurial class that is skilled at taking advantage of every loophole.

At the same time, it is putting forth a blueprint to be a world-leader in a number of critical industries, and to do so it has embarked on a policy of favouring domestic innovation over that of IP introduced from abroad, to the consternation of foreign investors who are worried they will be shut out from critical sectors. This push, combined with a parallel drive to obtain access to foreign IP, either through compulsory licensing requirements imposed on foreign investors, or through espionage, is of great concern to foreign companies and governments.

So, China’s IP is bad, but improving, but China is now using IP as a lever to gain competitive advantage. What implications does this have for Canada-China trade negotiations? A look at the China-Australia FTA (ChAFTA) might give us some indication.

Under ChAFTA, Australians get “national treatment” with respect to the protection of IP (that is, they will be given the same protection as Chinese nationals). Other areas, such as patents, trademark and copyright contain vague promises of cooperation. The area of enforcement is somewhat more robust, requiring the implementation of effective IP enforcement systems to eliminate trade in goods and services that infringe IP rights. For willful trademark and copyright infringement on a commercial scale, each nation must provide criminal procedures and penalties consistent with TRIPS. Penalties must include imprisonment and monetary fines sufficient to provide deterrence. Disputes over issues within the ChAFTA IP chapter are subject to the Agreement’s dispute settlement provisions. This is important as the right to invoke a bilateral agreement to ensure fair treatment will help Australian companies in dealing with recalcitrant local authorities in China.

Canada needs to seek at least this level of commitment in the IP chapter, but should go beyond these terms. In particular the recipro-

*China is now using IP as a lever to gain competitive advantage.*

the focus having shifted to streaming and online piracy – but China is still a “leader” in this respect.

Western companies seeking to market their products in China have found that they have to localize their brand image and name into Chinese, given the uniqueness of the Chinese language. Often, to their dismay, they have learned that their preferred Chinese brand name has already been registered in China by someone else. Or, if they registered a Chinese name for their product, a very similar rendition is soon launched in the local market, altering one character in the name but producing a label that was virtually indistinguishable

China, however, is changing, albeit slowly. Chinese now file more patents than any other country in the world. The US shoe company, New Balance, has just won a US \$1.5 million trademark infringement judgment against three Chinese shoemaking companies, in an award from a court in Suzhou. Chinese e-commerce platforms like Taobao and Alibaba are taking more strenuous efforts to cleanse their sites of counterfeit and pirated products. There is a growing film and video licensing market in China. In short, as China has become more of a stakeholder in IP-intensive products, it has stepped up its awareness and enforcement activities.

cal agreement signed in June of this year to forego “cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors” should be made subject to the agreement, with the ability to enforce its provisions through the dispute settlement mechanism. Also, if China wants looser review of investment in Canada by Chinese companies through a trade agreement, the agreement needs to protect Canadian companies in China from being forced to disclose sensitive IP in return for receiving foreign investment approval, and needs to ensure that China’s drive for domestic innovation does not discriminate against Canadian companies seeking to operate in China.

Canada has a good, though not perfect, regime with respect to fostering and protecting intellectual property. Chinese companies investing in Canada will be able to take advantage of that. China’s record in the area of IP is less reassuring. Any Canada-China agreement needs to ensure that Canadian companies have the ability to protect their IP in China through fair and balanced application of Chinese law (the law in China is generally not the problem; it is the interpretation and application of the law that is the main issue), subject to adjudication under the Agreement if necessary. Canada should seek national treatment for its companies when it comes to any preferences for “domestic innovation” and should ensure that the existing cyber-espionage agreement is respected and enforced through any

Canada-China Trade Agreement.

IP may not be a central feature of a Canada-China trade agreement, but it is a vital part of the infrastructure. This is a chance to improve the risk environment for Canadian companies in China. If we get it wrong, or overlook the importance of this chapter, we will have missed a unique opportunity to give Canadian exporters and investors a fairer and more level playing field when it comes to operating in the Chinese market. ✪

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### **Justice system and social media (Perrin)**

*Continued from page 10*

took screenshots of them. The court found this evidence lacked integrity, meaning it could have been altered from its original form.

Finally, the Canadian Charter of Rights and Freedoms applies online. Breaches, including unreasonable searches and seizures, have unnecessarily occurred in the often quixotic quest to bring law to the disorder of the Internet. In Mr. Hamdan’s case, police searched his e-mail accounts without a warrant.

Social media has revolutionized a wide range of fields, including journalism, communications, marketing, politics, civic engagement and advocacy. Criminal law is next on the list for disruption and significant work is needed to improve its response. ✪

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### **Bill C-59 (Newark)**

*Continued from page 11*

offence” rather than merely promoting terrorism, as per C-51. This change could seriously compromise the government’s counter-radicalization efforts. Addressing the online publication of material that promotes radicalization, recruitment and facilitation is an important issue in preventing domestic terrorism, so hopefully the Committee studying the Bill will consider this change closely.

The committee also should explore whether the new oversight and review entities have sufficient mandates to achieve their goals, including with respect to receiving complaints and launching their own investigations.

The government is to be commended for the scope of the bill as well as its reflection of modern realities and the need for clear articulation of how it balances civil liberties and security. The committees that review this bill have important work to do. ✪

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*Fraser University. He is author of the MLI report*

*“C-59: Building on C-51 towards a Modern Canadian National Security Regime.” This article first appeared in iPolitics.*

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### **Canada’s economy (Cross)**

*Continued from page 12*

with falling oil prices. The first was the drop in interest rates engineered by the Bank of Canada to boost demand and lower the dollar. The second was the boost this devaluation gave to foreign homebuyers, since their currency now bought 20- to 25-percent more Canadian dollars. Finally, the end of the boom in Alberta meant that the flow of population from Vancouver and Toronto to Alberta came to a halt and even was partly reversed.

Governments have introduced a number of measures to cool their housing markets, with an immediate impact of lowering national house prices. BC’s experience over the past year suggests that this leads to a one-time drop in demand as a segment of foreign buyers moves



elsewhere, but does little to alter the fundamentals of the housing market. The Bank of Canada will need to raise interest rates to curb demand on an ongoing basis.

Besides industry-specific anomalies behind the first-half surge in growth, higher spending continues to be financed by debt, for both households and governments. The July increase in interest rates is a belated move to curb the overheated housing markets in Toronto and Vancouver.

There is widely-held skepticism about the endurance of the first-half growth surge. Despite the better than expected start to 2017, the consensus growth forecast for the next two years is a return to the two percent or less that has gripped Canada's economy most of the time since 2009. Examining the sources of growth in the first half of 2017 reinforces this skepticism. Sustaining higher growth in Canada is nearly impossible without an acceleration in the US, and there are few signs that is occurring. With incomes weakened by a drop in export prices and a reversal in housing, Canadians sustained higher spending by continuing to borrow more. This is an unsustainable path in a world of rising interest rates. ✪

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*Philip Cross is a Munk Senior Fellow at MLI. The article first appeared in the Financial Post.*

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### **Interprovincial trade (Crowley)**

*Continued from page 13*

desire to tear them down and create a unified, barrier-free, national marketplace. Ottawa was given the power and responsibility to tear down those barriers. One hundred and fifty years later we are still waiting as the provinces continue to exact their seven percent bounty.

In a compelling comparison, the Statcan paper underlines that in similar studies of the US economy, literally no effect could

be found of the existence of state boundaries on trade. In other words, the US states charge the equivalent of a zero percent tariff. Put another way, Washington's power to dismantle barriers to Americans buying and selling anywhere is used to great effect. So it can be done.

The premiers like to put about the idea that they are heroically tearing down the barriers themselves, including through the Canadian Free Trade Agreement that came into operation on July 1st. Don't be fooled. The list of exemptions is over 100 pages long and the really tough areas, like liquor, financial services and regulatory harmonisation, were punted. Don't expect open markets in marijuana, dairy products or electricity any time soon. And if you're trying to build a pipeline expect to meet a po-faced premier with a stop sign at several provincial borders.

Statcan doesn't think for a moment that they've fully documented the damage these barriers do nor have they calculated the cost to Canadians in terms of a needlessly lower standard of living. That's to come. But count on the news getting worse, not better. And remember: as long as these barriers are allowed to persist, the promise of Confederation remains unfulfilled. ✪

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*Brian Lee Crowley is the Managing Director of MLI. This article first appeared in The Telegraph-Journal.*

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### **NAFTA negotiations (Dawson)**

*Continued from page 14*

have not been able to get text and revisions cleared fast enough.

A predictable side-effect of the US get-tough agenda is that new actions to protect one sector are likely to provoke retaliation and/or negatively affect market conditions for other US sectors.

Thus, the proposal for new safeguards to protect Florida tomatoes from losing

market share when Mexican tomatoes come in season (and are priced lower) could trigger retaliatory action by Canada and Mexico against Washington state growers during apple and pear season.

The NAFTA house of cards has been carefully constructed over 23 years to create a tolerable balance of liberalization and protectionism. Knocking out entire sections affects the whole system in predictable and unpredictable ways.

Make no mistake, Canada's negotiators are not motivated by altruistic intent and many of their positions make little economic sense. Dairy protectionism remains a national religion and a web of nontariff barriers limits opportunities for US beer, wine and grains (not to mention investment in telecommunications, financial services, and cultural industries).

But the basic principle of trade agreements, enshrined in the 1948 GATT, is to lock down a baseline of liberalization and to gradually whittle down the politically sensitive or difficult issues over time.

This approach reins in the worst excesses of governments trying to intervene in markets and lets business do business. A return to aggressive intervention pits one sector against another and leaves everyone worse off. ✪

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*Laura Dawson is the director of the Canada Institute at the Wilson Center in Washington DC and a Munk Senior Fellow at the Macdonald-Laurier Institute. This article first appeared in The Star.*

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### **Tax fairness (Speer)**

*Continued from page 15*

“wealthy folks.” These aren't policy arguments. It's surface-level demagoguery.

What makes it worse is the government's messaging seems immune to the evidence that the tax and transfer system is highly progressive or that high-income earners already pay a significant share of total income taxes. The top 1 percent of tax

filers paid 20.5 percent in 2014. The top 5 percent paid 40.3 percent. The top 10 percent paid 54.2 percent. The bottom 50 percent paid 4.3 percent. If this isn't "fair share," what is?

The irony, of course, is that Mr. Trudeau and his government have made the overall tax and transfer system more equitable and progressive with its new means-testing of federal child benefits and top marginal tax rate on high-income earners. It would seem that "fair share" is a fluid and undefinable concept that can be drawn on when politically expedient.

Government policy ought to be equitable, fair and progressive among other priorities, but this isn't a zero-sum proposition. Let's have a productive debate about how to achieve these goals. The Trudeau government needs to show leadership in this regard. ✨

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### **North Korean missiles (Fergusson)**

*Continued from page 16*

Relying upon guilt, however, is morally reprehensible – it places US decision-makers into a moral dilemma of Canada's making. NATO's Article 5 only commits the United States to "such action as it deems necessary" and Article 3, rarely mentioned, commits every member "to develop and maintain their individual and collective capacity to resist armed attack." Finally, the other allies (NATO, South Korea, and Japan in this case) are all participants in some form in ballistic missile. Canada is not – a fact especially relevant to Article 3.

Ironically, the Canadian implicit fallback to Article 5 has not led the Canadian government to issue a firm public commitment to defend the United States in the Pacific region, nor firmly stated its position

relative to its formal agreement to come to the assistance of South Korea stemming from the UN-South Korean agreement in 1953. Nor has Canada ever demonstrated its resolve by participating in exercises with the United States and South Korea.

Perhaps, the government simply fears that by taking the defence of the nation seriously by engaging in ballistic missile defence (evident in the committee discussions), and meeting its military commitments in the region would make Canada a target of North Korea. If so, the government has implicitly taken the position of neutrality.

In the end, Canada, its allies and true friends, and the international community face two regrettable, but stark choices. Either live with a nuclear North Korea, with the implications being the re-introduction of American tactical nuclear weapons into the region, and possibly a future nuclear-armed South Korea and Japan, or undertake military action ideally in cooperation with China.

As for Canada's current "do nothing" policy, it may be best summarized in two ways – appeasement of North Korea, and isolation from the conflict. Neville Chamberlain and Mackenzie King would be proud. ✨

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### **Kurdish independence (Majumdar)**

*Continued from page 17*

the Kurdish government has nevertheless established mature, respectful, peaceful relationships with key regional powers, including Israel. Prime Minister Benjamin Netanyahu supports Kurdish independence. Though not yet a perfect democracy, Kurdistan aspires to be a tolerant, pluralistic society with laws and traditions guaranteeing protection for its Christian population and other ethnic and religious minorities. Staffed by

some of the world's bravest soldiers, the Kurdish army, or Peshmerga, has played a decisive role in the war against ISIS, defending disputed areas even when Iraqi soldiers proved unwilling.

Sadly, none of these achievements is yet fully recognized. As part of Iraq, Kurdistan lacks full legitimacy to exercise the economic, diplomatic, cultural, and military powers it has strenuously negotiated to use on a de facto basis for its very survival.

A strong Kurdistan has always been in Iraq's national interest, and an independent Kurdistan will only strengthen Iraqi sovereignty. Yet Baghdad clings to the Kurdistan region, largely because of its oil wealth, even while post-Saddam era policies have often sought to limit Kurdish success rather than accelerate it. Liberated from each other's domestic issues, and the endless distraction of negotiating the terms of a perfect political marriage, both states would be free to function as a mature alliance of equals – a relationship that, to some extent, they already enjoy today.

Even as the world lines up against Kurdish aspirations for sovereignty following the recent referendum, President Barzani has already indicated a vote to secede does not imply a unilateral declaration of independence, but will rather begin a process to afford Kurdish leaders a democratic mandate to enter into peaceful negotiations with Baghdad. As a practical matter, an independent Kurdistan bedecked in the full rights and symbols of sovereign statehood is likely to still be many years away.

At the moment, however, we must lack no moral clarity in affirming where our allegiances lie. The West should support the mandate the Kurdish people are bestowing upon their leaders: to guide the peaceful emergence of a confident Kurdistan, rather than the reinforcement of a bad marriage destined to fail. The cause of Kurdish

freedom is right and just, and it is overdue that the West should say so. ✪

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### **Tobacco abstinence (Crowley)**

*Continued from page 18*

extreme and impractical goal (elimination of tobacco use) more important than the rational and immediately achievable goal of real harm reduction. In Japan, one new non-combustion product alone has already captured over ten percent of the tobacco market from cigarettes and that share is forecast to double by year end. Snus has allowed Sweden to have the lowest rates of smoking among wealthy nations.

Unrealistic “abstinence-only” policies have been signal failures in reducing drug use or teenage sex. Why would we think it is a good idea where tobacco is concerned? We have the opportunity essentially to eliminate the cigarette through technological change and informed consumer choice. Let’s take it. ✪

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### **Sino-Indian relations (Pant)**

*Continued from page 29*

ranks with Russia in a bid to engage the Taliban in Afghanistan. But even here, some major differences remain between China and India – as the Indian Foreign Secretary was careful to underscore. On the Taliban, he suggested that “their [China’s] characterisation was that there were elements of Taliban which are very extreme. In their view there were also elements of Taliban that can work with international community and Afghan government.” India has continued to resist calls for any engagement

with the Taliban, arguing that there is no good and bad Taliban.

As Beijing and New Delhi struggle to manage their complex relationship, India has certainly become more nuanced in its dealings with its most important neighbour. Even as it seeks to engage China on a range of issues, India has shown a new realism in acknowledging and articulating their bilateral differences. The diffidence of the past has been replaced by a new self-confidence in asserting its vital interests vis-à-vis China.

This self-confidence is reflected in the manner in which India is gradually bringing Tibet and Taiwan in its bilateral dealings with China. Shrugging off Beijing’s protests, Indian government representatives met the Dalai Lama in his visit of the Indian state of Arunachal Pradesh, which China claims as part of its own territory. The Chinese government underlined that the Dalai Lama’s visit will cause “serious damage” to China-India ties, as “China is strongly opposed to Dalai Lama visiting disputed areas.”

India seems to be taking it in its stride. Beijing has warned India of “political consequences” if it interferes in the country’s internal affairs. Yet Kiren Rijju, Union minister of state for home affairs who is from Arunachal and is Prime Minister Narendra Modi’s point man on Tibetan issues, had little issue meeting the Dalai Lama, who was visiting the Buddhist Tawang monastery after an eight-year interval.

Taiwan is now part of the Indian foreign policy discourse as well. A three-member women’s parliamentary delegation from Taiwan visited India in April amidst signals that the two sides might be getting serious about enhancing their bilateral engagement. This can be contrasted to last year when India reportedly backtracked from sending representatives to the swearing-in ceremony of then Taiwanese president-elect Tsai Ing-wen.

India is also building strategic relationships with key players in the Indo-Pacific

including the US, Japan, Australia, Vietnam and Indonesia. Against the backdrop of China’s growing assertiveness on the South China Sea, India has been vocal about the need to respect international law and freedom of navigation. As China’s power grows in the Indian Ocean, New Delhi will likely expand its footprint in the South China Sea. India now regularly participates in the annual Malabar series of naval exercises in the Indian Ocean and Western Pacific, which started out as India-US drills in 1992 but have included Japan since 2014 and more occasionally Australia and Singapore.

China has been warning India for some time now not to fall into the “trap” of the US and Japan who are trying to use it to contain China, underlining that such a move may make New Delhi face more risks. But, by not acknowledging India’s core security concerns and resisting its rise in the global order, China has managed to undercut this argument considerably. New Delhi has responded by becoming ever more assertive vis-à-vis what it feels is Chinese intransigence.

The attacks on India have grown considerably in the state-owned Chinese media, a reflection of some nervousness in Beijing about India’s growing assertiveness. This has happened even as China’s military and economic embrace of Pakistan is almost complete with CPEC on one side and a potential military base in Gwadar on the other.

What is clear is that Sino-Indian relations have entered uncharted territory as New Delhi seeks to engage Beijing strictly on reciprocity, resetting the terms of bilateral engagement. The future of the Asia, in more ways than one, depends on how the two regional giants relate to each other in the coming years. The Modi government wants to ensure that India is not the one to blink first. ✪

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