

CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

Can the National Interest Be Served Through a Prisoner Exchange?

by Eugene Lang

July 2020

POLICY PERSPECTIVE

CAN THE NATIONAL INTEREST BE SERVED THROUGH A PRISONER EXCHANGE?

by Eugene Lang

CGAI Fellow
July 2020

CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

Prepared for the Canadian Global Affairs Institute
1800, 421 – 7th Avenue S.W., Calgary, AB T2P 4K9
www.cgai.ca

©2020 Canadian Global Affairs Institute
ISBN: 978-1-77397-140-7

Can the National Interest Be Served Through a Prisoner Exchange?

"With Meng Wanzhou's Extradition, Canada Must Be Laser-Focused on the National Interest."

That is the headline on a *Globe and Mail* op-ed by Richard Fadden, former director of the Canadian Security Intelligence Service.[1] Fadden and some other Canadian foreign policy experts have been arguing it's contrary to Canada's national interest to end Meng Wanzhou's extradition process. Leading Canadian lawyers – including former Supreme Court justice Louise Arbour and former Justice minister Allan Rock – and foreign policy hands have said Ottawa should end the process that Washington initiated for crimes Meng is accused of committing in the U.S.[2] By doing so, they say Canada could obtain the release of two innocent Canadians, Michael Spavor and Michael Kovrig, jailed by the Chinese government and held hostage over Meng's case.

The national interest argument in this instance boils down to the claim that pre-empting this extradition process through a ministerial order (which is permitted under Canadian law) to effect a de facto prisoner exchange would encourage the Chinese and other countries to engage in hostage diplomacy against Canada, putting our national interest at stake. This move would also allegedly damage Canada-U.S. relations. Jeopardizing Canada's national interest to get our citizens back is therefore dangerous and not justified.

Unfortunately, the utility of national interest as a concept to inform policy-makers on complex decisions is about as useful as invoking "Canadian values" or the "public interest", terms politicians resort to when lacking convincing evidence to do this, that or the other thing, and for which they are normally and justifiably criticized. As Joseph Nye has written:

> It is tautological, or at best trivial, to say that all states try to act in their national interest. The important question is how leaders choose to define and pursue that national interest under different circumstances. Access to oil, sales of military equipment, and regional stability are all national interests, but so too are values and principles that are attractive to others. How can these two categories of interests be combined?[3]

The national interest, therefore, is usually too vague, subjective and contested a concept to be of much use in real policy-making. One person's national interest is little more than another's opinion or ideology.[4]

But let's assume that this can and should be a guiding principle for decision-making in the Meng case. Is it true that Canada's national interest is best served by refusing to release Meng in exchange for our imprisoned citizens? Is it likely that the consequences for Canada would be

[1] Richard Fadden, "With Meng Wanzhou's Extradition, Canada Must Be Laser-Focused on the National Interest," *Globe and Mail*, June 25, 2020.
[2] A Letter to the Prime Minister of Canada, https://www.documentcloud.org/documents/6956527-Letter-to-Prime-Minister.html
[3] Joseph S. Nye, Jr., "What is a Moral Foreign Policy," *Foreign Policy*, vol. 3, issue 1, November 25, 2019.
[4] The Oxford Dictionary of Politics basically concludes that the concept of the national interest is a phrase used "by politicians in seeking support for a particular course of action, especially in foreign policy"… and "the difficulty with the analytical usage of the term is the absence of any agreed methodology by which the best interests of the nation can be tested," Iain McLean, ed., *Oxford Concise Dictionary of Politics*, Oxford University Press, 1996, 332-333.

worse if Ottawa engaged in a prisoner exchange with China, rather than letting the extradition process play itself out in the courts?

It is worth emphasizing that the chief reason Beijing is engaging in such reprehensible behaviour to free Meng is that she is a member of their aristocracy. She is the chief financial officer of Huawei, perhaps China's most important firm and the world's largest telecommunications equipment manufacturer with well-known ties to the Chinese state. Her father, Ren Zhengfei, is the company's founder. Consequently, the Chinese seem to be prepared to move heaven and earth to obtain Meng's release, and are willing to absorb international opprobrium in that effort.

From the Canadian side, a prisoner exchange is a radical idea, to be sure. We've never done this before, so it is uncomfortable to contemplate. But without any evidence from other countries that have engaged in prisoner exchanges to demonstrate that this inevitably leads to a proliferation of hostage diplomacy, the national interest argument against the idea rests on the inexact science of predicting the future behaviours of other states. Robert Fowler, former deputy minister of national defence and former UN ambassador, who himself suffered as a hostage for 130 days in Africa, spoke to the CBC recently on this issue. He pointed out that countries the world over, including the U.S., have engaged in prisoner exchanges from time to time, and this has not led to an increase in or a normalization of hostage diplomacy.

The claim that Canada-U.S. relations will be badly damaged by ordering Meng's release is even more dubious. I heard this same refrain – that if Ottawa didn't do X, the relationship with Washington would be severely damaged – repeatedly from civilian and military officials and politicians when I worked in the office of the minister of National Defence during the lead-up to Canada's decision on the Iraq war in 2003. I heard it again prior to Canada's refusal to participate in the American ballistic missile defence system in 2005.[5] Then, as now, the dominant narrative was if Canada refused Washington on these matters, Canada-U.S. relations would go into the deep freeze. In both cases, this proved to be histrionics. Canada-U.S. relations, including with the Bush administration, easily survived the Chrétien government's decision to reject support for the Iraq war, and the Martin government's refusal to participate in ballistic missile defence.

President Donald Trump will no doubt rant at Canada on Twitter if Meng is released, but this too shall pass. Official Washington, or what the president calls the "deep state", might even be willing to cut us some slack given how Trump has alienated America's closest allies over the past four years. In short, our broader relationship with Washington is far too deep and resilient to be seriously damaged over the Meng affair, especially when China is holding innocent Canadians hostage because of it.

In any event, to invoke the national interest as the chief consideration in this case is a tacit acknowledgment that this issue is about power in international relations, not the rule of law in

[5] For more on this history, see Janice Gross Stein and Eugene Lang, *The Unexpected War: Canada in Kandahar*, Penguin-Viking, 2007, chapters 4, 5 and 9.

Canada, as the Trudeau government maintains. So the question is, who has the power in this situation?

The hard reality is that China doesn't need Canada for much of anything that it cannot get elsewhere; yet, over the years, we have unfortunately become dependent on China for some important things for which there are no readily available substitutes. Notable among these are markets for some of our commodities, various low- and high-tech goods imports and 140,000 international fee-paying students who help fund our under-funded universities. Canada has little to no power in this equation, whereas the Chinese have lots, and they know this.

The proponents of the no-prisoner-exchange view might be right that the national interest is better served in not caving in to Chinese bullying, on the theory that this could lead to Canada facing more blackmail in future from China and other international bad actors. That is a reasonable opinion about the risk to the national interest, on which reasonable people can agree or disagree.

But consider if the government lets the legal process play out, the court orders Meng's extradition to the U.S. and Ottawa facilitates her extradition. How would Beijing react to that?

If we are going to be in the business of forecasting the behaviour of foreign states, it's reasonable to predict that were Canada to extradite Meng, we would experience unprecedented trade retaliation from China; Canadian citizens in China would face a lot more risk to their personal liberty and safety than today; the two Michaels would be imprisoned for many years; and what is left of Canada-China relations would be put into some kind of Cold War-like situation. It is an outcome that is probably best avoided if we care about the national interest.

About the Author

Eugene Lang *is Adjunct Professor, School of Policy Studies, Queen's University, and Fellow, Canadian Global Affairs Institute. He was chief of staff to two ministers of National Defence in the Chrétien and Martin governments and served as an official in the Department of Finance.*

Canadian Global Affairs Institute

The Canadian Global Affairs Institute focuses on the entire range of Canada's international relations in all its forms including (in partnership with the University of Calgary's School of Public Policy), trade investment and international capacity building. Successor to the Canadian Defence and Foreign Affairs Institute (CDFAI, which was established in 2001), the Institute works to inform Canadians about the importance of having a respected and influential voice in those parts of the globe where Canada has significant interests due to trade and investment, origins of Canada's population, geographic security (and especially security of North America in conjunction with the United States), social development, or the peace and freedom of allied nations. The Institute aims to demonstrate to Canadians the importance of comprehensive foreign, defence and trade policies which both express our values and represent our interests.

The Institute was created to bridge the gap between what Canadians need to know about Canadian international activities and what they do know. Historically Canadians have tended to look abroad out of a search for markets because Canada depends heavily on foreign trade. In the modern post-Cold War world, however, global security and stability have become the bedrocks of global commerce and the free movement of people, goods and ideas across international boundaries. Canada has striven to open the world since the 1930s and was a driving factor behind the adoption of the main structures which underpin globalization such as the International Monetary Fund, the World Bank, the World Trade Organization and emerging free trade networks connecting dozens of international economies. The Canadian Global Affairs Institute recognizes Canada's contribution to a globalized world and aims to inform Canadians about Canada's role in that process and the connection between globalization and security.

In all its activities the Institute is a charitable, non-partisan, non-advocacy organization that provides a platform for a variety of viewpoints. It is supported financially by the contributions of individuals, foundations, and corporations. Conclusions or opinions expressed in Institute publications and programs are those of the author(s) and do not necessarily reflect the views of Institute staff, fellows, directors, advisors or any individuals or organizations that provide financial support to, or collaborate with, the Institute.