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Chair

The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

Wednesday, November 2, 2016

● (1545)

[*English*]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, we're waiting for a couple of members to arrive, because of the Olympians coming into the House. I think we have quorum, so let's do a little bit of House business before we officially go to our agenda on meeting number 31 pursuant to the order of reference.

I want you to look at the subcommittee's eighth report to the committee.

> The Subcommittee on Agenda and Procedure of the Standing Committee on Foreign Affairs and International Development has the honour to present its
>
> EIGHT REPORT
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> Your Subcommittee met on Tuesday, November 1, 2016, to consider the business of the Committee and agreed to make the following recommendations:
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> 1. That the proposed calendar for November and December 2016 and the suggested witnesses in the document entitled "Additional Witnesses For Committee's Review of the Special Economic Measures Act and the Freezing Assets of Corrupt Foreign Officials Act" be agreed to.
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> 2. That the Committee give priority to suggested witnesses who can speak on the theme of anti-corruption with regard to the review of the Special Economic Measures Act and the Freezing of Assets of Corrupt Foreign Officials Act.
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> 3. That Gary Kasparov be invited to appear before the Committee on Wednesday, December 7, 2016 in relation to the review of the Special Economic Measures Act and the Freezing of Assets of Corrupt Foreign Officials Act.
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> 4. That a letter be sent to the Department of Justice with specific questions related to the Committee's review of the Special Economic Measures Act and the Freezing of Assets of Corrupt Foreign Officials Act.

As I mentioned at the committee, we will be sending you a copy of that letter in draft to get your input before we send it to the Department of Justice.

Last:

> 5. That when the Committee invites officials from Government departments to appear before it that the Deputy Minister or the appropriate Assistant Deputy Minister of the Department be the officials who appear.

That's respectfully submitted by your chair.

I'd like to move that report on behalf of your subcommittee.

(Motion agreed to)

The Chair: I think we'll stop there, colleagues, and go right to our witnesses.

I want to start by apologizing to our witnesses for our late start. Parliament went a little over time today.

Colleagues, as a reminder, there will be votes at 6 o'clock, so we'll try to stick to the agenda as best as possible, to be completed around 5:30 p.m.

Before us this afternoon, pursuant to our terms of reference and section 20 of the Freezing Assets of Corrupt Foreign Officials Act and our statutory review of the act, are Maya Lester, Queen's Counsel, Brick Court Chambers, and Daniel Drezner, professor of international politics, Fletcher School of Law and Diplomacy at Tufts University.

Mr. Drezner will be with us by teleconference, so you won't see him, but you'll hear him.

With that, I'll turn it over to Ms. Lester to make her presentation, then we'll go directly to Mr. Drezner. We'll then go into questions by committee members.

Welcome to the committee, Ms. Lester. Thank you very much for being patient with us. We look forward to hearing your remarks.

Ms. Maya Lester (Queen's Counsel, Brick Court Chambers, As an Individual): Thank you very much, and thank you very much for inviting me. It's a great honour to appear before you.

I should say that I gave evidence to our own Parliament, to the House of Lords EU Justice Sub-Committee about two weeks ago, because they have been inquiring into various aspects of the EU's sanctions regimes. I would be happy to talk to you about that if it would be interesting for you to hear, perhaps in the questions.

I am a barrister; I am a litigator. I specialize in European law and public constitutional law, with a particular expertise and interest in sanctions regimes. I should say I am by no means an expert in Canadian law, so I will confine my remarks to what I know about, which is the European Union sanctions regimes. I know a little also about the United Nations, and of course the U.K.'s own regimes, to the extent that they have them, and I will come back to that.

I have a practice predominantly acting for listed parties, people and entities subject to sanctions, and I've litigated a very large number of cases in the European Court on their behalf, but I also do a lot of advisory work in other litigation related to sanctions for non-sanctioned parties.

What I thought I would do is briefly outline—and I hope it's not too basic—the EU system for imposing sanctions, and then I'll explain what I think are some of the challenges and problems in the European Union's system, which has given rise to a large number of court cases that you may be aware of.

The EU imposes sanctions as a group of states, as 28 member states—possibly 27 pretty alarmingly soon—as part of its common foreign and security policy, and decisions to impose sanctions have to be unanimous. That's very much the background to the EU sanctions regime, which is 28 member states trying to agree on what to do. To that extent, Canada has an easier job.

The decision-making body is the council of ministers in the EU, which is really all of the EU foreign ministers acting together. That's the executive body that decides on sanctions.

EU sanctions, like the U.S., the UN, and other sanctions regimes, consist partly of targeted asset freezes and travel bans, which are EU-wide, and partly of less-targeted sanctions, particularly in regimes like Iran, Syria, and, to some extent, Russia. In addition to targeted asset freezes and travel bans, there are broader prohibitions on, for example, certain kinds of business or financial transactions that can be done between the European Union and various states.

How does the court get involved? It's an exception to the general rule that foreign policy measures of the European Union are not subject to judicial review. There is an exception to that rule for individuals and entities that are the subject of targeted asset freezes and travel bans. This is because the EU Court has taken the view that, since these are restrictive measures that have an impact on the fundamental rights of people, whether they're EU citizens or not—and many are not—they should have access to judicial review to be able to challenge their designations. I understand that there is a system of that kind in operation in Canada. This judicial review must take place within two months of a sanctions listing in the General Court of the European Union, which is in Luxembourg. There have been literally hundreds of these cases in Luxembourg, many successful. I think, on average, about half of the cases that go to the European Court have succeeded.

Why? Well, originally when I first started doing these cases in about 2009-10, the practice was not to give reasons why people were designated on sanctions lists. The United Nations also was not giving reasons. So the basic initial challenges were due process challenges, where the European Court said that if you are going to impose restrictive measures on individuals and entities, you, the European Union institutions, have to comply with basic standards of due process. This means giving reasons why you have been designated; some basic evidence if you challenge the factual basis for your listing; some evidential support for what the institutions are saying as a justification for your listing; and some basic judicial review and proportionality analysis by a court.

● (1550)

Now we can come back to all of that, but the basic reason that so many cases were successful was an evidential reason. After these basic standards of due process were set out by the European court, there were then hundreds of cases—mostly Iranian cases, but by no means all; every different regime has brought cases—where, after initial cases that were lost by the institutions because of a lack of reasons, the focus of the court has been much more on whether the European institutions can substantiate with some kind of sufficiently solid factual basis, as they put it, the evidential basis for a sanctions listing. In many cases they haven't been able to do so, and again, we can come into that in more detail, if that would be of interest to the committee.

This basic reasoning and framework has been applied both to EU autonomous sanctions, those imposed by the European Union, and also to European Union implementation of United Nations Security Council sanctions. That has been very controversial. There was a famous case I was involved in called Kadi, in which the European court decided that it could review EU measures, even those that implement UN Security Council resolutions. That case was partly decided because of the lack of due process at the United Nations level, and that case led directly to the creation of the office of the ombudsperson for the UN Al-Qaida Sanctions Committee, the first incumbent of which, Kimberly Prost, I'm sure is well known to you and I think may be giving evidence to your committee.

The result of these cases was that many won. Many were brought. They're tailing off a little now for reasons that I can go into after my opening remarks.

The system has had particular problems, I think, which are reflected in the case law, to some extent. First, there is a real absence, in my view, of a body capable of gathering evidence to a robust and rigorous standard in the European Union. Now the council of ministers is not, in itself, an evidence-gathering agency. It's a group of member states, and so its sanctions capabilities, and the degree to which it can gather robust evidence to support sanctions listings, depend entirely on the evidence that member states are willing to share with each other in the council, and which, then, the council is willing to share with listed people and with the court.

This has led to another very interesting topic that I'd be delighted to speak about, which is rules of procedure that now will permit the institutions to rely on classified material. So far the court has taken the view, unlike the U.S. courts in this area, that all material relied on must be open to all parties. That may be changing in Luxembourg because of the problem of open-source material, but some of the quality of the open-source evidence, in my view, is not robust; it consists of some press articles and Internet printouts, very often.

The second problem, in my view, is that the EU institutions are not responsive to people who are affected by being included in sanctions lists. It takes them a very long time to respond to correspondence, even in real cases of urgency, and there's a real lack of engagement on the substance in the correspondence. Again, I can go into this in more detail, but I think—and I said this to the House of Lords committee—there is a real case for a Kimberly Prost ombudsperson process in the European Union in order to analyze evidence and provide a real responsive system.

Third, the court system has its own difficulties. It's very slow, is expensive, and there have not been injunctions given in cases of urgency, quick hearings, or damages in cases of serious errors in listings. There has also been—if I can call it—a bit of a game of re-listing: almost every entity and person that wins a case in the European court finding him or herself or itself on a sanctions list the next day, with slightly different reasons given for designation. The lawfulness of that process is being litigated in the European courts at the moment.

● (1555)

Finally, and I'll end with this comment, in my view there is a particular concern about the misappropriation regimes, and that may also be of concern to this committee. These are the Tunisia, Egypt, and Ukraine regimes which freeze the assets of people said to have misappropriated state funds. Why are these of concern? Well, in the case of the European Union—and I don't know about Canada—the origin of all of these lists was a request by the then governing bodies in Egypt and Tunisia, post-Arab Spring, to the European Union to please freeze the assets of a list of what they themselves called the enemies of the state who may wish to punish—was the kind of language that was used.

Now, the European Union, without leaving any time for analyzing the basis for any of the evidence that the people on these lists had been responsible for corruption offences of different kinds, immediately imposed an EU-wide asset freeze on them. Of course, the standards of due process by which these people are often standing trial in absentia, or that judicial investigations have been opened and pursued against them in these countries, without standards that Canada or the United Kingdom certainly would regard as complying with the rule of law is, in my view, shocking. The European Union has simply relied on the words of prosecutors in those countries as being sufficient to show that because these people are being investigated for corruption offences, that should be sufficient to keep them on EU sanctions lists. Although they are called temporary precautionary measures, they have now been in place for a very large number of years. I should say, though, that the European court has upheld the legality of these measures.

There are many other topics I could touch on. One, of course, is the potential consequences of the United Kingdom leaving the European Union for sanctions regimes, but I'll leave my remarks there and look forward to answering questions.

● (1600)

The Chair: Thank you very much, Ms. Lester. I very much appreciate that.

We'll go directly to Mr. Drezner, if he's on the line.

Prof. Daniel Drezner (Professor, International Politics, Fletcher School of Law and Diplomacy, Tufts University, As an Individual): I am indeed.

Thank you very much for the opportunity to testify. I'll give a little bit of background about myself. I'm a professor of international politics at the Fletcher School of Law and Diplomacy outside of Boston. My area of expertise is not legal, but rather in international relations. I've written a book and several articles about the utility of economic statecraft in international affairs. Much of what I will say today is based on a report that I co-authored for the Center for a New American Security in Washington which just came out about recent changes in the way the United States employs economic sanctions, which I will talk about now and which might hopefully be relevant to your Parliament.

In some ways, the interesting evolution in the American approach to economic sanctions has been that, when I started work on this in my dissertation 20 years ago, it was widely thought among policy circles that sanctions did nothing. Economic sanctions were usually thought to be a useless symbolic tool and a demonstration of states doing something without necessarily accomplishing anything. Twenty years later, what is striking is the degree to which the policy consensus in Washington has done a 180° turn. There is an increased amount of enthusiasm for the utility of economic statecraft, the tool in terms of advancing American interest in foreign policy, as well as advancing things like the cause of human rights.

The question is, what happened in those 20 years? Was it just the policy-makers were wrong both times or has there actually been changes in the way in which the United States has employed sanctions? The answer is a little bit of both. I would argue that policy-makers were excessively pessimistic when they were assessing the utility of sanctions back in the late 1990s and they are now excessively optimistic about the utility of economic sanctions for a variety of reasons.

That said, there were changes in the way that sanctions were employed. You can argue that the history of sanctions in the United States basically boils down to three phases. The first was up until about 1990. Then the Iraq sanctions which were placed immediately after the Gulf War were a notion of so-called comprehensive sanctions. That is the idea that any economic sanctions that are employed should be employed against an entire country, should usually be trade-based, and should be designed to maximize the economic punishment that a country faces unless they comply with whatever is asked with respect to sanctions.

It quickly became clear that this process did not work terribly well in terms of its success rate, and more importantly, demonstrated massive negative externalities as the Iraq case demonstrates in the form of humanitarian catastrophes, an increase in corruption, and so forth. Essentially, any employment of economic sanctions is an effort to outlaw what would otherwise be considered ordinary, perfectly fine commercial activity. It therefore creates an incentive for actors to find ways to work around sanctions rules as a way to earn above-average profits and it is therefore a breeding ground for corruption.

It is no coincidence that if you look at the list of countries in terms of corruption according to, let's say, Transparency International's or the World Bank's governance indicators, the countries at the bottom, the most corrupt countries are countries that have usually been under sanctions in one form or another, because once sanctions are imposed, the corruption is often longer lasting.

In response to that, the United States began to embrace the idea of smart sanctions. The idea of smart sanctions was to focus on somewhat more targeted aspects of the country rather than trying to hurt the population writ large. The idea was that certain kinds of sectoral sanctions would be used, things like sanctioning luxury goods, imposing travel bans, imposing arms embargos, various financial sanctions. These sanctions would presumably hurt the elite of the target's population rather than the broad-based populace and therefore would cause pain to presumably the most politically influential members of the target country.

Furthermore, the other idea was to essentially start imposing sanctions on individuals rather than countries writ large, with the idea of making individual policy-makers or wealthy people who were considered close to policy-makers potentially liable for the implications of policy transgressions.

The problem was that most of these smart sanctions also didn't work very well. Indeed, the track record of the UN smart sanctions cases that were imposed in the 1990s and the 2000s show that they actually have a success rate of perhaps 11%, which is much lower than the success rate of ordinary comprehensive sanctions. While it did alleviate some humanitarian suffering, they didn't seem to accomplish that much.

● (1605)

The one exception appeared to be cases in which targeted financial sanctions were employed against the targeted country. In part, this is because when financial sanctions are imposed, the effect on the private sector in some ways actually enhances the effect of the sanctions, as opposed to the case of trade.

Generally, when you impose trade sanctions, you're incentivizing black market activity and corruption. However, as a general rule, when you're imposing financial sanctions, because the U.S. capital market is so central to the international financial system, generally speaking, for banks that have to deal with these kinds of sanctions, access to U.S. capital markets matter much more than any small profits they could gain from sanctions busting. Furthermore, private capital would engage in prudential risk calculation in terms of anticipating the effect of any kind of financial sanctions on a targeted economy. This is often referred to as de-risking.

The degree to which U.S. regulatory officials have fined various banks, such as HSBC, Commerzbank or BNP Paribas, for violating other kinds of sanctions, and these fines have run into the billions of dollars, have caused much of the western financial community to comply very quickly with sanctions edicts that come from the United States. Indeed, by 2015, the use of targeted sanctions was a relatively important component of President Obama's national security strategy.

Generally speaking, the question is, do these actually still work? The evidence suggests that the targeted financial sanctions do, in fact, have a better success rate than previous comprehensive sanctions as well as smart sanctions. Generally speaking, the success rate is along the lines of 40%, which might not sound that great, but again you're dealing with difficult cases. The fact that they work at all is relatively impressive.

Sanctions tend to work much better if they have a well-defined demand—which is a banal point but nonetheless important—if they hurt target elites, and most important, if there are lower expectations of future conflict between the country imposing the sanctions and the country on the receiving end of sanctions, or to put it another way, sanctioning allies, oddly enough, tends to work much better than sanctioning adversaries. Of course, countries are obviously more reluctant to sanction allies, which is why it doesn't happen all that much.

That said, there are still negative externalities that come from sanctions. Sanctions undeniably cause investment to dry up in the targeted economy. You do see massive increases in the assessment of economic and political risk by the private sector when any kind of targeted sanctions are imposed. There is not that much evidence of a "rally around the flag" effect, which is to say the sanctions don't necessarily lead to members of the targeted population deciding to support their leaders that much more.

The logic seems to be with targeted financial sanctions that the imposition of sanctions leads to an elevated perception of political risk among private sector actors, which then causes private sector investment in the targeted economy to expire. The question is whether or not we have reached peak sanctions, for lack of a better way of putting it. One of the reasons you can argue that some of these cases of sanctions have worked, for example, the sanctions that were imposed against Iran prior to the nuclear deal, is that in some ways people did not anticipate that they would actually have the potency that they did. Therefore, the actual imposition of sanctions was a genuine policy surprise not just to the target economy, but I would argue to U.S. policy-makers as well. The interesting question is whether or not going forward you're going to see an increasing amount of countries anticipating the fact that this can actually happen, and therefore, as result, hedging or finding alternative ways to guard against U.S. financial power. Indeed, you're even seeing in some cases countries such as Russia trying to find alternatives to the SWIFT payment system and to excessive reliance on the U.S. dollar as a form of international trade.

The question is whether or not the U.S. government appreciates this. Indeed, there are indications from a speech that Secretary of the Treasury Jacob Lew gave back in the spring that, in fact, U.S. officials are aware of this, and that in some ways while they will have to engage in continued financial intelligence in order to be able to continue to impose successfully targeted sanctions, there is a concern that essentially if the United States continues to become sanctions happy, there will be too much blowback, and that, in turn, could affect the dominance of the U.S. financial system.

I think I will leave my remarks there.

● (1610)

The Chair: Thank you very much, Professor Drezner. That's very helpful.

We're going to go straight to questions, and we'll start with Mr. Allison.

Mr. Dean Allison (Niagara West, CPC): To both our witnesses, thank you very much for two different perspectives on the U.S. and the EU.

Dr. Drezner, we're reviewing our Special Economic Measures Act and our Freezing Assets of Corrupt Foreign Officials Act. We're trying to figure out if maybe there's a spot we're missing. We've heard loudly from a number of witnesses who state that sanctions have unintended consequences and sometimes these things seem to be a challenge. Both of your remarks bear that out today in terms of once again talking about those stats.

I'm assuming, Dr. Drezner, you are familiar with Magnitsky, and that's part of the reason we're talking about this today. You did say that smart sanctions are more effective. We're looking at trying to figure out if we have a gap in some of our legislation that maybe doesn't address this or doesn't give us an opportunity. Do you have any comments on Magnitsky? I've certainly heard your testimony say that smart can make some sense, that targeted makes sense, that it can have an effect.

We're looking at those who have bad behaviour, massive human rights abusers who raid their countries of money and all these things, and then say, "Hey, we're going to park it in western democracies, and then when we're done ripping off our own countries we'll be able to travel there, we'll be able to live there."

We're hearing a number of different things. Obviously, if you're going to do something you have to have the tools. You have to have the ability. We've heard here in Canada that maybe we need more resources to target some of these things.

We also hear the complications of what happens with banks. You also talked about that in your testimony. We'll go back to Magnitsky. It's pretty early stages in terms of this act in the U.S. We see some of the blowback that happened from Russia in terms of refusing adoptions of babies, etc.

What are your thoughts on that approach? What are some of the things we need to look out for as we review some of our legislation?

Prof. Daniel Drezner: Again, I think with Magnitsky the question is always, what do you want to get out of the sanctions? In other words, do you see the sanctions as a tool of punishment for prior bad acts? This, in some way, is what the Magnitsky sanctions did.

Part of the problem in terms of evaluating their success is that essentially they took place in a steadily worsening state of Russian-American relations. As I said, in some ways the expectation of a future conflict between Russia and the United States...the Magnitsky Act was simply one element of it that further increased the conflict between the two countries. Any time you increase the idea that there's going to be conflict, you decrease the likelihood that the target will make any concessions, even if the target is an individual citizen. I have to say I would not define the Magnitsky sanctions as all that much of a success in terms of the effect on Russian officials who have been placed under sanction.

There is one other possibility, however, although this is an extremely nebulous category and it's extremely hard to nail down, which is you can look at the Magnitsky sanctions as an example of potentially sanctioning as a form of deterrent, which is that imposing those sanctions will not necessarily alter the behaviour per se of the individuals under sanction, but it might cause other officials in the same country or other countries to recognize the implications of deciding to engage in similar behaviour. That could lead to one of two effects. It could actually successfully deter them or it could cause them to take countermeasures to make sure that even if those kinds of sanctions are imposed, they, as a result, do not suffer as much.

I cannot stress enough that this is extremely difficult to identify. As a scholar, it's hard for me to say we conclusively can show that this takes place. There is some limited evidence that this has occurred in certain categories of sanctions, that you see other actors responding to it. But I do know from my conversations with state department officials that another thing that's going on is that Russian officials, once being placed under sanction, are trying to figure out ways, obviously, to circumvent them in terms of depositing money or assets with relatives or known friends, and so on and so forth.

As a result, there's a constant arms race in terms of financial intelligence, to be able, if you're going to impose these sanctions, to see not just the effect on the intended target, but also the penumbra of relationships that this intended target possesses.

● (1615)

Mr. Dean Allison: Thank you.

Ms. Lester, do you have any comments or thoughts on that statement? I certainly heard your comments on how difficult it is even to get people on a list because you need the agreement of 28, now 27 countries.

Ms. Maya Lester: As you probably know, the European Union has not imposed a Magnitsky list—

Mr. Dean Allison: Correct.

Ms. Maya Lester: —but that's very controversial, and members of the European Parliament have repeatedly called on the EU to do so. Some countries feel very strongly that there should be a list. It has not been possible to reach an agreement on it.

I think that serious human rights violations are perhaps a good example of a use for targeted sanctions. Although I don't disagree with anything that has just been said by Mr. Drezner, when people talk about the efficacy of targeted sanctions, I often wonder exactly what they mean by that. It seems to me to be very rare that targeted sanctions ever actually identify what it is they're trying to achieve and what someone who is targeted by those sanctions has to do if he or she wishes to change behaviours and not be sanctioned anymore.

What one tends to see are very broad formulations like "In view of the situation in Zimbabwe" or "In view of the situation in Russia, we are imposing sanctions," but there are never achievable, clear goalposts. I wonder whether or not this is intentional. It seems to me in those circumstances to be extremely difficult to say whether targeted sanctions have worked or not because it is just not measurable.

Of course it also depends on who is imposing the sanctions and whether the targets care or not. If the European Union freezes your assets and prevents travel, you're not going to care, other than perhaps by reputation or symbolically, if you don't hold assets in the European Union and you're not going to travel there. The same would be true, of course, in the case of Canada.

As a final example, the EU's Russia program does not include on its list President Putin or his very close allies. This highlights the point that targeted sanctions, like others, are of course highly political. Very often the criticism is made that the real targets of the sanctions tend to be the business classes, the middle classes, and not the real decision-makers who are actually responsible for policy.

Very often you see decisions to include people in lists that are not really based on their conduct, but rather on their association with a regime or their status. There are plenty of studies showing that these have sort of counterproductive effects, because if you freeze out or make life more difficult for those people but not their rulers, the politicians who actually do have control over policy in those entities, then how can you say in any meaningful sense that those sanctions are working?

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

I'll go to Mr. Sidhu, please.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you both for your testimony today.

Ms. Lester shed a lot of light on the European Union, which leads to my question. Given the complexity and scope of economic sanction programs in the European Union, how difficult and onerous is it for the private sector to comply with the regulations?

If your answer is yes, is there sufficient information, clarity, and guidance for the private sector?

● (1620)

Ms. Maya Lester: If I have understood the question correctly, yes, it's extremely onerous for the private sector to comply with sanctions. There is an incredible industry of compliance, and the main enforcement of sanctions, certainly in the EU, comes from compliance rather than public enforcement.

Is there clear guidance? No. In my view the EU has been very bad, far worse than the OFAC in the United States, at publishing guidance on the meaning of its sanctions measures and how they should be applied. Of course, you could say that's fine because it's intentional. It leads to over-compliance by institutions trying to do the right thing, but I think a lot of people in business—entirely innocent business, if you like, which is not supposed to be subject to sanctions—find themselves turning in somersaults trying to work out how they can lawfully conduct their business. That is a huge externality, if you like, which has just become part of the system.

I think it's fair to say that is not part of the targeted sanctions problem, although to some extent it is. How can you do business without making funds available to a targeted person? I think the problems you've identified are far more with the less targeted parts of sanctions regimes.

Mr. Jati Sidhu: Is there any room to improve when it comes down to assistance not currently provided by regulators in the European Union? Would that be beneficial to the private sector as a part of the compliance process?

Ms. Maya Lester: I think the answer from the private sector would be, loudly and clearly, yes, please, they would love more guidance and they would love more clarity.

I think the answer from the EU might be that it's difficult when you have 28 member states to pass these measures, first of all, let alone give detailed guidance on what they mean and how they're going to be applied, not least because, of course, the rules are set by the European Union but the enforcement happens at the member state level. Each member state's national authority has to decide what the penalties will be for breach of sanctions and how it is that they are going to enforce them.

The U.K. treasury gives some degree of guidance, but again, I think the private sector would say that it's all about clarity, and there is just not enough guidance being given.

Mr. Jati Sidhu: Mr. Drezner, would you have a different take on the comments made by Ms. Lester?

Prof. Daniel Drezner: No. I would pretty much agree with Ms. Lester's testimony with respect to the frustration that I think the European private sector faces with respect to the way the EU sanctions are implemented, as opposed to the way that OFAC handles U.S. sanctions. Indeed, I would suggest that I believe OFAC and treasury officials in the United States occasionally express similar frustrations about the way European Union officials engage in sanctions. Part of the issue, again, is whether or not you're dealing with the EU as one or the EU as 28 members.

In the case of the United States with respect to compliance with the U.S. sanctions, I think there is some degree of frustration within the private sector about the degree to which OFAC occasionally forces them to engage in things like “know your customer” and compliance and so forth, but that said, OFAC also has a longer institutional history and institutional relationship with the banks in the United States. As a result, I think a lot of the kinks in the process have probably been a little more smoothed out in the United States.

Mr. Jati Sidhu: Thank you.

The Chair: Thank you, Mr. Sidhu.

In the minute left over by Mr. Sidhu, I want to ask Ms. Lester a question relating to targeted financial sanctions, or travel bans, or areas of sanctions relating to gross human rights violations. How would we gather evidence if we were to put in legislation like that, either in the EU, or in the United Kingdom, or in Canada? From a legal perspective, how would we do that?

Ms. Maya Lester: Canada, like the United Kingdom and the United States and other countries, has agencies that are very used to gathering evidence in a domestic context, both legal enforcement and criminal law agencies, which have very good investigatory powers precisely to gather evidence against people who are alleged to have engaged in various kinds of regulatory, criminal, or other misconduct. In the United Kingdom, there is certainly some joined-up thinking between different pre-existing agencies about who has responsibility for evidence gathering and enforcement when it comes to sanctions and violations.

Obviously, the details of who exactly would undertake the job in Canada is not something I can speak to. I know that the foreign office in the U.K. is actively engaged at the moment in the process of trying to work out how to make particularly the open source evidence gathering they have to engage in more robust.

Of course, there would have to be some interaction, one assumes, with international partners and colleagues. I think Kimberly Prost would be a very good person to talk to about evidence sharing between different nations when it comes to the imposition of sanctions and intelligence sharing.

● (1625)

The Chair: I understand the United Nations has an experts panel that they use to look at sanctions. Does the EU have the same process?

We're not aware of an experts panel in Canada. We are aware of one at the United Nations. When they promote these sanctions and put them in place, they review them through the experts panel.

Do you have anything similar in your regime?

Ms. Maya Lester: To my knowledge we don't. The UN not only has a panel of experts but has, I understand, a separate panel of experts for each different sanctions regime, and that is staffed with people who know very clearly what's actually happening on the ground in that country, who in fact is operating as opposed to who you're being told is operating, who the real movers and shakers are, and so on.

In the European Union, one problem is that the EU's procedures are not very transparent when it comes to sanctions, so we are never told who it is that does this. My guess is that the Council of Ministers, which has responsibility for imposing sanctions, does not have separate teams of experts going out and gathering evidence for each sanctions regime. I think what happens is that they rely on each member state's own domestic evidence-gathering capabilities, and each member state then comes to the EU with a list of people and with reasons supporting why they propose that those particular people should be subject to sanctions. At the EU level itself, though, there is no equivalent to the panel of experts.

The Chair: Thank you very much. I appreciate that.

[*Translation*]

Mr. Aubin, you have the floor.

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

Hello Ms. Lester and Mr. Drezner. Thank you for agreeing to shed light today on the very important subject of economic sanctions.

After having heard, since the start of this study, a certain number of witnesses describe the relative scope of economic sanctions, I want to reverse the process. I would like to know whether you have an analytical grid, in the European Union or United States, that would help assess the impact of sanction regimes on the imposing countries, and not on the targeted countries.

We could start with Ms. Lester.

[*English*]

Ms. Maya Lester: From my perspective [*Technical difficulty—Editor*] I don't have any such grid. I'm a mere litigator, I'm afraid. I'm very responsive to the individual questions of clients, but I don't study or pretend to study sanctions imposed by different entities overall. I follow it. I have a blog called europeansanctions.com in which I try, personally, to track sanctions developments around the world.

Actually, one comment I would make is that I also practise in the field of antitrust where there are very well-established networks of agencies internationally that share information. I think there is a lack of similar interaction on a sanctions level, but I suspect Mr. Drezner will be more familiar with matrices for measuring sanctions.

I have just one comment before I hand over. You can ask me about the way the European Union imposes its sanctions, but actually the people you should ask are the European Union officials and perhaps officials from the U.K. Foreign & Commonwealth Office. They could tell you from the horse's mouth, as it were, how they go about gathering evidence, and whether they think that's a good system or not. We can follow up afterwards. If anyone would find it useful, I'd be happy to provide the names of people I think might be useful to you. As I say, I'm in private practice, and I can give my personal views, but I wouldn't pretend to be someone directly involved in the system.

● (1630)

[*Translation*]

Mr. Robert Aubin: Thank you.

Mr. Drezner, what do you think?

Prof. Daniel Drezner: Thank you for your question.

[*English*]

I want to make sure I understand. To clarify, are you asking me whether or not there's sufficient data to determine the degree to which different countries that impose sanctions feel the effects of them, or the way in which different countries develop criteria for how to target the sanctions on specific individuals?

[*Translation*]

Mr. Robert Aubin: My question was not about the effectiveness of the measures we want to impose on certain countries. Instead, I want to know whether the economic sanctions also affect the imposing country.

Prof. Daniel Drezner: Okay.

[*English*]

Right. That makes sense.

In terms of the costs on the imposing country, it gets complicated. There have been far fewer studies on the costs of sanctions on the sender country, the sanctioning country. The few studies I have seen on these are not all that good, frankly, mostly because what they tend to measure at this point are trade effects. They usually don't take into account the notion that if, let's say, the United States sanctions Russia, which then leads to a decline in trade between the United States and Russia, it's possible that the United States compensates for not trading with Russia by trading more with Ukraine or Belarus or what have you.

I would say that in fact there is actually a fair amount of data that one could try to use to study the systemic effects of sanctions on the sender country, but not a lot of research has actually been done. Part of this might be due to the fact that an overwhelming number of the sanctions that are imposed are by large economies, such as the European Union or the United States, on relatively small economies. As a result, usually the effects on the sanctioning country are negligible.

That said, if you're talking about a case like Russia, I think it would be appropriate to talk about some general equilibrium effects of those sanctions. There are a few studies that I believe the government accountability office has tried to do in the United States on the effect of those sanctions on the Russian economy, but I'm not actually sure there have been any studies done on the effect on the U. S. economy.

[*Translation*]

Mr. Robert Aubin: Thank you.

My second question is for Ms. Lester. It's probably more applicable to your area of expertise.

Once a person or entity is included on a sanctions list, what steps —for example, at the European Union—can the person or entity take to be removed from the list, if there is a case of mistaken identity or if the situation has changed? How can a name be removed from one of the lists?

[*English*]

Ms. Maya Lester: In the case of the European Union, you write to the European Council and you make observations explaining why you think you should not be on the list. As I said in my opening remarks, the response, in my experience, is very frustrating, because it will be very slow and it will usually not really engage with the substance of the observations. That is a failing, in my view, and it's why there are so many court cases. You only have a two-month time limit to get to the European Court to challenge the lawfulness of your listing.

Usually what happens is that people write to the European Council. They don't hear back, and they have to then make an application for judicial review in the European Court. That's the point at which they will see the evidence that is said to support their designation. They have to go through a lengthy court process, including appeals and possible re-listings. So I think the answer to your question is that it's very unsatisfactory.

In the case of the U.S., the administrative process with OFAC for delistings is more effective in the sense that there is a real administrative process that doesn't involve going to court, but I think anyone dealing with OFAC delistings would say that it's extremely difficult to be delisted from an OFAC list unless you can in some sense say that things have changed since the original designation. You might be able to be delisted administratively. The courts in the U.S. are much more deferential to OFAC than the European courts have been in the sense that the standard for overturning an OFAC decision is extremely high.

In the case of the United Nations, finally, the only process for delisting is one that's known as the “focal point”, which in my view is not an effective way of dealing with delisting requests, and requires the support of one's own country, which very often is not forthcoming. The only sanctions list in the United Nations that has a proper degree of due process, in my view, is the al Qaeda and ISIL sanctions list, which has an ombudsperson process that does provide real due process. They review all the evidence underlying listings and make a recommendation to the Security Council as to whether there should be a delisting. But the ombudsperson process is only for one of all of the UN's many sanctions lists.

● (1635)

The Chair: Thank you very much, Ms. Lester and Mr. Aubin.

Mr. Saini is the last questioner for our witnesses this afternoon.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much to you both.

Mr. Drezner, my question is for you. You've written extensively on comprehensive and targeted sanctions. One of the drawbacks of comprehensive sanctions, you say, is the rent-seeking opportunities that governments create for some of their supporters. If we look at targeted sanctions, I believe you said in your testimony that they work 40% of the time. In the last three decades, 80% of sanctions were conveyed upon non-democratic countries. When you target sanctions to an individual, in most cases that person would be in a non-democratic country, so in many cases that person would have state support to in some way avoid sanctions. I'm wondering if there is some way we can make our sanctions regime more effective.

On top of that, you said that after the Iraq situation, the targeted sanctions regime worked better when the Americans were involved because of the financial access to capital. If we put someone in Canada, for example, on a list, but the Americans don't put them on a list, or the EU doesn't put them on a list, how effective is it in targeting that individual?

Prof. Daniel Drezner: I'll answer your second question first. If Canada were to sanction an actor without the support of either the United States or the European Union, the effect would be pretty negligible. Obviously, that person would presumably still be able to do business in most of the major financial centres of the world. It wouldn't necessarily alter their behaviour all that much.

In terms of sanctioning individuals within authoritarian countries, you're correct that most of the targeted countries where sanctions have been imposed have been authoritarian or totalitarian. You're also correct to infer that most of these targeted individuals presumably have the support of the state. Indeed, that's usually the idea of it. The idea behind a lot of these sanctions is that in some cases you're trying to prevent corrupt or criminal liability, but in other cases, what you're trying to do is, in fact, pressure the very people who presumably have influence over an authoritarian government, which is sometimes a relatively murky question, as opposed to presumably a more open democracy.

That said, I should also point out that one of the drawbacks, even in the cases of these kinds of targeted sanctions over the last few decades, is that there is significant evidence that when they are imposed against an authoritarian state, one of the responses of the authoritarian state is to repress even further, which is to say that usually the authoritarian state becomes even more authoritarian in nature in response to any sort of external acts of economic coercion. That doesn't necessarily mean that, alas, you could eventually potentially hope for regime change, or once the sanctions end, that could ease up, but that is without question an important negative externality to consider.

Mr. Raj Saini: Thank you very much.

Ms. Lester, I have one quick question for you. You mentioned in your opening comments about the ombudsperson system in the United Nations. There's also another system in the United States. The intra-executive legal and policy review is part of the government process, so if someone has been designated to be on the sanctions list, they have the opportunity to exchange information with the government to provide evidence of their innocence prior to being on a list. The ombudsperson process is when someone has been listed. You're talking about delisting, which is a difficult process from what I understand of the United Nations, as opposed to the American system where they are trying, once a person has been designated, to give that person the opportunity to provide evidence.

How do you see the system work? You've seen it working at the United Nations. If we are to consider some form of judicial review in Canada, how do you think we could put together a regime where we could have the ability to make sure that you don't have to go through this whole process, and at the end, delist someone, as opposed to getting the evidence beforehand?

Ms. Maya Lester: I think the difficulty with evidence beforehand is that most, if not all, imposing authorities will say that, because of the risk of asset dissipation, they can't let someone know that they're going to have sanctions imposed on them before they're going to be imposed. The whole point, really, is to have a surprise effect to stop people channelling funds out of the European Union or out of Canada, or whatever it is. I'm not aware of a system that provides due process, if you like, in advance of a sanctions listing.

To me, the two key factors are, as quickly as possible after a listing, someone should be notified that they've been listed and why, and they should have some meaningful opportunity from a responsive, swift, efficient decision-maker to know the case against them and be able to challenge it. I don't necessarily subscribe to the view that it must be a full court providing full judicial review. The ombudsperson process, for example, can be very effective, as long as it provides a real substantive review of the underlying evidence to a transparent, consistent, and appropriate standard of review. The important thing from a target's point of view is to feel that someone has actually reviewed the evidential basis for their listing in detail and has heard what they have to say, explain whether they agree with it or not, and then have the ability to recommend delisting or not.

If I were designing a system, I would try to have a very responsive administrative system and I would also have a layer of judicial review, but not one that, with respect to the European court, takes two or three years. Hopefully it would be some sort of swift court procedure. In the U.K. where we have domestic judicial review as you do in Canada, one can have a pretty swift hearing particularly in cases of urgency, and it doesn't have to take years and years.

To me, there are two components: administrative review, and judicial review based on some kind of appropriate evidential threshold.

● (1640)

Mr. Raj Saini: Let me understand you clearly because you're talking about the timing of instituting the sanctions. If someone has been designated, are you suggesting that sanctions should be put on right away, that their assets should be frozen, and the travel ban should be put in place and then have the judicial review afterwards?

Ms. Maya Lester: I know of no system that doesn't do it that way, because I think anyone would say of course there are some penalty-type decisions where the only fair process is to give someone a warning in advance that you're going to impose a penalty and have the process in advance. Certainly the European system, and I'd be surprised if it was not also the UN and U.S. and Canadian systems, is that the due process has to come afterwards with an opportunity to be delisted swiftly if that's the right result. Otherwise, if someone tells you tomorrow that you're going to have your assets frozen next week but it hasn't happened yet, if this is someone who really should be sanctioned, then why wouldn't you simply remove all your assets from that jurisdiction? I think it's very difficult to provide process in advance but I think the key is swift and efficient due process as soon as possible after the event.

The Chair: Thank you very much, Mr. Saini.

Ms. Lester and Professor Drezner, thank you for your testimony and thank you very much for your patience at the beginning of the meeting with our being a bit late. It's much appreciated. I think your testimony does go a long way in our getting a better sense of the different structures in the European Union, the United Kingdom, and of course, the United States, which are the key areas we are focusing on, trying to get a better understanding of their jurisdictional structure versus our own.

If there is any information and/or reports that you think would be useful to the discussion we're having, please feel free to pass them on. We'll distribute them to the members of the committee.

Ms. Maya Lester: Thank you for asking us. If there are particular topics of interest to the committee, I'd be very happy to provide notes in writing, and I will think about whether there is useful material to send now. But please don't hesitate to ask for particular items of information.

The Chair: Thank you very much.

Prof. Daniel Drezner: Thank you.

The Chair: Colleagues, we're going to take a two-minute break and then we're going to hook up Mr. Halvorssen, the president and chief executive officer of the Human Rights Foundation. He will be speaking from London, I understand.

● (1640)

(Pause)

● (1645)

The Chair: We'll recommence our committee hearings. I understand that Thor Halvorssen is in front of us and can hear us.

Mr. Halvorssen is the president and chief executive officer of the Human Rights Foundation. He will be making a presentation to the foreign affairs committee here. Then we'll get into questions. We have a good 45 to 50 minutes, so we have plenty of time for the presentation and discussions with Mr. Halvorssen.

With that, Mr. Halvorssen, I'm going to turn the floor over to you for your presentation. I understand you've been briefed on our process, and what we're looking to chat with you about.

Mr. Thor Halvorssen (President and Chief Executive Officer, Human Rights Foundation, As an Individual): Thank you very much.

I appreciate the opportunity to tell you a little bit about my knowledge on the subject of corruption, and specifically what your committee is doing.

I would like to underline something about the modern authoritarian state. Whether we speak of elected autocrats, like Nicolás Maduro in Venezuela, Vladimir Putin in Russia, or of dictators like Teodoro Obiang in Equatorial Guinea or Nursultan Nazarbayev in Kazakhstan, all of these are almost pathological kleptocrats. To achieve their aims of accumulation of illegally gotten wealth, they typically rely on significant natural resources that range from gold and diamond mines, oil and gas exploitation, vast forests, or even water to secure the funds that they want to hide in distant jurisdictions. Just as important, kleptocrats in power rely on domestic or foreign henchmen who operate in excellent terms domestically and through unhinged joint ventures with western companies and are ready to take a significant share of the spoils in return for silent complicity and for acting as fixers. The proxies and cronies of corrupt rulers are usually free to travel to the west, to own luxury mansions and apartments, to open bank accounts and invest in the stock market, and to make significant investments elsewhere.

I'm here to make two general points, and then to provide an important, current, and developing example. First, as currently constituted, your sanctions system lacks any teeth to punish corrupt officials, who are also gross human rights violators, or their cronies, who are also key enablers in dictatorships. My second general point is that passing a Canadian version of the U.S. Magnitsky Act would be a step in the right direction.

On the first point, if we consider the way the modern dictator operates, the Freezing Assets of Corrupt Foreign Officials Act, or FACFOA, sanctions come into place too late: when the corrupt dictatorship has already been removed from power and the new democratic or authoritarian government requests Canada to go after the assets of the most recent set of thieves, such as in the cases of Tunisia or Ukraine. Because of the way your law is written, FACFOA may even serve as a political tool for one set of corrupt officials to settle problems with another set of the same type of official that preceded them. Furthermore, FACFOA requires a foreign state actor to initiate a process.

Unless there are exceptional situations where the UN urges, through the UN Act, or the Canadian government determines that a serious threat to international peace and security exists, the Canadian sanctions system does nothing to deal with corrupt cronies and individuals who act as enablers of corrupt government officials who are also dictators. Both may be laundering their money in Canada. Essentially, a discussion of a Canadian Magnitsky Act has stalled after it was first introduced in 2015. To the extent that it targets specific government officials and cronies closely connected to gross human rights violations by the regime in question, I believe this act would be an excellent first step in the right direction. In this case, Canada should heed the advice of former member of Parliament and human rights champion Irwin Cotler.

With regard to FACFOA's and SEMA's deficiencies, let me provide one example. A group of Venezuelan businessmen formed a criminal association that operates under the name Derwick Associates. The principals of this company are in their twenties and thirties, and they had no prior experience whatsoever in government contracting, yet, in the space of one year, the Government of Venezuela provided them with 12 construction and procurement contracts for power plants. The businessmen, Venezuelans who also hold foreign citizenships for countries like Spain, Italy, and Germany, subcontracted all of the work to a second-rate company inside the United States. Derwick Associates then overbilled the Venezuelan government by almost $2 billion, and carried out an exchange rate fraud. The total amount stolen by these men exceeds $4 billion Canadian. If you consider the size of other well-publicized scandals around the world, if you consider the FIFA scandal, this scandal is multiples of that.

● (1650)

They paid kickbacks to Venezuelan government officials at the highest level, and then they set about laundering their money. They laundered part of this money by using U.S. banks, and they also laundered it by using the Royal Bank of Canada. They then invested hundreds of millions of their ill-gotten gains into numerous ventures, including two oil companies. One is a Texas company called Harvest Natural Resources. They also bought 20% of a publicly traded Canadian company by the name of Pacific Rubiales Energy. Incidentally, thanks to their ownership of this Toronto-based company, they blocked the acquisition of that company by a Mexican business group. Having stopped that merger, the shares of Pacific Rubiales tumbled to historic lows, causing losses in the hundreds of millions of dollars in value for shareholders.

In Canada, these men don't operate under the name Derwick Associates. They operate under the name O'Hara Group. The names of these men are Leopoldo Alejandro Betancourt, Pédro José Trébbau, Francisco Convit, Orlando Alvarado, and Francisco D'Agostino Casado. This last individual is the brother-in-law of the president of the Venezuelan legislature. I'm familiar with the actions of these individuals, because I am one of the two plaintiffs in a lawsuit against them, where we include in our verified complaint detailed allegations of bribery, kickbacks, money laundering, and predicate acts that reveal them to be engaging in racketeering.

Distinguished members, any act of corruption in conjunction with an authoritarian government is by necessity an action that empowers the government and enables it to continue to violate human rights with impunity. It is an action that entrenches these authoritarians. In the case of Derwick Associates, to give one very clear example that involves Canada, they've carried out smear campaigns against whistle-blowers in four different countries, and they have corrupted the financial systems of Spain, Andorra, the United States, and Canada.

Authoritarian governments would be powerless if they didn't have enforcers willing to arbitrarily arrest, torture, and execute innocent people, but just as importantly, they need individuals willing to whitewash and launder dirty money and pay them kickbacks. Governments often target individuals who choose to become enforcers of brutality, injustice, and oppression; however, enablers of corruption, the clearly corrupt cronies like these men have remained largely spared from any sanctions.

The Canadian sanctions under the Special Economic Measures Act jointly with FACFOA is a program that should be strengthened to cover not only corrupt cronies in Tunisia, Ukraine, Russia, Burma, North Korea, Iran, Libya, South Sudan, Syria, and Zimbabwe, but also the corrupt cronies of Nicolás Maduro's government and many other governments around the world. Simple, targeted sanctions like visa denials and asset freezes, such as the one being discussed here today, have the potential to change the mindset of the financial enablers of the authoritarians and motivate them to abandon the oppressive political structures that they currently prop up.

Thank you.

● (1655)

The Chair: Thank you very much, Mr. Halvorssen.

We're going to go right into questions. I understand Mr. Kent will start off.

Hon. Peter Kent (Thornhill, CPC): Thank you, Mr. Halvorssen, for clear and concise testimony today, and for adding quite honestly and frankly this new Venezuelan dimension to our study and the links you suggest with Canadian financial institutions and private companies.

We've been told in our testimony that the United States represents the high watermark, or the gold standard, for enforcement at all stages for determining targets, for detecting movement of financial transactions, and for action. We've also been told that, in Canada, we have significant gaps on the enforcement side because of the many government departments and agencies that are responsible for detecting and enforcing. We also have a heavy financial burden levied against the private sector in trying to comply with any sanctions regulations.

I'm wondering whether, given your insight and expertise, you would suggest that a single regulatory body, something like the U.S. Treasury's office of foreign assets control, is most effective in applying sanctions and enforcing sanctions, but also having the financial investment that would need to be made to have an effective sanctions regime.

Mr. Thor Halvorssen: It's not a surprise that part of the skepticism people in the human rights field have with regard to the lack of Canadian enforcement has a lot to do with the fact that so many natural resource companies are based in Canada, particularly gold mine companies and companies that exploit natural resources in some of the world's worst places. By worst places, I mean not just the standard of living which in great part results from the sort of government they have there, but also the conditions that these governments impose on their people. It's no surprise that so many gold mining companies based in Canada are engaged in, if not outright bribery, bribery of a different kind. Let me just start off by saying that.

I am certainly no fan of the United States government in respect of sanctions, because they often are extremely slow and they begin things either when people are out of power or at the tail end of it. However, it's better than what currently exists in Canada and certainly better than what exists in the European Union. OFAC can be a rather effective unit, but OFAC already has a considerable amount of experience, and it is certainly not the only regulatory body. OFAC will cover things like people violating sanctions with regard to Cuba or Iran, but with regard to freezing the assets and going after any number of people, I believe in a wider approach. Law enforcement in general should be counted on and should be empowered to do this at the municipal, federal or provincial levels, however you wish, depending on what specific structure we're speaking about in Canada.

My view is that more is better, not less. As long as someone is also watching the watchers, I think we will all be happier. In the end, the media are a key component of blowing the whistle, but once the whistle has been blown, someone needs to be there to make sure there is follow-through, and Canada at present has structures that are lacking.

I'm also very surprised that the Magnitsky Act is still stalled. Obviously, realpolitik comes into play, but it is rather pitiable that you folks have not yet carried the Magnitsky Act.

● (1700)

Hon. Peter Kent: That was to be my next question. The House of Commons unanimously supported the Magnitsky Act last year, but an election intervened and there has been a change in the support for that by some members of the government. There have been some criticisms of the Magnitsky Act in that it is limited to Russian oligarchs, Russian criminals and human rights abusers, and there have been recommendations that it should be reshaped to be more global in its nature. Would you agree with that, or do you think the Magnitsky Act should stay framed on Russia and the targets that have been identified by the U.S. Congress?

Mr. Thor Halvorssen: What you've just said is music to my ears. I have no specific beef with just Russia. I'm an equal opportunity exposer and opponent of dictatorships and authoritarians and human rights violators. Most definitely, it would not take very much to alter the language, to expand the language to include any government in the world. It would be up to the government to issue the directives to make sure what constitutes a human rights violation and how one would define what fits into that. I would expand it beyond human rights violations to include acts of corruption. It's down to the directives, and the devil is in the details. It can definitely be done, and it can be done well.

Hon. Peter Kent: There are those who have criticized sanctions in many ways, and the Magnitsky Act particularly, but I'm impressed by the advocates who say that more multi-party, nationally customized sanctions built on the Magnitsky Act would have the effect of ostracizing, isolating, blocking, and perhaps one day, although I think it's a long shot, changing the behaviour of those in the Putin regime.

Mr. Thor Halvorssen: I don't mean to be flippant. I'm being rather specific. We're talking about visa sanctions and asset freezing, telling people we don't want them here. Some people may say that it doesn't matter, that they're going to enjoy their ill-gotten wealth elsewhere. However, these officials have children and they have grandchildren. If you wish to see a change, for instance, in a government in Latin America, you eliminate their visas to go to Walt Disney World. Believe it or not, that's the kind of thing—

Hon. Peter Kent: Yes.

Mr. Thor Halvorssen: There is a reason the dictator of Uzbekistan is so afraid of this: because his daughter likes to go shopping in Paris. The daughter of the dictator of Angola—the richest woman in Africa—greatly enjoys spending time in the French Riviera, and visiting places like Whistler, and going on shopping sprees throughout the world. I'm currently in London. If the British actually followed through on a lot of this, they would see a dramatic decline in their real estate prices, which are held up by people looting their own countries so they can buy expensive mansions here.

Perhaps some countries are willing to sell their integrity in that manner, and have overinflated real estate situations, but at the end of the day, these visas have an enormous impact in those countries. No official wants to be targeted by this. This also leads to something that is unseen, which is that a lot of these officials will not carry out an act in the future, because they've seen what was done to their comrade in government. They may choose to say, "That's not going to happen to me, so we are only going to play by these rules." That's actually what we want more and more of. Let them be scared. Let them be the ones who are chilled in their behaviour, rather than doing whatever they want, when they want, simply because in their jurisdiction they can.

Hon. Peter Kent: Thank you.

The Chair: Thank you, Mr. Kent.

I'll go to Mr. Miller, please.

Mr. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Soeurs, Lib.): Mr. Halvorssen, I truly appreciate the emphasis in your advocacy. I think it moves forward a point that we are trying to study, at least when we break it down.

With great respect, where I do see quite a large disservice in your advocacy is the tendency to mix up the issues with the facts at hand. We are studying a legislative scheme. It's FACFOA and SEMA, which deal with the sanctions Canada may impose on states or actors at the request of states, and the potential holes, which you identified specifically in the area of gross human rights violations and in corruption.

What I tend to hear from advocates such as you and others, for which you are obviously not responsible, is a tendency to commit this confusion of proceeds of crime with the opposite of ill-gotten assets, assets that are not tainted by criminality, and say that there is a hole somehow in Canadian legislation.

I don't like doing this, but let me read from the Criminal Code, which states quite clearly that, in Canada:

> Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
>
> (a) the commission in Canada of a designated offence; or
>
> (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Clearly, this, along with our well-documented money-laundering legislation, provides a pretty important net to catch people who are trying to hide assets in Canada that are derived from or are the proceeds of crime.

You may have legitimate arguments about the ability to seize assets. We have our own questions with respect to our own officials. You may have legitimate arguments with respect to people elsewhere who have committed gross human rights violations—quite disgusting ones, and we've heard a lot of evidence of that—but when it comes to ill-gotten gains, Canada has quite a tight regime. When it comes to SEMA and threats against international peace, it is quite a tight regime. It's the same thing with FACFOA, although the hole you identified was designated by the nature of the legislative scheme.

I think that when you are trying to address a very important point, there is a very important disservice done by mixing apples and oranges.

Obviously, you are cognizant of the fact that we are a pluralistic democratic country. We are often dealing with state actors or non-state actors who live under a regime that isn't the same as ours. We don't necessarily have the same tools at our disposal that a so-called kleptocracy may have, and we do have to follow the rule of law. What are your concerns with people or institutions that we may consider putting on lists, freezing their assets, which may have been gotten by legitimate means in Canada, and their ability to use our judicial system to abide by a very important rule in Canada, which they have in the United States as well, and in Britain, which is the rule of law and due process?

Thank you.

● (1705)

Mr. Thor Halvorssen: Let me start start off by saying that obviously, I'm not responsible for the confusions or conflation of issues in terms apples and oranges said by people who preceded me in this conversation. I will, however, own up to everything I've said.

Now, if the system that you describe in place exists and is tight, how is it possible that a group of Venezuelans was able to put hundreds of millions of dollars into your system? These people were not hiding. There had been multiple news articles about their crimes. It would not take very long to realize, in fact, that some of these news articles were on front pages of financial newspapers looking at these people who came out of nowhere and just bought 20% of Pacific Rubiales in Toronto. So in that sense, the system has in fact failed, and they are a perfect example. There is no question that all of their wealth is ill-gotten; they had none before this began, and there is no question that the power plants that they built, which, by the way, don't function, are an enormous scandal.

As for due process, I think that, much like in asset forfeiture situations, there are many cases where people have had their wealth taken from them and held, particularly at the local level, by zealous prosecutors or police who simply don't like the idea of people having a lot of cash, or immediately have a question mark about it. I am the first to advocate for a lot of scrutiny on the state when it comes to asset forfeiture, but we're not talking about going after a supermarket owner or going after someone who operates a cash business who may be suspected of being engaged in drug money laundering. We're talking about going after people like the Bongo family, who have hundreds of millions of dollars in real estate, including in Canada, homes that are worth $100 million euros in France, and so on and so forth. That is what I am addressing in those particular cases. I think due process should most definitely exist in the case of Obiang in France or in the United States when his son was unable to provide an explanation for how, with an $80,000-a-year salary as minister of forestry, he was able to buy one of the largest houses in Malibu, California, or for that matter, 16 race cars, and a home worth in excess of $120 million.

I don't think I'm off base in pointing out that one example that I happened to be involved with, the Derwick case, was a signal of that failure. I do think there are gaps. One of the main gaps, I think, is that it's a state actor which has to initiate it upon receipt of a notice from a government. Why can't private individuals be enough? If Mubarak steals tens of billions of dollars and invests it in Canada, clearly the Egyptian government is not going to be blowing the whistle on its own dictator, but if a private citizen does, then it is incumbent upon Canada. Of course Canada may say, “We like our relationship with Egypt”, which is why we should have a situation where you have enough division of power and a civil service to actually follow through on these matters.

So there are things to be criticized in what's presently on the table. Now, I'm not an expert in Canadian legislation, and I'm here to help as much as I can. I was invited to do this three days ago, so forgive me, I actually flew yesterday evening from California to London, and as soon as I arrived, I went to another engagement, so work with me here. I'm happy to come back again in the future, too.

● (1710)

The Chair: Thank you very much, Mr. Miller.

Now we're going to Mr. Aubin, please.

[*Translation*]

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

A country like Canada has a range of tools. At what point do you implement the sanctions regime? I have the impression that, when economic sanctions start being imposed, diplomacy begins to break down. In your view, are these two approaches complementary, or should one follow the other? We could also eventually talk about military involvement. How can we combine all these tools that seek to change a behaviour?

[*English*]

Mr. Thor Halvorssen: Let me begin by stating that we are not talking at present of sanctioning a government. We're talking about sanctioning individuals. I don't think it is a stretch or that it should be problematic for the Government of Canada to be willing to sanction specific individual officials of foreign governments who have engaged in gross human rights violations. In addition to sanctioning them economically, if necessary, through asset seizure, we're talking about removing visas in some cases—removing visas. Now, removing visas from a general in Venezuela who is engaging in drug trafficking and in human rights violations is very different from sanctioning Venezuela as a whole. So I hope that this adds some....

As for foreign intervention militarily, I don't see how one thing correlates to the other.

[*Translation*]

Mr. Robert Aubin: Earlier, in response to a question, you spoke of shortcomings in the Canadian approach without really explaining what you meant. I want to give you the chance to mention a few of those shortcomings and to specify whether they constitute shortcomings in the Canadian approach or an unwillingness to implement or use the tools we already have.

[*English*]

Mr. Thor Halvorssen: Well, in terms of the example that I gave of Derwick Associates, I would not know why the Canadian system has failed to look into this, and look into how it is these men were able to blithely buy all of this Canadian stock with stolen money and not raise a single eyebrow in Canada, despite there being a lot of publicity around it.

With regard to the specifics of what we're discussing here, I believe that the FACFOA sanctions come into place too late. They come into place when the government in question has already been removed from power and the new government requests Canada to seize the assets of the most recent set of thieves. Considering how that law is written, I believe it may actually even end up serving as a political tool for a new set of people in government in one of these jurisdictions. I think that law could be altered somewhat, and it could be tightened.

In addition, I believe there is a failure in limiting initiation of action to states. I think you should allow associations or others to be able to blow the whistle. You do, after all, have offices that can look into and investigate these issues, and once they investigate them, they can decide to dismiss them or not dismiss them. Law enforcement operates like this in democratic countries all the time. They receive denunciations and accusations. They choose to investigate, and they will either choose to continue the investigation or not investigate, and possibly even prosecute if the investigation is fruitful. I don't see why we cannot apply the same analogy to asset seizures, or to seeking visa denials from foreign officials.

● (1715)

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: Thank you, Mr. Aubin.

Mr. Levitt, please.

Mr. Michael Levitt (York Centre, Lib.): Thank you for your testimony today, Mr. Halvorssen. Going back to your earlier comments about human rights abusers and Canada's desire and commitment to stand up strong in dealing with these situations, I can assure you this is something that is shared by all members of the Canadian Parliament. We're engaged in a process here that involves more broadly looking at our sanctions regime. It was a review that was called for in legislation, and as part of that we are also looking at ways of being able to add or include gross human rights abusers in the legislation. It's certainly an option that's on the table.

I want to move your comments, though, from a hypothetical discussion to an instructive one, and in doing that, who's doing it right from your point of view? You've made a number of comments about the need to have multiple levels, municipal, state, federal, all buying in and having responsibility over this. Can you instruct this committee on who is doing this right? Can you give us some pointers in terms of where you've seen this working, so that we can educate ourselves on it?

Mr. Thor Halvorssen: Among the governments that I believe are using the might of government internationally to further discourage human rights abusers, different tools are being used by different governments.

I could enter into this from a different perspective, not from the point of view of sanctions. For instance, the Government of Sweden has been particularly excellent in using foreign aid or limiting foreign aid tied directly to corruption and tied directly to whether or not they believe that the government needs this money. In other words, if the government is putting most of its money in Swiss bank accounts or bank accounts in Andorra or Singapore, they certainly don't need Swedish foreign aid.

With regard to the sanctions regime, I do believe that in the last eight years the United States has made some significant progress. This progress is underlined by doing less of a country-broad approach and much more an approach aimed at specific individuals inside a government.

Again, I cannot stress enough how if you were to, beyond denouncing these individuals, have that tag, that scarlet letter, of being a human rights violator and being called that by a democratic government, it tends to set off a domino effect, because if they're denied visas to the United States, for instance, or to the United Kingdom or to France—if we're going to do the European Union—it sends a message that perhaps this is not someone we want.

Now, is there a risk that there might be a due process violation or that someone could be accused falsely? There certainly is that risk. However, a visa is a privilege. It's not a right for you to enter another country, so the bar certainly is lowered. That said, I do believe that directives can be written in such a way so as to ensure that if someone is unfairly smeared with human rights violations, as has occurred previously, this does not lead to a visa being pulled.

There are examples, such as the Magnitsky case, where it is beyond question that Sergei Magnitsky is dead, that he was murdered because he blew the whistle on a tax fraud case and that certain government officials were involved in his persecution, prosecution, and the cover-up. In going from the individual to the general, the Magnitsky case is excellent.

Again, I'm not someone who believes that government is in fact the answer to problems. My view is government tends to be the initiator of most problems and most certainly human rights violations around the world are committed mostly by governments. I'm wary of that fact, but I do think the United States has a large enough system and large enough structure that can be emulated and some of the best practices can be used and some of the worst, such as a very low bar for asset seizure can be reformed and made better.

● (1720)

Mr. Michael Levitt: You're aware of the global Magnitsky legislation that's currently before the U.S. Senate, I presume, and the difference between the targeted list as opposed to the broader capture of global human rights abusers. Can you give us your feelings in terms of the differentiation there? I think there's really a feeling that being able to have something that's not limited and something that can have teeth beyond just one country...the problem being if individuals on a given list, should it be Magnitsky and the case with Russia or any other country, if they don't have assets that are capturable in Canada, there's not much we can do.

If it's a broader range, there's obviously something that we can look into further beyond just the named individuals.

Mr. Thor Halvorssen: I'm a great supporter of the global Magnitsky Act. I think it's an excellent idea. I think that in terms of these lists, again, we must underline these are not lists subject to criminal prosecution. These are lists of people who have been identified as having engaged in gross human rights violations in the case of the Magnitsky murder.

I would encourage more of such lists. I have such a list for Kazakhstan involving the massacre of more than 100 workers in a place called Zhanaozen. We published such a list in a one-page ad in Washington. This sent essentially a political earthquake into Kazakhstan because they were terrified what people seeing their names on the list would say, and now that their names were on that list were they going to end up somewhere else.

I do believe it opens up a question and it opens up a whole avenue of discussion. There is not enough name and shame. One can say that human rights violations occur in Gabon or Turkmenistan or Kyrgyzstan, but it's very different to be able to say they are occurring in this particular country and here are the names of the people doing it.

The Chair: Thank you very much, Mr. Levitt.

We're going to Madam Zahid, please.

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thanks to our guests for their testimony today.

Would you say there is concrete evidence to suggest that the imposition of unilateral sanctions are somehow more effective in dealing with human rights abuses as compared with multilateral sanctions?

Mr. Thor Halvorssen: By this do you mean Canada on its own as opposed to Canada with a bunch of other countries?

Mrs. Salma Zahid: Canada in relation to a bunch of other countries.

Mr. Thor Halvorssen: The problem with multilateral sanctions is that they tend to be watered down, or people tend to wait until it's far too late, or until really all the teeth are taken out. You're dealing with so many different considerations at the same time.

I think unilateral sanctions are a great way and it's absolutely incumbent on democratic governments, whether it's Denmark or Canada, to push them through and to lead the way. Sometimes these lists are not necessarily going to be the same. Sometimes they will overlap and sometimes they will not, but they will bring some enormous value.

With me today, waiting for me outside, is Abdul Aziz al-Hamza, who is a member of Raqqa is Being Slaughtered Silently, a collective based out of Syria. When someone like that knows that you are talking about these issues and that you are taking specific action against certain government officials, in the Assad government for instance, it's a sea change of transformation to people on the front lines of the human rights fight.

Once individual actors in this are being identified, it sends a very strong message to people in that country. No one wants to be on one of these lists.

I would encourage you to have a list for each country that you think is problematic and then let the court of public opinion, let investigative journalism, and if there is a process that can be had, determine whether or not these people should or should not be on the list. These lists have enormous power. We're not talking about putting these people in prison by being on a list. It could be a visa sanction or it could be asset seizures. I think it's a very good thing and I highly encourage you to keep looking more into this.

Canada can be a world leader on this subject, especially if it also goes after the cronies, the people who are looting. Remember, no human rights violations would occur if it wasn't for loot. These people aren't violating human rights because they wish to rule over others. They're violating human rights because they wish to rule over others while they take the natural resources from those countries and hide them away, many times with Canadian companies helping them to do so.

● (1725)

Mrs. Salma Zahid: What would you say in your opinion is the best way to improve cases of human rights abuses? Would it be effective diplomacy, sanctions, or a combination of several tools? Are there specific examples that you could point us to?

Mr. Thor Halvorssen: I think everything should be on the table and there is going to be a recipe that is different for each country.

In the cases of some countries, it's about highlighting political prisoners and sending the message into that country that the Canadian Parliament cares for the life of this or that person and that the government should not execute them in prison or should, in fact, release them.

In some particular cases, it's more engagement. In some cases, it's sanctions, or it's asset seizures, or it's raising the....

I'm just thrilled when you do any of these things. I can give you specific examples from across the world as to what some governments have done to address these issues, but it's not one size fits all. What works in North Korea is going to be different from what works in Bolivia, which is going to be different from what works in Morocco. Again, sometimes Canada can have a stronger impact because it has historic ties, or a particularly good relationship, or the diaspora in Canada is very large. It can all be different.

I'm more than happy to put together for you, if you wish, a set of case studies on the subject.

Mrs. Salma Zahid: Thank you.

The Chair: Thank you very much, colleagues.

Mr. Halvorssen, thank you very much for your testimony. As is usually the case, we welcome any other further information you may want to supply to the committee as it relates to your expertise in the area you're working in.

Again, on behalf of the committee, we appreciate the scramble that was needed to have you here in front of us and we look forward to our continuation of the study of this very important matter. On behalf of the committee, thank you.

Colleagues, we will now adjourn until after the break week. We'll see you on Monday when we get back. Have a good week in the riding. Stay safe and we'll see you soon.

The meeting is adjourned.