



Center for a
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Hearing on Implementation of the Global Magnitsky Human Rights Accountability Act

Maximizing the Effectiveness of GloMag Sanctions

BY

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I. Strategic Assessment

Co-Chairs McGovern and Smith and distinguished members of the Tom Lantos Human Rights Commission, thank you for the opportunity to testify today on the role of sanctions as a foreign policy tool, and how they can be most effective in the context of the Global Magnitsky Human Rights Accountability Act (“GloMag”).

I’m honored to have the opportunity to speak today on this very important topic, and humbled to be part of this illustrious group testifying today. I applaud Congress’s work to create this important legislation that provides the U.S. government with a flexible option to use when going after those involved in human rights abuses and corruption, and one that I believe has been a valuable addition to the sanctions toolkit.

Given the likelihood of the continued use of this powerful tool in the months and years ahead, my testimony focuses on how best to maximize its impact. This includes five steps: First, sanctions must be part of a broader, clearly defined strategy that takes into account the foreign policy objectives the U.S. government wishes to achieve; second, once this strategy is developed policymakers must decide which tools can best achieve its goals. Choosing the right tools requires a sober analysis of the benefits and limitations of the use of sanctions, and how their impact can be leveraged by other tools of economic statecraft, diplomacy, foreign aid, and, for Global Magnitsky, existing human rights and corruption-focused initiatives; third, once this framework is established it is important to decide on which targets to actually sanction. This requires robust coordination across the government, and, for Global Magnitsky in particular, should also include input from relevant stakeholders in civil society; fourth, sanctions must constantly be evaluated against the stated foreign policy objectives. This should include regular impact assessments, as well as after-action reports once sanctions have been lifted; and fifth, sanctions are best when done multilaterally, and therefore this process should prioritize outreach to, and coordination with, allies throughout.

II. Understanding the Use of Sanctions

Sanctions are an important instrument in advancing U.S. interests and those of our allies and partners around the world, and because of the size of the U.S. economy and primacy of the U.S. dollar, have proven to provide significant leverage to the United States when seeking to change behavior or deter actions that are contrary to U.S. interests.

In recent years, sanctions have also become one of the go-to foreign policy tools for the U.S. government. The United States Department of the Treasury’s Office of Foreign Assets Control (OFAC) now implements 30 individual sanctions programs and has designated thousands of individuals and entities for activities ranging from narcotics trafficking to proliferation of weapons of mass destruction. This trend has been especially pronounced for the topic today, where over the past five years the U.S. government has used both Global Magnitsky and country-specific authorities to impose an unprecedented number of human rights and corruption-related sanctions, averaging 229 per calendar year.¹ ² The Biden administration has also pledged to make human rights central to its foreign policy. As seen in the recent designations against Chinese officials involved in human rights abuses in Xinjiang,³ Myanmar military officials involved in the illegal coup against the democratically elected ruling party in early February,⁴ Russian officials involved in the poisoning and subsequent imprisonment of Russian opposition figure Aleksey Navalny,⁵ and persons

¹ “Grappling with the Growing Use of Sanctions: Bridging the Academic-Policy Divide,” 2019, Center for a New American Security, <https://www.cnas.org/grappling-with-the-growing-use-of-sanctions-bridging-the-academic-policy-divide>.

² United States Department of the Treasury, Office of Foreign Assets Control, “Sanctions Programs and Country Information,” <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.

³ United States Department of State, Promoting Accountability for Human Rights Abuse with Our Partners, Press Release, March 22, 2021, <https://www.state.gov/promoting-accountability-for-human-rights-abuse-with-our-partners/>.

⁴ United States Department of the Treasury, United States Targets Leaders of Burma’s Military Coup Under New Executive Order, Press Release, February 11, 2021, <https://home.treasury.gov/news/press-releases/jy0024>.

⁵ United States Department of the Treasury, Treasury Sanctions Russian Officials in Response to the Novichok Poisoning of Aleksey Navalny, Press Release, March 2, 2021, <https://home.treasury.gov/news/press-releases/jy0045>.

involved in the murder of journalist Jamal Khashoggi,⁶ the Biden administration has already demonstrated its willingness to include human rights-related sanctions as part of its overall approach.

With this trend set to continue, my testimony focuses on where sanctions fit within these broader objectives and builds upon much of the excellent testimony already given today to draw out how best to maximize their use under GloMag.

III. Guiding Principles for Effective Sanctions Policy Strategy

When considering the use of sanctions, including under GloMag, it is vitally important to understand and clearly articulate the foreign policy goals the U.S. government is attempting to achieve, and what role sanctions will play. Ideally, in the GloMag context this should include a clear description of the human rights or corruption issues it is addressing, and how the use of sanctions will help advance this goal. It should also seek to identify specific benchmarks that are tied to the objectives, and detail how sanctions can help meet these benchmarks.

Importantly, this strategy should also take into account what other tools are available to the U.S. government, and how the tools can be combined for maximum effect. For GloMag, among others these tools could include export controls on U.S. technology that could be used for surveillance, supply chain restrictions on imports derived from forced labor, other anti-corruption efforts such as focusing on beneficial ownership, diplomatic outreach to relevant governments and other stakeholders, aid to civil society or others working on these issues in-country, and any joint efforts with allies. For transnational groups or others not tied to a specific country it could also include, for example, law enforcement coordination with relevant jurisdictions. In deciding on each of these tools, and in particular the use of coercive economic measures such as sanctions and export controls, policymakers need to weigh the benefits these powerful actions can have against the potential unintended consequences such as exacerbating humanitarian issues on the ground.

GloMag currently includes a reporting requirement that compels the executive branch to submit annually a list of sanctions imposed and the reasons for imposing those sanctions. I would suggest expanding this reporting requirement to also require an articulation of how the sanctions imposed fit into the broader foreign policy objective, as well as any additional tools used beyond sanctions to achieve that objective. By placing the use of sanctions within this broader context, I believe it will give Congress and the public greater context and understanding of where these important sanctions fit within the foreign policy toolbox, as well as help inform further oversight for their ongoing use.

After defining the goals and tools, it is equally as important to sanction the correct people or entities to best achieve the policy. Though this may seem obvious, this requires significant coordination across the U.S. government so that it is organized to be able to identify and quickly move on sanctions cases as necessary. Given the popularity of sanctions in recent years there is already a well-established process run by the National Security Council that includes representatives from relevant agencies, such as from the Bureau of Democracy, Human Rights, and Labor at the Department of State in the case of GloMag. This process is designed to bring in various viewpoints and expertise across the government, and to weigh the use of the sanctions tool against the use of other tools at the U.S. government's disposal.

⁶ United States Department of the Treasury, Treasury Sanctions the Saudi Rapid Intervention Force and Former Deputy Head of Saudi Arabia's General Intelligence Presidency for Roles in the Murder of Journalist Jamal Khashoggi, Press Release, February 26, 2021, <https://home.treasury.gov/news/press-releases/jy0038>.

IV. How to Improve GloMag Sanctions

To be most effective, such deliberations ideally should include viewpoints not just from relevant U.S. government agencies, but also from nongovernmental sources with expertise and deep experience with the issues. This is why I applaud the requirement in GloMag to consider credible information provided by Congress or by other countries and NGOs that monitor violations of human rights. I cannot stress enough the value from the insights and analysis provided by those who spend their careers deeply involved with these issues, often directly with those impacted by the corruption or human rights abuses on the ground. This information can help illuminate the nature and extent of the abuses, and oftentimes can help tie the activities directly to those responsible. This information is invaluable when it comes to building actual sanctions packages that will withstand legal scrutiny, which can be challenging given the often-opaque nature of the activities targeted by GloMag. As such, I hope this collaboration will continue to be a key element of the legislation moving forward, and that it can also serve as a model for how to approach other sanctions programs as well.

To be clear, GloMag sanctions deliberations do not happen in a vacuum. In addition to weighing them against other policy options, the U.S. government must also weigh them against the use of sanctions themselves in other programs. It is important to remain consistent in the consideration, application, and removal of sanctions across the board, and to clearly articulate these actions to the world such that those targeted and others know what the United States expects. This is why I was heartened to learn that as part of the stimulus bill signed into law last December Congress has mandated the re-creation of the Office of Sanctions Coordination at the Department of State.⁷ Crucially, this position will be ambassadorial-level and Senate-confirmed, which should give the confirmed individual the authority to coordinate sanctions policy both across the State Department and U.S. government, as well as with our allies. This step is especially relevant in the case of a functional authority like GloMag, given the need to coordinate designations across multiple countries and types of activities.

Once the policy objectives, correct targets, and coordination is in place, is it critically important to also study the sanctions' impact. For many sanctions programs, the U.S. government relies on Intelligence Community assessments both to anticipate possible effects before sanctions are imposed, and to assess those effects after designations have happened. For broader economic sanctions, officials can also look at the economic impact on the targeted country or trade data to attempt to infer their effect. In both cases, it can be difficult to separate the effect of sanctions themselves from other factors, such as economic mismanagement on the part of the targeted government, or broader diplomatic efforts.⁸

As already noted, in the case of GloMag there is an established process for input from civil society. However, this input is only mandated on the front end, looking at sanctions targets. I believe this input is equally valuable on the back end, when looking at whether specific sanctions have achieved their goals. Though policymakers maintain regular dialogue with civil society on this issue, I would recommend that Congress consider adding a requirement to formally seek this input on impact as part of a periodic impact assessment. This assessment should take place at regular intervals, and look back at the articulated goals and actions taken to implement and sustain the sanctions, and weigh them against changes in behavior or policies from those targeted by the sanctions. It should also include an after-action report done once sanctions have been lifted. To be sure, the U.S. government can draw upon many of its own resources to help with this effort, including by getting input from foreign service officers and others in the countries at hand, as well as receiving analysis from its many experts on human rights, corruption, and related areas. However, civil society has a unique perspective that they can also bring to bear, and which I believe would complement the review.

⁷ Daniel Fried and Edward Fishman, The Rebirth of the State Department's Office of Sanctions Coordination: Guidelines for Success, Atlantic Council, February 12, 2021, <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-rebirth-of-the-state-departments-office-of-sanctions-coordination-guidelines-for-success/>.

⁸ United States Government Accountability Office, ECONOMIC SANCTIONS: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness, October 2019, <https://www.gao.gov/assets/gao-20-145.pdf>.

By also mandating this assessment as part of the regular reporting requirement already contained within GloMag, it would create a regular opportunity to consider the sanctions effectiveness and provide Congress with valuable information to further help with future oversight. I believe this process would be helpful in other sanctions contexts as well.

V. Global Coordination on Sanctions is Key

Finally, sanctions are best when done multilaterally. By bringing allies on board in pursuit of a shared objective, not only does it act as a force multiplier by further raising the costs and isolating those targeted by sanctions, but it also helps to send a strong moral message in the case of GloMag that human rights and corruption have no place in the international community.

That is why it is very encouraging to see that so many countries have adopted similar legislation in recent months that is modeled on the important work done by Congress under GloMag. This includes Canada, which has used its Justice for Victims of Corrupt Foreign Officials Act to designate individuals from China, Russia, Venezuela, Saudi Arabia, South Sudan, and Myanmar;⁹ the United Kingdom, which has used the Global Human Rights Sanctions Regulations to target individuals from China, Russia, Saudi Arabia, Myanmar, and North Korea;¹⁰ and the European Union, which has used its new EU Magnitsky Act¹¹ to sanction individuals from Russia, China, North Korea, Libya, South Sudan, and Eritrea¹², as well as complementary authorities to target individuals in Myanmar¹³. Similar legislation is also under consideration elsewhere.

Recognizing the value of coordination, Congress has already included a requirement in GloMag for the executive branch to report on efforts to encourage other governments to impose similar sanctions. Now that these new sanctions regimes are in place with many of our allies, coordination is more important than ever. In addition to the strong message that it sends, it also benefits U.S. sanctions policy as a whole by signaling to our allies and partners that the United States will take into account input and counsel from allies on how to wield the sanctions tool responsibly.

In closing, when wielded correctly GloMag sanctions can be a powerful tool in the effort to root out corruption and prevent future human rights abuses. By embedding them in a larger effort rooted in U.S. values and policy priorities that draws on input from relevant stakeholders, carefully assesses their impact and effectiveness, and works in concert with allies, we can give them their best chance for success.

Thank you for your time and for allowing me to speak on this important topic today. I look forward to your questions.

⁹ Government of Canada, Justice for Victims of Corrupt Foreign Officials Act, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/victims_corrupt-victimes_corrompus.aspx?lang=eng.

¹⁰ Government of the United Kingdom, UK Announces First Sanctions Under New Global Human Rights Regime, July 6, 2020, <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>.

¹¹ Official Journal of the European Union, COUNCIL DECISION (CFSP) 2020/1999 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses, December 7, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020D1999&from=EN>.

¹² Council of the European Union, EU Imposes further sanctions over serious violations of human rights around the world, <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/>.

¹³ Council of the European Union, Myanmar/Burma: EU sanctions 11 people over the recent military coup and ensuing repression, <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/myanmar-burma-eu-sanctions-11-people-over-the-recent-military-coup-and-ensuing-repression/>.