Responding to Russia's massive cyberattack will be a key test for Biden

How he chooses to respond will be watched carefully by allies and adversaries alike, and will be an early, critical test of the new administration's leadership mettle

Derek H. Burney,
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If grappling with a contentious presidential transition, a spiralling COVID-19 crisis and the president's last-minute brinkmanship on pandemic aid and defence spending were not sufficiently challenging, reports of a major hack that compromised several government agencies and thousands of private companies sent a severe shock wave through America's national security network.

The attacks began in March and are regarded as the most extensive security breach in American history. It shows that the rivalry between major powers in cyberspace is becoming a more ominous, 21st-century version of the Cold War.

In the murky world of cybersecurity, one rarely gets full details about the extent of the damage or about what would be the most appropriate response. Those being attacked are usually reluctant to publicly acknowledge what has been compromised, while the perpetrators, for very different reasons, are unlikely to make public what they did or why. It is a cat-and-mouse game between offenders and defenders, but those on the offence seem to be winning.

The revelations are embarrassing given that, in February 2020, Gen. Paul Nakasone, head of the National Security Agency and the United States Cyber Command, said that U.S. teams were "understanding the adversary better than the adversary understands themselves." Little did he know what was about to happen one month after he made those remarks.

Adding to the confusion are reports that, just before President Donald Trump fired its leader, Chris Krebs, the federal Cybersecurity and Infrastructure Security Agency (CISA) was repeatedly criticized by the Homeland Security Department's watchdog for "poor intelligence sharing with its private and public partners and weak information security for its own system."

Equally concerning were reports of CISA's failure to ensure the physical security of polling locations, in sharp contrast to Krebs' assertion that the 2020 elections were the "safest and most secure in history," a boast that prompted his firing.

What we do know is that problems emerged when computer users downloaded an update for network monitoring software developed by Solar Winds, a company with an enormous customer base. It was a textbook supply chain attack. The hackers implanted malicious code into the company's regular software updates, creating a potential backdoor into any of its tens of thousands of customers' networks.

The hack is unique in scope and ran without being noticed for nine months. Only a handful of organizations, including the cybersecurity company FireEye and three federal agencies — the departments of commerce, energy and treasury — have publicly admitted to being seriously affected. State and Homeland Security were also vulnerable.

While Solar Winds has since updated its software, the hackers' nine-month head start means they likely built additional entry points into networks that they deemed important. "Just because you closed the intrusion doesn't mean that you solved the problem," observed Neil Jenkins, the chief analytic officer of the Cyber Threat Alliance. Yet to be explained is why the attack went undetected for nine months.

Victimized organizations now have to choose between two unpleasant options: spending significant resources searching through their computers in the hope that they can eradicate the hackers' footholds, or rebuilding their networks from scratch.

Secretary of State Mike Pompeo and Attorney General William Barr, along with U.S. intelligence officials, pointed clearly to Russia as the culprit, suspecting that the hacking was most likely driven by Russia's SVR intelligence agency, though Russia has denied it.

President Trump, meanwhile, downplayed the "exaggerated" media reports, saying the situation was "under control," a claim that president-elect Joe Biden flatly dismissed. Trump also declared, without offering specifics, that China, rather than Russia, "may" have been behind it.

It may take years to unravel the extent of the damage. But what is certain is that America's defence capability is demonstrably inadequate. That is why the most urgent task will be to tighten lines of responsibility and accountability for defending against foreign intrusions. (There is also a need for similar improvements in Canada's cybersecurity monitoring.)

Once forensic evidence is collected to confirm the perpetrator, the next task will be to make clear that intrusions of this magnitude will not go unpunished, in order to deter future attacks from Russia, or other unsavoury countries like China, Iran and North Korea.

The president-elect was quick to fault the Trump administration for not prioritizing cybersecurity. He described digital threats as being "among the most grave problems facing America." Biden has already assured the hackers that there will be "substantial costs" and that America "will respond, and probably in kind."

Senators on both sides of the aisle underscored Biden's call for a swift response. Republican senators Marco Rubio and Mitt Romney asserted that America must retaliate and "not just with sanctions." In fact, given those already in place, there is not much scope for additional economic sanctions against Russia. Democratic Sen. Dick Durbin of Illinois called the hack a "virtual declaration of war."

Given the decrepit state of the Russian economy, targeting Russian corporations would not produce comparable economic damage. Instead, the Foundation for Defense of Democracies, a Washington, D.C.-based think tank, suggested the U.S. strike back by hacking and releasing information about President Vladimir Putin's personal wealth, in an attempt to shame him into halting digital attacks against the United States.

Shining a light on government corruption and exposing how much money foreign leaders have stashed away could be damaging in authoritarian countries like Russia and China. The ultimate goal would be to make cyberspace more peaceful rather than simply punching back in anger.

Others believe that the U.S. should overtly disrupt Russia's security and infrastructure networks. But that could escalate the situation even further.

Russia is aggressively positioning itself to confront the new Biden administration. Deputy Foreign Minister Sergei Ryabkov stated recently that Russian-U.S relations are "going from bad to worse," and that Russia does not expect "anything good" from the new president. He suggested a policy of "total deterrence" toward Washington, with minimal dialogue.

Putin often extols the spies who hack into U.S agencies. Laying a wreath at the SVR monument on Dec. 27, Putin praised the work of SVR officials as "extremely important," noting "the difficult professional operations that have been conducted." Such words suggest that the prospects of engaging in a constructive dialogue with his government are slim.

Trump retains the levers of power until Jan. 20 and his likely actions are difficult to predict. But, as his failure to boost COVID allocations to individuals and the congressional override of his veto of the National Defense Appropriation Act clearly demonstrated, his authority is rapidly waning.

President Biden will be obliged to deal with the fallout from the latest cyberattack as one of his first orders of business. How he chooses to respond will be watched carefully by allies and adversaries alike, and will be an early, critical test of the new administration's leadership mettle.

Recent cyberattacks underscore the need for international norms of responsible behavior, and an institutionalized process to support them.

Paul Meyer

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It is not easy for a great power like the United States to admit to having been taken to the cleaners by a rival state, but that is what Washington was obliged to do mid-December. The Department of Homeland Security announced that the U.S. had been the victim of a massive cyber espionage operation that posed "a grave risk" to the government. Offensive cyber operations like this one have been escalating in recent years and to date the United Nations, despite twenty years of discussing cyberthreats to international peace and security, has not been able to agree on effective measures to counter them.

For some six months, a wide array of U.S. government agencies as well as numerous non-governmental entities had been penetrated by a sophisticated "supply chain" attack utilizing compromised software upgrades (an unknown number of Canadian entities were also impacted). "Solar Wind," the manufacturer of the infected software, indicated that 18,000 of its customers had downloaded the upgrade in their systems. No one may ever know the full extent of the information extracted or whether the intruders succeeded in creating "back doors" that would grant them ongoing access.

Cyber security teams will now have to undertake the Herculean task of expelling the intruders from the infected systems. There will always be the lingering doubt as to whether they have succeeded completely in doing so – the psychological equivalent of planting a "mole" in a rival intelligence service. If this all seems like something out of a spy novel – it is. We are dealing with a real-life incident of espionage. One which given its superior "tradecraft" has led it to being attributed to the Russian foreign intelligence service SVR (a successor to the KGB).

While the previous president has sought to downplay the episode and even has falsely attributed it to China rather than Russia, President Joe Biden has responded with vigour and rather belligerent language. He has vowed to impose "substantial costs" on those responsible and stated: "A good defense isn't enough. We need to disrupt and deter our adversaries from undertaking significant cyberattacks in the first place." This sounds good, but who determines what is a "significant" attack and for that matter what actions are we to understand as constituting a "cyberattack"?

The unfortunate reality is that cyberspace is basically a lawless realm. The prospects for any restraints on state-cyber operations emerging from discussions at the United Nations are not bright. These have made slow, if steady progress over two decades. But for many stakeholders who wish to preserve cyberspace for peaceful purposes, an agreement on concrete measures of international co-operation is now overdue.

Part of the problem in dealing with cyberthreats is that a blanket term – "cyberattack" – has been used to describe them, even though they vary enormously in scope. In order to guide relevant policy, it is useful to distinguish between the three forms of "offensive cyber operations." They are computer network exploitation, computer network attack and information operations.

Computer network exploitation is a contemporary form of espionage that involves penetrating a foreign computer network and extracting information from it. Preferably this is done without the operator of the network knowing about it. The current Russian operation belongs to this category as does the 2015 Chinese hacking operation that penetrated the U.S. Office of Personnel Management and stole 21 million personal records. The ancient practice of espionage has never been subject to international control and there is scant prospect that it will be now.

Information operations are cyber-enhanced missions of "propaganda" or "psychological operations" that aim to influence public opinion in a foreign state in a manner to advance the interests of the state behind the operation. Given that one man's "propaganda" is another's "freedom of expression" it is unlikely that a common understanding of what information operations constitute a threat to international peace and security can ever be reached.

Computer network attack can be viewed as a military-type operation that seeks to disrupt, damage or destroy a foreign computer system or the data stored on it. Computer network attack is arguably the most dangerous type of offensive cyber operation, although the one most amenable to curtailing via international co-operation. Although cyberspace is a unique, human-created environment on which global society has become increasingly dependent for its well-being, recent years have witnessed a sharp increase in its "militarization" with some 30 states estimated to possess offensive cyber capabilities.

Unlike other forms of military operations, states have been extremely secretive about their use of offensive cyber operations and to date have only publicly acknowledged them with respect to non-state targets (such as the Islamic State). State-conducted cyber operations have also caused massive, detrimental impacts on "innocent bystanders" as was the case with the state-originated "Not Petya" (Russia) and "Wanna Cry" (North Korea) cyber operations.

It is the threat of wide-ranging computer network attack operations that have prompted what diplomatic efforts to date have been made in the United Nations to respond. Since 1998, the UN General Assembly has been discussing "norms of responsible state behaviour in cyberspace." In 2015, an expert group report enumerated 11 voluntary norms that should govern state behaviour. Prominent among these norms is the non-targeting by cyber means of critical infrastructure on which the public depends.
The 2015 norms represent a good basis for elaborating co-operative security measures, but the revival of "great power rivalry" has led to a bifurcation of the UN process on cyber security, with both the launch of a further expert group and the creation of a new Open-Ended Working Group. The Open-Ended Working Group is considering a draft report before its final meeting in March.

Recently a group of states have proposed a "Programme of Action" outcome, which would have a political rather than legal status, but would enable the existing 11 norms to be codified and provided with institutional support to promote their implementation.

Specifically, the proposal would create a permanent forum at the UN with annual meetings, secretariat support and periodic review conferences.

Importantly, it would consolidate once more UN work into a single, inclusive body rather than stumble on with parallel processes. After decades of UN consideration, many states and non-governmental stakeholders are eager to have in place a set of agreed "norms of responsible state behaviour" complemented by an institutionalized process to monitor implementation.

Several non-governmental stakeholders have been active in generating proposals for its consideration. As "accountability" has been a concept largely absent from the intergovernmental discussions, ICT4Peace (an NGO I am affiliated with) has proposed a "Cyber Peer Review" mechanism that would provide for a state-led process for scrutinizing state behaviour. It would also allow for inputs from concerned non-governmental entities.

Canada has been among the more active states in the work of the UN's Open Ended Working Group, having submitted well-received proposals to provide practical guidance as to how states can operationalize the existing norms as well as highlighting the gendered impact of malicious cyber activity. It is also one of the 47 states sponsoring the "Programme of Action" proposal.

This year could prove decisive as to whether damaging state-run cyber operations continue to escalate or if a modicum of restraint can be applied via international agreement. After two decades of UN deliberations on the cyber threat to international security, it is time for concrete results. The "netizens" of the world deserve no less.

Opera and Copyright: Why is Mozart Performed More Often than Modern Composers? (Is Copyright the Reason?)

Hugh Stephens Blog

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Early in the New Year I thought it might be fun and interesting to look at how copyright and opera intersect, not that much opera is being performed these days. However, if the COVID vaccines are rolled out quickly and effectively (right now this seems more like a hope than an expectation), allowing public performances to resume, then *La Scala*, *the Met* and all the other famous venues may be back in business by the end of 2021. That's something for lovers of opera to look forward to.

Many of you may fall into the category of true opera *aficionados*. You're able to hum famous arias, know all the main characters in *The Magic Flute*, can sing the libretto in

Italian of *The Barber of Seville*, and are able to recite Beverly Sills' most renowned performances. I also suspect that many others are a bit like me. We love to go to the opera occasionally, for the music, the costumes, the whole spectacle. And when we go, we usually choose to see some very familiar work—*Carmen*, or *Marriage of Figaro* or *La Bohème*, for example—because, well, they're familiar. We like to hear the music and songs that we remember, and follow the stories that we more or less know (while recalling that all opera plots are generally ridiculous and that most of the characters on stage will eventually come to a tragic and unhappy end). To keep us—the average opera-goer—coming back for more, artistic directors ensure that their programming includes a healthy dose of the classics. More avant-garde, experimental pieces are usually mixed in but the bread-and-butter of most companies, seeking to ensure balanced budgets and full houses where possible, are the tried and true "recognizable" works. There is nothing very surprising in this. Symphony orchestras work much the same way, balancing the need for popular appeal by regularly playing the classics combined with trying out new pieces to expose audiences to something different.

Thus it was with great interest that I recently read a research piece from WIPO, the World Intellectual Property Organization, that suggested copyright might be the reason why more classical operas, which are in the public domain, are performed than are modern pieces that are still under copyright protection. (There was the usual disclaimer for such think pieces that the views expressed were those of the authors, and did not necessarily reflect the views of WIPO or its member states.). The study's focus is stated as follows;

"Today, the works of almost no living composers are performed on global opera stages….Why are we not seeing more performances of modern operas? What are the factors that have driven new works off the stage? While previous research has focused around how copyright incentivizes composers to create new work, we'll be taking a look at the economic role of copyright and how it affects opera houses' decisions around staging and reusing works. Is granting exclusive rights to new opera works actually excluding them from the stage?"

The paper points outs that of the 50 most widely performed operas globally in 2017-18, only 1 percent of them were written by composers born in the 20th century (29% of composers were born in the 18th century and 70% in the 19th century). The only 20th century work in the top 50 was Leonard Bernstein's *Candide*. It had 111 performances during this time period. The most popular, Verdi's *La Traviata*, had 853.

To the question of whether copyright encourages creativity in the opera world, the paper argues that while in theory copyright incentivizes composers to create new operas by granting them exclusive rights, in the case of opera this might not be true because "*new, avant-garde works tend to attract smaller crowds and sell at lower ticket prices compared to the many popular works in the public domain. Opera houses have low*

expected revenues from these performances so the cost of licensing them from composers becomes too high."

The first part of this statement is certainly true, but does it follow that lower revenues mean that the cost of licensing new works is too high relative to anticipated income? To me this is a questionable conclusion although the paper states that it can document that works are performed more frequently (plus 15 %) once they are out of copyright than when they are under copyright protection.

The extension of the argument that new works are performed less often because of licensing costs is that artistic directors select which operas they will perform based on whether or not they have to pay royalties. Why not go for Mozart, when his work is in the public domain, over, say, John Adams, the composer of *Nixon in China*, *Doctor Atomic* and a number of other modern operas. Could licensing fees really be that significant a disincentive and does payment of royalties skew the decisions as to which works to produce? I think this is a dubious proposition where adding 2 plus 2 has yielded 5. Yes, many fewer modern operas are produced than classical works, and yes, modern operas require payment of copyright licensing fees whereas classical works don't. But is there a direct correlation between these two sets of facts or are there other factors at play—factors such as the tastes of "average" opera-goers like me?

In a search to find out, I contacted the artistic director of my local professional opera company (Pacific Opera Victoria), Maestro Timothy Vernon, putting the question to him. He responded that *"royalty payments are important in drawing up a workable budget, but are seldom if ever a determining factor in deciding to produce any given opera."* Maestro Vernon said that if a copyrighted work is chosen, there will be a negotiation with the publisher, taking into account factors such as the size of the company, its audience and budget, and the popularity of the work. As artistic director, while mindful of financial parameters, first and foremost he considers artistic aspects in making choices as to what works to offer to his audiences, recognizing that there are 400 years of opera creation to draw from.

That is only one view, but I suspect it is a common view among those who determine what works to offer audiences in the opera world. Artistic considerations come first.

Another factor to consider is the cost of royalties in comparison to the considerable expense in putting on an opera. I am not privy to what it costs to license an opera production but as Timothy Vernon noted, often a negotiation takes place. In the elusive search for truth, I went on the internet and tried to research the cost of vocal scores and full scores for a couple of modern operas, namely two by John Adams, *Nixon in China* and *Doctor Atomic*. Some well-known sources of musical scores are the famous British music publisher Boosey and Hawkes and the longstanding US firm of J.W. Pepper (which sells the Boosey and Hawkes produced vocal score of *Nixon in China*). Ordering the vocal score of *Nixon* directly from Boosey and Hawkes will cost $99 (all

prices in USD). If ordered from J.W.Pepper the price is a bit cheaper at $85. The full score is available for only one piece from the opera, *Chairman Dances*, for $45. Boosey and Hawkes informed me that the full score for *Nixon* was not available for sale, but perhaps it could be available "to hire". The full score of *Doctor Atomic* is available from J.W. Pepper for $175 and just the vocal score for $75. This seems like a pretty modest sum, but then I am not sure how many copies are required. I assume that if a large number are purchased for the choir, a bulk rate could be negotiated. In sum, the amounts involved are more than trivial but less than significant, and compared to the total cost of mounting an opera, the cost of copyright licensing can hardly be considered the key factor in determining whether or not to stage a particular work. To the question posed *"Does copyright actually encourage the creation and promotion of new opera works?",* I would have to answer that it certainly does not discourage it.

While I disagree with the proposition that "*copyright may act as a barrier to entry and licensing cost hurdle for new, more avant-garde operas, particularly for new productions that are outside of an opera house's standard production repertoire"* (because the WIPO research piece overstates the role of copyright fees in determining which works get air time), the issue of how new pieces can get performed in order to attract recognition and popularity among audiences is a real one. The author of the WIPO document (Alexander Cuntz) offers a couple of suggestions to remedy this problem. First, he proposes that consideration be given to establishing a new collective management system for licensing opera productions, which would require that a new collective rights management organization be established.

Another is to encourage the testing of new opera on both stage and on digital platforms, in order to give new productions greater exposure. If copyright fees are truly a disincentive to staging more new operas (a conclusion about which I have reservations), he argues that lower streaming royalties could be negotiated to encourage digital productions. However, if copyright fees are not the real problem but simply mask the basic issue which is the unfamiliarity of audiences with new works, distributing productions online will only partially solve the problem. Digital distribution will reach more audiences, but there are two issues that need to be addressed; production costs and revenue generation. Production costs for a digital opera production may be somewhat less given that it only needs to be performed once, and then recorded, but initial costs will still be close to a live performance. On the revenue side, it has proven difficult in many fields to raise significant revenue from digital offerings, or at least as much revenue as from a live performance. A livestream performance should bring more revenue than a recording, but even a livestream performance is unlikely to begin to match the cost of seat at a live opera. Views of a recorded performance will generate a much lower return. One can argue that the lower unit cost of a digital performance can be offset by repeated viewings, but this is unlikely to close the revenue gap.

The WIPO paper posits the conundrum that copyright exists to incentivize new production yet, if you buy the argument in the study (which I don't), it also tilts the playing field in favour of public domain works because of the cost of royalties. However,

you could make the same argument about plays or symphonies, but I doubt if the timeless popularity of Shakespeare is a result of *Hamlet* or *Romeo and Juliet* being in the public domain as opposed to the work of any modern playwright. Rather it is a result of audience choice, and familiarity with those classical works that have stood the test of time precisely because they are the best of the lot. Artistic directors have learned to their peril that while they may wish to "educate" their audiences and challenge them with new, sometimes avant-garde works, the operas that pay the bills come from a limited repertoire of classical favourites. The finger of copyright rests very lightly if at all on the scale that determines which operas get selected for production. In fact, I will wager that in almost all cases, copyright is scarcely a factor at all.

For other items on copyright issues, please visit Hugh's blog

www.hughstephensblog.net

CHALLENGES AND PROSPECTS FOR THE CPTPP IN A CHANGING GLOBAL ECONOMY: TAIWANESE ACCESSION AND CANADA'S ROLE

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SUMMARY In the past, Canada has had to deal with the matter of Taiwan very delicately. China considers Taiwan to be an integral part of the nation: a rogue province that must eventually be reunified with the mainland. Since Canada relies much more on trade with China than with Taiwan, the stakes have favoured policies that avoid engaging with Taiwan in ways that would unnecessarily irritate China. As a result, there has been little appetite here for negotiating a bilateral trade deal with Taiwan. That attitude is finally changing. One main reason is because China is already angry with Canada, and vice versa. Relations between the two countries are at an all-time low, and domestic support for accommodating China is minimal. As a result, Canada is freer than before to consider negotiating a trade agreement with Taiwan. At the same time, Taiwan is interested in joining the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), to which Canada is already a party. By supporting Taiwan's accession to the CPTPP, 1 Canada can achieve a free-trade agreement with Taiwan without having to negotiate one bilaterally. The ability to do so under the aegis of a multilateral agreement should serve to mitigate any remaining concerns that China might further retaliate against Canada directly. However, striking back at China is not a reason for Canada to support Taiwan's accession to the CPTPP. We should do so because it is in the interest of Canada and the other members of the CPTPP to add to the strength of the organization by welcoming an economy that is an important global trader and a key player in global supply chains. In addition, Taiwan is a country that is clearly willing and able to accept CPTPP disciplines. Canada should move quickly and enthusiastically to support

Taiwan's accession. The benefits of having Taiwan join Canada in a free-trade agreement are obvious. The opportunity to make it a reality is finally here. 2 The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which entered into force on Dec.30, 2018 for six of the 11 signatories that had completed ratification at that time (Australia, Canada, Japan, Mexico, New Zealand and Singapore),1 is a beacon of hope in a dark, protectionist landscape. Along with the Regional Comprehensive Economic Partnership (RCEP) agreement, which was signed on Nov. 15, 2020, the CPTPP advances the trade and investment liberalization agenda at a time when protectionist measures by some major trading countries are threatening to undo decades of progress. The commitments and new disciplines of the CPTPP are particularly important because of malaise infecting the World Trade Organization, where the work of the Appellate Body has now ground to a halt because of actions by the United States, and to offset the negative impact of the U.S.-China trade war now underway.

THE CPTPP CAN HELP OFFSET NEGATIVE IMPACTS OF THE U.S.-CHINA TRADE WAR A recent study2 undertaken by professors Peter Petri and Michael Plummer has argued that the CPTPP and RCEP combined could offset the global trade losses of US$301 billion to 2030 caused by the U.S.-China trade war. Adding additional members to the CPTPP, such as South Korea, the Philippines, Thailand, Indonesia and Taiwan, increases the gains — which jump substantially if China also joins (although, under current circumstances, this seems unlikely). Still, Petri and Plummer note that "The RCEP and CPTPP offer hope in a dangerously divided world. They partly offset the damage of the US-China conflict, encourage cooperation in the Asia-Pacific, and suggest viable directions for the world trading system."3 The CPTPP sets out high-level standards of trade and investment liberalization, focusing particularly on "behind the border" measures rather than traditional tariff reduction. To quote the Government of Canada, "The Agreement features ambitious market access commitments in trade in goods, services, investment, labour mobility, and government procurement. The Agreement also establishes clear rules that help create a consistent, transparent and fair environment to do business in CPTPP markets. Additionally, the CPTPP features chapters on the protection of the environment and labour rights, enforceable by dispute settlement…. (It) also includes a variety of chapters aimed at trade-related technical cooperation among CPTPP members, including with respect to small and medium sized enterprises, regulatory coherence and economic development."4 1 Vietnam subsequently ratified and the CPTPP entered into force in Vietnam in January 2020. The remaining members of the agreement (Brunei, Chile, Malaysia and Peru) have yet to complete ratification procedures

THE IMPLEMENTATION OF THE AGREEMENT IS INCOMPLETE In short, the agreement not only results in important commitments to reduce barriers to trade and investment, but it also recognizes the importance of trade facilitation and capacity-building in ensuring that the benefits of liberalized trade are sustainable, equitable and inclusive. That said, as important as this is, the implementation of the agreement is incomplete. Not only are four of the original signatories still engaged in the ratification

process, but the original dozen countries that began the precursor Trans-Pacific Partnership (TPP) agreement, collectively known as the TPP-12, became the TPP-11 when the United States withdrew after signing but prior to ratification, after the Trump administration came into office. This was considered a serious foreign policy mistake by many critics in the U.S, ranging from the late senator John McCain, to Richard Haass, president of the Council of Foreign Relations.5 However, under Japan's leadership, the remaining TPP partners came together to keep the gains that had been achieved. With minor modifications (primarily to suspend issues of primary interest to the U.S.), the TPP text was adopted. Now the first priority needs to be to ensure that Brunei, Chile, Malaysia and Peru complete the ratification process. Internal political issues and disagreements, now worsened by the COVID-19 crisis, have slowed down this implementation, but the demonstration effect of the benefits of the CPTPP should help revitalize the ratification process once the immediate crisis of the pandemic has passed.

EXPANSION IS DESIRABLE IF ASPIRANTS MEET BENCHMARKS Beyond completing ratification for existing members, expansion is the next step. (At some future point, it would also be desirable if the U.S. reconsidered its position and sought to rejoin the agreement.) With regard to expansion, a number of countries have expressed interest in accession, including, perhaps somewhat surprisingly, the United Kingdom6 (post-Brexit), Thailand, Indonesia, the Philippines, Korea, Taiwan and, most recently, China.7 Last year, Canada held public consultations on CPTPP expansion, seeking input from domestic stakeholders.8 Other countries, including Japan, Australia,9 and New Zealand,10 have also spoken favourably of CPTPP expansion. At its first meeting in January 2019, the commission for the CPTPP adopted guidelines for expansion, which included setting out a process through an accession working group and benchmarks that "aspirant economies" must agree to meet.

TAIWAN'S INTEREST IN ACCESSION The Taiwanese government has made no secret of its interest in accession. As a full member of the WTO, there is no reason that Taiwan (under its WTO nomenclature) could not enter a regional trade pact that would be consistent with Article XXIV and be notified to the WTO. Japan, in particular, has been a strong supporter of Taiwan's accession to the CPTPP, despite some bilateral disputes over Taiwanese imports of Japanese agricultural products from the Fukushima area.12 Canada, for one, has been officially non-committal, but it has certainly not opposed Taiwan's participation. A few years ago, when the TPP was under negotiation and Taiwan had expressed interest in joining the negotiations then underway among the original 12 economies, Stephens and Goold wrote an op-ed13 expressing cautious support for Taiwan's participation. They recommended, however, that the initial stage of the agreement be completed first (that has now happened) and noted that Taiwan needed to prepare for negotiations, notably by demonstrating the political willingness to make significant reforms to dismantle entrenched trade barriers. That has also happened, and the preparatory work that has been underway in various agencies of the Taiwan government to get ready for CPTPP negotiations has been impressive.

THE CHINA FACTOR In sum, the evidence suggests that Taiwan is more than ready to adopt the standards required for CPTPP membership. But let's address the most serious inhibiting issue: the China factor. As much as it is unacceptable that one member of the WTO should seek to block another WTO member from entering a regional trade pact, the fact remains that there are unique historical and geographical circumstances that surround the question of how China would respond to Taiwan's accession to the CPTPP. Each member of the CPTPP may approach this question somewhat differently, but each will inevitably consider China's reaction as it makes its decision. CANADA-CHINA

RELATIONS AND POSSIBLE ACCESSION BY TAIWAN TO THE CPTPP Caution has always been the watchword for Canada when it comes to dealing with Taiwan and China. Since 1970, Canada has accepted that Beijing is the "sole legal government of China." At the same time, Canada only "took note of"14(it did not "acknowledge" and did not "accept") China's assertion that Taiwan is an "inalienable part of the territory of the PRC." This formula has allowed Canada, like other countries, to maintain diplomatic relations with Beijing, while at the same time developing economic and other non-diplomatic relations with Taiwan. However, it must be said that Canadian governments over the years have always been cautious, if not overly cautious, with regard to more fully developing relations with Taiwan, lest this damage prospects for closer economic ties with China, where the stakes are much greater. Taiwan is Canada's fifth-largest trading partner in Asia, with two-way trade totalling almost $8 billion in 2019, and Taiwan enjoying a three-to-one surplus in goods trade with Canada.15 This total is small when compared to Canada-China trade ($98 billion in 2019, with roughly the same three-to-one trade surplus in China's favour),16 but it is not insignificant and, for comparison purposes, is roughly double that of Canada's trade with Australia. Would China "punish" Canada for supporting or promoting Taiwan's accession to the CPTPP? China has demonstrated that it is prepared to use trade actions in furtherance of its broader political objectives, even when such actions may be contrary to its international commitments. Examples include the actions it took against exports of Canadian pork and canola to China, based ostensibly on phytosanitary concerns, that were clearly a response to Canada's detention of Huawei executive Meng Wanzhou. As a result, Canadian exports to China in 2019 suffered a 16-per-cent decline from the previous year. China has also taken action to slow down or block imports of Australian coal and wine because of unhappiness with Australian actions regarding alleged Chinese political interference in Australian domestic politics and Australia's call for a full accounting of the causes of COVID-19. What is significant is that Australia and China have a free-trade agreement in place, yet this has not stopped China from taking punitive action. Given this history, Canada is correct to approach any change in its relations with Taiwan carefully. But supporting Taiwan's accession to a multilateral trade agreement, where there are already 10 other participating partners, is quite different from engaging in bilateral negotiations. New Zealand signed a bilateral free-trade agreement (FTA) with Taiwan, but prior to concluding this arrangement, it first reached a bilateral trade agreement with China. Given the current state of Canada-China relations, there is no prospect of Canada and China concluding a bilateral pact that would smooth the way to

a Canada-Taiwan FTA. That is not even to mention the poison pill (Article 32.10)17 in the new Canada-U.S.-Mexico Agreement (CUSMA) trade pact that effectively bars 14). 6 Canada or Mexico from entering into a bilateral trade agreement with China on pain of CUSMA being terminated. Thus, while there is no legal impediment preventing Canada from negotiating a free-trade agreement with Taiwan (as New Zealand has done), there has historically been little appetite for such a move. This attitude is now changing for several reasons. First, as noted above, accession by Taiwan to a plurilateral agreement is different from entering into bilateral trade negotiations. Second, there is unlikely to be public pushback in Canada over the risk of irritating China, given that Canada's relations with China are at an all-time low. This is because of China's response to the arrest of Meng in Vancouver in December 2018, on the basis of a U.S. warrant. A few days after Meng's detention, China arrested and has now charged two Canadians, Michael Kovrig and Michael Spavor, with national security violations. Canadians regard China's actions as hostage-taking and, according to recent polls,18 just 14 per cent of Canadians currently have a favourable view of China. Meng may be released, or she may be extradited to the U.S., depending on the outcome of her extradition hearing, but in the meantime, Canada-China relations have never been worse. That fact, however, is not a reason for Canada to encourage Taiwanese accession to the CPTPP. Rather, as Stephens has commented elsewhere,19 Taiwanese accession should be pursued because it is in the interest of Canada and the other members of the CPTPP to add to the strength of the organization by welcoming an economy such as Taiwan, which is an important global trader, a key player in global supply chains and is willing and able to accept CPTPP disciplines. China could still retaliate but is unlikely to further complicate the bilateral relationship simply because Canada is working with others to expand CPTPP membership. The multilateral nature of the CPTPP accession process provides Canada with a degree of insulation from direct Chinese pressure, while the fact that relations with China are poor diminishes what, in the past, might have been a constraining factor in terms of pro-China domestic influences in Canada. To look at it another way, were Canada to decide to eschew any support for Taiwanese accession to the CPTPP, it is very unlikely that this would do anything to improve Canada-China relations.

NEXT STEPS While COVID-19 has cast a pall over the global economy, governments need to take steps now to prepare for the post-pandemic era by laying the foundation for economic recovery. Taiwan's handling of COVID-19, meanwhile, has been exemplary. The CPTPP Commission has recently concluded its third meeting, conducted virtually under Mexico's chairmanship. Its statement20 focused on the need to maintain co-operation and open supply chains in a time of COVID-19, especially with regard to trade in medicines and medical products, agriculture and food supplies. With regard to expansion, the commission's statement said, "We support growing the value of CPTPP through accession and warmly welcome the interest shown by several economies to accede to the CPTPP by showing their willingness to meet the Agreement's high standards." That sounds like an invitation that Taiwan is more than capable of accepting. Taiwan is ready and willing to negotiate accession. The CPTPP needs to move

forward and accepting new members willing and able to meet CPTPP benchmarks is the best way to do this. The conditions are ripe, and the timing is right. Right now, it seems that no one wants to formally apply to join a club where the response may be "no," while the members of the club don't want to invite a potential member who may refuse or not be ready. To break this impasse, CPTPP participating economies, with Canada's active support, should solicit firm expressions of interest from potential members by a fixed date — such as the 2021 meeting of the CPTPP Commission — and subsequently launch the negotiations through establishment of an accession working group. Preparatory work needs to begin now. Canada as the second-largest economy in the CPTPP can play an important role in getting the accession process started, including supporting the extension of an invitation to Taiwan to begin negotiations. It's time to move from talk to action. 8 REFERENCE LIST Angus Reid Institute. 2020. "85% of Canadians say Chinese government has not been honest or transparent about pandemic." Angus Reid Institute, May 13. Accessed August 10, 2020. http://angusreid.org/covid19-china/. China Institute. University of Alberta. 2020. "Canada-China Trade: 2019 Year in Review." Accessed November 3, 2020. https://www.ualberta.ca/china-institute/medialibrary/media-gallery/research/analysis-briefs/canada-china-trade-2019-year-inreview.pdf. Government of Canada. 2019. "CUSMA Chapter 32 Exceptions and General Provisions." Accessed November 3, 2020. https://www.international.gc.ca/trade-commerce/ assets/pdfs/agreements-accords/cusma-aceum/cusma-32.pdf. Government of Canada. 2020. "Comprehensive and Progressive Agreement for TransPacific Partnership (CPTPP) – Statement on the Occasion of the Third Commission Meeting." Accessed August 10, 2020. https://www.international.gc.ca/tradecommerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/2020- 08-06-cptpp-statement_declaration-ptpgp.aspx?lang=eng. Government of Canada. 2019. "About the Comprehensive and Progressive Agreement for Trans-Pacific Partnership." Accessed August 9, 2020. https://www.international. gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptppptpgp/backgrounder-document_information.aspx?lang=eng. Government of Canada. 2019. "Comprehensive and Progressive Agreement for TransPacific Partnership (CPTPP) – Accession Process." Accessed August 9, 2020. https://www.international.gc.ca/trade-commerce/trade-agreements-accordscommerciaux/agr-acc/cptpp-ptpgp/accession_process-processus_adhesion. aspx?lang=eng. Government of Canada. 2019. "Public Consultation: Future accession negotiations of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership." Accessed August 9, 2020. https://www.international.gc.ca/trade-commerce/ consultations/cptpp-ptpgp/negotiations-2019-07.aspx?lang=eng. Government of Canada. 2020. "Taiwan." Accessed November 3, 2020. https://www. canadainternational.gc.ca/ci-ci/assets/pdfs/fact_sheet-fiche_documentaire/ Taiwan-FS-en.pdf. Government of New Zealand. 2019. "CPTPP meeting agrees guidelines to expand trade agreement." Accessed August 9, 2020. https://www.beehive.govt.nz/release/ cptpp-meeting-agrees-guidelines-expand-trade-agreement. Joint Communique of the Government of the People's Republic of China and the Government of Canada Concerning the

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INTERVIEW: CANADA, NATO, & THE NUCLEAR BAN TREATY

Paul Meyer
Canadian Defence Association Institute, January 19, 2021 |

Does the TPNW complement existing treaties? What are its aims and what gaps could it fill?

Supporters of the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) characterized it as filling a “legal gap”. This refers to the fact that of the three categories of WMDs—chemical, biological, and nuclear, only the first two categories are subject to comprehensive prohibition treaties. Nuclear weapons are only constrained by the 1968 (Nuclear) Non-proliferation Treaty (NPT). The NPT has a far lower standard of restriction on nuclear weapons. The treaty commits its state parties to work towards nuclear disarmament and oppose any proliferation, but the NPT is actually silent on the possession and use of nuclear weapons. Article VI of the NPT outlines an obligation to engage in good faith negotiations to bring the arms race to a cessation at an early date, and for nuclear disarmament. But the NPT lacks the comprehensive prohibition of the other treaties. What’s especially significant is that the TPNW also prohibits the use or threat of use of nuclear weapons.

Why has Canada not signed on to the TPNW? Could Canada benefit strategically by joining?

Currently, NATO is supportive of a policy of nuclear deterrence. That, I would suggest, is probably the main stumbling block for Canada with respect to the TPNW. Canadian officials have also cited the “ineffectiveness” of the treaty, in that none of the nine nuclear weapons-possessing states are supportive of it. Some have cited a lack of verification provisions in the TPNW, or its supposed incompatibility with the NPT. These objections

are rather weak. The purpose of the treaty over the longer term is to stigmatize nuclear weapons as immoral and illegal WMDs. It is intended to influence the attitudes of nuclear weapons-possessing states and their populations.

I think the negotiators of the TPNW took the most prudent route on verification, recognizing that attempting to elaborate verification provisions lacking input from nuclear weapons-possessing states would have yielded a product likely subject to ridicule by those states. Each situation with respect to a nuclear-armed state joining the TPNW is going to require tailored verification arrangements. Ultimately, it is not verification but the concept of deterrence that is the chief constraint for the adoption of the treaty by nuclear allied states like Canada. I think the Canadian government felt uncomfortable with its rejection of the TPNW, given its longstanding advocacy on disarmament matters. A resolution supporting the treaty was apparently passed at the 2016 Liberal Party's policy conference. The government rejected it, instead emphasizing the work that Canada has led with respect to the eventual negotiation of a Fissile Material Cut-Off Treaty (FMCT), long a priority for the NPT. While this treaty has been proposed for decades, there hasn't been even an initial day of negotiation on it. Canada continues to subscribe to the position that this treaty would have to be negotiated in the 65-nation Conference on Disarmament (CD), which has frankly been in a state of paralysis for over 20 years.

To ensure compatibility with the TPNW, Canada could try to pursue reform of nuclear policy within NATO, something which we have done in the past. In 2018, the House Standing Committee on National Defence published a unanimous report on Canada and NATO, [it] contained a recommendation that explicitly called for Canada to initiate a discussion within NATO on creating the conditions for a world without nuclear weapons. NATO functions based on consensus decision making, which means that even if there was support among some members for changing Alliance nuclear policy, it might not be possible for it to gain universal acceptance. This would leave the option of taking national action as has been done in the past—by Canada, for example under Prime Minister Pierre Trudeau, when he terminated any nuclear weapon role for Canada. Other NATO non-nuclear weapon states have dissented on NATO nuclear policy statements in the past through national "footnotes".

Does the re-emergence of great power competition put the world at risk for another nuclear arms race?

I would suggest we're already in one, especially in light of the modernization programs that nuclear weapons-possessing states are currently engaged with. The U.S alone has embarked on a nuclear force modernization program estimated to cost over a trillion dollars. We are witnessing a significant acceleration of the development of nuclear forces by all nuclear-armed states. This trend as well as the bellicose rhetoric that's occurring between Moscow, Beijing, and Washington are legitimate reasons for concern. The Trump Administration's Nuclear Posture Review from 2018 essentially expanded the rationale for nuclear weapons. Hypothetically, they could now be used to counter a significant cyber attack. Also of concern was the dismantlement of arms control by the Trump Administration including its repudiation of the CTBT, its termination of the INF Treaty, its withdrawal from the Open Skies Treaty, and its prevarication about extending the New START treaty.

I think, the JCPOA (aka the Iran nuclear deal), which Trump rejected does represent a solid, diplomatic solution to a nuclear non-proliferation challenge. I think it was a very positive attempt at ensuring that Iran's nuclear program remains civilian in nature, as it

has always claimed. Biden has suggested he will try to re-enter it. He has also discussed adopting a policy stipulating that the sole purpose of the U.S nuclear arsenal should be to deter a nuclear attack against America.

Biden may be able to end the development and deployment of low yield nuclear warheads, which were authorized under the Trump administration. There is a basis for cautious optimism going forward. But I think there are a lot of very vested interests that lie behind the maintenance of overkill capacity in the U.S nuclear arsenal, as well as in other countries. The Military Industrial Complex has ensured a network of bases and facilities that are tied in with local economies and congressional interests and which has pushed military spending in the U.S to astronomical levels. That pattern will be harder to break with under any Administration, but there is hope for improvement regarding arms control policy though.

What new strategies can be taken to build broader support for the treaty from across the aisle? Especially considering that many signees of the TPNW are in nuclear weapons-free zones, are neutral or anti-nuclear states.

The articulation of risk reduction measures is a potential area of common ground between nuclear weapons-states and non-nuclear weapons-states. The postponed 2020 Review Conference of the Nuclear Non-Proliferation Treaty is now scheduled for August of this year. There's a lot that could be done to try to ensure a positive outcome, especially since the 2015 conference failed to adopt one. It would be a helpful gesture if nuclear weapons states embraced, even partially, the various proposals that non-nuclear weapon states have put forth at NPT meetings. As a member of the 12-member nuclear non-proliferation disarmament initiative (NPDI) group, Canada has advocated for greater transparency. The NPDI has espoused a common reporting format that would require nuclear weapons states to share details of [their] nuclear weapons-related policies and postures. The reported actions of NPT nuclear weapon states would provide the basis for judging their progress in fulfilling their Article VI nuclear disarmament obligations in a more empirical and objective fashion. Regrettably, to date the nuclear weapons states haven't accepted the NPDI's transparency initiative.

There's also the concept of de-alerting measures—taking certain deployed strategic nuclear forces off high alert, where they have so-called "launch on warning" capabilities, which put any decision maker under extreme time pressure. With the quantity of secure-second strike forces that the US possesses, there is no reason for having any of its missiles on a "hair-trigger" alert. There is a long and alarming history of close calls involving nuclear weapons. Anything that provides time during a crisis to determine whether there was any kind of nuclear attack going on is extremely prudent.

The five nuclear weapons states (P-5) under the NPT have established a consultation process. Their activities to date have chiefly produced a glossary of nuclear weapon terms, which has been received with faint applause by the NPT membership. Consultation is fine, but I think there is an obligation under the NPT for those five states to, in effect, carry out negotiations to eliminate their nuclear arsenals. The European Leadership Network has recently posited the idea of a permanent forum for P5 states to discuss more ambitious goals that would be relevant to reducing nuclear risks.

I was disappointed when the Standing Committee on National Defense made a very explicit recommendation to the government to take a leadership role within NATO on the topic of nuclear disarmament. This recommendation received a disingenuous reply from

the government, stating that it agreed with the committee's recommendation, but there's no sign whatsoever that the government actually took any action on it.
Civil society groups are currently calling for a hearing by a Parliamentary committee, such as the Standing Committee on Foreign Affairs & International Development regarding the government's stance on the TPNW. I think that is a near term step that really is incumbent on a democratic government to take in order to show that it is responsive to views from parliament and the broader public concerned with the risks posed by nuclear weapons in the current international context.

The Gotterdammerung of Donald Trump

Louis Delvoie

January 22, 2021, Kingston Whig-Standard

After providing a translation of the term as meaning twilight of the gods, the Concise Oxford Dictionary defines Gotterdammerung as "complete downfall of regime." This is what we have witnessed in the final weeks of Donald Trump's presidency. A totally deranged man thrashing around in an effort to retain his position and the loyalty of his followers. And it has certainly not been an edifying sight. On the contrary, it has brought the United States into disrepute around the world.

In a ploy to curry favour with his base, he made an off the cuff decision to reduce the level of American forces stationed in Afghanistan and Iraq to 2,500 each. This was a decision made against the advice of his military advisers and for which he provided no strategic or policy rationale. It was simply meant to satisfy the demands of his followers for a decrease in America's military presence abroad. Similarly his decision to withdraw 9,000 American troops from Germany was not based on any objective assessment of the best deployment of American forces in Europe. In fact, it was little more than an act of petty revenge directed at German Chancellor Angela Merkel, who had refused to kowtow to some of Trump's demands of her. Foreign and security policy decisions made on a whim are detrimental to the national interests of the United States.

Then there was the sudden outburst of pardons issued by the president. The right to pardon is enshrined in the U.S. Constitution and has been used by numerous presidents over the years. It is usually invoked to correct perceived errors in the administration of justice or to release prisoners who have already served long jail terms. Trump has used it in order to release some of his political enablers, such as Roger Stone and Paul Manafort, who had barely begun to serve the terms to which they had been condemned. And in a manifest display of nepotism, he pardoned the father of his son-in-law, Jared Kushner, who had been convicted of fraud and had served two years in jail for his crimes. The least that can be said about this is that it represents an abuse of the constitutional provision.

In the midst of his vociferous campaign to have the results of the presidential election invalidated, Trump made the now notorious phone call to the secretary of state of Georgia. He invited the secretary of state to find some 10,000 votes that would secure his victory in that state. When the Georgia official pointed out that the votes had all been counted three times and in each case had given the victory to Joe Biden, Trump began to argue the point. At first he cajoled and then he threatened. In the same vein, he fired his attorney general, William Barr, who had declared that a thorough investigation by the Department of Justice had found no evidence of widespread fraud in the election. While attempts to falsify the results of a federal election should have resulted in a criminal prosecution, Trump escaped from this episode largely unscathed. His reputation, however, was further scarred.

Then came the events of Jan. 6. Addressing a very large crowd of his supporters, including right-wing extremists, Trump once again asserted that the election had been stolen from him and from them. He urged them to march on the Capitol and to make their views known in a meaningful way. What ensued was a frontal attack on the Capitol by an enraged mob. The protesters broke windows and doors to gain access to the chambers of the Senate and the House of Representatives. As legislators and staff cowered in panic, the mob ransacked offices and hallways and fought with the badly outnumbered police officers on duty. It was a scene reminiscent of events that have taken place in a very few Third World countries, but never in the history of the United States. The attack on the Capitol caused consternation throughout the country, and Trump was widely condemned for inciting it. Even some of his long-standing Republican supporters refused to condone it.

The reaction to the attack was not long in coming. In a matter of a few hours, Congress reconvened and affirmed Joe Biden's victory in the presidential election. Several members of Trump's White House staff and Cabinet resigned in protest. The FBI launched a nationwide investigation to identify and apprehend those directly responsible for the outrage, and within a week had arrested more than 200 of them. Tens of thousands of National Guard troops were deployed to the Capitol and other major sites in Washington to ensure that there was no repetition of his disruptive event in the run-up to Biden's inauguration on Jan. 20. And the House of Representatives launched impeachment proceedings against Trump, giving him the distinction of being the only president in U.S. history to be impeached twice.

In the immediate aftermath of the attack on the Capitol, Trump remained strangely silent for several days, perhaps a reflection of the fact that his Twitter account had been cancelled. He re-emerged after a few days, and the best thing he could think of doing was to head to Texas for a photo-op in front of his infamous wall along the Mexican border. He went on to try to defend the remarks he had made to the mob in Washington, saying that they had been "appropriate." Judging by what happened in the Capitol building that day, it would be fair to conclude that the man is totally tone-deaf. The impression is further reinforced by his failure to apologize or to express any regrets. His repeated denunciations of violence do not go far enough to meet the needs of the situation.

Trump's final days in office simply confirmed what so many have known for so long — that he was monumentally unfit to be president of the United States. In a column published a few weeks ago, I concluded that he was "a spiteful and deranged narcissist." His recent doings only confirm the validity of that judgment. In four short years, he has debased the presidency, divided the American body politic to an extent not seen in 150 years, and ruined the image and reputation of the United States on the world stage. His obstinate mishandling of the COVID-19 pandemic is only one more addition to an overly long charge sheet. He will certainly go down in history as the worst president that the United States has ever had.

For other recent articles by Louis, visit: https://www.thewhig.com/

Three years into detention of two Canadians, Canada remains a bewildered bystander

China occupies the high ground in the relationship with the U.S., and there is no reason to expect tentative coercive action will do anything more than making the problem worse.

Gar Pardy

Hill Times, January 27, 2021

The shame continues. The days of the third year of Michael Korvig's and Michael Spavor's imprisonment in China inexorably roll on. Soon, over 800 days will be removed from their lives and so far, there is no action by the Canadian government to suggest that number will not double. The possibility of small changes in their contact with families or with Canadian government officials is displayed as if this is significant rather than actions that should be normal.

This shame remains Canadian. The actions of the government of China are part of its normalcy. The individual has no status except to provide examples of the ability of the state to impose its will. As with all totalitarian regimes concern is for the inchoate "masses" and rulers; the individual disappears.

The shame is Canadian. We profess the individual is the foundation of our existence and government is created for our protection. It is the essential if not the sole objective of those we entrust with that responsibility. Nearly forty years ago we created a Charter providing greater certainty for the individual and created restraints on our government.

The legacy of another Trudeau lives on and while it does not have the ringing opening of "We the people" the Charter is transfused with the requirement that government protect

all Canadians. There are strong prohibitions against arbitrary actions affecting our daily activities.

In the intervening years, it is a rare case that arrives at the Supreme Court of Canada that does not involve the application of Charter rights and freedoms for the individual. These rights and freedoms now permeate all levels of judicial decision making.

The shame is Canadian. Our mutual sanguinity must be central to the decision making by those selected to provide for our well being. It cannot be conditioned by concerns arising from foreign policy or economic considerations. Nor can it be explained away by suggestions that appropriate action today might occasion possible adverse action by others tomorrow.

Nowhere is that more pronounced than in the lack of action by the government in protecting the well being of the two Canadians imprisoned by China. The Prime Minister early on in their imprisonment commented that to exchange them for a Chinese citizen detained in Canada, could affect the well being of other Canadians, in other situations, in the future. In doing so the Prime Minister is promoting a supposition based on fear to cover the lack of appropriate action.

Today, with a new American government, there is a reiteration of another earlier hope that action by other government might aid in the release of Mr Kovrig and Mr Spavor. In their initial conversation it is reported that the Prime Minister "pressed" President Biden "for help" in securing the release of the two Canadians. This is specious, misleading and not worthy of a respectable sovereign government especially one which has the mechanisms to make the arrangements directly with Beijing.

As well, there continues to be the false expectation that the B.C. court involved in deciding the legal aspects of the American request for extradition will come to a conclusion that might eliminate the need for a political decision by the Canadian government.

Already, the legal process associated with Mme Meng's extradition has gone on for as long as Mr Kovrig and Mr Spavor have been imprisoned in China. There can be no expectation the court involved or others courts which ultimately will deal with appeals will reach conclusions that will lead to their release in any time less than several more years.

At this time many countries, especially western ones, are considering their future relationship with China. The United States has the greatest need to establish a comprehensive policy and there is hope that action acceptable to other countries will emerge in the coming weeks. Such a policy should offer some measure of guidance for the world in dealing with the world's foremost and most dynamic economy.

In the midst of the out-of-control pandemic in the United States this is not happening. So far, the tentative signs suggest a continuation of the Obama era American "repivot" on Asia and Trump era policy of economic measures to limit China's

role in the American economy. China occupies the high ground in that relationship and there is no reason to expect tentative coercive action will do anything more than making the problem worse.

There is no reflection in Washington's actions the world has changed. Part of that change is the widespread acceptance of view the United States is part of that change. There is a global lack of expectation the United States has much to offer in assisting other countries in their search for a new modus-operandi in seeking and establishing an approach offering cooperation with China.

The Canadian shame continues. In all of this Canada is a bewildered bystander. Its hands and mind wander aimlessly while the lives of two Canadians teeter in the balance. We ignore the action Canada can take on its own to resolve its specific bilateral problem, so that it can join the common effort to deal with the global issues associated with China. Instead, there is increasing prospect Michael Kovrig and Michael Spavor will join John Ridsdel and Robert Hall as casualties of the inability of the Canadian government to accept its basic responsibility of protecting Canadians.

How will President Biden fare? The first 100 days could tell

It is hard to anticipate much collective will in Washington when retribution is the emotion of the moment

Derek H. Burney,

National Post, January 19, 2021

When Joe Biden takes charge after the inauguration on Jan. 20, it will be with a very ambitious agenda, one he has described as "the most progressive of any U.S. administration." But he would be mistaken to interpret the election verdict as a mandate. He barely campaigned on his platform and won what ultimately became a referendum on Donald Trump primarily because he was the alternative. Choices he makes on priorities for the first hundred days will set the tone for his ability to get things done.

His first task will be to deal with the fallout from the mob attack on the Capitol building, incited by President Trump to protest the election result. The day of desecration ended ultimately in resilience with formal ratification of the election result thus reinforcing the most fundamental tenet of any genuine democracy — the peaceful transfer of power. But the incident has cast a pall over Washington and the fabric of America's democracy. The nation is sharply divided politically. Public trust in governance and in the media are at all-time lows in America.

Trump was impeached again by the House of Representatives, including 10 Republicans, but is less likely to be convicted by a two-thirds Senate vote. Instead of clearing the air, the impeachment initiative has intensified an acrimonious political mood with threats of more violence at a time when many Americans wanted to exhale and move forward.

Public trust in governance and in the media are at all-time lows in America

Biden could designate a bipartisan commission to investigate the assault on the Capitol building and ensure greater accountability for the perpetrators, their enablers and the defenders who were ill-prepared and grossly undermanned. The objective would be to ensure that the heart of American democracy is less vulnerable in future. For the inauguration, it is literally an armed camp.

Given the chaos on Capitol Hill that prompted the impeachment, Biden's pledge to "heal the nation" and rekindle public trust now takes on greater urgency. He has already promised to bring a US$1.9 trillion COVID relief package to Congress immediately after the inauguration and has committed to deliver 100 million doses of vaccines in the first hundred days. (Another spending bill on infrastructure and climate change is expected in February.) The pandemic is still the dominant concern of Americans and, as Ezra Klein has written, the government needs above all to demonstrate that it can "help people fast." Biden might also commission a non-partisan, blue ribbon panel to assess what went right and wrong in responding to COVID, along with guidance for the future.

Another sensible move would be to reduce the transition period in future to one month instead of the outdated and ragged two and one-half months.

Along with COVID relief, infrastructure may also offer scope for common ground. Biden's direct personal relationship with Republican Senate leader Mitch McConnell could help. But potentially fruitless deliberations on impeachment may disrupt his legislative objectives.

On day one Biden intends to follow Trump's example and make maximum use of executive powers to overturn much of Trump's handiwork on deregulation, immigration and climate change by fiat bypassing Congress.

By capturing both Senate seats in the Georgia runoffs the Democrats moved into a 50/50 tie with the Republicans, leaving Vice-President Kamala Harris with the casting vote. It should certainly make confirmation of Biden's cabinet choices easier. With a tenuous Senate majority, he could also move to increase taxes for corporations and wealthy individuals, but a political calculus may temper the timing, if not the package.

Joe Manchin, the Democratic senator from West Virginia, has signalled publicly that he will not support some radical elements of the Democrat agenda like packing the Supreme Court or ending the filibuster that sustains the need for 60 votes on key legislation or vestiges of the Green New Deal. Unanimity among Democrats is not a sure thing.

Biden intends to follow Trump's example and make maximum use of executive powers

What Biden has going for him is an innate ability to work with Congress, better many believe than any of his predecessors since Lyndon Johnson. He will need that and then some. Biden also has a generally uncritical media, many of whom have been unable to contain their visceral hatred of Trump. Despite an FBI criminal investigation into allegations regarding Biden's son Hunter, the mainstream media has ignored the issue.

There is no consensus in America on such fractious issues as health care, energy versus climate change and social disorder, nor on taxes, so Biden will be constrained on what he can achieve. He should start with issues that have some prospect for success having learned the hard way under president Barack Obama that time and energy can be squandered if the priorities selected have little chance of approval. Despite having a majority in both Houses of Congress in its first two years, the Obama administration's level of achievement was dismal.

On foreign policy, the initial changes will likely be more on tone or style than any radical policy shift. Boldness is less likely from a team of conventional, foreign policy elitists more inclined to manage processes than to respond aggressively. (His State and National Security nominees have been snidely dubbed by some as the "Obama B team.")

Biden will seek to repair some of the damage to the Western alliance, aiming for more consultation and collective alliance responses to looming challenges rather than unilateral impulses.

He may revert to form and choose Canada for his first foreign visit.

China and Russia each pose significant threats to the U.S. and its allies and these will be inescapable if not dominant priorities. Recent cyber-attacks on America should be an easy target for enhanced alliance vigilance. Consensus on other threats will not come easily. Chafing at their treatment by Trump, the Europeans have already moved out front concluding an investment agreement with China, one that the Americans tried unsuccessfully to forestall. Meanwhile, traditional allies in Asia concluded a trade agreement with China, action that runs counter to the objective of the Trans-Pacific partnership that Trump vehemently spurned.

Actions to bolster rather than undermine institutions like the WTO and WHO may be easier to achieve.

He may revert to form and choose Canada for his first foreign visit

If Biden tries, as he has stated publicly, to reinstate the nuclear deal with Iran, he may lose in a fight with Congress. Besides, with Iran's presidential elections scheduled in June, now may not be a propitious time to expect compromise from Tehran.

On the Middle East more generally, the U.S. could build on Trump's achievements bridging the gap between Arab States and Israel and laying the groundwork for more of

the same — actions that would isolate rogue regimes like Iran and Syria while consolidating a new basis for regional stability.

Gridlock tends to be endemic in Washington. Whether Biden can overcome that tendency will be his most severe test. It is hard to anticipate much collective will when retribution is the emotion of the moment. As Ian Bremmer wrote in Time, “We do not have a vaccine for our political divisions.” Biden faces daunting challenges at home and abroad. His most difficult task will be to determine how best to respond in a manner that will help restore trust in America’s democracy.

Biden’s Inauguration Speech

Paul Heinbecker:

The Ottawa Citizen

January 20, 2021

‘The speech frankly acknowledged the divisions that plague governance in America.’ jpg

It was an excellent speech, very well delivered, one that rose to the sombre, but hopeful occasion. It faced the challenges the administration will confront but was the polar opposite of the American-carnage inaugural speech of his predecessor. Biden made clear that he is not just not-Trump; he is anti-Trump. He set out a vision that Ronald Reagan or John Kennedy might have given, one that tempered great aspiration and responsibility with humanity and confidence in the American people.

The basic themes were of unity and inclusion, realism and hope. The challenges were clearly faced: the cascading crises of the pandemic, unemployment and economic recession, racial injustice and political extremism, a climate in crisis. The speech frankly acknowledged the divisions that plague governance in America, maintaining that “disagreement does not have to equal disunion …. Politics doesn’t have to be a raging fire destroying everything in its path. Every disagreement doesn’t have to be a cause for total war.” He said further that “we must end this uncivil war that pits red against blue, rural versus urban, and set aside politics and face them as one nation.”

All in all, a fitting speech on a fraught occasion addressed to Americans of all stripes.

Links

CTV Diplomatic Community, January 26, "Covid, covid, covid" Who's getting the vaccine?

https://www.ctvnews.ca/video?clipId=2126835

CTV News Diplomatic Community, January 19 - Immigration optimism!!! at a time of crisis –

https://www.ctvnews.ca/video?clipId=2122076

CTV News, Diplomatic Community, January 12 - The US catastrophe: where now?

https://www.ctvnews.ca/video?clipId=2117481