

**Transparency International EU
Frozen – How can the EU Fight Global Corruption
Panel: Toward the Adoption of an EU-wide Global Human Rights Sanctions Regime
March 06, 2019
Rob Berschinski – Remarks**

Thank you, Michael, and my thanks to TI EU for having all of us here.

I expect that I'm here to provide something of the American perspective on the utility, or lack thereof, of a global (horizontal) human rights and anti-corruption targeted sanctions regime.

By way of background, I served in the White House and State Department during the Obama Administration, and one of my tasks in the latter job dealt with implementing the 2012 Sergei Magnitsky Rule of Law Accountability Act, a law that provided the USG with authority to target economic and travel-related sanctions against Russian nationals found to have been directly involved in the crime and cover-up surrounding Sergei Magnitsky's death in custody, and other human rights violations in Russia.

In late 2016, just as the Obama Administration was transitioning into the Trump Administration, the U.S. Congress passed its global version of the so-called Magnitsky Act, and I began to work on advocacy around that law in my new position outside of government. Human Rights First is a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

The two laws are in many ways similar, but they differ from one another in three key ways.

- First, obviously, the global law is just that—global, or fully horizontal.
- Second, while the Russia-specific law focused on the case of Sergei Magnitsky and other human rights abuses, it did not include a mechanism to sanction corrupt actors outside of the Sergei Magnitsky case itself. In the global version of the law, conversely, acts of corruption are listed as covered crimes alongside human rights violations.
- And third, the Russia-specific law was written so as to be a mandatory requirement on the executive, while the global law was not. What this means is that, under the first law, the U.S. executive is compelled to impose sanctions on individuals if it feels it has information on the covered acts that meet legal sufficiency. In the case of the global law, this requirement was removed, and the tool is purely elective. Designations made under Global Magnitsky thus require not only legal sufficiency, but also political will.

To date, the Trump Administration has used the Global Magnitsky Act to sanction 101 individuals and associated entities, spanning actors in 17 different countries, in 7 rounds of designations. The first round of designations occurred in December 2017, approximately a year after the law was passed. The most recent occurred in November 2018, when the USG sanctioned

17 Saudi nationals found responsible for the murder of *Washington Post* columnist Jamal Khashoggi.

While parsing the numbers can get tricky—something I'd be glad to discuss—roughly 70 of these designations respond to instances of corruption, with roughly 30 correspond to incidents of gross violations of human rights.

They range from instances of a designation of a single individual, to more comprehensive approaches that appear to seek to enforce penalties against several actors or a network.

And lastly, in terms of description, they reflect in some part the work and input of human rights and anti-corruption advocates.

My organization, Human Rights First, has become something of a coordination and education hub for NGOs around the world who want to provide information to the U.S. government that might result in sanctions designations.

The theory of the case that we're operating under is that normal advocacy—saying, in effect, "here's a bad guy, here's what he did, now go get him"—isn't enough to maximize the chances that the U.S. government would sanction that person.

Instead, we're advising other organizations on how they can assemble the most credible, corroborated targeting dossiers similar to those used by the U.S. Treasury Department, and also providing assistance on how to argue that any particular designation is in the U.S. national interest.

The intent is essentially two-fold. First, to do what advocates do in terms of pushing for action, but also to make it as easy as possible for the government to take action, under the theory that we'll help counteract what is clearly a problem of limited bandwidth on the governmental side, and, we hope, any propensity to use the tool in a selective way against only certain governments, rather than where the most need is in terms of systemic abuses or corruption.

With this as background, I want to make a few points in terms of the ongoing conversation within the EU on whether it should empower itself with a similar tool.

First, it's important to reiterate that targeted sanctions are merely a tool, not an end unto themselves. I get asked all the time, are Global Magnitsky sanctions effective? The truthful answer is "possibly," and only then if they're one part of a larger diplomatic strategy in which they can provide appropriate leverage. In corruption cases, one can also imagine instances in which sanctions might complement legal tools. And in both human rights and anti-corruption cases, sanctions have some intrinsic value as a signaling device. But they're not a panacea, and as a stand-alone tool they're insufficient.

Cognizant of the first point, my second point is that EU member states are better off with the tool than without it.

- Having an existing horizontal sanctions regime on the books means that governments can act in two ways with the tool that they can't without it. First, with timeliness in response

to emerging global events; and second, without necessarily triggering a bilateral rupture that might be attendant to a country-specific sanctions program.

- Arguably the two most prominent Global Magnitsky cases to date bear this out—the sanctions imposed on the 17 Saudi nationals in the Khashoggi murder and the sanctions imposed in a corruption case dealing with Dan Gertler, an Israeli national found to amass a fortune through corrupt mining and oil deals in the Democratic Republic of the Congo (DRC), and dozens of his associated businesses.
- It's nearly inconceivable that the United States would initiate country-specific sanctions regimes covering Saudi Arabia and Israel. And yet, because of the targeted and global nature of the Global Magnitsky Act, these penalties are currently in place.
- I should caveat by saying that politicization of the tool is an ever-present concern, and part of the role of advocates is to do what we can to make sure that the U.S. government doesn't sanction individuals only in countries it doesn't like, while overlooking its allies. The Trump Administration has had a mixed record on this front. But the Saudi case in particular demonstrates that the alternative of having no human rights sanctions program would probably be worse, in terms of selective applicability of penalties imposed on actors in friendly states.

Third, if the EU is serious about a horizontal sanctions regime, it would be a mistake for that regime to include human rights but not corruption. Corruption and human rights violations are distinct phenomena, but their relationship is well established. The loss of public resources from corrupt acts can undermine a government's ability to invest in basic rights like health, education, and housing. On the flip side, corrupt officials frequently resort to human rights violations to maintain their grip on power, including by targeting transparency advocates and journalists, who they fear will expose their crimes. There's simply no justifiable reason, as far as I can see, for including one but not the other.

Fourth and last, while special care needs to be taken to ensure that any designations made under a future sanctions program adhere to due process considerations and are based on sufficient evidence, this concern shouldn't be a reason for the EU not to establish a program. As compared to other horizontal regimes related to terrorism or non-proliferation, the evidentiary basis for designations under a human rights and corruption regime should tend toward unclassified, publicly available information. If care is taken, this should allow for a more transparent process and preclude aspects of the legal challenges that have dogged other EU sanctions programs.

I'll conclude with that, and look forward to the discussion.