



Summary Report

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Panel Theme: Diplomatic Perspectives on the Foreign Interference 'Gray Zone'

Introduction

I am particularly interested in this subject because I have navigated in these two worlds at various levels for most of my 35+ years of public service. My various assignments abroad, particularly my 5 years at our Embassy in Washington, where we work relentlessly to protect and advance Canada's interests by engaging with a variety of civil society and governmental actors, my responsibilities as Deputy Minister of Foreign Affairs for almost three years and my role as National Security and Intelligence Advisor (NSIA) to the Prime Minister for two years have drawn my attention on this subject and have allowed me to work closely with both national security and international affairs' colleagues to get a better appreciation of the line between influence in the conduct of normal diplomatic relations advocacy to promote a country's interests versus clandestine and deceptive activities by states that either interfere in internal affairs or even violate the laws of the host country.

Context

Before, I broach the subject more directly, I think that it is important to underline that the debate on foreign interference and the current proceedings of this Commission have highlighted the lack of awareness among Canadians on national security as a whole and foreign interference, in particular. A few examples to illustrate:

- Prior to the 2015 election, when the then Department of Foreign Affairs sent a diplomatic note to foreign missions accredited to Canada to remind

* Translation



- them not to interfere in elections in compliance with the Vienna Convention, there were very few reactions except the comments of a few Canadian retired diplomats in one media article¹ who described the measure as « rude ». Our concern, based on close cooperation with the security and intelligence organizations was that while there was no fire, there was just enough smoke to warrant an “ounce of prevention”.
- In 2016, when the same Russian GRU that would go on to interfere a few months later in the U.S. elections, orchestrated a cyberattack on the World Antidoping Agency (WADA) in Montreal, its Canadian partner, the Canadian Centre for Ethics in Sports (CCES) and released confidential medical information of Olympic athletes including Canadians as part of a disinformation campaign in retaliation for the sanctions imposed by the Olympic movement, not a single media organization in Canada initially covered the incident despite the fact that the NY Times, the Guardian² and many foreign medias were on the story.
 - The debate that followed the leaks of classified information and led to the current Commission of Inquiry initially put a lot of attention on the risks of foreign interference in elections. Nobody wishes to minimize the importance of protecting the integrity of our democracy both during and in between elections. However, democracy is much more than the electoral process.
 - As I write these lines, there are three criminal proceedings under way in Canada, one for an active member³ of the RCMP and another for a retired member⁴ who are alleged to have shared sensitive information with two countries, Rwanda and China, countries publicly criticized by well-known human rights groups⁵ for monitoring and intimidating members of their diasporas abroad and the diplomatic crisis with India with serious allegations of sponsored third party criminal actions ranging from intimidation to extortion and even murder.

¹ Amanda Connolly, [Keep your noses out of our elections Foreign Affairs warns diplomats](#), iPolitics, 8 September 2015

² The Guardian, [WADA cyber-attack : Williams sisters and Simone Biles targeted by Russian group](#), 13 September 2016

³ [Rwandan targeting of dissidents in Canada should be probed by foreign-interference inquiry, activists say](#), Globe and Mail, 8 April 2024

⁴ Kate McKenna et Philip Ling, [Former RCMP officer charged with foreign interference granted bail](#), CBC News, 25 July 2023

⁵ Human Rights Watch, [“Join us or die”: Rwanda’s extraterritorial repression](#), 10 October 2023



Assessment

Q-1 What is behind the disagreement between security and diplomatic services, around what counts as foreign interference? What is the role of incentive structures? Could disagreement between these services be a positive thing?

First of all, the word tension seems more appropriate than disagreement and this tension is normal and healthy given the distinct mandate and objectives that guide these two distinct communities and the need to jointly assess the nature of the threat, possible actions and related risks and their potential impact as much in terms of reducing the threat than on Canada's diplomatic and economic interests. If on the one hand, a state cannot make concessions on the most egregious transgressions such as criminal acts, the grey areas must be carefully assessed in a "risks/rewards frame" including the risks of compromising the investigation. Interestingly, while it is often the foreign interference intelligence gathered by the security community that informs the RCMP on possible criminal acts, the three cases above are examples where it is criminal investigations that have put a new light on serious foreign interference allegations. Unlike intelligence activities, criminal proceedings take place within a framework where much of the information becomes public when charges are laid.

Q-3 Are definitions the right approach to classifying foreign interference? What other approaches might be useful?

Let's look at the existing legal definitions and the practical reality and let's try to understand better the tension between national security and the foreign relations' interests.

The definition in the CSIS Act describes foreign interference (FI) as a "deliberate and covert activity undertaken by a foreign state to advance its interests, often to the detriment of Canada's."⁶ The CSIS Act describes FI as "activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person."

The relevant reference in the Vienna Convention on the Conduct of diplomatic relations indicates: "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws

⁶ CSIS, Foreign Interference and you, 2021, p. 2. https://www.canada.ca/content/dam/isis-scrcs/documents/publications/2021/foreign-interference-and-you/AOSE_ForeignInterferenceHandout%20-%20Digital_ISBN_A.pdf



and regulations of the receiving States. They also have a duty not to interfere in the internal affairs of that State”⁷.

There is very little debate between the relevant security and diplomatic experts on what constitute activities that are clearly normal diplomatic relations to influence versus the more egregious cases that are clearly foreign interference. Of course, the challenge resides in the grey zones.

Based on my experience, I believe that the best way to manage this healthy tension around the grey areas is to facilitate franc and regular exchanges between the relevant organizations. This allows to further the understanding and the judgment that should be applied to these situations with a healthy dose of due diligence where the arguments at the heart of the tension between our national security and foreign relations interests can be examined through these specific cases. Our legislative instruments are full of definitions that can be challenging to fully understand in practice, but courts make an interpretation and jurisprudence enriches the legal framework and its application.

Such an exercise can also inform the analysis of options, when necessary and possible, whether they be prevention, deterrence or more « aggressive » measures.

- For example, in 2017 when I was NSIA, I wanted to make the prime Minister and the Government more aware of growing concerns by the Canadian Security and Intelligence Service (CSIS) around some activities that could be construed as foreign interference. However, the reports were composed of a mix of normal diplomatic activities and some activities that could suggest interference attempts. I raised my concern with the CSIS director and he suggested a meeting between his experts on the possible threats under consideration and the Foreign Policy Advisor and myself.
- This meeting was mutually beneficial to better address the gray areas and improve the quality and credibility of the intelligence on those activities of greater concern that could represent a threat.
- In addition, we also took advantage of subsequent interagency meetings with representatives of the national security and international affairs organizations to get a better sense of how this threat manifests itself through specific situations and explore options to counter it.

⁷ Vienna Convention on Diplomatic Relations, 1961, article 41
https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf



Q-7 Alternatively, might the existing ambiguity be in Canada's interest, overall?

I think that it would be very difficult to develop a more precise definition than the one in the CSIS Act that could eliminate these grey areas, and we must recognize that some degree of ambiguity can be helpful in the choice of actions, if necessary and possible, that a state can take while keeping in mind the risks/rewards framework. For example, a grey zone that shows very little smoke and a limited impact could be countered through better awareness by the population or the relevant actors or groups or a démarche to the relevant diplomatic mission while activities that clearly amount to interference could lead to more serious measures ranging from a possible threat reduction, possibly charges or sanctions, whether criminal, monetary or diplomatic, if diplomat(s) are in contravention.

Q-5 Diplomacy changes over time. Are international law tools and guidelines around intervention, such as the Vienna Convention, adequate for the contemporary context? If not, what might be the benefits and drawbacks of seeking new tools and guidelines for the international community, for example through Canada spearheading a global initiative?

With regards to the possibility of amending the 1961 Vienna Convention to try to identify more clearly the red lines that states should not cross, it would be a substantial effort that is not without risks --- after all the Convention in general continues to serve its purpose well and, even if such amendment could be made, it is unlikely that they would be either ratified or complied with the states that are the most likely to engage in the conduct that we wish to deter.

However, I believe that Canada could draw inspiration from the leadership that it has demonstrated in the elaboration and initial endorsement by almost 60 states (now 78 endorsements) of the Declaration against Arbitrary Detention in State-to-State Relations⁸ launched in February 2021. By rallying a critical mass of “like-minded countries”, it could consider drawing up a declaration which, based on existing principles guiding diplomatic relations, would describe unacceptable foreign interference behavior sponsored by states that we wish to deter. . In fact, the Declaration against Arbitrary Detention relies on existing principles of

⁸ Global Affairs, Declarations against Arbitrary Detention in state-to-state relations, https://www.international.gc.ca/news-nouvelles/arbitrary_detention-detention_arbitraire-declaration.aspx?lang=eng



international instruments, namely: the “**Universal Declaration of Human Rights**”, the “**International Covenant on Civil and Political Rights**”, and the “**Vienna Convention on Consular Relations**”.

From there, in the context of a partnership a bit like we're trying to do with state-sponsored cyber attacks, the declaration could envisage collective attribution and the adoption of common or complementary sanctions when a state crosses the lines. Such an initiative could likely draw interest. The analysis of foreign interference trends in other countries, particularly when it comes to the intimidation of diasporas, shows that the targeted communities vary between states depending on the sources of its immigration.

Useful case study: The United Kingdom’s response to the poisoning of the Skripal family

- The management of the United Kingdom’s response to the serious extraterritorial transgression that was the chemical poisoning by Russian agents of the Skripals is one of the best-case studies in terms of responses in recent history.
- We have to remember that, when first informed, some members of the opposition in Parliament expressed skepticism when Prime Minister May initially attributed the chemical agent poisoning attack to Russia. The swift forensic identification of the chemical agent and of the suspects and a comprehensive engagement quickly rallying the international community, including Canada⁹, in joining on the attribution and concerted efforts to sanction Russia. This concerted attention even led Russia to make a an error that further compromised them when the Dutch authorities arrested their agents who were transporting equipment designed to spy Organization for the Prohibition of Chemical (OPCW) investigation¹⁰.

Of course, it is easier to act when the culprits are countries like Russia, that are already in the penalty box, and not actors with growing geopolitical and geoeconomic importance. But we encountered these same concerns by some states of not rocking the boat with China in 2017 in the context of our efforts on economic security (the protection of sensitive technologies).

⁹ CBC News, [Canada to expel 4 diplomats, reject the credentials of 3 more](#), 26 March 2018

¹⁰ <https://www.theguardian.com/world/2018/oct/04/how-russian-spies-bungled-cyber-attack-on-weapons-watchdog>



For a country like Canada, favouring a concerted approach with many countries is more likely to have a greater effect and protect against the risk of unilateral retaliation.

Q-4 What levels or types of interactions between politicians and diplomats or foreign representatives in Canada are in compliance with the Vienna Convention? How can Parliamentarians, their staff, and members of the public be educated on where to draw the line?

With regards to measures to deter interference by foreign states in Canada, the upcoming creation of a foreign agent's registry in the context of Bill C-70 will bring more transparency, a bit like existing measures on lobbying, on the activities of proxies that represent foreign countries in Canada.

As for illicit activities of foreign diplomats or their proxies that would operate in the shadow of the foreign agents' registry, it is critical that public institutions, for example parliamentarians be more aware of the threat through regular updates on the threats and tactics used. These institutions should also consider updating their relevant codes of conduct to adapt to the threat.

As for political parties, given that, unlike other countries, e.g. Australia, nomination processes in Canada will not be subject to the measures put in place in the new legislation (C-70 adopted and C-65 still under review in Parliament) and that political parties have expressed a desire to self-regulate, it would be both in the public's and their own interest to adopt transparent rules of conduct in this area that can reassure Canadians vis-à-vis some of the concerns identified in this Inquiry.

Summary of recommendations

R-1 Security and intelligence and diplomatic bodies should work closely to assess and differentiate activities that represent various degrees of foreign interference versus normal diplomatic relations' activities. Less serious interference acts and related possible deterrence actions should be assessed against a « risks/rewards » framework as much about their impact on the diplomatic and economic relations than their risks to the methods, sources and investigations while the most serious transgressions should lead to consequential administrative, criminal and/or diplomatic sanctions.

R-2 Global Affairs Canada should consider, drawing on its experience with Canada's 2021 Declaration on Arbitrary Detention, consider rallying « like-minded countries » with a similar initiative on foreign interference that could rely on



existing principles guiding diplomatic relations and identify the unacceptable interference behaviours.

R-3 Parliamentarians should regularly be updated on the threat, methods and tactics used by foreign states and their missions to interfere in Canada's internal affairs and parliamentary institutions should consider, in a way transparent to Canadians, updating their relevant ethical rules or codes of conduct.

R-4 The Key actors of political parties should receive regular updates on the threat, methods and tactics used by foreign states and their missions to interfere in Canada's internal affairs. Given that political parties will not be subject to new legislative measures introduced in C-70 and C-65 and that they have indicated a preference to self-regulation, they should in both their own interest and the interest of Canadians update in a transparent way their relevant rules of conduct to counter foreign interference.