

Why Canada Must Release Meng Wanzhou

Like 'kidnappings' of the past, the arrest of Huawei's CFO could bode ill for the 'abductor'

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Global Research, November 02, 2020
[Asia Times](#) 30 October 2020

Region: [Asia](#), [Canada](#)
Theme: [Law and Justice](#)

Few things are as dangerous as a poorly thought-out kidnapping. Kidnappings are serious business, often with unintended consequences. History is replete with dimwitted criminals who engaged in them on a whim, only to discover adverse outcomes far beyond their imagining. One dramatic example happened 90 years ago this week.

On October 24, a mother with young children is kidnapped. She is the cherished wife of an important man whom the kidnapper's gang is in competition with. The plan is that by abducting her, the kidnapper will create unbearable psychological pressure on her husband, force him to capitulate, or at least damage his resolve.

The woman is first humiliated, then tortured, then killed. But the leader does not capitulate, break, or weaken. Instead, over the next 19 years, he wages war without quarter on his enemies and eventually drives them into the sea. Decades later, he will write this [poem](#) for her:

The lonely goddess in the moon spreads her ample sleeves
To dance for these faithful souls in the endless sky.
Of a sudden comes word of the tiger's defeat on earth,
And they break into tears of torrential rain.

The poet, of course, was Mao Zedong. The kidnapped woman was the beloved wife of Chairman Mao, Yang Kaihui, the mother of his three children. In the winter of 1930, the Kuomintang kidnapped her and her son, in order to demoralize Mao and put pressure on him to capitulate. She was executed in Changsha, on November 14, in front of her children, at the ripe age of 29.

Though utterly helpless while she was being held hostage, Mao never forgave the kidnappers for their depravity, cowardice, and misogyny - victimizing women and children as weapons in a war - and he ground his enemies into the dust, and then built a state where such atrocities could never occur or go unpunished again.

The state-directed, extraterritorial kidnapping of Huawei chief financial officer Meng Wanzhou is widely seen as a similar act of infamy, misogyny and thuggery, by a similar class of disreputable individuals.

"Lawless, reasonless, ruthless ... vicious" is the [official diplomatic pronouncement](#) of the Chinese government. It is certainly a violation of [international law](#). How this will play out

ultimately, and what retribution will be meted out, remains to be seen, but retribution there will surely be for this “extremely vicious” act.

George Koo has pointed out the “rotten underpinnings of the case” in a previous [Asia Times article](#). Most people understand that Meng is not guilty of anything other than being the daughter of Ren Zhengfei, the founder of Huawei.

Huawei, as a global technological powerhouse, represents Chinese power and Chinese technical prowess, which the United States is hell-bent on [destroying](#). Meng has been kidnapped as a pawn, as a hostage to exert pressure on Huawei and the Chinese government, and to curb China’s development.

In a maneuver reminiscent of medieval or colonial warfare, the US has explicitly [offered to release](#) her if China capitulates on a trade deal – making clear that she is being held hostage. This constitutes a violation of the [UN Convention on Hostages](#).

The outcome of this judicial kidnapping will determine US and Canadian China policy for decades to come: whether a rapprochement is possible in the future, or whether relations will spiral into a cycle of acrimony, vengeance, and ultimately catastrophe.

What is on trial, of course, is not Meng, or Huawei, but the judicial system of Canada and the conscience, good sense, and ethics of its ruling class: whether it will uphold or undermine international notions of justice.

If the Canadian judiciary and its ruling classes fail this test, Canada risks being driven, metaphorically, into the sea by a determined Chinese leadership. The global community that upholds international justice could only [concur](#).

Key facts about the Meng Wanzhou case

The Canadian government arrested Meng on December 1, 2018, as she was transiting Vancouver on a flight to Mexico. The arrest was made on the demand of the US District Court for the Eastern District of New York. The initial charge was “fraud and conspiracy to commit fraud to circumvent US sanctions on Iran.”

Of course, the US government knew quickly that these allegations could not constitute an extraditable charge. Ottawa does not subscribe to US sanctions against Iran – it actively [encourages trade with Iran](#) – and therefore business dealings with that country could hardly be a crime in Canada.

In fact, the unilateral US sanctions are a violation of international law. Furthermore, like most jurisdictions in the world, Canada has a requirement of “double criminality”: unless the alleged crime is a crime in both jurisdictions, you cannot extradite.

So an alternative case had to be constructed. The case that was concocted alleged that because Meng had lied to a bank, she must be extradited for fraud. Of course, the bank was British (HSBC), the “crime” happened in Hong Kong, the accused was a Chinese national, and the arrest was in Canada. Hence she must be extradited to the US for “fraud.”

As a setup for a lame joke this would not pass, and as a legal argument it is beyond farce. The US court claimed standing to charge her because transactions with HSBC had, or would have, transited US servers in New York for a few milliseconds.

Here are some key things to remember about this case:

1. Even if the allegations of so-called “fraud” were true, without the political pressures, such an issue would largely be a private matter between HSBC and Meng.
2. None of the transactions between HSBC and Meng occurred in the US. The funds only transited through the US system because of the way of the global banking system is set up for dollar clearance – this was the pretextual technicality used for jurisdiction and charging. (The funds could equally have been set up to transit through an alternative system, bypassing US servers and risk.)
3. No non-US person has ever been charged for “causing” a non-US bank to violate US sanctions in the past. In similar cases, it’s usually a small fine to a corporation.
4. It has been shown that the US attempted the abduction of Meng in six European and Latin American countries, all of which rejected US demands. The US decided on Meng’s momentary transit through [Canada](#) because it considered Prime Minister Justin Trudeau’s government to be the most pliable and sycophantic to its cause.
5. US President Donald Trump has made statements that Meng could be used as a [bargaining chip](#) in the US-China trade deal, showing the clearly political nature of the arrest. Confidential Royal Canadian Mounted Police (RCMP) documents also note that the arrest was “highly political.” It’s widely suspected that the law-breaking John Bolton was the instigator behind the action.
6. HSBC was already under prosecution by the US government for prior unrelated violations; rather than doing due diligence in their loan or clearance processes or the law, it decided to collaborate with the US government to entrap Huawei and Meng.
7. The arrest itself involved massive abuses of process: irregularities in detention, notification, search, seizure, constituting themselves violations of international law and bilateral agreements.
8. The court case has also been full of abuses, including the hiding of key exculpatory documents by the prosecution; and denial of access to key documents to the defense (on the basis of national security and “damage to China-Canada relations”).
9. The Trudeau government is going on with charade that it is a hapless damsel obliged to follow US strong-arm demands. But Section 23 of the Canadian Extradition Act gives the government the authority to terminate this case at any time. Extradition is made on the discretion of the government, and by refusing to act, the Trudeau administration is abdicating its responsibilities to the Canadian people and the cause of justice.

The fraudulent charge of fraud

Meng Wanzhou’s lawyer has argued, “It is a fiction that the US has any interest in policing interactions between a private bank and a private citizen halfway around the world.... It’s all about sanctions.”

Jurisprudence upholds this: For a fraud charge against Meng to stick, it would have to show 1) deliberate misrepresentation/deception to HSBC as well as 2) harm or risk of harm to HSBC. In other words, Meng’s lies would have put HSBC at risk for fines and penalties for

sanctions busting.

Note, however, that the bank could not have been held liable, if it could be shown that they had been “deceived” into breaching US sanctions by Meng as alleged. If Meng had “lied” to the bank, no harm could have occurred to the bank. The bank would have needed to act deliberately to face any risk of liability.

On the other hand, documents, slides and e-mails released later actually show that HSBC had been informed of the relationship between Skycom and Huawei before Meng’s testimony as well as during the meeting, so the allegation of deception doesn’t hold up. (Slides 6 and 16 used in Meng’s presentation to HSBC were omitted to make it seem as if she had deceived the bank, but in full context, show there was no deception.)

The conclusion is simple: There was either no lie, or no harm. Regardless, there was no fraud.

In other words, the Canadian government had no case.

Double criminality and Justice Holmes

Heather Holmes, associate chief justice of the British Columbia Supreme Court, presided over Meng’s interrogation. Like the fascist KMT warlord who kidnapped and tortured Yang Kaihui, she [interrogated](#) Meng Wanzhou and her lawyer in sibilant tones. Tell me about “double criminality,” she entreated gently, as if their arguments would be weighed in her judgment.

Meng’s lawyer, Richard Peck, answered with common sense: Because Canada doesn’t have sanctions against Iran, there would be no liability to the bank, hence no risk to the bank, hence no criminal “fraud.”

It also couldn’t constitute fraud in the US, since if what the government argued was true – that Meng had misrepresented facts to the bank – HSBC would not be liable because the bank would be an “innocent victim,” hence not liable for any sanctions.

“All risk is driven by sanctions risk in the US,” Peck stated.

Astonishingly, Justice Holmes ruled against Meng, claiming that one should not look for correspondence or equivalence between the statutes to determine “double criminality” in fraud. Instead, she claimed that one had to transpose the context and the coherence of the statutes of the demanding country to render a decision.

Even though Canada didn’t have sanctions against Iran (thus no illegality or risk of harm, and hence no fraud), she stated that she still had to interpret the demand for extradition by “transposing the environment” that led the US to make the demand. In other words, Canada had no sanctions on Iran, but she had to imagine “the environment” – in other words, “as if Canada had sanctions on Iran” – to render the decision.

In so doing, she was able to smuggle in illegal US sanctions by installing a legal back door – into a country that had lifted sanctions.

In other words, the illegal “environment” of US sanctions overruled the clear, plain letter of Canadian law. Neither was any consideration given to the odious political “environment”

driving the abduction.

Why did the good judge see fit to make a mockery of Canada's own laws and sovereignty, and subjugate Canada to US extraterritoriality? Why did she contort herself to support the blatant illegality of US sanctions? Does she realize she has set her country barreling down the wrong lane of history?

It's not known if Justice Holmes asked for the clerk to bring her a basin of maple syrup to wash her hands after she passed judgment. But it would have been understandable for such a corrupt, consequential, and deeply catastrophic judgment.

But why is US going after Huawei?

China has been designated the official [enemy](#) ("revisionist power") of the US, because it poses a threat to [US dominance](#). As such, the US is engaged in "[multi-domain](#)" hybrid warfare against China to attack and bring China down.

The domains of warfare that involve the US assaults against Huawei are the domains of: tech war, trade war, economic war, lawfare, and cyberwar. Huawei is one of the key pillars of China's technological and economic strength. It is the world's largest and most advanced telecom corporation, and in 5G (fifth-generation telecom technology) it owns one-fifth of the base patents in the field.

Huawei is also building the digital infrastructure to accompany the Belt and Road Initiative (the "digital silk road"). This not only allows China's economy to grow, but also prevents the effects of military blockade at the South China Sea. Its hardware makes it harder for US surveillance to tap.

These are the key reasons why it is being attacked and taken down. Aside from kidnappings, the US has been waging this warfare by trying to prevent other countries from signing deals for Huawei 5G infrastructure. It is alleging that Huawei would render these networks insecure: Huawei would spy on them for the Chinese government, or even open them for Chinese cyberwarfare.

Actually, the truth is exactly the inverse. A worldwide Huawei system could [create problems](#) for the US global panopticon upon which US "unipolar" dominance relies on: its ability to eavesdrop on individuals, corporations, the leaders of countries, as well as military communications. With non-Huawei routers, due to the subservience and mandated cooperation of US companies, cyberspace as a domain of warfare is always guaranteed to be permeable and amenable to US surveillance and attack.

In other words, the US [taps routers](#) globally to [spy](#) on individuals, companies, governments, and nations: "Routers, switches, and servers made by Cisco are [boobytrapped](#) with surveillance equipment that intercepts traffic handled by those devices and copies it to the NSA's network."

Regarding specific allegations of Huawei's "spying," Huawei has been completely transparent and has handed over its source code to relevant Intelligence agencies for detailed analysis, year upon year. No spying or intentional backdoors have been found: For example, German Intelligence [found no spying](#), and no potential for spying, and British Intelligence [also found none](#).

On the other hand, the US National Security Agency, in a program called [Shotgiant](#), spied extensively on Huawei to look for links between Huawei and the People's Liberation Army, evidence of back doors and spying, and vulnerabilities that they could exploit. This extraordinary spying (revealed by WikiLeaks) showed no evidence of back doors, spying or connections with the PLA.

The Shotgiant disclosures [showed](#) that US allegations were projection: NSA actions “actually mirror what the US has been accusing Huawei of potentially doing.” The NSA did, however, steal Huawei's proprietary source code at the time, [and had plans to spy](#) on other countries by using this information and had sought to compromise security in general. Of course, these kinds of [unethical exploits](#) create dangers for [everyone](#).

Theft and exploits notwithstanding, using Huawei hardware could still make it harder for the US to surveil networks – Huawei has declared it refuses to plant back doors.

Guo Ping, the chairman of Huawei, was quoted in [The Verge](#): “If the NSA wants to modify routers or switches in order to eavesdrop, a Chinese company will be unlikely to cooperate.” Guo argues that his company “hampers US efforts to spy on whomever it wants,” reiterating its position that [“Huawei has not and will never plant back doors.”](#)

[Wired magazine](#) has also confirmed that Huawei is an obstacle to NSA surveillance: Telecom-equipment makers who sell products to carriers in the US “are required by law to build into their hardware ways for authorities to access the networks for lawful purposes.”

The only allegations of “Huawei vulnerabilities” with any backing evidence shown to date have been in a Bloomberg “gotcha” article, which claimed that in 2009 and 2011 some telnet connections in Huawei equipment for Vodaphone in Italy were insecure. Vodaphone, however, refuted these allegations.

The hardware (Baseboard Management Controller) that Bloomberg alleges is “insecure” cannot access any data in any normal configuration Furthermore, built-in [Telnet access CLI connections](#) are unexceptional, and did not pose meaningful risk.

Since then further allegations have been made by the [US government](#) (leaked to the [Wall Street Journal](#)), but always without proof. These allegations may be recycled and refuted old allegations, or they may just be pure invention, which why they cannot issue the proof. Of course, Huawei [refutes these allegations](#) and always demands proof. The proof is never forthcoming, because there is none.

Here is a solution that allows everyone to step back from the brink. Back off on the unsubstantiated, unverifiable “back-door spying” canards. Stop the spying and harassment of Huawei, and stop the projection. Stop the interference with its global contracts: let each country evaluate them on their own merits. Stop the fraudulent prosecutions that recycle settled matters.

Above all, stop taking hostages: This is a violation of international law. Canada must release Meng Wanzhou, immediately. And it must find ways to repair relations and find ways cooperate anew with China. The benefits of success will be tangible and immense. The consequences of failure, immeasurable.

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