

Robert G. Berschinski  
Remarks as Prepared  
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Examining the Anti-Corruption Provisions of the Global Magnitsky Act  
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U.S. Helsinki Commission Staff,

I'm pleased to be with you today to discuss the Global Magnitsky Human Rights Accountability Act, a landmark law that allows the U.S. government the ability to impose a form of accountability on the world's worst human rights abusers and corrupt actors, irrespective of where they reside.

We are meeting at a timely moment, as it is likely that as early as next week the Trump administration will make public its initial tranche of sanctions designations under the Act. Many human rights defenders and other members of civil society from around the world are eagerly awaiting the Trump administration's decisions.

Robustly implementing the Global Magnitsky Act is seen as crucial by activists abroad. Notwithstanding recent rhetoric and policy from the administration that has severely damaged America's image as a leader on human rights and efforts to fight corruption, I can assure you that many men and women laboring under repressive and kleptocratic governments around the world still view the United States as their last, best hope. They view our government, empowered by "Global Magnitsky," as an actor able to stand up for what is right, able to protect the vulnerable, and able to challenge those who otherwise act with impunity. We will soon see whether these hopes are well-founded.

Robust implementation of the law is also important for activists within the United States. Proponents of the law at home see in Global Magnitsky a tool that the U.S. government can use to shine a bright light on murderers, torturers, rapists, and those that steal brazenly from their own citizens, and to deny such actors travel to the United States and the ability to move their ill-gotten gains through our financial system. Many of us also see in advocacy around the law an avenue to accomplish some of these effects even without the U.S. government taking action on any particular case.

Recognizing this important potential, shortly after the law was passed last year, a number of leading, largely U.S.-based human rights and anti-corruption NGOs came together in an effort to provide the executive and legislative branches of the U.S. government with recommendations for individuals that we felt warranted investigation by the administration for potential designation.

We did this in accordance with the law's section 1263(c)(2), which directs the President to "consider...credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights."

I want to pause to acknowledge the importance of this provision, which serves as a reminder that Congress views the role of nongovernmental watchdogs as integral to Global Magnitsky's success. For this, I'd like to offer a note of thanks on behalf of many of my NGO counterparts and activists around the world.

I also want to highlight the proactive outreach to civil society over the course of the year initiated by officials at the Departments of State, Justice, and Treasury, as well as members of the National Security Council staff. Having over the course of my career been on both the "USG" and "non-USG" sides of the table during external consultations, I've been impressed with the seriousness with which members of the administration approached outreach to human rights and anti-corruption NGOs. Kudos to them.

Turning to the process that some of us in civil society undertook regarding making sanctions designations recommendations, I would offer a few thoughts.

First, one of Global Magnitsky's greatest strengths—its global reach—is in some respects also what makes it complex to implement, at least in a maximally coherent way. Unfortunately, gross violations of human rights and acts of significant corruption abound across the world. With respect to corruption, the UN estimates that roughly five percent of the world's economy each year is lost to bribes and skimmed off the top of legitimate commerce. In the context of Global Magnitsky, this raises the fundamental question of "where do we begin?"

Accordingly, in choosing would-be targets, the U.S. government would ideally have in place a process to think through criteria that go beyond the fundamental question of whether the law's evidentiary threshold can be met. Key questions the U.S. government should ask itself include:

first, whether a designation will have impact beyond the specific individual or individuals sanctioned, either by deterring others from similar conduct, or by sidelining a particular actor or group of actors;

and second, whether a particular designation or set of designations would reinforce the idea that the United States views accountability for human rights violations and corruption as a policy priority that should be advanced globally, including with respect

to our partners and allies, or whether we will pursue such actions only in the context of countries with which we have bilateral disagreements.

With these questions in mind, those of us in the advocacy world decided early on that we wanted to provide the U.S. government with a list of recommendations that not only involved would-be sanctions cases that we felt would have important ramifications, but that were also geographically dispersed, mixed between regional powers and smaller states, and made little distinction between international friends, competitors, and enemies. It remains to be seen whether the U.S. government will adopt the same approach.

The second point I'd offer is that Global Magnitsky's high evidentiary threshold has implications for how civil society makes its recommendations.

Sanctions are, of course, an administrative tool rather than a judicial remedy, and are ultimately about policy and behavior modification, not achieving justice. That said, before taking an action as significant as blocking a person's assets, the U.S. government must have confidence that its determination will be upheld in a court of law if it is challenged. This results—and I would say appropriately so—in a high evidentiary standard needing to be met before a designation is made.

For those of us working on the outside to expose corrupt schemes, what this means in practice is that only in rare circumstances will we be able to deliver to the U.S. government conclusive information around which the government could fully base a sanctions designation. Except in rare cases, activists and investigative journalists may be able to point to a compelling pattern of behavior worthy of further investigation, but are not necessarily able to produce "smoking gun" type information. Nor, I should add, are we compelled to do so under the law in whatever we make public.

Third, and related to both of the above points, activists are still thinking through the relative pros and cons of using public naming and shaming as a tool under Global Magnitsky, as opposed to making quiet recommendations to the government.

Being public in our recommendations has obvious upsides. Doing so puts alleged corrupt actors and human rights violators on notice that they're being watched. It creates doubt in their minds about whether they'll be able to carry on their acts with complete impunity. It raises the potential that foreign governments will sideline certain actors viewed as pariahs. It provides some measure of satisfaction—if not actual justice—to victims. And lastly, those that argue for public recommendations note that the audience for such declarations is two-fold, including not only the foreign individual and his or her

government, but also the U.S. government. By highlighting credible allegations publicly, advocates believe that they have an opportunity to impact U.S. government thinking, not only by providing useful information, but also by highlighting to policy makers that the world is aware that they could take action to limit the extent to which dirty money flows through the U.S. financial system, if they can find the requisite political will.

There are, however, at least two important downsides to public naming and shaming worthy of serious consideration. First among these is the reality that those publicly recommended for sanctions by NGOs may avail themselves of the opportunity to move or hide their assets before the U.S. government acts. Also relevant is the very real potential that often wealthy and powerful foreign actors, who have been known to employ American enablers, will fight back. Human rights and anti-corruption advocacy at the level of individual naming and shaming is a serious business, and the potential for harassment and attempted silencing of those engaged is very real.

This brings me to my fourth and last point. Beyond its worldwide reach, a major innovation behind Global Magnitsky is that it's a policy scalpel and not a mallet. By allowing the U.S. government to target individuals, the law allows the potential for a nuanced policy that signals strong disapproval of certain actions and actors, without suggesting or initiating a complete breakdown in bilateral relations.

An illustrative example of how this dynamic might work in practice on the side of the law dealing with gross violations of human rights relates to the potential for the U.S. government to levy Global Magnitsky sanctions on certain military commanders involved in atrocities recently committed against the Rohingya people in Burma. Such sanctions could play a role in sidelining these actors, while continuing to differentiate them from the civilian government.

A different example related to corruption can be extrapolated from an episode involving Hungary in 2014. In the fall of that year, the U.S. government applied visa bans on a handful of Hungarian businesspeople and government officials implicated in a corruption scheme related to Value Added Tax (VAT) reimbursements. In that instance, the U.S. government acted under Proclamation 7750, which allows for the suspension of entry of "persons engaged in or benefiting from corruption." That action sent, to my mind, an appropriately strong but targeted signal to the government of Hungary about how the United States views corrupt acts committed in the absence of accountability, irrespective of whether these acts were undertaken by individuals in an allied country.

It is my hope that this example can serve as a model for actions under Global Magnitsky moving forward in the OSCE region and beyond.