COVID-19 — The Unexpected Game Changer: Artificial Intelligence and the Rules-Based International Order

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Issue

Artificial intelligence (AI) is reshaping international relationships and disrupting existing international governance frameworks. Canada is uniquely positioned to leverage AI to advance the interests of the rules-based international order (RBIO) by calling for the creation of a peer review mechanism at the Organisation for Economic Co-operation and Development (OECD) to enforce the OECD Principles on Artificial Intelligence, and leveraging AI to strengthen international criminal justice prosecutions.

Background

The RBIO relies on political leaders who understand, respect and "play by the rules" of established foreign policy practices. The rise of populism, nationalism and disruptive technologies is undermining these key principles, threatening internal state affairs and the legitimacy of the international system as a whole. AI is already integrated into every facet of modern life, making it one the most significant technologies of the digital era. However, a significant gap has emerged between the private innovation of AI and the public policy to manage it. Without adequate governance, the unregulated use of AI will certainly threaten the already fragile RBIO. The United States and China receive the vast majority of global investment for technology and are fiercely competing over its industry and military applications (Perrault et al. 2019). Russia lacks a high degree of global tech-industry integration, relying instead on the manipulative and covert applications of AI. The European Union continues to be a legislative leader following the momentum and international acclaim of the General Data Protection Regulation (GDPR), using AI as an industry bridge between member states and as a human-centric tool supporting global governance. Smaller and medium-sized states such as Canada must recognize this balance of power, and position themselves alongside like-minded countries that share their interests and values.

Despite these limitations, Canada was among the first few countries in the world to adopt a national AI strategy in 2017. The Pan-Canadian AI Strategy provides an average of $25 million per year between 2017 and 2022, which supports three industry super-clusters in Edmonton, Toronto and Montreal (Canadian Institute for Advanced Research 2019). This expanded Canadian jobs in AI by more than 500 percent since 2017, securing an additional half-billion USD of venture capital funding in 2018 alone. Under the Trudeau administration, Canada has met demands for greater accountability and governance through the Responsible Use of AI Mandate (2019). Equally important, however, is how Canada chooses to represent these domestic values in the international arena, in competition with foreign state and non-state actors that are considerably more powerful and better funded. By maintaining a leadership position in AI governance, Canada has the opportunity to foster key state partnerships in advancing a human rights-based AI agenda, contributing to the overall security of the RBIO, which will become even more important in a post-COVID world.

Enforcing the OECD AI Principles

AI is challenging democracy and paving the way for illiberalism, in particular in a COVID-19 context. Hungarian Prime Minister Viktor Orbán passed a law permitting him to rule by decree during COVID-19 — an extraordinary power that is likely to continue in perpetuity (Walker 2020). Orbán is just one example of how a leader is using the global pandemic to normalize extraordinary power and entrench illiberalism. With this new-found power, leaders can deepen civilian surveillance. Once a government sets a surveillance precedent, surveillance becomes the norm. Intensifying surveillance is possible even though the GDPR is in place. Governments could use biased AI surveillance to inform policy which could lead to discrimination and reinforcement of social inequality (Feldstein 2019). The pandemic highlights why governments should share policies and knowledge, and promote coordination and collaboration (Calzada 2020).

Similarly, the 2016 US presidential election highlighted the far-reaching impact of the unencumbered political use of social media. Political parties used cyberspace to affect public opinion, including the targeting of individuals and special interest groups (Anderson 2017). This, combined with the massive amounts of data collected by tech companies (such as Google and Facebook selling data to the highest bidder), raises concerns about the impact AI has on domestic politics and international relations (Bessi and Ferrara 2016). These privacy questions have become even more relevant given the COVID 19 pandemic, as the increased collection and use of personal data raise questions about what will happen to such data after the crisis. Human rights-centric governance norms and laws that include limits on how data can be used — most notably the OECD Principles, which member states adopted in May 2019 — are a good start, but they are not enough. The stakes are too high. At a minimum, resources need to be invested in order to ensure member states adhere to the principles to which they have committed themselves, which has become even more vitally important in the pandemic and eventual post-pandemic contexts.

An AI peer review mechanism could help governments share policies, knowledge, and promote coordination and collaboration. Such efforts could be achieved through an AI peer review mechanism. Specifically, Canada should initiate the creation of such a forum within the OECD system that would be responsible for ensuring compliance of the OECD Principles. Such a mechanism would allow OECD members to experience positive peer pressure by reviewing and assessing members' records with respect to AI policies, laws and institutional frameworks at regular intervals, as in other areas of global governance (Thompson 2018). With such a peer review mechanism, governments could be held accountable for their AI policies and practices against well-established international norms and rules.

International Criminal Justice

One of the pillars of the RBIO is that no one is above the law. Yet impunity for mass abuses is one of the most pressing threats to the order. Canada has the unique opportunity to leverage AI to help combat impunity and rising illiberalism by strengthening international criminal justice. For example, there have been more than 1,400 war crimes committed in Syria since 2011, which demonstrates the pervasive gap between human rights norms and justice (Koelbl 2016). The United Nations and several non-governmental organizations sort, catalogue and preserve terabytes of technologically derived evidence in the hope that these crimes can be brought to court. In April 2020, Germany made the first step toward bringing Syrian war criminals to justice by prosecuting two generals of the Assad regime for their role in Syria's state-sanctioned torture program. To bring criminals to justice, prosecutors need documentation that is probative, relevant and reliable — and AI has the unprecedented capacity to find documentation meeting this evidentiary standard (International Bar Association 2016). Canada has already taken a leading role in international criminal justice by helping establish the International Criminal Court. Developing evidence-sorting AI would be yet another invaluable Canadian contribution to international justice and would help Canada promote the RBIO.

Next Steps

COVID-19 is highlighting the fragility of human rights and showcasing the importance of international cooperation to address today's pressing issues. Canada is in a prime position to lead efforts to harness AI for the promotion of transparency, accountability and the advancement of a cooperative, strengthened RBIO. There is no single policy that any government can make to entirely eliminate the potential negative effects of AI; however, there are a few different ways governments can address this growing issue.

Recommendations

1. **Canada should advocate that a collective increase of resources within the OECD be put toward policing data collection and use.** Increasing resources available for policing data collection and use will remedy a main issue noted in EU efforts to strengthen online privacy through the GDPR policy. Allowing for stronger enforcement of regulations regarding data collection is vital to maintaining an effective regulatory framework.

2. **Canada should lead efforts to establish a permanent AI peer review mechanism within the OECD system.** A multi-stakeholder peer review mechanism to enforce compliance with the AI principles would allow for positive peer pressure and the sharing of best practices with regard to AI. It would strengthen international cooperation and address the need for designing AI policies, decision making and institutional frameworks within the AI system with accountability and responsibility.

3. **Canada should invest in developing AI capable of sorting digitally derived evidence based on the evidentiary standard of being probative, relevant and reliable.** By developing this AI, Canada can help close the international justice gap and advance the RBIO.

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