



## Summary Report

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Panel Theme: Diplomatic Perspectives on the Foreign Intervention ‘Gray Zone’

### Recommendations:

Significantly strengthen our diplomatic capacity in the field, as detailed in the “Report of the Senate Standing Committee on Foreign Affairs and International Trade” (December 2023), thereby strengthening the security and intelligence analysis carried out at headquarters.

Educate to foster resilience and nurture national security “reflexes” in citizens: make Canadians aware of Canada’s lures and vulnerabilities that may attract interference through a national framework integrated into an international strategy.

### Key Issues:

WHAT IS THE PURPOSE OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS?

Three principles underpin this document (hereafter “Vienna Convention” or “Convention”): respect for state sovereignty, non-interference in state affairs, and reciprocity. Reciprocity is very important. It explains why Canada, with its relatively small diplomatic service abroad, must consider how its response to diplomatic measures (applied to sanction conduct not in keeping with diplomatic status) might impact its diplomatic service.

**Article 41** stipulates the privileges and immunities, as well as the duties and responsibilities of both the envoys of a State and the receiving State.

Canadian diplomats are bound by Article 41, as well as the various codes of ethics and conduct that apply to public servants, diplomats, and heads of mission. Parliamentarians and ministers must follow the *Open and Accountable Government Directive* (2015).

Duly accredited foreign representatives, if not governed by a national code of ethics, have an obligation to abide by the laws of the receiving State.

***Can an Act Be Both Legal and Illegitimate? On the Individual and the State***

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<sup>1</sup> Translation

When a foreign diplomat seeks to establish a relationship with a person of interest in Canada, that person must ask why the diplomat is interested in them, unless the answer is public or obvious. Above all, they must bear in mind that what a diplomat might consider to be a “legitimate” behaviour in their own culture may not be legitimate according to accepted customs in Canada. Should this behaviour violate our laws, the diplomat may still be deemed to operate lawfully, being shielded by the Vienna Convention. Such behaviour could, however, be seen by Canadians as illegitimate as it goes against the cultural and ethical norms of our society.

Potential persons of interest would benefit from knowing what the Canadian government requires of its diplomats.<sup>2</sup> This would help them judge whether a foreign diplomat’s approach is in line with our expectations (and therefore legitimate).

A State’s activities may be legal but not legitimate: for example, using official news media to create disinformation campaigns that may distort the outcome of a referendum or fuel racial hatred.

Verbal harassment from an ambassador to Canada may be legal, but not always legitimate, depending on its intensity. At what point does repeated aggressive speech become intolerable disrespect for the authorities? This is a political judgment based on national security considerations and should take precedence over partisan considerations.

**Article 9** deals with the expulsion of diplomats.<sup>3</sup> India allegedly violated this article in 2023 in seeking to revoke diplomatic immunity from 22 Canadian diplomats **prior to** informing Canada that it was declaring them undesirable, thus leaving them vulnerable to legal abuse and reprisals.

### **What Distinguishes a Diplomat from a Spy?**

**Article 3** of the Convention describes the functions of a diplomatic mission. These include representation, protection, negotiation, information, and promotion. The provisions on consular access explain why maintaining a functional mission in times of crisis is essential to defending our interests.

Herein lies the answer to **what distinguishes a diplomat from a spy**, since part of a diplomat’s mission is, according to Article 3.1 (d), “ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State.” Diplomats must not act clandestinely. Spies are not usually declared to the host government, but diplomats always are, and so are known to the authorities.

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<sup>2</sup>See Global Affairs Canada’s “Code of Conduct for Canadian Representatives Abroad.”

<sup>3</sup>“The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving state. 2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.”

**Grey Zone:** Acting openly is not without risk for the diplomat or the local citizens with whom the diplomat comes into contact. Depending on the quality of relations between two countries, the receiving State may express its displeasure in the way it more or less tolerates the nature of the contacts the sending State's diplomats maintain. China's detention of a former Canadian diplomat has shown that there is confusion among Canadians about the nature of diplomats' activities. It is important that this confusion be cleared up.

### **What Diplomatic Measures Are Compatible with the Vienna Convention?**

- Delays in approving visas for diplomatic staff
- Refusing to approve such visas
- Delays in approving or refusal to approve the accreditation of heads of mission or military attachés
- Refusal to grant *agrément* to a proposed head of mission
- Withdrawal of local staff
- Declaring staff already approved but who have not yet taken up their posts to be *personae non gratae* (PNG)
- Expulsion (PNG) of existing staff
- Temporarily reducing the number of diplomatic posts that a mission is permitted
- Expulsion of staff or reducing the size of the contingent
- Closure of consulate, office, or embassy

### **Should the Vienna Convention Be Updated?**

In updating the Convention, we would stand to lose more than we might gain. The principle of reciprocity is fundamental: it is in the common interest of all States, whatever their influence, that the rules apply to everyone. States apply the Convention, and they remain its protagonists, even with the emergence of non-state actors. The behaviour of States is based on the balance of power, which would not change if the Convention were to be updated. In addition, the drafting of the Convention takes technological developments into account. The risk of widening the differences between States outweighs any desire to reaffirm the validity of the legal principles underpinning the Convention.

## PRODUCT QUALITY AND THE “NEED TO KNOW”

Exerting influence is an inherent feature of relations between States. To determine whether an action is benign, ambivalent, harmful, or hostile to our values, interests, and institutional integrity, we consider several factors: the objective and transparency of the influence, the methods and timing used, its duration, and the level of cooperation between actors over time.

An Australian expert proposes we think of influence and interference as a continuum,<sup>4</sup> comparing the characteristics of military and civilian grey zones. The difference between

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<sup>4</sup>Katherine Mansted, “The Domestic Security Grey Zone: Navigating the Space Between Foreign Influence and Foreign Interference” (Acton, Australia: National Security College, February 2021)

influence and interference depends on thresholds—for example, the legal threshold of plausible deniability.

Safeguards, guidelines, and adjustable criteria can be subject to debate.

What remains essential are **human resources** in terms of their “synaptic capacity;” that is, the experience and knowledge needed to make connections between events through information from various sources. I would add that the more advanced the technology, the more important human verification (the human “reality check”) becomes in validating the product.

Global Affairs’ **added value** includes perspectives from abroad. Representatives of various agencies and departments are assigned to our embassies and participate collegially in embassy affairs. Discussions of complex subjects are enriched by different angles. In this way, Global Affairs Canada provides Ottawa’s security and intelligence community with a broader outside perspective, one that reflects the reality on the ground and is rooted in the context of relations between States.

The credibility of the political risk analysis, which political decision-making is based on, is most important.

When I joined External Affairs, the *sine qua non* for access to information was that it was on a strictly **need-to-know basis**. Information should only be shared if strictly necessary for a specific subject, regardless of the status or importance of the potential reader or their level of security clearance, even if they have appropriate clearance for the document in question. Our security clearance had to be updated and renewed every five years.

## OUR SOCIETY’S CIVIL AND POLITICAL RESILIENCE

### “If You See Something, Say Something” – Toronto Transit Commission

Awareness of the benefits of Canadians’ rights- and freedoms-respecting lifestyle, and of the need to protect it, should be made a reflex among citizens. Thus motivated, Canadians in both public and private life will be more receptive to information briefings on detecting dubious approaches and campaigns designed to fragment societies.

A few points:

- Include politicians’ exempt staff in briefings.
- Encourage visible, non-partisan collaboration between various jurisdictions in the fight against vectors of interference that go beyond the federal level, e.g., organized crime.
- Explain the link between local actions in Canada and Canada’s reputation among our partners in the fight against interference.

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[https://crawford.anu.edu.au/sites/default/files/publication/nsc\\_crawford\\_anu\\_edu\\_au/2021-02/nsc\\_foreign\\_interference\\_op\\_2021.pdf](https://crawford.anu.edu.au/sites/default/files/publication/nsc_crawford_anu_edu_au/2021-02/nsc_foreign_interference_op_2021.pdf).

- Explain Canada’s responsibility to its allies, Canada’s contributions to the fight against hostile actors, and the real costs of inaction.
- Sweden’s model, the Psychological Defence Agency, offers support to municipalities, regions, companies, and organizations, in order to prevent, detect, and counteract threats.
- Make open-source intelligence (OSINT) information public. For example, researchers have mapped the networks of the many organizations, links, and associations directly or indirectly connected to the Chinese Communist Party across Germany in various fields.<sup>5</sup>

### ***What Non-Legal Responses Might Be Appropriate in Addressing Foreign Intervention?***

Does a massive disinformation campaign exploiting a contentious issue, such as the influx of migrants, count as interference? Such a campaign could be orchestrated well before the formal start of an election period, and form part of a wider campaign involving other countries. It can also piggyback on other issues that play out at the provincial level—for example, foreign students exacerbating the housing crisis. The adversarial intent becomes evident and poses a threat.

National legal solutions may no longer be enough to thwart these attacks. Such solutions must be strengthened by coordinated measures implemented with our allies. Examples include the Rapid Response Mechanism created on Canada’s initiative, which provides citizens with resources for debunking misleading narratives, or collaboration in NATO’s public diplomacy, which produces series such as “Women vs. Disinfo,” as information manipulation most often targets women.

Finally, concerted action gives greater weight to diplomatic demands. One example includes the coalition of like-minded countries formed by Canada to obtain the eventual release of Canadians arbitrarily detained in China (February 2021).

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<sup>5</sup> Didi Kirsten Tatlow, “Mapping China-in-Germany,” (Workshop paper, “Mapping China’s footprint in the world II,” Sinopsis and the Oriental Institute of the Czech Academy of Sciences, October 2019), <https://sinopsis.cz/wp-content/uploads/2019/10/tatlowgermany.pdf>. Didi Kirsten Tatlow is a journalist and independent researcher based in Berlin.