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*"True North in Canadian Public Policy"*

## National security, national interest and natural resources: What should Canadians think about CNOOC's bid for Nexen?

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**Speaking notes of the Hon. David Kilgour, J.D**

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The proposed takeover of Nexen, Canada's sixth largest oil company, by the government-owned China National Offshore Oil Corp (CNOOC) is one of Beijing's largest foreign buyout attempts to date. State-owned enterprises (SOEs) in China are unlike responsible publicly traded and private businesses in Canada, instead operating as extensions of the party-state, with priorities far different from the concerns of customers, employees and shareholders.

The Harper government must decide whether or not to approve the purchase under the vague "net benefit" and "national security" tests in the Investment Canada Act. It is important to keep in mind that what is sought is a complete change of ownership of a business with about 3000 employees, which has been operating in a socially responsible manner in Canada and internationally for many years.

The takeover would constitute Nexen's nationalization by the party-state in Beijing. CNOOC is controlled by its parent, China National Offshore Oil, wholly owned by the Chinese government, which is in turn dominated from top to bottom by the Communist Party. A similar offer was made by CNOOC for Unocal oil of California in 2005, but was halted in the face of strong opposition in Congress and by American public opinion. China Minmetals considered a takeover the same year of Noranda, then Canada's largest mining enterprise, but abandoned it when Canadians became aware that Minmetals was a branch of the mines department of the government of China.

The board chair of CNOOC, Wang Yilin, is also the secretary of the Party branch in the business. Charles Burton, the academic and former Canadian cultural attache in Beijing, explains, "CNOOC's party committee has a party discipline inspection group whose head, Zhang Jianwei, is also a senior member of the CNOOC board. Zhang's job is to make sure that all the leaders of Nexen comply with the secret directives of the party leadership in Beijing... it is difficult to believe this will all go the way CNOOC, its Canadian lawyers, PR agencies and 'pro-China' Canadian supporters say it will..."

The *Economist* magazine concluded earlier this year (21 Jan.) about China's model of state capitalism: "The Chinese party-state is the largest shareholder in the country's 150 largest companies and directs thousands of others...A culture of corruption permeates China's economy today, with Transparency International ranking it far down its list at 75th place on its perceived corruption index for 2011." The magazine quotes a central bank of China estimate that, between the mid-1990s and 2008, 16–18,000 Chinese officials and



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executives of state-owned companies “made off with a total of \$123 billion” (averaging about \$6 million each) and concluded, “By turning companies into organs of the government, state capitalism simultaneously concentrates power and corrupts it.”

*The Party*, published in 2010 by Richard McGregor, former China bureau chief for the Financial Times, documents its continuing grip on the government, courts, media and military. “Top leaders adhere to Marxism in their public statements, even as they depend on a ruthless private sector to create jobs... (It) has eradicated or emasculated political rivals; eliminated the autonomy of the courts and press; restricted religion and civil society; denigrated rival versions of nationhood; centralized political power; established extensive networks of security police; and dispatched dissidents to labor camps.”

Consider the conduct of Chinese SOEs globally. When the China National Petroleum Corp took a stake in Sudan’s oil fields in 1996, Beijing subsequently backed the al-Bashir regime in Khartoum, selling it arms and providing diplomatic cover at the UN Security Council. Bashir and his agents committed systematic atrocities in south Sudan and Darfur for which he has been indicted by the International Criminal Court. Africans also accuse Chinese resource companies of underbidding local firms and not hiring local residents. In Zambia, Chinese mining companies banned union activity and in two instances were charged with attempted murder after opening fire on local employees protesting work conditions. Its SOE roles in Iran and elsewhere are similarly controversial.

In Canada, the SOE Sinopec flew 150 Chinese workers into Alberta in 2007 to build a storage tank on an oil project. Two were killed and two were injured when the tank roof collapsed. When the Alberta government laid charges for failing to protect its workers, Sinopec’s construction company denied a presence in Canada (No doubt recognizing that this position might affect the bid for Nexen, the company recently pleaded guilty.). Major corporations are above the law in China and routinely ignore safety, environmental and employment legislation with impunity. Former employees of CNOOC in China say it has been one of the most active agencies of the party-state in persecuting Falun Gong since 1999.

Beijing would not for a moment permit a foreign government or private company to take over a major business like Nexen in China. There is no reciprocity between China and Canada in trade and investment; the bilateral investor protection agreement, which took 18 years to negotiate, is now signed in some form, but not yet ratified by both sides. The “courts” and entire legal system in China, moreover, are controlled and administered by the Party. Judgments in disputes between Chinese and foreign parties are politically, rather than judicially, driven; there is seldom a political reason to uphold a claim by a foreign entity against a Chinese one.

Canadians have indicated decisively through opinion surveys and other avenues the extent of opposition across the country to the proposed Nexen takeover. In blocking it, the Harper government should publish a set of regulations for SOEs, whether they are publicly traded or not, to govern all foreign takeovers. Any SOE, regardless of national origin, will be



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limited to a minority share-holding in any Canadian business. CNOOC might be told that it can own up to 20% of Nexen, provided that no other entity linked to the party-state in China attempts in future to purchase any additional ownership. Thank you.