

Canada Arrest of China's HuaWei CFO Meng Wanzhou: Diplomatic Blunder or Cold War Stratagem?

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The arrest and detention by Canadian authorities of one of China's most important business executives boggles the mind. Meng Wanzhou, Huawei's CFO, was arrested as she changed planes at Vancouver International Airport en route to Mexico on December 1.

Canada's arrest of such an important representative of China is made even more incredible by the fact it occurred as the President of the U.S. hosted a dinner with the President of China at which solutions to the China/US trade war were being discussed.

If the arrest was a diplomatic and foreign policy blunder then it is one of astonishing proportions but there could be a more substantive explanation.

Why did Canada arrest Meng Wanzhou?

According to the explanation provided by Prime Minister Trudeau and Foreign Affairs Minister Freeland, Canada had no choice but to honour the U.S. request for her arrest.

The Canadian government maintains the extradition process is outside the political arena and is simply a matter to be decided upon by the courts. This has been the Canadian government's explanation either to:

- 1) extricate itself from a major economic and political confrontation with China or
- 2) cover its tracks in setting up the arrest and perhaps the ultimate extradition of Meng Wanzhou.

In the days following the arrest Chrystia Freeland attempted to deflect the growing diplomatic confrontation with China. In an interview given to "[POLITICS](#)" at the Toronto Global Affairs Forum on December 10 she said:

"I think it's really important for Canadians to understand that this was not in any way a political decision...There was no political interference, as the prime minister has said. None at all." and that the decision was "in keeping with our international obligations...I believe very strongly that it is absolutely essential for Canada to remain a rule-of-law country in how we behave... A rule of law is not like a smorgasbord...You have to accept them all, so that's the fundamental point."

What is interesting is that Freeland's comments both at the Toronto Global Affairs Forum and elsewhere have consistently misrepresented the issue of extradition and the power that rests with the Canadian government.

On December 12 the Justice Minister issued a statement to, in its own words, clarify the situation. The statement is interesting in that it obscures the fundamental power of the Minister to halt the process. Rather than clarify it bolsters the argument that the Canadian government was simply following its legal obligations to arrest Meng Wanzhou, and that the Minister (and by extension the government) must not politicize the process by becoming involved. Some significant excerpts from the statement are:

"It is internationally understood and accepted that people who are alleged to have committed crimes in another country should be surrendered to that country to address the charges."

"The decision to seek a provisional arrest warrant from the court is made by Department of Justice officials without any political interference or direction."

N.B. The full statement can be read [here](#).

The Minister's statement bends the facts considerably to fit the narrative of Prime Minister Trudeau and Foreign Affairs Minister Freeland and obscure the decision to arrest Meng Wanzhou was a political one.

Extradition is not an obligation of international law. Extradition is first and foremost political activity at the highest levels of government. The Canada U.S Extradition Treaty states in Article 9: "(1) The request for extradition shall be made through the diplomatic channel."

The act of extradition is governed by a treaty which spells out the criminal activities subject to extradition and importantly retains discretionary power in the hands of the state to negate extradition - in other words, the sovereign right of the state to act above the "rule of law and the courts" when necessary:

"Even though bilateral and multilateral treaties establish its existence, extradition is actually a product of diplomacy and foreign relations. As the extradition involves surrendering of criminals by one country to another through diplomatic means, the interplay between the diplomacy and extradition becomes inevitable. Where treaty entered into between the two countries doesn't cover the behavior in question, it becomes a diplomatic concern which in essence depends upon their negotiations which are always influenced by their respective bargaining strength or power."

"International law does not impose any obligation on states to extradite. Nor does it set out any special procedure for handing over the person concerned to the requesting state. [3] Under International Law, extradition is in most of the cases is a matter of bilateral treaty." Cited in "All Answers Ltd, 'Criminal Extradition and International Diplomacy' (Lawteacher.net, December 2018) accessed 24 December 2018"

The U.S. request to arrest Meng Wanzhou was communicated at the highest levels. The request for extradition was initiated through diplomatic channels and required authority from the Justice Minister to proceed. Trudeau acknowledged, and it was confirmed by U.S.

Secretary of State John Bolton, that the Canadian government was informed of the U.S. request to arrest Meng Wanzhou several days in advance of her arrival in Canada. This suggests that Canadian and U.S. intelligence services were sharing information about Meng Wanzhou's travel arrangements in order to have the documentation and Ministerial approval prepared to make the arrest. It also suggests that the Canadian government had ample opportunity to review the case and decide whether or not to comply.

The Minister pleads the necessity to remain hands off in order to respect the rule of law but it was at her direction the arrest took place and under her direction the crown argued strenuously in the B.C. courts against the release of Meng Wanzhou and presented the case of the United States for her detention to await extradition proceedings. The Minister's statement hypocritically describes her hands off position this way:

"In order to safeguard due process and to respect the independence of the courts, it is essential that the Crown's position in this matter, as in all court proceedings, be presented in the court room where it can be properly considered."

"If the superior courts and any appeal courts ultimately approve a "committal" for extradition, then as the Minister of Justice, I will ultimately have to decide on the issue of surrender of the person sought for extradition. Therefore, it would be inappropriate for me to comment on the facts of this case at this time. Doing so would risk undermining both the independence of the court proceedings and the proper functioning of Canada's extradition process."

The "no choice but to act" argument of the Canadian government:

The Canada U.S. Extradition Treaty and the Extradition Act provides that the crime for which extradition is sought has to be punishable in the country from which extradition is requested. The Treaty stipulates the offences which a person may be extradited for and the general provision:

"(1) Persons shall be delivered up according to the provisions of this Treaty for any of the offenses listed in the Schedule annexed to this Treaty, which is an integral part of this Treaty, provided these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year."

The Extradition Act stipulates:

"3(b) the conduct of the person, had it occurred in Canada, would have constituted an offence that is punishable in Canada,

(i) in the case of a request based on a specific agreement, by imprisonment for a maximum term of five years or more, or by a more severe punishment, and

(ii) in any other case, by imprisonment for a maximum term of two years or more, or by a more severe punishment, subject to a relevant extradition agreement."

The Extradition Act not only spells out the requirements it gives discretionary powers to the

Minister. The Act reads:

“Authority to Proceed
Minister’s power to issue

15 (1) The Minister may, after receiving a request for extradition and being satisfied that the conditions set out in paragraph 3(1)(a) and subsection 3(3) are met in respect of one or more offences mentioned in the request, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the extradition partner, an order of a court for the committal of the person under section 29.”

And, importantly:

“Contents of authority to proceed

(3) The authority to proceed must contain

(a) the name or description of the person whose extradition is sought;

(b) the name of the extradition partner; and

(c) the name of the offence or offences under Canadian law that correspond to the alleged

conduct of the person or the conduct in respect of which the person was convicted, as

long as one of the offences would be punishable in accordance with paragraph 3(1)(b).” emphasis added

The Minister has ultimate say as in Section 44 of the Act – though it should be noted the Minister is, as explained, is deeply implicated in arrest of Meng Wanzhou and the prosecution of the U.S. request for extradition:

“44 (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or

(b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person’s position may be prejudiced for any of those reasons.”

What did the Canadian government know when it issued the arrest warrant

The Canadian government knew the details the U.S was relying on to request arrest. These details were presented by Canadian government lawyers as they strongly argued for detention of Meng Wanzhou to await extradition proceedings. These details were presented to the courts. CTV has made these documents available on its web site (*they can be found [here](#)*).

They are an interesting read because they outline the facts and thus cut through the obfuscation that has been part of the Canadian government's response to the arrest.

In essence the charges against Meng Wanzhou are that Wauwei has close ties to Hong Kong-based Skycom Tech Co Ltd, which attempted to sell U.S. equipment contrary the [U.S secondary sanctions](#) the U.S. has applied against Iran. These prohibit technology transfers of a non-military use. The U.S. also charged that Meng Wanzhou was not truthful to banks who asked her about links between the two firms. This charge is also particular to U.S. secondary sanctions because they prohibit anyone from having any financial dealing with Iran.

Those facts are important and particular only to U.S. secondary sanctions. Secondary sanctions are particular to the U.S. and are applied only by the U.S. They are beyond those approved by the United Nations. The issue of U.S. secondary sanctions is important in assessing how Canada has behaved through the course of this and whether or not Canada is truly following international norms and the rule of law.

The argument that the arrest of Meng Wanzhou is not legitimate rests on the fact that Canada has no sanctions on Iran that are equivalent to the U.S. secondary sanctions. Canadian sanctions are only those as approved by the United Nations and these are sanctions against military hardware and infrastructure as well as individuals. *(a list of these sanctions is included in the "for your reference" at the end of the article)*

An example of U.S. secondary sanctions:

"(i) on or after August 7, 2018, knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;

(ii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran;

(iii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran;"

(the full text of U.S. secondary sanctions is included in the 'for your reference' at the end of the article)

U.S secondary sanctions are illegal under international law. This fact is the most damning to Canada's argument that is upholding the "rule of law and international norms". In an address given to the T.M.C Asser Institut, The Hague, Dr. Rahmat Mohamad noted:

"Legitimacy of sanctions under international law is applicable only to 'multilateral sanctions' which are applied as per Chapter VII of the Charter of the United Nations." Pg.2

"Within this structure of international law, it becomes evident that [Unilateral Sanctions Text - The Hague 11 July 2013](#) - violates certain core principles of the Charter of the United Nations, like principle of sovereign equality and territorial integrity, principle of non-intervention, and duty to cooperate. It also violates the core principles of 1970 Friendly Relations Declaration. These include the principle of - sovereign equality of states, non-use of force, self-

determination of people, non-intervention into the internal and external affairs States, peaceful settlement of international disputes, cooperation among states, and fulfilling in good faith obligations assumed under international law. The unilateral sanctions imposed against third parties by virtue of application of one's own national legislation extra-territorially also breach certain basic tenets of general principles of international law. These include, principle of self-determination, 'right to development' ⁵ of the citizens and individuals residing in the targeted territory, countermeasures and dispute settlement, freedom of trade and navigation." Pg. 5

"UNILATERAL SANCTIONS IN INTERNATIONAL LAW" Prof.. Dr. Rahmat Mohamad, Secretary-General, Asian-African Legal Consultative Organization (AALCO), at T. M. C. Asser Institut, The Hague, on 11 July 2013" the document is included in 'for your reference' at the end of the article or can viewed [here](#).

The complicating legal factor of Canadian versus U.S. sanctions was noted within days of the arrest in various articles and interviews given by experts on extradition law. It could be presumed that officials in the Department of Justice and the Minister herself would have known this which makes the decision to proceed questionable.

Therefore, the argument is Meng Wanzhou has broken no Canadian law and is not subject to extradition. This may explain China's immediate condemnation of the arrest as illegal. Further to this Trump suggested she was a bargaining chip to be used in the trade dispute with China - a move that implies her arrest is politically motivated by the United States which also precludes extradition.

What is condemning of Canada's actions is that it had the right to deny the U.S. request for arrest, and in terms of protecting the legal and human rights of Meng Wanzhou, had the obligation to rebuff the U.S. request for arrest.

The Cold War Stratagem

Unlike the Harper government before it Canada's Liberal government has been desirous of a trade agreement with China, especially in the light of the problems it had with the U. S. on trade issues in the recent free trade negotiations. Canada also hoped to conclude an extradition treaty with China as part of developing bi-lateral relations. In 2017 Canada joined the Asia Infrastructure Investment Bank, a major undertaking of the Chinese government, a move that certainly upset the U.S. and one that the previous Conservative government balked at. Canada is the last of the Five Eyes countries to decide if it will allow Huawei 5g technology to be part of its next telecommunications infrastructure.

The question to be asked is whether or not the arrest of Meng Wanzhou is part of a strategy to push confrontation with China. Some in Canadian ruling circles see the arrest as a move dangerous to Canadian interests.

On December 9 John Manley, former Liberal cabinet minister for foreign affairs, industry and finance under Jean Chretien and currently on the board of Telus a major Canadian telecommunications provider and partner with Huawei appeared on the CTV news show "Question Period". He noted that Canada has never been "as alone in the world as we are now", and remarked that Canada needs China because of how unreliable the United States been as an economic partner. He went on to say:

“China is the way we validate the policy of diversification or trade and economic interests. There’s no other choice,”

“China is the second largest economy in the world, we need to have our own China policy driven by our own national interests. And unfortunately we’ve got ourselves caught in a situation where our China policy is being very much fashioned by some hardliners in Washington,”

“The Trump administration takes a very different very hard line view and we’re caught in the middle of it and that’s not good for us.”

In a moment of unscripted frankness that was noticeably disturbing for the interviewer and the other panel guest Richard Fadden, the former director of the Canadian Security Intelligence Service, Manly suggested Canada could have avoided confrontation with China through “creative incompetence.” He said:

“This woman was not residing in Canada, she was simply transferring flights in Canada, and we might have just missed her,”

The decision to arrest Meng Wanzhou suggests elements in the Canadian and U.S. states, hostile to China, hope to disrupt Canada/China relations through this international incident. The fact that Canada has not taken opportunities to end this action against Meng Wanzhou suggests the issue will continue beyond her next scheduled court appearance in early February.

The view of confrontation with China is represented by former Prime Minister Stephen Harper who has been outspoken about the need to keep Huawei out of Canada and during his time as Prime Minister kept Canada-China relations out in the cold. An article in the “Ottawa Citizen” titled: “Canada must smarten up on its China policy” by Charles Burton, a former Canadian counsellor official in Beijing, is certainly in keeping with the confrontation that has occurred with the arrest of Meng Wanzhou.

“China’s official state news agency said that Song Tao – who heads the Communist Party Central Committee’s International Liaison Department – briefed Canadian officials last month on Beijing’s plan to displace the United States as the world’s superpower by “building of a community with a shared future for mankind,” which Xinhua said is “not only important to China but bears profound interest for the rest of the world.”

The decisions being made now are going to radically change the values of global diplomacy and justice for the next century or more. What Canada needs to do is seriously rethink its approach to China, in order to meet the challenge of China’s rise.” (See [this](#))

A China divide with the West is growing on a number of fronts – significantly Meng Wanzhou and Huawei represent one of these. There is enormous pressure by the United States, its Five Eyes partners – an Anglo-American Intelligence Alliance formed during World War 2 and strengthened during the Cold War – to keep Huawei out in favour of American and European 5g providers.

The dispute also fuels a growing polarization between the Atlantic Alliance, China and Russia, witness the appeal of Foreign Affairs Minister Chrystia Freeland to western allies to condemn China’s recent arrest of three Canadians, two on national security issues and one

for work permit irregularities.

Placing Canada at the centre of a major diplomatic and legal confrontation with China through the arrest of the Huawei CFO could ultimately derail improved Canada/China relations and strengthen the hand of those looking for confrontation with China.

For your reference:

Statement of the Minister of Justice:

OTTAWA, Dec. 12, 2018 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, issued the following statement:

“As the Minister of Justice, I take my extradition responsibilities and obligations very seriously. Ms. Wanzhou Meng is sought for extradition by the United States and is currently being afforded due process before the courts. Ms. Meng was granted bail yesterday under strict conditions set by the court. Given interest in this case, I would like to clarify key aspects of Canada’s extradition process.

It is internationally understood and accepted that people who are alleged to have committed crimes in another country should be surrendered to that country to address the charges.

The [Extradition Act](#) implements Canada’s international obligations under extradition treaties to surrender people sought for prosecution or to serve a sentence imposed against them in the foreign state. Extradition proceedings are conducted in accordance with the rule of law and constitutional principles.

Canada’s extradition process protects the rights of the person sought by ensuring that extradition will not be granted if, among other things, it is contrary to the Charter of Rights and Freedoms, including the principles of fundamental justice. Ms. Meng is currently being afforded due process by the courts – as would any person arrested on Canadian soil. Canada benefits from an independent and impartial judiciary. This ensures that a fair and unbiased process will unfold.

Ms. Meng was arrested pursuant to a provisional [arrest warrant](#) issued by a judge of the Supreme Court of British Columbia, a procedure which is contemplated in both the Extradition Act and the [Treaty](#) between Canada and the United States in circumstances where urgency has been established. The decision to seek a provisional arrest warrant from the court is made by Department of Justice officials without any political interference or direction.

The next steps in the case are as follows:

- Under the terms of the extradition treaty, the United States has 60 days from the date of Ms. Meng’s arrest to make a full extradition request.
- Department of Justice officials have a further 30 days to determine whether to issue an Authority to Proceed which will formally commence the extradition process.
- Should an Authority to Proceed be issued, an extradition hearing will be scheduled by the British Columbia Supreme Court.

At each stage of the extradition process in Canada, there is careful balancing of the interests of the person sought for extradition against Canada's international obligations. The person sought is able to challenge their extradition at multiple levels, both before the superior and appellate courts in Canada, and by making submissions to me on the issue of surrender.

If the superior courts and any appeal courts ultimately approve a "committal" for extradition, then as the Minister of Justice, I will ultimately have to decide on the issue of surrender of the person sought for extradition. Therefore, it would be inappropriate for me to comment on the facts of this case at this time. Doing so would risk undermining both the independence of the court proceedings and the proper functioning of Canada's extradition process.

In order to safeguard due process and to respect the independence of the courts, it is essential that the Crown's position in this matter, as in all court proceedings, be presented in the court room where it can be properly considered."

Canadian Sanctions on Iran

Sanctions under the [Regulations Implementing the United Nations Resolutions on Iran](#) (the Iran UN Regulations) were modified on February 5, 2016 to implement the changes to the United Nations sanctions against Iran as decided by the Security Council of the United Nations in Security Council Resolution 2231 (2015). Ongoing restrictions on dealings with Iran under the Iran UN Regulations include:

- prohibitions on the export to Iran of:
 - items, materials, equipment, goods and technology related to uranium enrichment, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems (products listed in the International Atomic Energy Agency's Information Circulars INFCIRC/254/Rev.12/Part 1 and INFCIRC/254/Rev.9/Part 2 and UN Security Council document S/2015/254, as well as to a number of goods listed in Group 1 (Dual-Use List) and Group 2 (Munitions List) in A Guide to Canada's Export Controls;
 - items, material, equipment, goods and technology related to goods listed in the *Missile Technology Control Regime* (2015/254);
 - battle tanks, armored combat vehicles, large caliber artillery systems, combat aircrafts, attack helicopters, warships, missiles or missile systems as defined in the United Nations Registry of Conventional Weapons;
- a prohibition on the provision to any person in Iran of technical assistance, financial or related services related to the supply, sale, transfer, manufacture or use of the products subject to the export prohibitions;
- a prohibition on making available to any person in Iran any property, financial assistance or investment, related to the supply, sale, transfer, manufacture or use of the products subject to the export prohibitions;
- a prohibition on making property or financial services available to Iran for the purpose of investing in specified nuclear-related activities in Canada;
- a prohibition on providing any technology to Iran in respect of any activity related to ballistic missiles capable of delivering nuclear weapons;
- a prohibition on the acquisition and import from Iran of arms and related

material;

- an assets freeze against individuals and entities who were listed by the Security Council or the Committee established pursuant to Resolution 1737 (2006) as of July 20, 2015 whose names were not removed by Resolution 2231, or any other persons who may be listed by the Security Council under Resolution 2231; and
- a prohibition against claims by Iran or designated persons in relation to any transactions prevented by reason of the sanctions imposed against Iran.

Sanctions under the [Special Economic Measures \(Iran\) Regulations](#) (the Iran SEMA Regulations), as amended, prohibit:

- transactions involving property with the individuals and entities subject to asset freezes as listed in Schedule 1;
- the export, sale, supply or shipment of any goods listed in Schedule 2 of the Iran SEMA Regulations, to Iran, to any person in Iran, or to a person for the purpose of a business carried on in or operated from Iran; and
- transferring, providing or disclosing to Iran or any person in Iran any technical data related to the goods listed in Schedule 2.

There are also provisions in the Criminal Code that prohibit certain dealings with listed entities. Canadian persons (both individuals and entities) should look closely at their legal obligations and do careful due diligence about prospective partners, customers or suppliers in Iran to ensure that they are not dealing with any listed entities.

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