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The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

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● (1530)

[*English*]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, let's bring this meeting to order. Thanks to all of you for attending.

We'll continue with our study pursuant to the order of reference of Thursday, April 14, 2016, of section 20 of the Freezing Assets of Corrupt Foreign Officials Act in the statutory review of the act. As you know, of course, we're discussing SEMA as well.

In front of us this afternoon are two professors. One is Kim Richard Nossal, who is a professor at the Centre for International and Defence Policy at Queen's University.

Welcome.

On video is Mr. Goldman, the executive director of the Center on Law and Security at the New York University School of Law.

Welcome to the committee, Mr. Goldman. Can you hear us?

Mr. Zachary Goldman (Executive Director, Center on Law and Security, New York University School of Law, As an Individual): I can hear you very well. Thank you.

The Chair: With that, we'll start with Professor Nossal's presentation. We'll have both presentations and then go right into questions for the equivalent of roughly an hour. We'll go to other witnesses at 4:30.

On behalf of the committee, welcome.

I will turn it over to you, Professor.

Professor Kim Nossal (Centre for International and Defence Policy, Queen's University, As an Individual): Thank you very much, Chair.

I'd like to thank you all for inviting me to participate in your consideration of the effectiveness of sanctions as a tool of Canadian statecraft.

I should begin by stressing, if you haven't already figured out from what is not in my bio, that whatever assistance I might be able to afford you today is limited to a broad consideration of sanctions as a foreign policy tool. Mine is an academic's, not a practitioner's, perspective. It's academic in the sense that I'd like to pitch the focus more broadly, to address some of the general questions posed in the excellent backgrounder by Allison Goody, Brian Hermon, and Robin MacKay.

The perspective is also academic in the sense that it's broadly historical. I've been looking at the use of sanctions in foreign policy since I began my academic career in the mid-1970s. As a young and callow academic, I was particularly interested in understanding the enthusiasm for international sanctions, given the failure of this tool of statecraft under the League of Nations in the interwar period and the long-running sanctions regimes in the post-1945 period—the sanctions against the Soviet Union that began in the late 1940s, against the People's Republic of China in the 1950s, against Castro's Cuba in the 1960s, and the sanctions that were being advocated against the white minority regimes in Rhodesia, South Africa, and Portugal's African colonies in the 1960s and 1970s.

What prompted my interest was the renewed enthusiasm for sanctions against the Soviet Union following its invasion of Afghanistan and against South Africa after the collapse of order in the townships in the mid-1980s. I wondered why there was such enthusiasm, given the string of long-running failures up to that point. Much of my early writing, when I was at McMaster University in Hamilton, sought to address this puzzle.

I raise these historical cases because I think it's important that we remain very conscious of just how enduring the problems with these measures have been. Many years on, it continues to surprise me that we see the same optimism about sanctions that we saw a century ago. To be sure, much water has passed under the bridge since then. The nature of sanctions themselves has changed, and radically so, in the last generation. Instead of the blunt instruments applied in the 20th century to entire communities, instruments that invariably produced a great deal of humanitarian suffering in the target country, we now have so-called smart sanctions or targeted sanctions. Indeed, there can be no better example, in my view, of the move to targeted sanctions than the Magnitsky Act of 2012, a piece of legislation, as members of this committee know well, that was adopted by the United States government to impose sanctions on just 18 of Russia's 143 million people.

What's not changed in all these years is the conviction that imposing economic hardship on some, many, or all the people in a target community will achieve political change. But is there evidence that these measures actually produce political change? Now, it's true that economic sanctions can and do inflict economic hardship on entire communities, on groups, on sectors in the economy, on particular firms, and of course on selected individuals. But do these measures produce the desired political change? Do the economic hurts that are clearly produced by sanctions actually change the behaviour that triggered the sanctions in the first place?

Consider the sanctions regime that Canada presently has in place against 21 different countries, some now for well over a decade. This is a simple question for the committee to consider: have any of these measures actually changed the behaviour of the target government? In my view, the answer, broadly speaking, must be no.

● (1535)

Like the long-running sanctions regimes of the Cold War, which lingered year after year without producing any of the changes that they were supposed to produce, Canada's bundle of sanctions regimes grows older, but no more effective.

Ironically, however, we know that while these measures do produce economic pain, it's not always the pain that is intended. Consider, for example, the hugely gendered impact of the sanctions imposed on Iraq during the 1990s in the aftermath of the Persian Gulf war. The relatively greater negative impact of these sanctions on Iraqi women was one of the reasons why so-called “smart” sanctions came to replace the “dumb” sanctions of the 1980s and 1990s, sanctions dubbed that because they tended not to discriminate between targets.

We also know that sanctions can end up hurting the sender's own people. Talk to Canadian banks or firms in other sectors of the economy that have to deal with current Canadian sanctions practice and have to spend, in the aggregate, millions of dollars because the federal government has downloaded the costs of implementing its enthusiasm for this highly questionable public policy tool onto those firms.

In short, we know that these measures don't produce their intended effects, while at the same time they produce all manner of unintended, and usually negative, collateral damage. That is, of course, why students of sanctions like me continue to ask the question we've always asked: If the economic hardship that is produced by sanctions does not produce the desired change, why do governments continue to use this tool of statecraft and, importantly, continue to pretend that these measures work? The answer to this question is that sanctions, whether the “dumb”, blunt sanctions of the past or the supposedly “smart”, targeted sanctions of the contemporary era, are really not about producing actual political change in the target state.

On the contrary, sanctions are all about producing other political effects. First, sanctions, like all punishments—and we need to remember the etymological origin of the term itself—are useful for symbolic reasons. Like all harms imposed on wrongdoers, sanctions are a useful way of signalling disapproval of particular behaviour. In that sense, international economic sanctions will always “work”, because they punish. They always have, and they always will.

Second, international sanctions are a very useful tool for domestic political purposes. Because sanctions actually produce harm, unlike mere words, these measures give the impression of a stern rebuke to wrongdoers and wrongdoing.

I understand why governments continue to embrace sanctions with the same enthusiasm they always have, and continue to pretend that they will be effective in producing political change. Nonetheless, I remain highly skeptical about this tool of statecraft, and that skepticism is buttressed by the views of a new generation of sanction scholars.

You've already heard from one of this new generation, Andrea Charron. Another one is Dr. Lee Jones, a young academic at Queen Mary University of London, who has explored how sanctions actually play out in target communities. I would highly recommend his 2015 book *Societies Under Siege: Exploring How International Economic Sanctions (Do Not) Work*. This book demonstrates nicely how inflicting economic pain simply doesn't pay enough attention to what actually happens in societies targeted by sanctions.

Dr. Jones's research led him to write, in a briefing in 2015, the following:

> If policymakers cannot specify a plausible, step-by-step mechanism by which the infliction of economic pain will generate political gain, they ought not to impose sanctions at all. Doing so merely imposes random suffering in the vain hope of positive outcomes. This is deeply unethical, and poor public policy.

In my view, there can be no better way to put it.

Thank you very much. I look forward to your questions.

● (1540)

The Chair: Thank you very much, Professor Nossal.

I'll go straight to Mr. Goldman.

Go ahead, Mr. Goldman.

Mr. Zachary Goldman: Chairman Nault and Vice-Chairs Allison and Laverdière, good afternoon. It is an honour to appear before you today.

My opening remarks will focus on two main issues: first, a few ways to think about the goals of financial sanctions; and second, some of the processes by which the U.S. government imposes financial sanctions.

When the government thinks about the imposition of financial sanctions, it likely has one or both of two goals in mind. Here, while I'm speaking specifically about the U.S. government, I believe the points generalize and in some sense echo the interventions of Professor Nossal. The first goal of financial sanctions is to engineer a change in behaviour in the ultimate target of the sanctions, and in so doing to advance the foreign policy and national security interests of the United States. The second is to protect the integrity of the financial system by preventing illicit capital from entering.

One prominent example of this first objective to change behaviour is the successful Iran sanctions program, where sanctions imposed by a broad coalition over many years incentivized Iran to negotiate a deal regarding its nuclear program. Other recent cases include Burma, where sanctions were recently lifted in response to important democratic reforms, and Côte d'Ivoire, where sanctions were removed in response to a successful presidential election, progress on arms control issues, and the removal of multilateral UN sanctions. There also have been important successes in the narco-trafficking context, where large numbers of individuals and entities have been delisted because of a change of behaviour.

On the preventive side, it is helpful to think about two intertwined goals. Sanctions can be used to help ensure that ordinary citizens and businesses retain their trust in the international financial system by targeting illicit conduct. Here, sanctions work in concert with other forms of preventive measures such as anti-money laundering regulations to keep illicit activity out of the global financial system. National and transnational sanctions regimes work in concert with national AML measures and guidance offered by non-governmental organizations such as the Financial Action Task Force and the Wolfsberg Group.

There is another preventive function that sanctions can serve—namely, to interfere with the ability of illicit actors to obtain the goods and services they need to function, to make it harder for them to raise, store, move, and use funds. This was another part of the rationale for the Iran sanctions program and for other successful programs, including counterterrorism sanctions.

Officials understand, of course, that sanctions alone will not cause an end to terrorism. They are not blind to some of the unintended consequences that Professor Nossal identified, but if terrorist groups are unable to gain access to the international financial system, it will be harder for them to engage in the financial activities necessary to sustain themselves. Individual attacks might not cost much, but sustaining a terrorist organization over time costs a great deal.

It is important to note that financial sanctions are preventive and not punitive. The goal is not to use sanctions in lieu of criminal prosecutions. Instead, sanctions can be a complement to indictments, but fundamentally have a different goal. Whereas criminal prosecutions are designed first and foremost to punish with respect to completed conduct, sanctions are regulatory measures designed to have broad systemic effects.

We saw an example of this complementarity in September, when the U.S. announced the indictment of Chinese industrialist Ma Xiaohong, a company she controls, and several of her associates for helping North Korean entities evade U.S. sanctions and provide support to its WMD program. At the same time as the indictment was announced, the U.S. government sanctioned some of those same entities in order to prevent them or entities they own or control from participating in the international financial system. Here, the two legal mechanisms worked side by side.

Sanctions operate through a range of legal mechanisms. Broadly, they are regulatory restrictions imposed on natural or legal persons. There are two basic types of schemes: some sanctions are directly imposed by legislation, while others rely on a grant of authority by Congress to the executive to establish sanctions programs that address particular national emergencies.

The main U.S. statute that follows this pattern is the International Emergency Economic Powers Act of 1977, or IEEPA. It authorizes the president to declare a national emergency with respect to a problem that originates wholly or substantially outside the United States. The president can then investigate, regulate, or prohibit and generally constrain a wide range of financial transactions in response to the problem. In practice, the president has adopted dozens of executive orders to address the financial dimensions of critical national security threats, such as nuclear proliferation, counterterrorism, the situation in Syria, and Russian activities that undermined democratic processes and threatened peace and stability in eastern Ukraine.

● (1545)

The executive orders allow the treasury department to target individuals or entities involved in illicit conduct. The Department of the Treasury can impose a range of restrictions, but most common are sanctions that block the property of designated persons subject to U.S. jurisdiction, and prevent U.S. persons from doing business with them. Other types of restrictions are also possible. For the Russia-Ukraine sanctions program, for example, the U.S. and its allies adopted creative restrictions on dealings in the debt and equity of a range of Russian companies. The objective was to target as precisely as possible the objectionable conduct and to spare, as much as possible, activities that would have a wide-ranging and unanticipated impact on the Russian economy.

The actual process of identifying targets for designation involves a number of steps. The U.S. government canvasses a wide range of information sources to develop targets and then compiles an administrative record that is subject to multiple levels of legal and policy review by different agencies before a final decision about a designation is made. Designations are then finalized with an administrative order and are made public via a press release and a public change to the relevant sanctions list on which the target will appear.

If they wish, designated parties can seek review and reconsideration of the designation by the Office of Foreign Assets Control, OFAC, the administrative agency that implements financial sanctions, or can challenge their designation in court. OFAC must make public sufficient information about the basis for designation such that the target can understand the conduct that led to the imposition of sanctions, but OFAC can use classified materials in compiling the evidentiary record, which a review in court can evaluate in camera *ex parte*.

Some statutes also directly impose certain financial sanctions, most prominently in the Iran context.

In the post-9/11 era, financial sanctions have taken on an increasingly important role in national security, foreign policy, and financial integrity discussions. Very few people believe that they are intended to have decisive impacts on their own. They are, however, a critical tool of risk management.

I look forward to answering any questions that you might have.

Thank you.

The Chair: Thank you, Mr. Goldman

Thank you, Professor Nossal.

We're going to go right to questions. We'll start with Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair.

Thanks to both of you for attending today and sharing your insight and expertise.

In the barely six hours of testimony that we have heard in this study on the SEMA and the corrupt foreign officials act, we've heard a great deal with regard to the Canadian situation, where enforcement and/or compliance has as much to do with capacity as it does with the laws. We were told that there are gaps in our laws and that some of our departments and agencies—the RCMP, for example—have capacity issues, and that enforcement of these sorts of sanctions, or crimes for which sanctions have been imposed, is of a lower priority than their anti-terror focus.

I would like to start with a question to you, Mr. Goldman, regarding the harshest enforcement penalty levied. It was in the United States for the BNP Paribas case. I think the penalty was almost $9 billion against that financial institution for channelling many billions of dollars through the United States on behalf of clients in Sudan, Iran, and Cuba.

I'm just wondering, for a penalty of $9 billion, what would you estimate—or do you know—was the capacity cost, the enforcement and prosecution cost, of that particular case?

● (1550)

Mr. Zachary Goldman: Thank you very much for your question.

I couldn't put a precise number on it, but I would think about enforcement and compliance in two respects. The first is enforcement and compliance costs borne by the government itself. The U.S. Department of the Treasury has an office called OFAC, the Office of Foreign Assets Control, which I alluded to, and it enforces financial sanctions. Roughly 200 people work in that office, so we can back from that into a rough estimation of the annual cost.

There are others involved in that enforcement action as well. There are oftentimes multiple overlapping jurisdiction on these cases, and because the banks are located in New York, by and large, the New York banking supervisor and the New York State Department of Financial Services is involved. The local state prosecutor in Manhattan is often involved. Also, the federal prosecutors are often involved because these involve violations of federal statutes.

In that instance, the $8.9-billion fine was a result of at least four or five different agencies: OFAC; the Department of Justice, which is the only entity that can bring federal criminal prosecutions; the state prosecutors; the New York state banking supervisor; and, I believe, the Federal Reserve. These are all folks who have multiple missions. It might be difficult to disaggregate with any degree of precision the amount of time, for example, they spent on that particular case.

Another way to think about the cost of compliance is the cost borne by the banks themselves. All of the banks subject to U.S. jurisdiction must—and have—built up very elaborate compliance architectures in order to ensure that they are behaving in a manner that is consistent with U.S. law and policy and their other legal obligations.

Take a bank like BNP Paribas, for example. They're subject to French and EU law because they're a French bank, and their activities that are subject to U.S. jurisdiction are subject to U.S. law as well. Presumably, the point generalizes across the many dozens of countries in which banks like that operate. Needless to say, their compliance architectures are very complicated. They have to adhere to local law wherever they operate and also to, for example, EU law, because they are an EU person.

It's difficult, sir, to give you a precise answer, but that's perhaps a way to begin thinking about the problem.

Hon. Peter Kent: Thank you very much.

Professor Nossal, thank you for sharing your skepticism with us today. Indeed, we've heard that in fact the problems of compliance in Canada do impose significant resource costs on the banking system, on the different sectors that don't have access to consolidated lists to comply sometimes with sanctions. In fact, some potentially legal business is lost in simple avoidance because of the fear of violation of sanctions.

You brought up the Magnitsky Act. We have in fact been dealing with aspects of it for some time, even before this study officially began. I think we've been told that the Magnitsky Act isn't so much to change the behaviour as to ostracize and isolate certain gross abusers who are not caught in the Freezing Assets of Corrupt Foreign Officials Act because they are not necessarily designated individuals. They are jailers. They are police officers. They are security people who have enriched themselves criminally and who look to take some of those funds and themselves and their families to safe havens in different parts of the world.

I think that when the U.S. Congress passed the Magnitsky Act it was in the hope that other countries separately would accept similar penalties on these individuals—again, targeted Russian criminal individuals—and that by shunning, they would send a message and achieve a purpose through that alone. I wonder if you could speak to the Magnitsky Act.

● (1555)

Prof. Kim Nossal: Absolutely. When I focused on that particular act and the 18 individuals, it was really to underscore the nature of the targeted sanctions that, as you say, try to be as precise as possible. As Professor Goldman notes, the idea is to try to avoid unintended consequences.

What has been the focus of that particular act underscores, it seems to me, the symbolic purpose that you focus on, which is essentially a shunning, essentially the sending of a message about these particular individuals and their particular roles in the death of Mr. Magnitsky in 2009.

From that point of view, the measure is a useful measure, but to the extent that considerable resources are devoted to the creation of these kinds of measures, it's not entirely clear to me that there is a larger policy purpose, other than the symbolic element of signalling and shunning that is served. From that point of view, it seems to me that these kinds of targeted sanctions tend to focus too purely on the symbolic side.

There's one other element, too, and it is that when you're talking about the Russian Federation, one of the important elements here is the ability of many individuals to sidestep and subvert these measures. There's also the element of basically being able to provide individuals with a certain benefit within Russian society of being the target of western sanctions.

The Chair: Thank you, Professor.

Thank you, Mr. Kent.

Mr. Miller, please.

Mr. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Soeurs, Lib.): Thanks for the testimony today. I'll match your "callow" professor with a number of callow politicians around this table any day.

In your 1994 book on sanctions, which focused on Canadian and Australian foreign policy, you noted that Canada in particular lacked the economic capability to "give the sanctions of major powers their bite", thus essentially saying that the sanctions were symbolic.

If we go back to what my colleague MP Kent was saying with respect to a sanctions regime that would condemn or seize assets of gross human rights violators, the initial act of seizing the assets has some beauty to it, because it is smart, at least at first glance, in the sense that you're grabbing an asset on Canadian territory of a person who has manifestly committed these gross human rights violations, but the unintended consequence is what I'd like to focus on, or at least a countermeasure that could be enacted against Canada and could have on Canadians perverse consequences that were never intended in the first place.

It seems to me that there's a distinction to draw between the easiness of freezing an asset that belongs to someone if it's properly identified and then focusing on the countermeasure, which may have perverse consequences, vis-à-vis a broader regime that simply doesn't work because Canada lacks the heft to put bite into its actions. I do think we need to examine at what point our actions have consequences for other Canadians that weren't intended in the first place. The initial ability to freeze those assets, if you can actually do it, is interesting as a policy measure and, properly, to send a message to the person who has committed those acts that they can't hide their assets in Canada.

● (1600)

Prof. Kim Nossal: The key here is the target. When you're focusing on individuals, there's a particular logic. The real issue is what happens when the target is a state, is another government.

It seems to me that what one wants to do is to recognize the crucial role of these kinds of measures that are able to target individuals, and in particular individuals operating on Canadian soil, and to distinguish that action as a policy tool from the kinds of broader measures that we normally talk about when we are referring to broader sanctions: that is, sanctioning other states or communities where the government can in fact impose countermeasures on Canadians operating in their territory or simply tit-for-tat measures that are imposed by governments such as, let's say, the Government of the Russian Federation. It imposed almost exactly the same kind of tit-for-tat measures against the United States after the Magnitsky Act, although they added the ban on Russian adoptions by Americans.

I think the key here is to distinguish between an act that is targeted against another state, another government, and policy measures that are directed toward individuals.

Mr. Marc Miller: Mr. Goldman, perhaps you could speak more at length on the actions of the Russian government. Essentially, we're talking about state actors or quasi-state actors, and it is immediately perceived as an act against the state. Whether you freeze a person's assets or just say you're freezing that person's assets, they were acting on behalf of the state in question, so it's immediately perceived as such.

Perhaps you could speak to what happened in the Magnitsky case.

Mr. Zachary Goldman: I'll perhaps generalize the point a bit more and note that the general pattern now is to impose costs on states by targeting individual entities or individual persons that will be perceived to have an impact.

To take the example of Russia, but perhaps a slightly different example, after the violence in Ukraine accelerated in early 2014, the U.S. and many of its partners in the EU and elsewhere imposed sanctions that were designed to shape the cost-benefit calculations of Russian President Vladimir Putin. The U.S. and others did so by targeting individuals who were close to him, former regime officials, and banks that played a significant role, at least putatively, in hiding regime assets, such as Bank Rossiya and others. There, the purpose was to shape Putin's thinking about the cost and benefits of continued escalation in Ukraine.

Now, the question can be raised: to what extent did Russia retaliate against the U.S. and its allies for this activity? Also, what impact did the sanctions have? One can make an argument that it's of course impossible to know for certain, because to determine the impact would require knowing the outcome of a counterfactual, which is to ask what would have happened if you had not imposed sanctions, and that's obviously impossible to say with certainty.

But there's at least a credible argument could be made that the acceleration of sanctions in the first half of 2014 in that context at least dampened the escalatory cycle in eastern Ukraine. While it may have frozen the status quo, Putin did not take the other more inflammatory actions that he could have taken.

● (1605)

Mr. Marc Miller: At the very end of your testimony today, Mr. Goldman, you mentioned that sanctions, whether they were effective or ineffective, were still a very interesting and important tool. I was hoping you could develop that a bit.

Mr. Zachary Goldman: Sure. I would make two or three related points.

First, there are very few people who would advance the argument that sanctions alone will solve any particular foreign policy crisis. To take Iran, which is the most I think poignant recent example, sanctions there I think were designed to generate leverage that would ultimately be used in a course of diplomatic negotiations. I think very few people had the self-understanding that we could just sanction Iran into compliance with our desires about its nuclear program. Again, the sanctions were built up over a long period of time and involved broad multilateral efforts, but ultimately it was diplomacy that caused the nuclear agreement to materialize. It was not sanctions alone.

Let me abstract away from that specific example to a more general point that I alluded to, which is that sanctions are a tool of risk management. There, I think the key is that the international financial system relies fundamentally on trust. Individuals will not engage in trusted transactions with the international financial system if they believe the banks and others with whom they interact are doing business with rogue actors.

If you envision a world in which governments—particularly western governments and Asian governments—that harness the bulk of the world's financial activity simply stopped enforcing financial sanctions, which is to say, if they allowed with impunity those involved in acts like terrorism and narco-trafficking and WMD proliferation to have free access to the international financial system, I can't imagine that would be an international financial system in which trust and the free flow of information and financial services would be enhanced.

I can develop more points if you'd like, but those are the two I would make: one, sanctions are always used in complement with other national security tools, such as diplomacy, the use or threat of military force, and intelligence means, to achieve particular goals; and, second, it is very important to focus on the broad systemic effects on financial integrity when thinking about the utility of sanctions.

Mr. Marc Miller: Thank you.

The Chair: Thank you, Mr. Miller.

We'll go to Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you, Mr. Chair.

I want to thank the witnesses for being here and for shedding light on a file involving quite a complex study.

I want to hear from you, because in your opening remarks, you both seem to have stated somewhat different positions. Feel free to correct me if I'm misinterpreting your words.

Mr. Goldman, you seemed to say that the sanctions are preventive and not punitive. Mr. Nossal, you argued the opposite, if I understood correctly. You think the sanctions are essentially punitive or symbolic and not effective.

Let's look at this first difference and at the statistics, which particularly impressed me, on the number of economic sanction programs supported by the UN and the number of programs supported by the United States. The number is almost double. Regarding the people who are personally affected by sanctions, the number is five times higher in the United States.

Is the difference related to a systemic difference in the approach, basically, and design of the sanctions programs? Or is it related to the cumbersome nature of an institution such as the UN, for example?

Let's start with Mr. Goldman.

[*English*]

Mr. Zachary Goldman: I'll address one of your points on the preventive versus punitive discussion. Second, I'll talk about the importance of symbolism.

What I meant by that is that the classic understanding of criminal prosecution is that, one, it applies to completed conduct. There is some resemblance there with financial sanctions. More broadly, the obligations of banks to engage in other kinds of measures designed to protect the international financial system, such as anti-money laundering and things like that, are designed not only to target completed illicit activity but also to enable the systems to be established that prevent it in the first instance. Therein, I think, lies the primary difference between, for example, criminal prosecutions on the one hand, and sanctions on the other.

Obviously, another important difference is the punishment, the effect. Nobody goes to jail when they're put on a sanctions list per se. Sanctions evasion is a crime, but the result of a sanction is an asset freeze, not a trip to prison. That's obviously the most significant difference in the United States that drives different levels of legal proof and legal review.

On the symbolic point, I don't disagree with Professor Nossal. In some instances, sanctions are symbolic, but I don't think that for that reason they're useless. I think it is important to provide the international community with opportunities to express its collective disgust with particular forms of reprehensible activity and to draw boundaries around what is acceptable international conduct and what is unacceptable international conduct.

If, for example, the regime of Bashar al-Assad could freely access the international financial system, I think that would not be consistent with the horror and disgust with which almost all of us view his behaviour toward his own people. It may or may not be true that sanctions on Syria will ultimately lead to a peaceful resolution of the civil war there, but it will certainly impede the ability of the Assad regime to function and obtain the resources it needs to continue its oppression of its people, and I think the expression of disregard for his actions is appropriate and important.

● (1610)

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Goldman.

Mr. Nossal, do you have anything to add?

[*English*]

Prof. Kim Nossal: Thank you.

I agree 100% with Professor Goldman about the punitive purpose, and I would never suggest that the purpose of punishment, when it is achieved, whether in domestic law or international affairs, is useless. On the contrary, punishment is of crucial importance here because, it seems to me, the ability to inflict harm sends that important message. Just because it's symbolic doesn't make it useless by any means.

This is where I come to your question about the United Nations and the UN sanctions. It seems to me that it's when the United Nations takes those measures that you get the maximum punitive effect in that symbolic sense of being able to communicate a dislike for a particular set of actions. Denunciation of those actions becomes, then, an important part of the punitive exercise. It seems to me that when the UN does it, the international community operating through the UN, as opposed to individual states, either unilaterally or plurilaterally, you get the maximum symbolic effect.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Nossal.

You have almost given me the answer to the following question, but I would still like to hear your point of view.

At the international level, does Canada have a character such that, in a certain number of cases, it may be the only government to act or may lead a resolution that might involve a sanction? More specifically, when Canada implements a sanction, when does the sanction have the most credibility?

● (1615)

[*English*]

Prof. Kim Nossal: I am an anti-unilateralist when it comes to sanctions policy and the Canadian government. My own view is that when Canada engages in sanctions it is most effective when it is as multilateral as possible. There's no doubt that you can take multilateral sanctions and make them harsher, and go out in front of your friends and allies, but in my humble estimation that is, in general terms, not a wise way to go. The ability to act in concert, especially with close friends and allies, is critical, and if you can manage a broader way, all the way to the United Nations, even better.

I must admit that my skepticism about sanctions as a general rule is magnified when it comes to a relatively small actor such as Canada seeking to impose unilateral measures. I simply ask the question: what impact does that kind of unilateral measure have on the international system?

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: *Merci,* Monsieur Aubin.

I will go to Mr. Saini, please.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much to both of you for being here today.

Mr. Goldman, I have a few questions for you, because I know that you've written widely on the European judiciary and you've highlighted some points where in the past they've had difficulty getting indictments. One of the facts was that the courts did not have access to classified information. In a lot of the decisions that were made, they only had access to unclassified information.

Also, you've written about the difficulty with judicial oversight with regard to the people on the list. The two famous cases are the Ahmed case and the Kadi case.

You've also said that probably the Americans, through their inter-executive legal and policy review, have a more robust option.

Knowing the issues that they've had in Europe and the sorts of successes they've had in the United States, could you highlight what you would recommend to this committee in terms of judicial oversight or making sure that in terms of people who are predesignated there would be a more effective way of getting an indictment or making sure the sanctions were effective?

Mr. Zachary Goldman: Absolutely. Thank you very much for your question.

I think judicial involvement in the sanctions process is critical to the integrity and legitimacy of the enterprise. At the outset, I want to make sure that I'm clear about that.

I would say that there are two characteristics of a sanctions regime that are important, and I think this has troubled the EU in some regard. I won't say that the U.S. does it better, but I will say I think the U.S. does it reasonably well.

The first is clarity about the process. What exactly goes into a decision to impose sanctions in the first instance? What institutional actors are involved? What are the legal criteria? What are their burdens of proof? What are the evidentiary thresholds? I think it's important that there's clarity about these issues and that they are foreseeable, and that this in some measure helps protect the due process rights of designated individuals.

Second, I think it is important that the courts have some ability to review classified information, information that's provided in confidence by the executive branch, but again, in order to protect the due process rights of sanctions targets, it's important that the sanctions targets know enough about the underlying conduct for which they have been designated that they can mount an effective defence.

These are the two principles that I would articulate as being important, and at least in the U.S. context, I would say we do reasonably well. There's always room for improvement, but I think we do these reasonably well, and they are important to focus on moving forward.

Mr. Raj Saini: Thank you very much for that.

The second question I have highlights a case in England, the Law Lords and Ahmed case, where they decided that the judicial oversight through the ombudsperson model was not effective, and after Resolution 1267 in the United Nations, they decided to form the office of an ombudsperson.

Is this something that you would recommend domestically also to provide more effective judicial oversight?

● (1620)

Mr. Zachary Goldman: The ombudsperson at the UN, do you mean?

Mr. Raj Saini: Well, they have one at the UN level.

Mr. Zachary Goldman: Right.

Mr. Raj Saini: At the domestic level, do you think it's something that would be effective?

Mr. Zachary Goldman: Yes. As you know, I'm sure, the ombudsperson at the UN for a long time was a Canadian judge, Kim Prost, who did an exceedingly fantastic job. I think there are two important things I would focus on. I'm less concerned with the particular institutions than with the functions they serve. To me, the important thing is that designated individuals have a meaningful opportunity to contest the sanctions that have been imposed on them and that the process is perceived as fair.

Different systems will have different ways of accommodating those two objectives. Given where the U.S. is, for example, I don't know that an ombudsperson would add a tremendous amount to the system that we currently have in place. I believe the system now allows for two different kinds of review. You can petition OFAC directly to reconsider a designation or you can file suit in court to have a designation reviewed by the judiciary. In that context, my sense is that this is an effective series of mechanisms to review a sanctions determination.

For example, speaking for the U.S., I don't know that an ombudsperson would add a tremendous amount to the already existing context. It may be the case in the Canadian context that an ombudsperson would add some measure of due process protections for designated individuals.

The Chair: Thank you, Mr. Saini.

That will take us to the next round.

Mr. Sidhu.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you, Mr. Chair.

Thank you both for sharing your wisdom and experience with us today.

I have a question for you, Professor Nossal. You suggested that sanctions tend to be more successful when placed on liberal democratic states rather than authoritarian regimes. For example, in your article “Liberal-democratic regimes, international sanctions, and global governance”, you wrote:

> ...the record of sanctions failures shows clearly that military dictatorships... human-rights abusing governments, and indeed all regimes with illiberal forms, generally find it easy to resist the punitive impact of sanctions.

What's your take on this?

Prof. Kim Nossal: That conclusion was reached largely because, if I use Professor Goldman's terms, it's difficult, generally speaking, to change the cost-benefit calculations of certain kinds of governance.

Among the interesting cases of sanctions success historically, two cases are usually held up. One involves the sanctions imposed against the State of Israel by the Eisenhower administration in 1956. It was a threat of sanctions rather than the actual imposition of sanctions. The Eisenhower administration threatened to revoke the State of Israel's status under U.S. income tax law, as a tax-deductible donation, as a mechanism for forcing Israel to shift its policies on the Sinai. The Israeli government moved immediately.

The second case of a liberal democratic government sanctioning another liberal democratic government was in the aftermath of the French bombing of the Greenpeace ship in Auckland harbour in the mid-1980s. The New Zealand government seized the French agents. France let it be known to New Zealand that if these agents were not released into French custody, New Zealand exports to the EU would be negatively affected. New Zealand understood entirely what that threat involved. The agents who had planned and executed that bombing were released into French custody, released by French authorities, and indeed given medals for their behaviour.

There aren't that many cases where you get those kinds of sanction episodes, but in the case of liberal democratic governments, it seems to me that you do find, especially if there is dependence, a sensitivity there that just simply isn't the case in authoritarian or military dictatorships.

● (1625)

The Chair: Thank you, Mr. Sidhu. I'm going to cut you off because we're really tight on time and I want to go to Mr. Allison.

Mr. Dean Allison (Niagara West, CPC): Thank you very much, Mr. Chair.

As well, thank you very much to our witnesses.

We have heard also from other witnesses that looking at some of these overarching sanctions sometimes doesn't work. We talked about whether we're trying to send a message or some of these other things.

My question is for you, Mr. Goldman. Obviously in the States you're familiar with Magnitsky. It was something that Mr. Kent was talking about with Mr. Nossal. I want to get your comments on Magnitsky as it relates to the U.S. and where—and if—you feel that it's been successful. I know that we're certainly aware of some of the unintended consequences, such as the refusal for adoptions by Americans who want to bring in Russian babies, etc.

As we look at some of the testimony that even we have heard about individuals and sanctions targeting, we've heard people say that it's either too expensive or it doesn't work, or they ask if people really put their money in Canada. I want to refer you to an article written last week by Daniel Leblanc, who basically talked about the fact that Mr. Browder, out of the U.K., has looked at some of these things, and already we're seeing money flow into Canada. What may be even more troubling is that for some of these individuals and the companies that were set up to take advantage of the fraud and what's happened, there's actually money flowing out of Canada in large amounts as well.

It is a reality. We realize that if we act unilaterally, it probably doesn't work, but as we move forward and other countries look at this, I think the whole purpose of Magnitsky is to say, listen, if you're going to take advantage, if you're going to rip off your own governments, you're not going to find a place in the western world where you can actually safely take that money, store it, spend it, and keep it safe until such time as you want to take advantage of that.

Very quickly, what are your thoughts on what has happened with Magnitsky and the U.S. and on whether you feel it's moving in that direction? I realize that maybe other countries need to move on this if we're going to have the desired effect that we want to have on multiple countries.

Mr. Zachary Goldman: I'm in wholesale agreement with three broad points you made. One, having the kinds of preventive measures in place to prevent being a destination for illicit capital is incredibly important. Two, countries, particularly western democracies, are better together, which is to say that in targeting particular problems, whether it's human rights abuses, WMD proliferation, or counterterrorism—you name the sort of illicit activity—western democracies and others are far more effective when they act in concert. Three, I think Magnitsky is a particular example of two things, one being the importance of reputation and the effect that imposing sanctions can have on reputation and in reinforcing the idea that human rights abuses are unacceptable, and the second, and sort of in relation, is the breadth of the activity in concert with allies.

There were unintended consequences. No action in the international arena is without a consequence, and sometimes there are unintended or unanticipated consequences, but that doesn't mean that the act in the first instance is inappropriate.

Mr. Dean Allison: Thank you.

The Chair: Thank you, Mr. Allison, Mr. Goldman, and Professor Nossal.

Unfortunately, Mr. Goldman and Professor Nossal, our time is up. On behalf of the committee, I want to thank both of you. As you know, this study is a very important one for Canada, and a very important discussion and debate about how sanctions apply and how effective they are. We very much appreciate your learned opinions. If there is other information for the committee that you think would be useful in our discussion and study, please feel free to forward it to us. We would be very receptive to that.

Again, thanks very much to you, Mr. Goldman, on video, and also to you, Mr. Nossal. One of my favourite universities is Queen's, so I'm glad to see you here today.

● (1630)

Prof. Kim Nossal: Thank you.

The Chair: Colleagues, we are going to take a five-minute break and then go right to two more witnesses for the next hour.

● (1630)

(Pause)

● (1630)

The Chair: We're now ready to move forward with our agenda this afternoon.

In our second set of witnesses, we have Clara Portela, who is a professor at Singapore Management University. She is in Singapore, where it is four in the morning. The second witness is Mr. George Lopez, a professor at the University of Notre Dame. Mr. Lopez is on the phone, so you won't see him, but you will be able to hear him.

We'll try to get the technical glitches out of the Singapore call and start with you, Mr. Lopez.

● (1635)

Professor George Lopez (University of Notre Dame, As an Individual): Thank you. Can you hear me?

The Chair: Yes, Mr. Lopez, we can hear you.

The process for the committee will be for you to start off with your presentation. If we can hook up with Singapore, we'll have Ms. Portela give her presentation and then go right to questions.

I'll turn the floor over to you for your opening comments.

Prof. George Lopez: Thank you very much, Mr. Chairman, for this opportunity to appear before you today.

I'm honoured by the chance to answer questions that have been prompted in your investigation of this legislation, and also to appear with many people whose work I admire, those who appeared last week, and those who are appearing now.

The use of multilateral sanctions, particularly by the UN Security Council, has been increasingly advocated—

● (1640)

The Chair: Mr. Lopez, can I interrupt for a minute?

Prof. George Lopez: Please do.

The Chair: We're having difficulty hearing you at our end. Plus, it's not allowing us to do the translation that's required here in the House. What we're proposing to do is call you back and see if it improves so we'll be able to do the translation.

Prof. George Lopez: Yes, that's fine. Our earlier connection was fine, but I'm getting a lot of static as well. I'll wait.

The Chair: Thank you, Mr. Lopez. We'll give it one more try.

I'm sorry that I had to cut you off. If you would, please back up about five minutes in your submission to the committee. Then we can do the translation. You can start at the beginning.

Prof. George Lopez: All right.

The Chair: I apologize for this. Go ahead, and thank you for your patience.

Prof. George Lopez: Thank you very much.

Do you want me to start at the beginning?

The Chair: You can start at the beginning. Thank you.

Prof. George Lopez: Thanks again for this opportunity.

The use of multilateral economic sanctions, particularly by the UN Security Council, has been increasingly advocated by transnational human rights NGOs and various governments friendly to human rights promotion and protection, and sanctions imposition and enforcement occupies a significant place in many of our foreign policies in democratic states, as well as in the UN Security Council.

In fact, in terms of human rights protection and advancement, the Security Council currently mandates 15 total sanctions regimes, with 11 of them having some form of human rights or humanitarian law dimension.

On its own, the African Union has imposed sanctions in eight cases where extra-constitutional changes of government have occurred and it has smartly leveraged these targeted measures to protect fragile rights during the first years of democratic governance in post-war nations.

The European Union administers almost 370 sanctions cases, with a high proportion of those having human rights dimensions. My own country, through the Treasury Office of Foreign Assets Control, has proposed 50 total financial sanctions programs against individuals, governments, or organizations for their violation of human rights.

Even with all of this structure and activity, I think the honest approach is to say that these measures have proven only somewhat effective. In fact, worse yet, are the cases where historic inaction by the Security Council has led to dramatic expansions of human rights atrocities. These, of course, occurred in the situation of mass killings in Yugoslavia, genocide in Rwanda, mass killings in Liberia until about 2001, and the continued debacle and killings in Sudan's Darfur region.

At present, the historical evidence about targeted sanctions is cautious at best for its ability to improve human rights performance of a violating government or of marauding militias that continue to kill civilians at will. Sanctions, I think we must say, have by themselves rarely forced rights violators to desist their actions. They've never toppled a government run by a dictator who violates human rights.

But when dictators have changed their behaviour, it's because sanctions have been an important part of the mix of wider foreign policy tools and ones that focus on domestic pressure points within terrible regimes that lead to an improved human rights situation over time. Sanctions have more dramatic success in safeguarding the rights protection culture that's emerging in fragile democracies.

If I were to put it in its best light, I would say the UN Security Council has made progress more in norm articulation and lags behind in effective implementation and enforcement. These new global norms that have emerged tend to fall into three categories.

The first is the protection of civilians during armed conflict.

The second is what some of us fear as an all too short-lived assertion in the international community at the UN about what would be called the R2P principle, the responsibility to protect civilians faced with upcoming mass atrocities. Of course, many of us are deeply indebted to Canada for its leadership in the R2P realm.

The third area is one I mentioned earlier, which is the protection of electoral and democratic transition processes at the UN. That includes the movement from prior sanctions aimed at stopping civil war to now be reformulated as part of peace-building and peacekeeping on the ground.

Much, as you know from the testimony of others, has proceeded to narrow sanctions, to what we call the “smart” or “targeted” kind. The ones that have proven most effective are those that fall into three areas.

The first is freezing financial assets, property, and other funds held outside the country where the atrocities are being held. These might be held by national government entities or officials, by officials privately or in their public realm, or by persons designated as supporters, conduits, or enablers of the regime.

The second is the ability to deny assets movement and access to overseas financial markets, particularly emerging financial institutions, national bank mechanisms, and other government ways of transferring funds, particularly to designated private banks, investors, and money launderers.

● (1645)

The third area is restricting the trade of very specific goods and commodities that provide substantial revenue to these human-rights-violating actors, especially ones that are highly traded and valued by markets in the west.

The structure of imposing targeted sanctions on rights abusers and their effectiveness is something we've learned over time. In practice, when powerful foreign policy countries such as Canada, the U.K., and the United States work with the United Nations or regional actors like the EU or AU to reinforce sanctions that have been passed or, more importantly, to precede the measures that the wider organizations will take, we've found increased chances of success.

The most notable case of this, I think, is what happened in 2011, when western states combined to pass a series of strong impositions and a locking down of assets of half of General Gadhafi's usable monies from Libyan official funds and from private assets available to the regime totalling nearly $36 billion. This occurred 48 hours before the Security Council Resolution 1970, and there was also another tranche examined and frozen before Security Council Resolution 1973. These particular locked-down assets had a significant impact on Gadhafi's ability to import heavy equipment, to hire foot-soldier mercenaries, and to hire in full the elite commando units he was exploring in a variety of countries to come to his aid.

My own work has increasingly pushed me, over the last few months, to look at a human rights abuse situation in which we have to move beyond the most visibly available agents who are authorizing the human rights atrocities, that is, government institutions and leaders, to more identifiable individuals who actually perpetrate the rights violations or mass atrocities themselves. A deeper probing of these abuses indicates to us a dramatic connection to specific products, companies that supply them, assets holding, and financial facilitating organizations—in fact, a wide array of individuals and entities that are usually not visible at early stages of analysis.

In light of this, we are advocating the targeting of sanctions on what we would call this enablers category, which focuses on the means that are used to commit mass atrocities, as well as the way that they're financed. The organizing logic behind this concept, in part derived from the Libyan experience, is that mass atrocities are organized crimes. Crippling the means to organize and sustain them —the money, the communications networks, the resources—can dramatically interrupt their execution.

As my time is coming to a close, I will hold for answering to questions the cases where we've seen this, in Congo, Darfur, and elsewhere. I'd advocate for examination by your good committee the way in which we can dig deeper into the perpetrators of mass atrocities and look at those sustaining enablers of a transnational nature that often have ties to the west, where their assets can be frozen and their networks disrupted.

Thank you very much.

● (1650)

The Chair: Thank you very much, Professor Lopez.

We'll hear from Professor Portela, and then we'll go to questions, colleagues.

Good morning, Professor Portela.

Professor Clara Portela (Singapore Management University, As an Individual): Hello.

The Chair: We have just concluded with opening comments by Professor Lopez. We want to turn the floor over to you for your opening comments, and then we'll go to questions.

If you're ready to follow through on that, I will turn the floor over to you.

Prof. Clara Portela: Yes, please.

The Chair: The floor is yours. We're looking forward to your presentation.

Prof. Clara Portela: Thank you very much.

I thank you for this opportunity to talk to the members. I hope that I can speak clearly and am sufficiently slow for the interpreters to translate to French.

My speaking notes are going to be very brief. Unfortunately, I have to mention that I was not able to listen to the presentation of Dr. Lopez because there were technical difficulties here. I apologize if I end up saying things that have already been mentioned by Dr. Lopez.

As a specialist in European Union sanctions, I would like to start by commenting on the comparability of the Canadian legislation with European Union measures.

The European Union has some possibilities, let's say, for imposing sanctions against countries where corruption is widespread, with the idea of actually punishing the governments that engage in widespread practices of corruption. However, it doesn't have anything along the lines of theFreezing Assets of Corrupt Foreign Officials Act. There is no equivalent legislation now, and no equivalent legislation is under discussion in the context of the EU. Basically, there have been no demands coming from civil society or from any member states to put in place legislation that is similar to the Freezing Assets of Corrupt Foreign Officials Act.

I mentioned that the EU still has the possibility of punishing government authorities, let's say, for corruption. This exists in the framework of development aid co-operation. As you know, the European Union is allowed to interrupt development aid on the basis of widespread corruption practices by government authorities. This takes place under the heading of “good governance”.

The treaty that provides for development aid from the European Union to developing countries includes a clause that explicitly foresees the possibility of interrupting development aid on the grounds of widespread corruption. This exists as an EU practice when the European Union as a whole is a donor, and it also exists in the practice of individual member states that are also important donors to developing countries, but outside this framework there are no measures along the lines of the Magnitsky Act in the U.S.

It is difficult to imagine that the EU will contemplate the adoption of an act of this nature due to the recurrent court challenges that it has been facing with regard to its designations. The EU has been blacklisting people under anti-terrorist legislation and also in the framework of its sanctions regimes against individual countries. However, these listings are subject to the scrutiny and the jurisdiction of the European Court of Justice.

The European Court of Justice has actually ruled in favour of the claimants quite often. According to calculations made by researchers, only 40% of the cases in which designations have been challenged in front of the European Court of Justice have been in favour of the European Union. In the remaining 60%, the claimants have been able to basically win the challenge and to compel the European Union to cancel its designation.

● (1655)

The European Union currently has a very big problem with blacklisting individuals. It is actually quite reluctant to expand legislation along these lines, because it has faced important difficulties in bringing evidence that could be made public to the court in order to support its cases.

Moving back to the Canadian version of the Magnitsky Act, which is basically the Freezing Assets of Corrupt Foreign Officials Act, this document actually puts Canada on a par with the U.S., because it is basically following a U.S. model. This departs from previous practice, in which Canada was actually not necessarily following the U.S. lead in terms of sanctions imposition, but was also coordinating with the European Union. We see that this departs from current practice.

To comment further on this act, what is good about this act is that it is actually a very targeted instrument. It allows for the imposition of very clearly targeted sanctions precisely because it focuses on individual designations. This contrasts with the practice in the case of the European Union, where state authorities are punished as a whole through the interruption of budgets support in terms of charges of corruption. To the extent that targeting is considered to be a positive innovation on the sanctions landscape, this act is actually very good. It's very good in terms of allowing there to be an effect on specific individuals without having any impact on society and on innocent bystanders.

My last point concerns the purpose of the measure. What do we actually want to do by freezing the assets of corrupt foreign officials and what effect is this likely to have?

The idea with this type of legislation is to make Canada a more hostile environment for corrupt officials, because once this type of legislation is in place and corrupt officials are aware that they have been blacklisted, they basically cannot operate in the Canadian markets. They cannot hold assets there. This delivers a very strong signal to them that they are unwelcome. They are *personae non gratae* in the country. This is definitely useful, because obviously it serves to single out and stigmatize these specific individuals.

We can also expect that this will have a deterrent effect on other officials who are tempted to engage in the same sorts of practices if they have any interest in maintaining assets in Canada or if they have any relationship to the country. At the same time, we should distance ourselves from the idea that by imposing these sort of measures we will be able to compel a behavioural change in any of the affected individuals.

Actually, we have to take into account the fact that even if these individuals resent the fact that they are blacklisted and stigmatized by a respectable member of the international community such as Canada, their priority is to be regarded as members of the group in power, or the elite circles, let's say, in their country of origin. If they find themselves in a situation in which all of their colleagues, associates and bosses, the other members of their circle, are part of a blacklist, it would actually be very suspicious if they did not appear on exactly the same blacklist. Consider the situation of person who has been blacklisted under the act and whose name disappears from the blacklist after some time, perhaps in response to a modification of its practices. This would put the person in a very delicate position in those elite circles if they're integrated in the country of origin. It seems to me that the moment somebody gets blacklisted under the act, we cannot expect any behavioural change at all.

● (1700)

What is important about this circumstance is not that the Freezing Assets of Corrupt Foreign Officials Act should be believed to be an ineffective tool, but it is important to be clear about what the purposes and likely impact of this act will be, and it is important that this be communicated very clearly to the public, particularly to the Canadian public directly. Otherwise, the authorities will face the risk of being accused of putting legislation in place that is ineffective. Actually, this can be very effective. It will be able to fulfill certain important functions in international relations. In terms of criminalization of corruption, that should definitely be pursued, at least in my opinion, but we should make sure that no expectation is created among the public that this will actually change things on the ground.

Thank you very much.

● (1705)

The Chair: Thank you very much, Professor Portela and Professor Lopez.

We're going to go straight to questions. We'll try to restrict them to about five minutes each so that we'll get through a number of colleagues as our time wraps up.

I'll start with Mr. Allison.

Mr. Dean Allison: Thank you very much, Mr. Chair.

To both professors, thank you for your testimony.

Dr. Portela, the U.S. has looked at this Magnitsky law as we're looking at it. If some of these western democracies start looking at acts like this, do you see the possibility that this would be something that Europe, the EU, may consider in the future?

Prof. Clara Portela: Am I supposed to answer right now or wait for other questions?

Mr. Dean Allison: Go right ahead.

Prof. Clara Portela: There is a possibility that the EU might consider it, but I think the problem about all the difficulties standing in the way of a possible adoption of similar legislation by the EU is not so much the lack of commitment of the EU to the fight against corruption in this country, because the EU, being one of the most important donors, is quite interested in making sure that its aid is spent effectively. It definitely has an interest in fighting corruption.

The problem with this specific piece of legislation is that designating specific individuals is a problem for the European Union because, under the institutional system of the EU, the possibility exists for individuals who have been designated to challenge the blacklisting in front of the European Court of Justice. The European Court of Justice will listen to them. It will accept the case and will actually examine the evidence. Often, the European Union has not been very effective in defending itself. It was unable to produce the evidence on which the blacklisting had taken place, particularly in the case of terrorist organizations or terrorist designations, because it were based on intelligence that was confidential and could not be made public. Often this intelligence came from foreign sources such as the U.S., for example, and foreign intelligence services were unwilling to allow the European Union to disclose this evidence. In these cases, the European Union has been forced by the European Court of Justice to delist the individuals, because it was simply unable to produce convincing evidence in front of the court.

This is something that has affected even the listings of the European Union that emanate from the United Nations Security Council, which in theory are obligatory for everybody to impose. Because the EU is facing this big problem and has not found a way of dealing with it, I don't think it is very likely that the EU will contemplate passing legislation along these lines before it has found a way of sorting out the problem that it has with the individual designations that are condemned by the European Court of Justice as not being compatible with due process guarantees under human rights legislation, particularly the very stringent European convention on human rights.

● (1710)

Mr. Dean Allison: Thank you, Dr. Portela.

Because my time is limited, I have a quick question for you, Dr. Lopez. You mentioned three things in terms of targeted sanctions: freezing assets, obviously, denying movement, and restricting trade. Is there anything else that you would add to that in terms of effective targeting of sanctions? I know those are the top three.

Prof. George Lopez: I think those are supported by travel bans and the special designation of individuals to make sure that their passports are frozen and those kinds of things.

When we get to the enabler level that I had talked about at the end of my presentation, I think you look at a wider range of goods and services that indirectly facilitate sustained atrocities. That puts us into technology, telecommunications equipment, satellite phones, cellphones, and computer hardware, and that can then give us the financial leverage through the existing targeted financial sanctions to go after those particular commodities, which have really been off base to those who have been trying to help with human rights in the past.

I think the application and targeting of the existing three that I mentioned, supported by smarter identification of what the services and goods are that facilitate the atrocities, is where we want to go.

Mr. Dean Allison: Thank you.

The Chair: Thank you, Mr. Allison.

We'll go to Mr. Mendicino, please.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Thanks, Mr. Chair.

Thanks to both of you for your testimony.

My first question is for you, Professor Lopez. What I took from your evidence is that sanctions rarely work on their own against human rights abusers. Is that a fair summary of your bottom line?

Prof. George Lopez: You're absolutely correct. Thank you.

Mr. Marco Mendicino: Indeed, if they did, we probably wouldn't see as much conflict in the world and as many wars. Is that a fair statement?

Prof. George Lopez: Well, I think one of the interesting things about the legislation and the whole dialogue we've had this afternoon is that there are many more financial dimensions that drive wars, including crime and corruption, than there have ever been. While we could say that we have 25 years of history of UN and EU and other sanctions, and boy, the evidence is really good, I would urge you on this, and I would say that this is the last time—or the worst time—that you would want to say "let's scrap these tactics because they're ineffective".

Now, in fact, on crime and corruption, the global system has caught up with the ability to use these techniques in much more targeted and effective ways and to actually tailor legislative programs to be more effective in stripping perpetrators of the kinds of things they have available to them to enable and perpetrate atrocities.

Mr. Marco Mendicino: I'm glad to hear you say that, because we did hear some evidence earlier today in the first round that suggested that sanctions at their worst can be ineffective and even counterproductive, but I think that at least some of us here are trying to be a little more optimistic and even practical, in that, when used properly amongst the multilateral tools that are available to Canada, sanctions can often effect desired outcomes.

I wanted to pick up, though, on your evidence about enablers. You said that if sanctions are used properly and specifically, in a targeted way, we can get at the money, the resources, and the communications networks that are used by human rights abusers. How can Canada work with other like-minded state actors in a more effective way to coordinate the approach to using sanctions targeted at enablers?

Prof. George Lopez: One way, for example, is to think about your participation in the Financial Action Task Force, which has given us very good and effective ways of following the money in the nuclear non-proliferation area or in the counterterrorism area. We now need to have powerful democratic states like Canada say to FATF that we now need the same kind of approach that has been effective multilaterally to look at mass atrocities.

Mr. Marco Mendicino: It is through things like the Financial Action Task Force that Canada can coordinate and strengthen its resolve when it comes to coordinating sanctions?

● (1715)

Prof. George Lopez: Yes, particularly if we find ways to enlighten FATF that the kind of success they've had in these other areas has to be transferred to the human rights area—absolutely.

Mr. Marco Mendicino: What are the risks that Canada becomes unaligned with other like-minded states when it comes to coordination? I realize that sometimes states do engage in negotiations with countries that are abusing human rights, for the purposes of advancing certain causes that are to the benefit of Canada, so how do we ensure that we stay on the same page, if I could put it in those general terms?

Prof. George Lopez: Well, I think you rely heavily on the NGO and the international community that talks about the level of abuse and the level of corruption connected with the abuse. It's terrible to say that there's a difference between dealing at a foreign policy level with a government whose ideology or current practice with a strong-arm ruler has gone awry in our democratic principles, versus dealing with a kleptocracy. I think—

Mr. Marco Mendicino: I'm sorry to interrupt you, Professor Lopez, but my time is short.

My last question is this: how do we measure the success of sanctions? We have heard evidence that sometimes we can confuse causation with correlation? What is your concise answer as to how best not to confuse those two concepts?

Prof. George Lopez: You follow closely the panel of experts reports from the UN. You follow closely the NGO and research community that's on the ground monitoring what's happening everywhere from South Sudan to other countries where these are playing out on the ground.

Mr. Marco Mendicino: What are the things in the report that we should be looking for?

Prof. George Lopez: You should be looking for the naming and shaming of the violators, and the extent to which other countries, in their foreign policy, are unwilling to condemn actors in their own political domestic environment who have been enablers.

Mr. Marco Mendicino: That's my time. Thank you very much.

The Chair: Thank you, Mr. Mendicino.

Mr. Aubin, go ahead.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Chair.

My first question is for Mr. Lopez, although Ms. Portela should feel free to chime in.

I was a bit disappointed with the start of your presentation when you said that economic sanctions seemed to be ineffective or only somewhat effective. However, during your presentation, you seemed to say that the economic sanctions procedure had undergone a certain number of changes over the years. As a result, the economic sanctions may be a bit more effective now.

What should be done next to make the sanctions more effective and to possibly bring together the European Union's method and the North American bloc's method, which seem quite different?

[*English*]

Prof. George Lopez: I think there are a couple of things. One is to further underscore what Dr. Portela said about the corruption mechanisms, etc. We continue to go after high-level foreign policy officials in trying to control their human rights behaviour and improve it. What we have to do is realize that the greatest perpetrators, both in conditions of war and of regular human rights abuses without war, tend to be kleptocracies and organized criminal networks that are benefiting substantially from the perpetration of these violent areas.

There is no greater case right now in the international community than South Sudan, where these two particular politicians, supposedly at political loggerheads or tribal differences, are actually amassing vast fortunes for themselves and their families by making the atrocities go on. I think it's a changed, focused lens or mindset in which you make.... You have to understand that the drivers for the violence tend to be corruption, criminal networks, and the illicit use of funds.

The second thing is that the ground ahead is to get regional organizations, particularly those like the African Union, to look at things like sustainable development goal 16, which talks about building effective, accountable, and inclusive institutions in which anti-corruption and protection of rights on the ground really matter.

[*Translation*]

Mr. Robert Aubin: Ms. Portela, do have anything to add?

[*English*]

Prof. Clara Portela: Thank you very much.

I totally agree with what Dr. Lopez just mentioned.

Perhaps what I would add is that it is difficult to foresee what the next state will be, because, interestingly, UN sanctions are becoming increasingly targeted. We have seen the UN Security Council basically being ready to blacklist spoilers to peace treaties, for example. The sanctions of the UN are becoming more personal, more targeted, and more individualized.

But if we look at the sanctions practice of the European Union, we see that it is actually becoming less targeted. There is increased readiness to impose measures that affect wider sectors of the economy or population groups that are not directly implied in the misbehaviour that the sanctions are trying to address.

Since we have a situation in which universal sanctions are becoming more targeted, but some unilateral sanctions are becoming less targeted, it is difficult to foresee what the next state will be. In any case, the interplay between these two levels might be quite interesting to observe over the coming years. We might witness a scenario in which the global and the regional levels follow different paths. They might even go in opposite directions, but they might still be complementary and actually quite effective.

Finally, I would underline again what Dr. Lopez has mentioned: what matters is that we improve our capacity to follow the money. The activities of the Financial Action Task Force have made it much easier to identify what financing networks are in place. This knowledge makes it much easier to target them specifically.

● (1720)

[*Translation*]

The Chair: Thank you, Mr. Aubin.

Ms. Zahid, you have the floor.

[*English*]

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thank you, Chair.

Thanks to Mr. Lopez and Ms. Portela for providing their testimony today.

My first question is to both of you in regard to the effectiveness of sanctions.

What measures are used to test the effectiveness of sanctions? For example, the intent of sanctions, at least in part, is to influence a change in behaviour on the part of the targeted state. If this change does indeed take place, how can we be sure that it was due to the sanctions and not other factors such as a leadership struggle, popular unrest, an empowered opposition, or capital flight in response to popular unrest?

Ms. Portela, you can start, and Mr. Lopez can also provide his input.

Prof. Clara Portela: It is not easy to establish a causality link, but in some cases this has been quite evident, because even the targeted leaders or the advisers, the circle around them, have confirmed that the impact of sanctions or the prospect of the continuation of sanctions has affected their calculations.

Sometimes it is possible to ascertain that there is a relationship of causality simply by taking a look at the chronology. In some cases, it is pretty evident, but in many cases, what you usually have is a combination of factors leading to these decisions.

Sanctions can be effective and not simply by having a direct impact on the calculations of the responsible leaders. Sometimes the sanctions can create conditions that foster a climate, or they bring about, for example, defections among the members of the inner circle of the leaders, which helps bring about this kind of behaviour.

As I mentioned in my presentation very briefly, sanctions are not only, or primarily, or exclusively about influence, but about changing the behaviour of the targeted leaders. They fulfill a number of functions in international relations, and sometimes the sanctions are actually designed to just create an incentive for the leaders to negotiate, to participate in a process of negotiation that is influenced by many other factors.

In many cases, as long as the sanctions have actually provided an incentive for parties participating in a conflict to actually negotiate, then we can consider the sanctions to have been successful, even if they have not brought about a complete change in the behaviour of the leaders, or even if they have not managed to interrupt completely the prescribed behaviour.

● (1725)

Mrs. Salma Zahid: Can we also hear from Mr. Lopez?

Prof. George Lopez: Yes, let me pick up exactly where Clara left off. In the first 14 cases of UN sanctions of position from the nineties to the mid-2000s, we found that 11 of those cases resulted in some kind of negotiation between the UN or various actors and the targets. This notion of sanctions that punish exclusively or so arm-twist and inflict pain as to make a target capitulate are all a myth. They're not borne out by the history.

What you want to do is not only enrage the target that you've sanctioned them, but you want to leave that path, that incentive, that Dr. Portela talked about, for there being an engagement between the international community or the imposers of sanctions and the target so you can persuade them to change the behaviour and show them the rewards that may be associated with that. When that can't happen, the utility of sanctions, to be effective, is that they should deny unlimited access to easy resources of a financial type, or arms or other types, which leave the perpetrators of violence unaffected by what you're doing. It's very important to have a mechanism whereby you can measure the ability to constrain those resources and limit the ways in which they can find substitutes for their arms, for their technologies, and for greater followers.

Finally, I think I'd say that sanctions fail when they're seen as the major instrument or the pulse. Sanctions work when they're part of the tools in a larger set of policies. If I want to improve the human rights behaviour of a target, I will use sanctions to deny its resources and try to create a bargaining situation, but I'm going to use the other available tools to our country or to our international organization to find ways to strengthen and protect the people who were targets or victims of the atrocities and to find ways to change the international dealings with commercial actors within that country that are ambivalent or a little embarrassed by the actions of the regime.

I think that brings us back to where Dr. Portela began. Can you get to the elites who support the policy but haven't actually designed it or implemented it and want a better business and political climate than they currently have?

The Chair: Thank you very much, Mr. Lopez and Madam Zahid.

Our time is pretty much done, colleagues.

There are a couple of matters.

Mr. Lopez, one matter was brought up by Mr. Mendicino in your conversation with him as it related to the expert panels. If there is a particular country that is the focus of sanctions and it is not part of the Security Council's ability to put sanctions on them, then is the United States looking through its own lens, through an expert panel, at whether those sanctions are successful or not in regard to countries that are not part of the UN sanctions process?

Prof. George Lopez: My experience is that U.S. government people rely very heavily on the information provided by expert panels. They also engage experts in their own bureaucracy to try to double-check or extend that analysis.

Often, the policies of the U.S. of late have been that when new perpetrators or sanctions violators have been found by expert panels, we lobby heavily within the Security Council to get those people listed and sanctioned. When that's not possible, OFAC does its individual foreign policy work and uses the existing—even thin—UN sanctions that are in place as a springboard for the U.S. system to then impose targeted financial sanctions and the like.

This, of course, has led to a small set of disagreements with the Russians and Chinese, who believe that sanctions set by the Security Council are the global norm and the ceiling that you can't go beyond, but I think the U.S. and many other western states believe that when you have that global agreement, the nations doing individual implementation can use it as a springboard rather than being constrained by a ceiling.

● (1730)

The Chair: Thank you very much.

We probably have a number of other questions, and we apologize for our technical difficulties this afternoon.

On behalf of the committee, Professor Portela and Professor Lopez, thank you very much for your time and your information. If there are other outstanding papers or issues that would be of use to us during our study, I encourage you to send them to our clerk and our committee. We are certainly looking to get as much expert information as we can in our study of this particular file.

Again, on behalf of the committee, thank you very much.

Colleagues, I will see you on Wednesday. The meeting is adjourned.