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**EVIDENCE**

**Monday, November 14, 2016**

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**Chair**

**The Honourable Robert Nault**



# Standing Committee on Foreign Affairs and International Development

Monday, November 14, 2016

• (1530)

[English]

**The Chair (Hon. Robert Nault (Kenora, Lib.)):** Colleagues, I call this meeting to order.

Before we get started with our witnesses this afternoon, just for your information, I want to bring to your attention a number of issues that we'll have to deal with procedurally at the end of the meeting. You could have a quick read if you haven't had a chance yet.

There are two letters. One is to the Minister of Foreign Affairs. It relates to our interest in clarifying the situation with regard to the witnesses from the department over the next number of weeks. It's very precise, so I'd like you to have a good look at it. The second letter is to the Minister of Justice and Attorney General of Canada. It lays out the information we'd like to get from her department. Have a good look at that.

Then there are two travel requests that we need to have approved. I'll get the clerk to distribute those items to you in your free time here over the next two minutes or so. You can do two things at once, I'm sure. Have a good look, and then we can have a little discussion at the end of the meeting. That's just to prepare you for those two issues after the agenda and the order of reference.

Pursuant to the order of reference of Thursday, April 14, 2016, and section 20 of the Freezing Assets of Corrupt Foreign Officials Act, our statutory review of the act continues.

Before us this afternoon are Mr. David Kramer and Mr. Jared Genser. Both are in video conference with us. I want to thank both gentlemen for being here with us.

The process, if it's not been explained to our two witnesses, is that we'll hear from you both in order and then go straight to questions for roughly an hour. We will start with Mr. Kramer.

**Mr. David Kramer (Senior Director, Human Rights and Democracy, McCain Institute for International Leadership, As an Individual):** Mr. Chair and members of the committee, thanks very much. It's a great privilege and honour to be appearing before you via Skype on this important issue of sanctions.

If you don't mind, Mr. Chair, what I will do is focus on whether sanctions work and what the United States has been doing. I will not...I don't feel it's my area of expertise or responsibility to focus on the legislation you have before you, but I'll talk a little more broadly about the U.S. experience with sanctions.

Quite honestly, if this hearing were held even a week ago today, I might offer a slightly different testimony, at least at the end of my remarks, but in light of the election of Donald Trump, I do think that sanctions will be re-examined and given another look, even though sanctions had been an important part of U.S. foreign policy over the years under both Republican and Democratic administrations. They have been important parts of the foreign policies of many other countries as well.

Before getting into the implications of the election in the United States, let me back off and look at the issue of whether sanctions are effective.

Some analysts argue that sanctions rarely work against intended targets. They harm average citizens and they even inadvertently help the targeted regime demobilize the international community by giving it the false sense that the international community is in fact responding to a crisis situation.

Some researchers such as Gary Hufbauer claim that sanctions have no more than a 34% success rate over the years. Sanctions have worked in places like South Africa with the apartheid regime, against the Polish government during the crackdown against Solidarity, and in the case of Iran, in bringing it to the table to negotiate over nuclear weapons. The Jackson-Vanik legislation that was passed in the 1970s involved the Soviet Union and its ban on emigration by Jews out of the Soviet Union. Most recently, there were sanctions in response to Russia's invasion of Ukraine. At the risk of stating the obvious, they have failed miserably—most notably, at least, the U.S. sanctions when it comes to the issue of Cuba.

The Secretary of the Treasury in the United States, Jack Lew, said in a speech on March 30, “While every situation will require a tailored approach, the underlying goal of all sanctions is an effort to change behaviour.”

Sanctions are indeed most effective when they can take advantage of other economic conditions. That has been the case, for example, with the drop in the price of oil, where sanctions have been accentuated in their impact due to the precipitous drop in the price of oil from Russia.

Similarly, countries more integrated into the international financial system will feel the impact of sanctions more than countries that are isolated. This would be true in the case of Iran and even in the case of Russia, of course, in contrast to the situation with North Korea. Sanctioned countries tend to see a drop in foreign investment out of fear that even if a certain project is not currently prohibited, it could be prohibited should sanctions be ramped up against the targeted nation.

That brings me to the importance of the psychology of sanctions. The target of sanctions needs to think that it is going to get hit with more sanctions if it doesn't change its behaviour. The mistake we've made, for example in the case of Russian sanctions for its invasion of Ukraine and illegal annexation of Crimea, is that the conversation, particularly in Europe, has been about the hope that the EU will maintain existing sanctions. There is virtually no conversation about ramping up or ratcheting up sanctions should Russia continue to violate the Minsk cease-fire agreement.

Similarly, it was a mistake for Europeans to raise expectations that Russia might be sanctioned over its military actions in Syria, particularly in Aleppo, that killed hundreds of innocent civilians. Nothing happened in the way of new sanctions against Russia for Syria, and they were wrong to have raised the hopes and possibility that such steps would be proposed.

Sanctions today, unlike most of those in the past, which were broad and sweeping in nature, tend to be more targeted and aimed, if you will, at the bad guys responsible for egregious behaviour. They are best done with other countries, but that said, the extraterritorial nature of U.S. sanctions should not be underestimated. Secretary Lew said in his March 30 speech, "The power of our"—meaning western—"sanctions is inextricably linked to our leadership role in the world."

• (1535)

Sanctions were forged in the context of our position as the world's largest economy and the dominant role the U.S. financial system plays in global commerce.

It's also important that we not confuse means with ends. Unity on sanctions, meaning trans-Atlantic unity, a global unity in which Canada, the United States, Europeans, and others come together, is an important issue, but it's a means to accomplishing what should be the goal with sanctions. Take, for example, getting Russia out of Ukraine and respecting Ukraine's sovereignty and territorial integrity. Sometimes the search for unity on sanctions leads us to the lowest common denominator on sanctions. It's simply easier. It's not easy, but easier for the U.S. to pursue sanctions on its own.

I'm all for unity. I'm for the U.S. working with other countries on sanctions. As Secretary Lew said, "The more international support there is for sanctions, and for their underlying objective, the more effective they will be", but not to the point of confusing unity with the objective of changing behaviour. Sanctions are best done as part of an overall approach to a problem, but sanctions are not the be-all and end-all in and of themselves. Imposed in a vacuum, they're less likely to work. They have to be accompanied by diplomatic and other means of coercive actions.

The question is not whether sanctions have worked or not, but whether they can be effective when used along with other elements. Sometimes they are the best option to have available, certainly as a step to ensure that we don't go straight to a military response. They can be part of the answer when we in the international community say something is unacceptable. In fact, they give meaning to the word "unacceptable" and make sure that we do not go back to business as usual after we have declared that a certain country's or a regime's actions are unacceptable.

To critics of sanctions I always ask, "If not sanctions, what then would you do?" Rarely do I get a satisfactory answer.

Secretary Lew, in his March 30 speech, said:

Sanctions are not meant to dole out punishment for past actions. They are forward-looking, intended to keep illicit or dangerous conduct out of our system and create pressure to change future behavior. This foundational principle is very different from civil penalties and forfeiture, which are punitive and meant to address past behavior.

Quite frankly, and with all due respect to Secretary Lew, I don't agree. Sanctions are imposed reactively, after something bad has happened, after a country has been invaded or a regime is in place oppressing a population's rights or a country launches a campaign in pursuit of nuclear weapons. Sanctions are not imposed preemptively, in anticipation of something bad happening. They do not look forward. They always follow something bad.

That's important to bear in mind, because when they are being considered, countries are not looking at ideal options. In an ideal world, sanctions wouldn't be necessary, nor would our militaries, but we don't live in an ideal world. Sometimes we have to resort to measures that we'd rather not have to take, and those include sanctions.

Sometimes sanctions seek to block funding to the bad actors, whether those are individuals involved in gross human rights abuses, as was the case with the Sergei Magnitsky Rule of Law Accountability Act that the U.S. Congress passed in late 2012, or whether it is funding for terrorist organizations. Sometimes they're designed to change behaviour, such as in the case of Iran or in Russia's aggression and invasion of Ukraine.

It's important to demonstrate that sanctions also have an end when the target of sanctions changes its behaviour. Secretary Lew said, "since the goal of sanctions is to pressure bad actors to change their policy, we must be prepared to provide relief from sanctions when we succeed. If we fail to follow through, we undermine our own credibility and damage our ability to use sanctions to drive policy change."

Let me explain the sanctions that we have in place against Russia. Two are currently in place and two have been talked about and considered, but no action has been taken.

The Magnitsky act that I mentioned earlier was done through legislation by the U.S. Congress, meaning it will be much harder for president-elect Trump to remove the Magnitsky legislation, though he would have the authority not to impose those sanctions under Magnitsky. I regret to say that no other country, including Canada, has passed any legislation comparable to the Sergei Magnitsky act.

There were Ukraine-related sanctions, and there were two different kinds of sanctions under the Ukraine-related sanctions. One was for Russia's illegal annexation of Crimea, and the other was for its military actions in Donbass.

•(1540)

These are sanctions that in fact president-elect Trump could lift. They are not codified by U.S. legislation. Though if president-elect Trump were to lift such sanctions, it would be likely to generate a very negative reaction from Congress.

The other two areas involve Syria and Iraq, and here there has only been conversation about imposing sanctions on Russia for its military actions in Syria, especially in Aleppo, and for its unprecedented hacking of email systems in the United States with the goal of trying to influence or affect U.S. elections.

I am very worried—and I will end with this, Mr. Chair—that Donald Trump will move to lift sanctions on Russia. I'm equally worried that even before he has the authority to do so he will cause the European Union, when it reviews sanctions next month, to decide not to renew sanctions and roll them over for another six months. I think this would be a very dangerous move. It would be a disaster for Ukraine, for the region, and for the concepts of sovereignty and territorial integrity that many sanctions were designed to uphold.

Thank you very much.

**The Chair:** Thank you very much, Mr. Kramer.

We'll go right to Mr. Genser, please.

**Mr. Jared Genser (Managing Director, Perseus Strategies):** Thanks so much, Mr. Chair and members of the committee. I'm pleased to be able to testify before the standing committee in your comprehensive review of the Special Economic Measures Act and the Freezing Assets of Corrupt Foreign Officials Act. I'll discuss my perspective on each of those laws in turn.

First, as you know, FACFOA was enacted in 2011, in the midst of the Arab Spring, as a tool for supporting states in political turmoil that were trying to transition toward democratic rule. FACFOA allows Canada to temporarily freeze the property of corrupt current or former foreign officials, as well as that of their families or associates, when the foreign state formally requests that Canada do so, all with a view toward ultimately recovering those assets for the foreign state. Given this relatively narrow scope, however, FACFOA has been utilized only a handful of times to sanction corrupt foreign officials, in the cases of Tunisia, Egypt, and Ukraine. I note that the Ukrainian sanctions were jointly authorized under SEMA.

In my view, the major problem with FACFOA as enacted is that it relies on a foreign state claiming that a politically exposed person from that state has stolen funds and then formally requesting that Canada act. The expectation that governments will be eager to call out corruption within their own ranks is not consistent with the reality that many of the world's countries are not free. Indeed, the organization that Mr. Kramer formerly ran, Freedom House, in its "Freedom in the World 2016" report, concluded that only 86 countries can currently be considered free, while 109 countries are either partly free or not free at all.

The effect of this reality is to limit FACFOA's usefulness to penalizing corrupt former officials when corrupted governments have changed, rather than productively sanctioning corrupt current officials, as foreign heads of state, in many cases, are often

themselves complicit in or benefiting from corruption. Indeed, authoritarian governments that run on endemic corruption are thus totally outside the reach of FACFOA.

Let me illustrate the problem.

I serve as pro bono counsel to Mohamed Nasheed, the first democratically elected president of the Maldives, the small island nation in the Indian Ocean. He was overthrown in a coup, and in February and March of 2015 was abruptly arrested, tried, convicted, and sentenced to 13 years in prison on terrorism-related charges. The UN found that his detention was arbitrary and in violation of international law. With immense pressure brought against the Maldives by the international community, he was released in January 2016 and permitted to travel to the United Kingdom for medical treatment.

In September 2016, just a few months ago, the largest corruption scandal in the history of the country was uncovered. Nearly \$80 million from the state-owned tourism firm was reported stolen, with President Abdulla Yameen at the centre of the scandal. Documents found on the electronic devices of the now disgraced and imprisoned former vice-president, Ahmed Adeeb, revealed a clandestine system whereby top Maldivian officials, including Yameen, senior ministers and aides, and members of the judiciary, received bribes and stolen money. Senior judges were reported to have received money and luxury flats and to have met regularly with the president and his deputy, who then fixed the outcomes in prominent court cases, including that of Nasheed. Yameen himself allegedly received bags of cash filled with up to \$1 million.

Additionally, the documents uncovered a plan for the president's ministers and aides to launder up to \$1.5 billion with the help of the country's central bank and a few foreigners. Other leaked documents accuse Yameen of corruption and fraud in state-owned entities, with a value of \$150 million. This involved the selling of oil to the then military dictatorship of Burma in the early 2000s, when it was under Canadian and international sanctions. Yameen has publicly apologized for the scandal, but has refused to admit his responsibility.

Yet under FACFOA, Yameen and his ministers get a free pass and have total assurance that not only will Canada not sanction them for this corruption, but even worse, as long as their political party remains in power—I note that he and his half-brother, Maumoon Gayoom, have ruled the country for 33 of the last 38 years—Canada may actually be a safe haven where he can transfer and maintain his stolen assets for safekeeping in Canadian banks.

Why does this matter? In short, corrupt governments often stand against the values and priorities of Canada and other western countries. In the case of the Maldives, President Yameen returned his country to autocracy, has strongly aligned his country with China, and has allowed it to become a hotspot for Islamic State recruitment, with more than 200 fighters estimated to have travelled to Syria and Iraq. That would be the equivalent on a per capita basis of Canada sending 21,000 fighters to ISIS. In my view, all of these are developments that are contrary to Canada's interests.

● (1545)

I understand and appreciate that in adopting the law initially Canada considered it easier to act when a foreign government had explicitly assessed evidence of corruption and requested assistance. Nevertheless, I believe that for the most egregious of examples of the kind that I have described, it would benefit Canada to consider amending FACFOA so that it could have the flexibility to act without the request of a foreign government and could stand publicly against grand corruption when it occurs on this kind of scale.

Second, with regard to the Special Economic Measures Act, while the law provides for a much more robust sanctioning capability than FACFOA, it too has room for improvement. Currently, the Canadian government can take unilateral action under SEMA only when “a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis”. However, this threshold is significantly higher than that given by the UN charter, which empowers the UN Security Council to impose economic sanctions when there is merely “the existence of any threat to the peace, breach of the peace, or act of aggression”.

As Canada readily employs the United Nations Act to join on to the UN's sanctioning of regimes, there is no reason that Canada should require a separate and higher threshold to trigger economic sanctions absent a UN regime, especially given that vetoes of China and Russia have arbitrarily blocked the imposition of UN sanctions, especially in the case of mass atrocity crimes.

To remedy this inconsistency, I would respectfully request that Parliament consider amending subsection 4(1) of SEMA to include a third justification for economic measures, in addition to the “international organization” and “grave breach of international peace and security” justifications that are already present, by adding this language, “or to prevent or respond to actual or imminent mass atrocity crimes including genocide, war crimes, ethnic cleansing, and crimes against humanity”. An expansion of the language in this manner would give teeth to Canada's principled international leadership on human rights.

Lastly, I should note that as Canada reviews its sanctioning capabilities I very much hope that Parliament will consider amending SEMA and the Immigration and Refugee Protection Act to authorize your government to impose entry and property sanctions against any foreign person or entity that's responsible for extrajudicial killings, torture, or other gross violations of international human rights.

In March 2015, a resolution advanced by Irwin Cotler was adopted by Parliament, unanimously supporting the creation of such human rights sanctions, but efforts to enact these amendments analogous to the U.S. global Magnitsky act have languished. In my view, having such authorities at the government's disposal would provide it with maximum flexibility to sanction the most egregious human rights violators around the world.

Thank you very much for the opportunity to appear before the standing committee today, and of course I'm also happy to answer any questions you might have.

● (1550)

**The Chair:** Thank you very much, Mr. Genser and Mr. Kramer.

We'll go straight to questions by committee members. We'll start with Mr. Kent.

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

Thank you, gentlemen, for your testimony before us today.

We have heard through this study that the sanctions are only as effective as the capacity of various government departments to, on the one hand, monitor and force compliance, or on the other hand, to detect violations and carry out enforcement.

In the United States, the treasury's office of foreign assets control is the lead investigator and prosecutor. We have heard from different Canadian government agencies and departments that in fact there's a disconnect between their individual responsibilities, whether it's immigration, FINTRAC, the Superintendent of Financial Institutions, the RCMP, or CSIS. I'm wondering how you feel about the suggestion that one central lead agency, with responsibilities for sanctions and for monitoring compliance and enforcement to make those sanctions more effective, should have the authority to guide other agencies.

That's for both of you, please, with Mr. Kramer first.

**Mr. David Kramer:** Thank you very much for the question.

Again, I'm here in Washington, so perhaps I will give how we do it here in the United States. My answer is also based on having served in the U.S. Department of State for eight years during the Bush administration.

There are two departments that take the lead on sanctions. On the financial side, when it comes to assets, it is, as you said, sir, the treasury department's office of foreign assets control, OFAC. In my experience in government, and even out of government, I find OFAC to be one of the most effective agencies or offices within the treasury department. There are also sanctions that could involve visas, and visas are handled under the State Department, so there is the breakdown of responsibility, depending on the kinds of sanctions are imposed.

Most of the conversation, not only here today, but in general, is about financial sanctions, which our treasury department would take a lead on. With regard to denying people, say, Russian officials on the Magnitsky list—it's a privilege not a right to come to the United States, either themselves or their families—denying people I think is an effective tool. It's targeted. It's against individuals. It's not sweeping.

That involves the State Department. Visas are discretionary by nature, which means they cannot be challenged in a court of law. Financial sanctions could be challenged in a court of law. Therefore, they are subject to a higher evidentiary threshold. The treasury department has to make sure it could prevail should someone challenge those sanctions.

● (1555)

**Hon. Peter Kent:** Mr. Genser.

**Mr. Jared Genser:** Briefly, I'm obviously not an expert on how you organize yourselves in Canada on these questions, but I associate myself, of course, with Mr. Kramer's observations about the United States.

I will say that although monitoring and detecting is critically important and enforcement is important, I wouldn't underestimate the power as I described in my testimony of ensuring that you have the authorities and are exercising the authorities to actually render these kinds of sanctions publicly.

Let me give you an example from my real life experience. I spent five years as Aung San Suu Kyi's international counsel during the latter five years that she was under house arrest—of course, the now leader of a more democratic Burma. Recently, the United States removed its financial sanctions against Burma across the board, with the exception of people who were narco-traffickers or terrorist-affiliated people.

The general sanctions that had been imposed against many individual blocked persons and companies were removed. I heard, anecdotally, from a friend of mine in Rangoon about one of the Burmese companies that was off that list. They tried to open up a bank account with a U.S. bank, and the U.S. bank actually said, "Well, yes, you're not on the U.S. list, but you're still on Canada's list", and refused to open an account on that basis.

It may well be the case that right now you don't have the full range of bureaucratic tools at your disposal to be able to do this on a larger scale, but I wouldn't underestimate the impact, and I think that story illustrates precisely what I'm talking about.

**Hon. Peter Kent:** Thank you.

You mentioned the Magnitsky act. While there was unanimous passage of a motion supporting the Magnitsky act provisions, you're right that the private member's bill died when an election occurred last year. There are now again two new bills, one in the Senate and one in the House of Commons, based on the Magnitsky act, with a couple of slight variations.

Canada's Minister of Foreign Affairs has said that existing legislation is adequate to identify and prevent funds involved in the Magnitsky realm of fraudulent funds from entering Canada. However, Mr. Browder from the Hermitage fund has recently provided information to the RCMP that shows millions of dollars have come into Canada undetected and have been transferred again by various bodies out of Canada, and that Canada is being used as a base for millions of dollars of fraudulent money activities. I know both of you spoke to the importance of the Magnitsky act in the United States. I'm wondering if Mr. Browder is making the case that the Magnitsky act is needed in Canada.

**Mr. David Kramer:** I'd be happy to comment.

I do think it would be very positive for Canada to enact Magnitsky-like legislation. In the United States, Magnitsky legislation technically wasn't required for the president to go after those involved in the Magnitsky case. There is existing presidential authority in the United States for the president, delegated to the Secretary of State and the Secretary of the Treasury, to impose sanctions on people involved in gross human rights abuses, even for

people involved in major corruption, which the global Magnitsky act, which has not passed the U.S. Congress, would also go after.

The United States has been the only country that has passed Magnitsky legislation. It happened now almost four years ago. Not another democratic country has passed similar legislation. I think it would help governments to impose the kinds of sanctions that are called for under the legislation, because sometimes governments need that extra push from their parliaments to make sure that they go after people who have been involved in gross human rights abuses. I understand the reluctance of governments to avoid codification of sanctions, because once sanctions become codified it is harder to remove them. At the same time, without that codification, without the passage of legislation, we sometimes see governments less eager or enthusiastic to propose them.

● (1600)

**The Chair:** Thank you.

**Mr. Jared Genser:** I've had the opportunity to work with Canadian governments of various political stripes over many years, and have found Canada to be an outspoken and strong advocate on international human rights regardless of which government is in power. Obviously, there are different perspectives, I'm sure on that, but that has been my own experience working in Geneva at the UN Human Rights Council on human rights issues, at the UN in New York, and other multilateral fora, including the OAS as well.

I do think that it would be very consistent with the kind of leadership role that I've seen Canada playing internationally to be able to move this kind of legislation. I agree with Mr. Kramer, of course, that there may be some existing authority. I'm not an expert on Canadian law. I'm not a Canadian barred lawyer, but in my conversations with Irwin Cotler, whom I've known for many years, he believes that while there may be some authorities on components of Magnitsky, there are not on others.

Speaking with a single voice through the identification and the censoring through travel bans and asset freezes of the most egregious human rights violators in the world, and doing that systematically under a single and unified set of changes to your laws, would create a very powerful voice internationally, on Canada's behalf, for the values that are embedded in your Charter of Rights and Freedoms and are so important to your foreign policy abroad.

**The Chair:** Thank you very much.

Mr. Fragiskatos, please.

**Mr. Peter Fragiskatos (London North Centre, Lib.):** Thank you very much, Mr. Chair.

My question is for Mr. Kramer.

I'm particularly concerned about unintended consequences. We have heard from, arguably, the foremost expert on sanctions policy in Canada, from Kim Richard Nossal, recently on the ability of authoritarian regimes to simply ignore or not be impacted by sanctions. There's a 2010 article, written by two noted academics, Joseph Wright and Abel Escribà-Folch, "Dealing with Tyranny: International Sanctions and the Survival of Authoritarian Rulers". In that article they say that authoritarian regimes respond to sanctions by simply raising their tax revenue, and in turn, directing those funds to the maintenance of their tools of repression, such as the police, the military, and so on and so forth.

I'm particularly concerned, if we went down this road, how Russia would respond, and has responded, frankly. It doesn't look like the Magnitsky act has elicited the kind of political change that we had hoped for. I'm certainly not one that agrees with what Russia has done in the Ukraine and elsewhere, and I see that there are issues of a democratic deficit in Russia. However, if Canada goes down the road of enacting its own Magnitsky act, are there going to be unintended consequences, namely the empowering of the Russian state?

**Mr. David Kramer:** Thank you very much for your question. It touches on a very important issue.

In 2012, soon after the U.S. Congress passed the Magnitsky act, and the president signed it into law, President Putin responded by banning the adoption of Russian orphans by American citizens. He went after the most vulnerable, innocent segment of his population and punished them. That was obviously something we did not want. It also hurt American citizens who wanted to give a loving home to Russian orphans, but it does get at the nature of Mr. Putin and his regime, that he would respond by punishing his own people.

He did something similar after Ukraine-related sanctions were imposed by a number of countries, where he banned the import of food and agricultural products from countries that imposed sanctions on Russia. Again, Putin imposed a higher price on his own people in response to steps that we had taken. There are these unintended consequences, which I think you're absolutely right to look at, but the—

**Mr. Peter Fragiskatos:** You would agree, I think, that they're very significant consequences from a human rights perspective.

**Mr. David Kramer:** I agree completely, but the problem is not with the sanctions that have been imposed. The problem is that we have not done an effective job in the west to explain to our own citizens—and to Russian citizens, which is a challenge given Putin's control over the media—that the sanctions that have hurt the most have been the ones that Putin himself has imposed against his own people.

It is a response to our sanctions—

**Mr. Peter Fragiskatos:** Considering the nature of media in Russia, it would be difficult to communicate that. Certainly if the United States as a superpower can't communicate it, I doubt Canada as a middle power would be able to communicate it.

I don't mean to cut you off, but my time is limited.

**Mr. David Kramer:** That's okay.

**Mr. Peter Fragiskatos:** In your view, is Russia the world's leading violator of human rights? I'm just confused about the fixation with Russia when we have arguably much more serious violations of human rights, as egregious as some of the human rights violations that Russia has engaged in. Certainly I have great respect for Mr. Magnitsky and even Mr. Browder, who has championed Mr. Magnitsky's name for very good, moral reasons.

**Mr. David Kramer:** Is Russia the worst human rights abuser? The short answer is no. However, Russia is one of the worst, and it's only been getting worse over the years, particularly since Putin returned to power in 2012. As Mr. Genser mentioned, I used to run Freedom House. It produces this category of "the worst of the worst", and Russia is not in that category. Countries like Uzbekistan, Turkmenistan, North Korea, Syria, and Saudi Arabia are among the worst of the worst.

Your question leads me to say that this is why I support the global Magnitsky act, which has not yet been passed. It would put the spotlight on other countries that are engaged in the greatest human rights abuses. My view is that Russia may not be the worst, but you sort of have to go after opportunities when they present themselves.

**Mr. Peter Fragiskatos:** I would simply respond to that with some confusion, with all due respect. Wouldn't you want to go after far worse violators of human rights simply as a way to send a clear signal to the world that we're paying attention to the worst violators?

As a final question, how many entities have had travel bans and asset freezes imposed on them as a result of the Magnitsky act?

•(1605)

**Mr. David Kramer:** First, yes, I would like to go after other countries. That's why I support global Magnitsky. But the Magnitsky story itself presented an ideal opportunity to go after Russian officials involved in gross human rights abuses.

The number of entities under the Magnitsky act is zero, I believe. The Magnitsky act goes after individuals, not entities. It denies people the privilege to come to the United States, and it would freeze their assets if they had any here. There are about 38 people involved on the public list, I think, and there are at least two names on the classified list.

**Mr. Peter Fragiskatos:** Thank you, Mr. Kramer. I would just add that Canada has measures in place that would prevent individuals who have violated human rights from entering the country.

Mr. Genser, you talked about reforms. I believe you were talking about FACFOA. You talked about adding to the legislation a focus on genocide, crimes against humanity, war crimes—real, systemic human rights abuses. Could you expand on that?

**Mr. Jared Genser:** Yes. Your Special Economic Measures Act and your United Nations Act basically look at Canada imposing, as I've read it...and again, this is plain language, as I'm not a Canadian barred lawyer. The focus is on country situations that are of immense concern to Canada. One set of reasons that Canada can be concerned is that the United Nations has already imposed sanctions. That is one set of authorizations. A second set of authorizations is based on this very broad language about imminent threats to international security and peace.



My observation was that the current act, as written, doesn't account for situations in which the Security Council hasn't acted—in fact, there have been vetos issued by the council, for example, on Syria—but where, at least based on my reading of the statements coming from your Prime Minister or your foreign minister, current and past, there have been immense concerns from Canada. It was not clear to me, from reading the language in the current law in Canada, why you would have a higher threshold for engagement on economic sanctions than the Security Council has for engaging on sanctions when the council acts as a body.

What I said narrowly was that one place where Canada may want the authority to be able to impose economic sanctions is in situations of imminent or actual mass atrocity crimes. They're situations that are on the Security Council's agenda, and Canada would have otherwise imposed sanctions but for the fact that a veto-wielding member of the council, like China or Russia, vetoed actions to take those kinds of measures.

**The Chair:** Thank you, Mr. Fragiskatos.

[Translation]

You have the floor, Ms. Laverdière.

• (1610)

**Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP):** Thank you very much, Mr. Chair.

I would like to thank the two witnesses for their presentations.

Mr. Genser, I am very interested in your comment about United Nations sanctions. We know that these sanctions are often blocked by a lack of consensus on the Security Council. That said, I am very interested in your view on mass atrocities and genocide.

Given the current constraints as regards consensus on the Security Council, do you think the UN's basis for action is sufficient? If not, should it also be reviewed?

[English]

**Mr. Jared Genser:** There's a substantial gap between the commitments of the international community and their implementation and practice. I previously published a book, *The Responsibility to Protect*, on the obligation of all states to prevent mass atrocity crimes, so I didn't choose those four sets of crimes that I mentioned in my proposed language by accident. These are the four sets of crimes captured in the “responsibility to protect” adopted unanimously by the UN World Summit in 2005.

I'm actually in the process right now of finishing a law review article that will be the first assessment of the way in which the Security Council has embraced the concept of the responsibility to protect and has engaged on it.

Interestingly, since the adoption of the responsibility to protect in 2005, and a lot of concern that countries went along, like China or Russia or others, despite their lack of interest in these kinds of concepts.... What my review has found, looking at the council's engagement in the last 11 years, is that there have been well over 150 to some 200 mentions of the responsibility to protect or the failure to protect in Security Council resolutions and presidential statements. In fact, it's become very much a norm that has been embraced by the Security Council as a major motivator of action, plus, of course, in

the most substantial of ways in which the council can engage under its chapter 7 authority, which would include potentially economic sanctions or even the use of force.

Obviously, the endemic realities of the UN charter, going back to the founding of the United Nations and the P5 veto, has thwarted action in those areas on the most complex and divisive of political disputes among the P5. We've seen that the council previously was able to engage on Libya, for example, where specific sanctions were put in place by consensus within the council, or by a lack of no votes against such actions. On Syria, there's been an inability to obtain a consensus.

I think my overall point is that just because the council is not capable of reaching a consensus, in my view that shouldn't be Canada's measure. Again, I'm an outsider, so you'll forgive me for just looking at the subject of the hearing you're having, which was what I think about these laws based on my read of them.

With that very humble caveat, I would say that Canada shouldn't launch to tie itself to imposing economic sanctions to only situations in which the council can reach a consensus, or where there's this very strong language—dramatically higher than I think the council would require—that relates to imminent threats and major international crises, which may not actually encompass a mass atrocity situation, which would be primarily internal by orientation.

[Translation]

**Ms. Hélène Laverdière:** Thank you very much.

I would like to go back to Canadian law.

You talked about amending the Freezing Assets of Corrupt Foreign Officials Act in order to provide more flexibility as regards human rights abuses. I know that your presentations are very brief, but I would like you to give us a quick overview of this, reminding us of the amendments to this act that you suggest.

[English]

**Mr. Jared Genser:** Regarding FACFOA, Canada took an important step forward in adopting the law just a few years ago. My only observation, again from the outside in, is that it's a little strange, as I read it as an outsider, to say that you can only take actions to freeze the funds of corrupt foreign government or former government officials or their families in cases where the government in question has specifically asked the Government of Canada to impose such actions. To me, you see many corrupt governments all over the world, particularly authoritarian governments, in which endemic corruption drives their actions and where foreign leaders particularly enjoy travelling abroad because of the challenges of enjoying life in such countries, and where they need to be held to account because, frankly, the people aren't capable of doing that themselves.

It would seem to me that having the authorities and exercising the authorities are two very different things. I understand that politically it will be challenging for any government to decide that it's going to impose sanctions against foreign corrupt officials or their family members because there is a question of the sufficiency of the evidence you can gather. But it does seem to me in the most egregious cases...and one can look not only to a case like the Maldives but to other countries like Malaysia, for example, right now, where the prime minister himself acknowledged that he received something around \$650-plus million in his personal bank account from Saudi Arabia, from unknown persons, and then he returned, he says, all but about \$50 million of it.

This is what he said publicly, yet in such a circumstance, unless he were to ask the Government of Canada to look at the question of sanctions, Canada wouldn't have those authorities. From my perspective, in very egregious circumstances where you're talking about grand corruption on the largest of scales, it might be useful if Canada were to have the authorities within FACFOA to take unilateral action without a government request.

I'm not suggesting Canada should be the world's policeman on corruption and go off looking at every country in the world and all of the possible corruption. I'm talking about egregious outlier cases where the international community has condemned governments for being particularly engaged in this kind of grand-scale corruption.

• (1615)

[Translation]

**Ms. Hélène Laverdière:** Mr. Kramer, you also mentioned a study that pointed out that approximately 3% of sanctions have the desired effect.

In our meetings, we have often heard that sanctions are intended to change behaviour, but that they can also serve other purposes. Sometimes it is simply a way of sending a message.

In this study that reports a 3% success rate, is success defined only in terms of a change of behaviour? We know there have been changes in the way sanctions are applied. When was the study done?

Thank you.

[English]

**Mr. David Kramer:** First, just to clarify, I believe the study I referred to by Gary Hufbauer, who was then at the Institute for International Economics, now called the Peterson Institute, was done in 2009. Mr. Genser may have more facts on this than I do. I apologize, I don't have the study in front of me.

However, it said 34%, not 3%, had success.

**Ms. Hélène Laverdière:** Okay.

**Mr. David Kramer:** The definition of success can vary depending on what the objectives are in a certain situation. Pressure applied on the apartheid regime in South Africa through the Sullivan principles and other sanctions is one example. The international sanctions that were done on Iran to pressure it to come to the negotiating table would be another example that could be cited. I will grant you it's hard to prove, but I do think that the sanctions Canada, the United States, and the EU imposed on Russia did keep Russia from going further into Ukraine. I also want to acknowledge that the

Ukrainians' ability to defend their territory against further Russian aggression played as much if not more of a role in limiting Russia's advance.

It depends on how one defines success. It depends on what the objectives are and sometimes it is to prevent a bad situation from getting worse, perhaps, rather than undoing the bad situation entirely.

• (1620)

**Ms. Hélène Laverdière:** Thank you.

**The Chair:** Thank you, Ms. Laverdière.

We'll go to Mr. Levitt, please.

**Mr. Michael Levitt (York Centre, Lib.):** Good afternoon, and thank you for your testimony here today.

I want to follow up on MP Laverdière's question by digging down a little deeper into the implications of expanding the scope of SEMA from beyond its "grave breach of international peace and security", as it now exists, into what is more of, let's say, a global Magnitsky-type framework. In particular, if we were to amend SEMA to include human rights violations, how would we be looking at defining them?

Is there an agreed international definition or some yardstick for gross human rights violations? What range of abuses might be captured? Are there concerns around thresholds being either too high or too low, and as you just mentioned, around basically setting up Canada to have calls for us to be looking to prosecute all over the world based on whether it would be in the public interest or that of other countries?

Tell us what success looks like. How do we define this in a way that is going to have some teeth to achieve the results we're looking for, which is constraining, and to a certain extent, punishing gross human rights violators? Also, how do we not wind up again with this theory of unintended consequences, where we're opening ourselves up to be constantly deflecting requests from all over the place to implement and act on these laws?

That's for whichever one of you wants to start. You can both have a go.

**Mr. Jared Genser:** Given that I was proposing some specific changes or suggestions for specific changes, let me take the first crack at it.

I was talking about two separate things. The first relates to SEMA and your existing authorities that you have there, which are either engaging through the UN, when the UN puts the sanctions, or engaging with this much higher threshold of language, such as "imminent threat" or "major conflict", etc.

When it comes to defining the four sets of "mass atrocity" crimes, as I said, I chose them intentionally on the basis of the fact that there is an international consensus on the responsibility to protect. Canada actually played a leading role in advocating for its adoption in 2005. These are all crimes that are defined in our international law in a broad range of respects. There's a consensus view on what they are and how to define them.

My view is that adding to the possibility—again, the authority—for Canada to be able to sanction governments that are engaging in imminent or actual mass atrocity crimes is to me a pretty high threshold for acting. It's not something for which you could say willy-nilly that it is this government, that government, and many other governments. It's a very narrow set of governments in the world.

**Mr. Michael Levitt:** What I'm speaking more about is applying this to individuals, though, gross human rights abusers as individuals, not in terms of the nation-states and all of that. How are we going to effectively define and set thresholds for applying this to corruption and human rights abuses by individuals?

**Mr. Jared Genser:** I think it will be in the same way you debate every kind of issue you face. "Gross human rights abuses" is a generic term. It doesn't have a precise legal definition. Again we're talking about engaging in such activities as extrajudicial killing or torture or other very serious offences that 98% of offences are not going to fall under. When governments are deciding how to impose sanctions, the Magnitsky act, as it was adopted, has that kind of language in it, and it will potentially be the global Magnitsky act when the United States has a similar set of definitions.

Ultimately any government has to decide how it's going to focus its limited resources and prioritize action in various contexts. No government in the world is going to be able to consistently apply all of these standards to every government in the world simultaneously and to go after every human rights abuser. However, the idea is that Canada, which, in my view, like the United States and like a number of other western states, has substantial moral authority as a democracy and as a country that stands for freedom and for human rights, should be able to say that there are certain sets of actions that fall outside of the acceptability norm of international conduct, and that those relate to both governments and individuals.

If you are engaging in extrajudicial killing, for example—and the kinds of people I'm thinking about are people who are beginning a faction of the Lord's Resistance Army or engaging in the mass use of child soldiers. I'm not talking about some average guy on the street who gets into a fight with his neighbour and kills him by accident. That would clearly fall outside of the threshold of what I'm talking about.

I'm talking about crimes that can be identified, I believe, by international human rights organizations, by governments, by international institutions like the UN, and by regional organizations. When you see these kinds of egregious situations unfold, you look at targeting those who are most responsible for them, not targeting everybody who did anything wrong but targeting those who are most symbolic of the abuses, so that you can stand in solidarity with the victims under these kinds of circumstances and make sure that the people who take assets, which they almost always try to store in U.S. dollars, Canadian dollars, or euros abroad, cannot easily put this money in places that are safe from international scrutiny.

• (1625)

**Mr. Michael Levitt:** Mr. Kramer.

**Mr. David Kramer:** I very much agree with what Mr. Genser said. If you look at the Ukraine-related sanctions, the United States and, I believe, Canada and the European Union have put individuals

on the sanctions list for contributing to or being a part of Russia's invasion of Ukraine, of the illegal annexation of Crimea. In a few cases, members of the Russian parliament have been put on the sanctions list because they have played a key role.

Take the illegal annexation of Crimea. That is not the murder of an individual and it's not mass torture, but it is the violation of one of the foundations of the nation-state concepts of sovereignty and territorial integrity, and Russia is the first country in Europe since the end of World War II to forcibly annex territory from another country. I do agree that action required a response both on a larger level involving certain entities and sectors and on an individual level.

I would take it one step further. The European Union has sanctioned Dmitry Kiselev, who is the head of RT, the scurrilous propaganda network of Russia. He has been put on there not because he's a journalist. He's not a journalist. He's a propagandizing, hate-mongering individual who helps create a climate in which the murder of Boris Nemtsov is allowed, in which he talks about reducing the United States to radioactive ash.

I would say you should do what we used to call *The Washington Post* test. If you would not want to have your picture taken with somebody and have that picture splashed on the front page of *The Washington Post*, that person's probably somebody you should look at for sanctions. That's not to say that all bad folks should be on the list; we have limited resources to enforce and implement these sanctions. However, going after some to send signals that the kinds of activities they've engaged in are sanctionable, I think, is extremely important.

**Mr. Michael Levitt:** I have just a quick follow-up on another point.

You talked at the beginning about the unity of sanctions and about being able to work with like-minded allies to hold individuals to account in this kind of international atmosphere, in which we're seeing a decrease in the efficacy of the Security Council to bring in sanctions given the divides there, and the International Criminal Court with countries dropping out. What do you think is the implication as we're moving to president-elect Trump and what's going to be a new foreign policy for the U.S., which has been one of the major proponents of this kind of individualized approach to sanctions? What do you think are the implications both for the U.S. and for other like-minded allies that may be moving in this direction? What sort of signal do you think this is sending that we should maybe be looking at ahead of time now here in Canada as we review these sanctions?

**Mr. David Kramer:** I'll be very direct. I'm a Republican who was critical of Donald Trump when he was campaigning. I did not support his candidacy. I am deeply worried what could happen to the sanctions regime on Russia. I was told before coming in to appear before you that he and Vladimir Putin have spoken by phone today. They have talked about a possible meeting even before Trump's inauguration on January 20. I worry deeply that Trump's interest in returning to business as normal with Russia will lead to the undoing of the U.S. sanctions on Russia, which will then lead the EU to fail to renew its sanctions, and possibly have an impact on your country as well.

I find that deeply troubling, so I can't sit here and tell you, "Don't worry, everything's going to stay as is." I worry we are in for a new kind of order that may not be terribly orderly.

•(1630)

**The Chair:** I think we might just leave it there.

Colleagues, on your behalf I want to thank both our witnesses, Mr. Genser and Mr. Kramer, for a very good and honest discussion about the whole issue of sanctions.

As you may have noticed, the committee is grappling with the whole process of, if you're going to include gross human rights violations, how you would do that from a processing point of view as a state. It's a legitimate question that we've been asking just about every witness. To be honest, it's not one we have had a very good answer to yet, simply because it is one that I think other states are also grappling with equally. We have to find an answer to that question if this committee is to recommend that to the government, because no legislation is worth anything if it can't be implemented in an effective manner.

We want to thank you very much for your presentations, and if there's any information you think the committee should receive, please feel free to send it on to us as we're looking for all and good sources of information on this matter.

**Mr. David Kramer:** Thank you very much.

**Mr. Jared Genser:** Thank you.

**The Chair:** We'll take a two-minute break—and I mean two minutes—so we can get hooked up to our next witness. Thank you.

•(1630)

\_\_\_\_\_ (Pause) \_\_\_\_\_

•(1635)

**The Chair:** Colleagues, we're back in committee. I just wanted to introduce to you our next witness. His name is Andrei Sannikov. He's a Belarusian politician and activist. Mr. Sannikov was the deputy foreign minister of Belarus between 1995 and 1996, a position from which he resigned in protest. He is a co-founder of the civil action group, Charter 97, and was a candidate in the Belarus 2010 presidential election. In 2011, Mr. Sannikov was sentenced to five years' imprisonment on charges of organizing mass disturbances and he was released and pardoned in 2012.

I thought for the record it would be important for us to know who Mr. Sannikov is. I want to welcome him to the committee and turn the floor over to Mr. Sannikov for his presentation. Then we'll get right into questions if that's convenient and good for everyone.

Mr. Sannikov.

**Mr. Andrei Sannikov (As an Individual):** Hello everybody, and good afternoon. It's quite late here in Warsaw.

I presume that you want to hear about the effectiveness of the policy of sanctions on individuals responsible for the violation of international law as well as domestic law. I can tell you that from my experience, this policy is very effective when implemented. Why is that so? In a country like Belarus where there is a dictatorial regime, especially the regime that has been in place for so many years, and there is no judiciary, the main factor that supports repression against—and I'm not talking political opposition—mass media and human rights defenders is impunity.

Since we don't have the benefit of the judiciary...and this is not just my words. It's the conclusion that was made by UN special rapporteur on the independence of the judiciary as far back as 2000, when he came and studied the situation in Belarus. He presented this report with a very negative assessment of the judiciary system, and it has only become worse since then.

The only hope we can have to support very legitimate demands for upholding democratic principles, which again are not theoretical but have been subscribed to and signed by the authorities of Belarus on many occasions, including the OSCE documents, the Paris charter, and others, is the international assessment of the situation in such countries as Belarus, and international solidarity on the basis of the principle of respect for human rights and support for the legitimate demands of the people in Belarus. Again, I must stress, it's not only the politicians but also the ordinary people, because the repressive system affects all layers, all the professions, and all walks of life within such a situation as Belarus.

I will be more than happy to answer specific questions. I do understand that you might need some specific views of the situation in my country, but not only in my country.

The only thing I must stress is that we need some kind of international instrument. The most effective, in my view, would be the global Magnitsky law, which is the law of a new era. That could address the challenges that we all face in the democratic community, both in democratic countries and within pro-democracy activities in countries like Belarus.

Thank you.

•(1640)

**The Chair:** Thank you very much.

I'll go straight to Mr. Kent, please.

**Hon. Peter Kent:** Thank you, Chair.

Ambassador, thank you for your testimony today and for making yourself available.

We've heard from any number of witnesses about the ineffectiveness of general sanctions against countries. In the case of Russia, the post-Crimea, post-Ukraine invasion, we know that Vladimir Putin's intention, attitude, and behaviour have not changed.

We have also been told that targeted sanctions against some of his criminal associates, some of the oligarchs dealing in money laundering and so forth, do feel the impact of isolation, of being named and shamed, of being ostracized, of being unable in some circumstances, when they're on these various national lists, to travel freely and enjoy their ill-gotten gains in other parts of the world.

I'm just wondering, from your experience and observation, whether you think that targeted sanctions do continue to play an effective role, if not in changing renegade presidents like Vladimir Putin, in discouraging those around him from behaving in a way that might lead to their isolation.

**Mr. Andrei Sannikov:** Thank you for the question.

I would say that both general sanctions and targeted sanctions are effective. With general sanctions, there are an assessment and the attitude of the international community toward the situation of the abuse of human rights, both in Russian and Belarus, and in other places in the former Soviet Union. I am the living proof of the effectiveness of both general and targeted sanctions, because I was released only due to the fact that for the first time the European Union introduced economic sanctions against the businessmen that were close to Lukashenko and close to and supportive of the regime. Only this made them release me.

When these sanctions started to be contemplated—again, it was done for the first time in Belarus—we had what I call the “visa ban tourist sanctions”, which were not sanctions but a very mild instrument. After the crackdown in 2010, when many of us were in jail, me included, the attitude in jail was very difficult.... There was a horrendous attitude on the part of the authorities.

Then, after the condemnation statements from different states, including Canada—for which I am very grateful because without that solidarity and support it would not have been possible to survive in there—they started to contemplate targeted economic sanctions on businessmen. Even when they had just started to do this in Brussels, already I felt the attitude changing inside the prison where I was. They were becoming not so aggressive and not so arrogant, because they were afraid of being included. Even some of the wardens who I saw told me openly—confidentially, of course—that they were afraid that they or their families would be included in the blacklist. Then the targeted sanctions followed, and two businessmen close to the dictator were targeted by the sanctions. Immediately, they started the procedure for my release and the release of my friend, the manager of my presidential campaign.

I would say that it's the combination, because we need first of all to feel the attitude of the international democratic community towards the atrocities in a country, and then, of course, there are the targeted sanctions. What I want also to stress and is sometimes underestimated is that all the oppression and all the abuse of human rights and basic freedoms that we see now in Russia were tested in Belarus. Lukashenko's model existed long before Putin came into power, and believe me, they do watch each other, these dictators. They also watch the attitude of the west towards their policies. When the west becomes soft on Lukashenko, it first of all gives Putin a lesson and the false idea that he can go ahead in Ukraine and elsewhere in Russia.

I've always supported sanctions, even in prison when it was difficult for me to publicly state that I was in favour of sanctions because it immediately brought repercussions for me and my life in prison. I've always supported that. Unfortunately, they're the only instrument that is effective, and that is soft power.

• (1645)

**Hon. Peter Kent:** You seem to be saying that sanctions and targeted sanctions are more effective against lesser powers than we have seen them being against Russia.

**Mr. Andrei Sannikov:** I would say that in lesser powers, as you say—

**Hon. Peter Kent:** In Belarus compared to Russia, in smaller countries—

**Mr. Andrei Sannikov:** —they could be more effective, yes.

**Hon. Peter Kent:** We've been considering and hearing advice that were we to go the route of the global Magnitsky law we should perhaps consider including violations of human rights, gross violations of internationally recognized human rights. What are your thoughts on that, sir?

**Mr. Andrei Sannikov:** I am strongly in favour of the global Magnitsky law. Those who commit crimes against their own citizens, those who abuse human rights grossly and regularly, for a long time, enjoy immunity because they're high officials and no international law makes it possible to bring charges against high officials of the state, no matter how bad it is. Impunity is a driving force of further repression, so the global Magnitsky law of course will be a very powerful instrument.

I know the attitude of the officials around Lukashenko. Those in his government, those who are close to him, are very much afraid to be banned from, let's say, the niceties of the life that they would like to at least visit. In terms of the freezing of assets, that perhaps is not so significant, because there are not so many assets, and not many people have assets abroad. But the international condemnation by the democratic countries will have consequences in terms of preventing them from enjoying the life that ordinary people, who did not commit any crimes, can enjoy all over the world. That's a powerful instrument.

**Hon. Peter Kent:** Thank you.

**The Chair:** Thank you, Mr. Kent.

I'll go to Mr. Saini, please.

**Mr. Raj Saini (Kitchener Centre, Lib.):** Good afternoon, Mr. Sannikov—or good evening, I guess, depending on where you are in the world. Thank you very much for agreeing to testify today.

I have a quick question for you. This is just a generality, nothing specific. In February of this year, the European Council withdrew some of the sanctions against 170 people and three companies. I find that with targeted sanctions, if there's no alignment between the European Union, the United States, and the United Nations, it gets very difficult for those sanctions to be effective. Can you just explain why the European Council decided to remove the sanctions against those individuals? What was the belief behind that?

•(1650)

**Mr. Andrei Sannikov:** What I hear is that the rationale behind it was that the geopolitical situation is changing and probably Belarus is not as supportive of Putin's regime as before, especially regarding the war in Ukraine, but this is presumptuous. Unfortunately, I must say, I was very critical of this decision. Why? Because Brussels demonstrated weakness at that time, because they set their own conditions. There were three conditions put forward for lifting sanctions or for softening sanctions. Only one was partly met, which was the release of political prisoners, and also only partly because the condition was the release and rehabilitation of political prisoners. None of us is rehabilitated to this time.

In this way the European Union demonstrated its weakness and that gave a false impression to the regime inside Belarus. Again, Russia was watching very closely. Even after the very strong reactions to the crackdown and atrocities in Minsk in 2010 and the following statements and strengthening of sanctions, this period was very short. They started to lift sanctions last year, when the dictator and those who were guilty of those crimes were actually acquitted by the international community. That's what I'm talking about.

We don't have an independent judiciary. That's why it's so important to have a moral condemnation of what's going on in such regimes as Belarus. It was an unfortunate decision that led us nowhere, because the system is trying to be nice to the west, not because they want to change but because they badly need money. That's the whole purpose of their rhetoric today.

Unfortunately, I must say that Canada also followed this example by lifting those restrictions that were in place in May this year. Again, I want to stress it sends the wrong signal, not only to us in Belarus who work as the freedom fighters, the human rights defenders, civil society, but also to the regime in the Kremlin. If the lesser regime, so less evil, as they call them, could escape the sanctions that's the pattern to follow in Russia. They can continue their politics, especially in Ukraine, and know for sure that there will be a period of fatigue in the west of its policy of sanctioning or strengthening these sanctions, and Russia will escape responsibility for its acts.

**Mr. Raj Saini:** Do you believe, then, it's a fair statement to say that, if sanctions are going to be effective, there has to be greater participation, not only from the EU but the United States and the United Nations? They all to work together and if one entity does not

**Mr. Andrei Sannikov:** Absolutely.

Do you know what is also important? If sanctions are discussed, it is important not to demonstrate the differences that the western democratic countries have on the issue of sanctions. It's better maybe to do less but in a coordinated, consolidated manner, than to show that there are some loopholes that Russia, or regimes like in the Kremlin and Minsk, could use. That is also something to take into account, because they are looking for these kinds of fractious intentions inside the western community on sanctions, and they're using them.

Why am I telling you this? Because that was the case in Belarus, as I said, when the sanctions were introduced to businessmen. There was a leak of information that there were probably three more

businessmen who would be targeted by the sanctions. But then nothing happened and the rest of the political prisoners stayed in prison. If it happened, they would have been released, I'm sure about that. But there was the leak of this information, that there would be three more persons quite close to Lukashenko who would be shortly, in two months' time, targeted for sanctions by the European Union, and then nothing happened and the people suffered for three more years in prison.

•(1655)

[Translation]

**The Chair:** Ms. Laverdière, you have the floor.

**Ms. Hélène Laverdière:** Thank you very much, Mr. Chair.

Mr. Sannikov, thank you for your very interesting presentation.

You said that the Europeans have lifted at least part of their sanctions, that some people were in a way acquitted. Do you consider it necessary to continue to apply sanctions even after there has been a change in behaviour?

[English]

**Mr. Andrei Sannikov:** I'm sorry...to look for what?

[Translation]

**Ms. Hélène Laverdière:** When there is a change in behaviour or the situation is being resolved, should extending the sanctions be considered in some cases to ensure that people do not get off easily, despite what they have done?

[English]

**Mr. Andrei Sannikov:** Absolutely. Again, let's take the example of Belarus. The people who escaped the sanctions because Brussels lifted them were the top officials of KGB, which is the secret police. In Belarus it still bears the name of the KGB as in the Soviet Union and they perform the same functions. They politically persecute not only the opponents of the regime but those who are not loyal to the regime. Those people committed crimes by any law, even by Lukashenko's law, by the laws that exist in Belarus but which were not implemented.

All of a sudden they were condemned by the international community and then all of a sudden they were pardoned. That's an absence of logic, because of course they have to be on the list of those who committed the crimes, because in a free Belarus definitely they will be responsible for the crimes they committed. But we need this kind of support today, international support, to—let's put it in very simple words—show them this evil and that evil eventually will be punished.

[Translation]

**Ms. Hélène Laverdière:** You raised another interesting point. To offer somewhat of a caricature, because I think you used this example, the idea of targeting prison guards or low-level public servants, for example, might be of limited success because these people in many cases do not travel and do not have foreign assets in an event.

Moreover, targeting heads of state or very high-level representatives is difficult. It creates problems. Business people are not necessarily protected and might have an interest in travelling and owning foreign assets. In your opinion, how can we address these complications and difficulties when we establish sanctions?

[English]

**Mr. Andrei Sannikov:** First of all, I cannot say whether they do have assets abroad or not because, as you may know, many of the power structures, both in Russia and Belarus and other parts of the former Soviet Union are very closely involved in business schemes, and mostly in criminal business schemes, that presuppose the withdrawal of money or storing the money or keeping the money outside, preferably in the western world.

When those businessmen were targeted in Belarus they panicked. I forgot to mention one other factor. The consolidated position on targeting businesses that supported the regime—and these were facts, not just speculation—created a different attitude inside the business community because they started to think about whether they were right to continue to finance this kind of repressive regime, and maybe they could do something to help the changes and not make the mistake of extraordinary or violent changes. We're talking only about the evolutions and the changes inside the country, peaceful changes.

I think it is very important to use this instrument because you never know how important it is to have assets, or to have access to assets outside the country. As for the top officials, I think it was mentioned here that, rightfully, the oligarchs and those who are close to the Kremlin were targeted. It does create a different attitude and it should continue. Once you've started this policy, there should not be any slack because this is not a policy of one or two days. When you embark on the policy of sanctions you have to allow some period for them to be effective.

I'm very often asked if that could be a strategy. Of course not. That is not a strategy for a relationship between countries in general, but this is the necessary instrument to change the behaviour of oppression and what's more, especially I'm thinking very personally, it's a very necessary and effective instrument to save people's lives.

• (1700)

**The Chair:** Thank you, Madame Laverdière.

Borys, please.

**Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.):** Sir, you just said that sanctions are an important instrument to save people's lives. Mr. Magnitsky was killed while incarcerated in Russia. After the imposition of the Magnitsky act by the United States, although Mr. Putin continued to incarcerate people he thought may be opponents—oligarchs, business people, potential political opponents, people who worked for them—none were murdered. None had their deaths caused as a result of being incarcerated. In fact, some were released.

Would it be fair to assume, perhaps as a consequence of these Magnitsky laws, that for the people Mr. Putin incarcerates, people he views as opponents, in fact, their lives are being saved by the imposition of these targeted sanctions?

**Mr. Andrei Sannikov:** I will say that yes, it helps to save the lives of people.

Of course, after the Magnitsky law, we lost our good friend Boris Nemstov, who was killed. He was a very strong supporter of the Magnitsky act. You cannot prevent these things from happening, if you are retaining this sort of position on the regimes that perpetrate atrocities against their own citizens, like in Russia and Belarus.

To answer your question, yes, it does help save lives. I can tell you that the attention, any kind of attention, any kind of solidarity, helps people to survive in prison and in penal colonies. However, where it is important as legislation... When governments know that it's not just a political statement or moral support, but it's legislation that has very specific consequences, that is very powerful.

• (1705)

**Mr. Borys Wrzesnewskyj:** Sir, I'd like to address another question that we're grappling with.

Canada is a big believer in multilateralism, especially with countries that we consider part of the western liberal democracy club of countries. We're tremendous supporters of the UN, but we see that the UN Security Council has not been able to act on sanctions because of a flawed structure. Russia or China, both grave human rights abusers, tend to veto any of those attempts.

Of course, we love to do things in tandem with our European Union allies, but they have a system that requires 28 countries to agree, which is problematic, especially with a situation where you have countries, currently, for instance, Bulgaria and Romania, that are not in favour of sanctions. We may perhaps be seeing a new era of isolationism with our North American colleagues.

Someone said previously on a panel that looking for unity among all of these countries may be searching for the lowest common denominator. In fact, it almost seems as if trying to do things multilaterally may be problematically difficult.

What are your thoughts with regard to a country taking a principled position, a leadership position, and saying we believe that a country should respect human rights? With regard to those who grossly abuse them, especially those officials directly involved in abusing them, we will stand firm and say that they will be sanctioned. We don't want their money or these individuals coming to our country.

What are your thoughts on those points?

**Mr. Andrei Sannikov:** I must say that today we are facing a lot of local crises and also global crises. I must say that we lack the type of leadership that you are talking about because especially after the big expansion of the European Union, I think that everybody was kind of complacent about the future development of the world in general. At least we have the bulwark of democracy in Europe, the biggest union of various shared values. But all of a sudden it started to collapse, and it started to collapse because of the complacency of the west in having a very soft reaction to the human rights abuses on the immediate borders of the west, by which I mean in the former Soviet Union.

This kind of a lack of strong and principled reaction created not one, not two, not three, but a group of countries that are very effectively co-operating with each other in the former Soviet Union and other parts of the world not only to calm the western efforts to strengthen democracy and values but also to attack. You must admit that the attacks sometimes are much more effective than the policy of the west to support the values.

I think today that we need this kind of leadership. I am a firm believer in values. I think that in recent years, *realpolitik* interests, for example, in my country of Belarus, are prevailing in too many cases over the values. The interests are prevailing over the values. That is eroding the fundamentals that we need to be restored today, and not only restored but strengthened. For me there is no question that the attitudes and our respect of human rights are the basic principles on which the west should build its relationship with this or that country.

• (1710)

**Mr. Borys Wrzesnewskyj:** Sir, you just touched on another interesting point, how these countries are influencing the west. There have been investigative reports over the past decade that have outlined in many cases, especially in Europe, how Russian money in particular has corrupted political leadership in many European countries. I guess the most notorious example is that of former chancellor, Gerhard Schröder. A couple of weeks before resigning, he signed off on a billion-euro credit for the Nord Stream with tremendous geopolitical consequences in Europe, and then a couple of weeks afterwards he joined one of Gazprom's boards. In fact, when the Estonians removed a Red Army memorial in Tallinn, they were subject to a cyber-attack, which shut down their government, and Mr. Schröder at that time said that it contradicted every form of civilized behaviour. Except, he didn't reference Mr. Putin or the Kremlin; he referenced little Estonia.

You're now in the west. I'm sure you meet with many politicians and leaders in European countries. How insidious is the influence of Russian money among western political leaders?

**Mr. Andrei Sannikov:** That's a very good question. I think you do recognize the problem, and you targeted it very well.

I would say that it's expanding, because Russia is operating very effectively in this regard. However, this is combined not only with politicians but with the think tanks in the west that are being bought over and with the mass media in the west that are being bought over or just being paid to present not even the views of Russia but very aggressive propaganda instead of information.

This worries me a lot. I see it, I know about this fact, and I don't see any effective preventive measures, let's say, or any measures to stop it. I still feel that there is a lack of recognition of the dangers. When Ukraine was attacked, when they annexed Crimea and started the aggression in the Donbass region, my first reaction was that this was the beginning of the attack on Europe and on the west in general.

Again, I think it was unexpected for many, but it was expected by us. We knew that it was coming. We didn't expect, of course, the kind of war that was unleashed by Russia, but the aggressiveness of the Kremlin had become more and more apparent for us. We knew that they would be looking for some kind of outlet for this aggressiveness.

We all know of the phrase "Russian World" and how it is promoted by the Kremlin in Belarus but also very effectively in the west. Believe me, there is no such notion of the western or democratic world in Russia or in Belarus. That is not being promoted. The values of the west and liberal democracy are not being promoted in our countries. That is the difference in the approaches, and I am afraid—I hate to say it—they are acting much more effectively. I'm sure that I'm not being too optimistic when I say that the west will put its act together eventually, but so far the dangers are apparent and they are growing, unfortunately.

• (1715)

**Mr. Borys Wrzesnewskyj:** Thank you, sir. Thank you for your courage.

**The Chair:** Thank you, Mr. Wrzesnewskyj.

Mr. Kmiec, please.

**Mr. Tom Kmiec (Calgary Shepard, CPC):** Thank you, Mr. Sannikov, for being with us today. I'm going to focus my questions a bit more on the work done by the opposition in Belarus.

Would it be fair to say that sanctions help protect members of the Belarus opposition, the people who are human rights activists, lawyers, or people like you who are actively opposing, in a democratic way, the Lukashenko regime?

**Mr. Andrei Sannikov:** Yes, absolutely. You're absolutely right. It helps protect people.

Another thing is that it creates a kind of opening, because when people who are on the side of the regime, or are members of the regime, or are those who have actually implemented whatever policies the regime has implemented in Belarus, they know that there is a principled assessment of their activities, their wrong activities, and they know the possible consequences. They are being more careful. Vice versa, when the sanctions are lifted, they don't have these kinds of barriers, so the sanctions do create openings for the civil society, for the political opposition, and for mass media or independent media in the countries that are in such difficult situations.

**Mr. Tom Kmiec:** In your particular case, you mentioned the two businessmen who were targeted by sanctions. Do you think that helped you survive in prison? Do you think you would have finished up like Mr. Magnitsky?

**Mr. Andrei Sannikov:** Yes, absolutely. Absolutely, it probably saved my life. I was then—pardon me for saying this—the most well-known opposition politician in the prison because my whole family was targeted. Initially, my wife was also in prison. They tried to abduct our little son. Everybody understood that the sanctions were tied to my personal case, as well as those of others, of course.

**Mr. Tom Kmiec:** I noticed that your memoirs of what happened to you and your ordeal are also not allowed in Belarus. They're actually seized at the border, so I know that you're kind of a focal point. I realize that.

**Mr. Andrei Sannikov:** Yes.

**Mr. Tom Kmiec:** You mentioned something about—

**Mr. Andrei Sannikov:** I would—

**Mr. Tom Kmiec:** Go on.



**Mr. Andrei Sannikov:** Yes, I agree with you.

**Mr. Tom Kmiec:** I was going to ask about this sanction fatigue concept.

I wasn't born in Canada. I was born in Poland. My family has always talked about Russia in a very different way from how I hear many people in the west talk about it. But this concept of sanction fatigue is, to me, very cultural and the Russian Federation, the Russian government, in whatever iteration it's appeared as, whether it be the Soviet Union or today under Mr. Putin, tries to outlast the west, so it takes actions according to whatever its best interests are and tries to outlast us.

With this concept you've talked about of sanction fatigue, do you think westerners, western governments, take too short a view on what sanctions are supposed to achieve in terms of coercing either the government or coercing people at, say, the prison warden level or at the KGB police enforcement level to take different decisions, take different actions?

**Mr. Andrei Sannikov:** I think that sometimes we allow a false rationale, a false logic, to enter the discussion. What people like Putin or Lukashenko try to do is, first, make the best argument they have against sanctions, which is that sanctions hurt the people. It's hypocrisy because the regime is hurting people. This is especially clear in the case of Belarus, because the economy now is in a catastrophic state because of the lack of reforms, because of the lack of anything that people could benefit from. The regimes hurt the people, not the sanctions.

Again, I must stress that sanctions are not magic. They are not a strategy. They are an instrument that should serve the strategy of democratic changes in the countries and the relationship of major countries like Canada, like the United States, like the European countries, with the regimes that are not complying with their own obligations, especially as regards human rights.

Sometimes I hear the argument that there were changes in eastern Europe without sanctions, but it's wrong because the sanctions were there, because it was not only Polish Solidarity that was sacrificing their lives in their fight for freedom but there were also sanctions from the west against the Polish government, especially after the introduction of martial law.

It is one of the the elements of the general policy of any individual country, especially western democracies, with rogue regimes. I think it's a very important element, but it has to be an element of a logical and durable strategy.

• (1720)

**Mr. Tom Kmiec:** If Canada were to go ahead and create a regime of more targeted sanctions, where we would target prison administrators, special police forces, would it help opposition parties in Belarus in opposing Lukashenko? Would that provide a better means of having a fair playing field for organizations like your own Charter 97 and others who are fighting for human rights, democratic rights?

**Mr. Andrei Sannikov:** Yes, absolutely. Again, I've had first-hand experience because some of the wardens in the prison were secretly or confidentially talking to me and saying that they were very afraid.

They were afraid of publicity. They asked me not to release their names to the press because they were afraid of being targeted by sanctions. They were afraid, also, that they would be known as criminals, even among their neighbours. It's very interesting, and it's very interesting to know, that the condemnation by the west of the crimes they committed exposes them inside the country because their names become known, which they try to keep secret. It puts them in an awkward position, and not everybody is a scoundrel who is in the situation of serving the regime—

**Mr. Tom Kmiec:** If I may interrupt for a second, we've heard before in other testimony that some members of police forces wear it as a badge of honour. I know at least one member at this table here, my colleague Mr. Allison has been sanctioned by the Russian Federation. He can't travel there. I'm sure he's chagrined by that. Is it seen as a badge of honour in Belarus—

**Mr. Andrei Sannikov:** Yes.

**Mr. Tom Kmiec:** —to be the target of western sanctions?

**Mr. Andrei Sannikov:** Do you mean a badge of honour for Belarusian colleagues?

**Mr. Tom Kmiec:** Yes, because you just mentioned the opposite, where people don't want their names to be out in local news for people to know that they are police wardens who abuse human rights activists or people who abuse political party members. We've heard the opposite. We've heard that some members actually think of it as a badge of honour to be targeted by western sanctions. Do you think that's true?

• (1725)

**Mr. Andrei Sannikov:** No. In Belarus it was never a badge of honour. It was a badge of dishonour. It was the period in Russia, if I remember correctly, when the western sanctions were introduced after the aggression in Ukraine, there was a very feeble attempt to save face where they started to call themselves the “honoured”. If you were on the list, you were on the list of “honourable people”. Believe me that people in Belarus do welcome sanctions. Especially after the 2010 crackdown, when the sanctions were eventually introduced for those events, they were welcomed by an overwhelming majority of the people.

**Mr. Tom Kmiec:** Thank you.

**Mr. Andrei Sannikov:** I don't recollect anybody.... Maybe when two or three of them got real drunk they would boast about this, but it's not a badge of honour among the people. Never.

**Mr. Tom Kmiec:** Thank you.

**The Chair:** Thank you, Tom, and thank you very much, Mr. Sannikov, for your time. It's very much appreciated by the committee. We'll have to leave it there for today. Your information is very useful to the committee, so thank you very much.

**Mr. Andrei Sannikov:** Thank you very much. It was my honour.

**The Chair:** Colleagues, we will take a two-minute break and then we'll go in camera. We'll suspend and clear the room and we'll go in camera to deal with budgets and a few other matters, and then we'll call it a day.

[*Proceedings continue in camera*]





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