

**Commission on Security & Cooperation in Europe:  
U.S. Helsinki Commission**

**“Combating Kleptocracy With the Global Magnitsky Act”**

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Commission for Security and Cooperation in Europe, presiding**

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MASSARO: Good afternoon, and welcome to this Helsinki Commission briefing on “Combating Kleptocracy with the Global Magnitsky Act.” My name is Paul Massaro, and I am the anti-corruption policy advisor at the Helsinki Commission.

This year the Commission has been hosting a series of events on combatting kleptocracy, one of the central threats facing the OSCE today. Starting with our event on asset recovery last June, we have looked at combating energy corruption, the nature of kleptocracy in Russia, the need for incorporation transparency at home, and Ukraine’s fight against corruption. Panelists at all events have agreed that this is a pressing issue, but there are some reasons for optimism. The Global Magnitsky Act is one of those reasons.

The term “kleptocracy” describes states where corruption has supplanted the system of government. While we often associate kleptocracy with states like Russia, it is important to note that there are a number of states in the OSCE region that contain severe kleptocratic elements. It is also important to note that behind every act of grand corruption are individuals, often foreign government officials and their accomplices, who trade the well-being of their country for personal gain.

But kleptocracy is not just a problem for states where corruption has taken hold. It is also a problem for states where the rule of law is respected, like the United States of America. Without the ability to stash ill-gotten assets in states where the rule of law is respected, there is little reason to steal them. If your money was identified as dirty, you could never spend it and it could simply be stolen by another thief.

Lucky for kleptocrats, there is a large corruption services industry in the West that is ready and willing to help hide that money for a small cut, corroding the rule of law and democracy from the inside while sustaining kleptocratic oppression. This oppression comes in the form of massive human rights abuses, and disproportionately targets those who attempt to expose corruption.

In kleptocracies, loyalty is rewarded by access to wealth and power while whistleblowing is answered with trumped-up legal attacks, imprisonment, torture, and sometimes even death. This was the case for Sergei Magnitsky, who, after uncovering a massive fraud scheme perpetrated by the Russian state, met a tragic end in a Moscow prison. His story led to Congress passing and the president enacting the Magnitsky Rule of Law Accountability Act in 2012.

This law established sanctions on those responsible for Magnitsky’s death, and for other gross human rights violations in Russia against whistleblowers and human rights activists. Last year, Congress passed an even more extensive version of this legislation, the Global Magnitsky Act, which we’ll discuss today, which authorizes the executive branch to prohibit the worst foreign human rights offenders and most corrupt officials operating anywhere in the world from entering the United States, and to block their U.S. assets.

This law is a groundbreaking, modern tool in the counter-kleptocracy toolbox. While most discussions of combating kleptocracy in the United States revolve around domestic reform

designed to make assets more difficult to hide, or foreign reform abroad in order to make assets harder to steal, rarely do we have the opportunity to discuss the challenges and opportunities of sanctioning those who are engaging in or facilitating gross acts of corruption.

I am glad to have such a distinguished panel with me today to discuss this revolutionary piece of legislation in the fight against kleptocracy. Alex Johnson, to my right, is the current senior policy advisor for Europe and Eurasia at the Open Society Policy Center, which seeks to expand citizen engagement and ensure human rights while building transparent and accountable governments around the world. He is also a close friend and former colleague at the Helsinki Commission, where he served as our representative to the OSCE in Vienna. Alex is an expert on the OSCE region and served as special advisor for Russia and Ukraine at the Department of Defense between working for us and taking his current job.

Charles Davidson, to my left, is the executive director of the Kleptocracy Initiative at the Hudson Institute, which has been in the vanguard on combating kleptocracy and produced extensive research and reporting on the issue. Charles was the first to the scene among those of us fighting kleptocracy and built much of the intellectual foundation toward the issue that we take for granted today. He has become something of a household name at the Commission and is a frequent contributor to our work. This will be the third time that he is on a Commission panel this year. (Laughs.) He previously participated in our panel on asset recovery and as a witness in our hearing on combating corruption with incorporation transparency.

Finally, Rob Berschinski is the senior vice president for policy at Human Rights First, which pushes for the U.S. government and business community to respect and defend human rights and the rule of law. Rob previously served as the deputy assistant secretary of state for democracy, human rights, and labor at the Department of State, and was responsible for overseeing human rights policy throughout the OSCE region. He is intimately familiar with the Global Magnitsky Act, having coordinated the work of a coalition of human rights and anti-corruption NGOs to develop a list of designees to be targeted under the act which was provided to the administration in the form of a letter and accompanying package of materials.

Thank you all so much for being with us here for this important discussion. I would like now to pass the floor to Alex Johnson, who will kick us off. Alex.

JOHNSON: Thank you, Paul.

So our conversation today is particularly timely. On December 10<sup>th</sup> we recognized International Human Rights Day and, just before that, International Anti-Corruption Day. Both days are inseparable in my view, because government corruption fuels human rights abuses. Corruption and kleptocracy enable human rights abusers to generate challenges throughout the OSCE region. Additionally, the Commission on Security and Cooperation in Europe is a critical player in overcoming some of these challenges.

So I want to thank the U.S. Helsinki Commission for its continued leadership in combating kleptocracy in the 57 participating States of the OSCE, in addition to the efforts of the political leadership, particularly in the OSCE Parliamentary Assembly, and the expert

contributions, of course, of staff, like Paul, to U.S. delegations at countless OSCE proceedings, where they've been truly impactful in really advancing principles around democratic governance and countering corruption.

As Paul mentioned, I spent a number of years working on the Commission staff, and it was the honor of my career. And I now lead advocacy for Europe and Eurasia at the Open Society Policy Center, where I am engaging quite frequently with many of the victims of corruption throughout the region.

So the passage of the Global Magnitsky Human Rights Accountability Act as a part of the 2017 National Defense Authorization Act embodies the refinement of smart sanctions against those who seek to do harm, while also reflecting a culmination of democratic governance commitments in the Helsinki process. Kleptocrats think their power and influence can buy them anonymity. Fortunately, the evolution of new tools for investigative journalism, including expansive data resources and the ubiquity of social media, have shed light on many more cases for investigation. International institutions, like the OSCE, must capitalize on this emerging era of unprecedented access to information to stop corrupt officials and human rights abusers in their tracks.

I will submit full remarks for the record, but I wanted to really just lead with a few recommendations that I think are relevant for this particular briefing here today. So, one, more cases for investigation. We'll hear more from our distinguished colleagues on the panel, who will speak to some of the cases that were advanced by civil society and are currently under review by the Trump administration to name particular individuals under the Global Magnitsky Act. And as it stands, we hope that the Trump administration swiftly adjudicates these recommendations, and that there is an exploration of even more in subsequent tranches.

Additionally, other recommendations too: Engaging European allies and partners to adopt national Global Magnitsky measures. So many of you know the United Kingdom, Estonia, and most recently Canada have adopted measures with some Global Magnitsky components, largely focused on Russia, many of which focus on visa bans exclusively. Lithuania and other countries are exploring similar action. It's really important that members of Congress, and U.S. experts, encourage their European interlocutors and partners to adopt measures up to the full scope of the Global Magnitsky Act, beyond the visa bans, but also asset freezes and other requirements. And they should do that within their national parliaments. In addition, a similar action should be taken at a European level. The European Union should also pursue its own version of a Magnitsky Act, and potentially a Global Magnitsky Act.

Another key point is global philanthropy and other resources are important in sustaining investigations into human rights abusers and corrupt officials. Some elected officials have been questioning the very notion of global philanthropy and foreign assistance in OSCE-participating states. It's really important to recognize that private philanthropy from across the political spectrum has found common ground in advancing democratic governance by supporting civil society actors and the independent media to expose corruption. It's really important that this continues.

Now turning to some of the institutional measures with the OSCE, it's important that civil society has a stake and a place at the table in terms of OSCE proceedings. The OSCE's human dimension implementation meeting benefits from robust, expert, and civil society access. The similar parallel of the economic and environmental forum process, as well as the economic and environmental dimension implementation meeting – which is new as of 2011 – should benefit from the same level of access of outside experts, NGOs, and experts who can really combine this expertise on countering corruption.

I would say my last core recommendation is establishing a thematic mission of the OSCE, focused on implementing anti-corruption provisions of OSCE commitments. There's been an erosion within the OSCE region with the closure of a number of field operations, which have long been the jewel in the crown, you could say, of OSCE activities, and focused on implementing commitments. And some of the mandates of the existing field operations have been scaled back. It's really important to develop a thematic mission in order to overcome some of the politics associated with these field missions and allow an elite unit to operate above those politics and address corruption throughout all of the OSCE-participating states.

A few more remarks. Just to note a little bit on the history of the OSCE and to level-set our conversation here and leave some time for our colleagues, who have gathered. The OSCE is really one of the few multilateral institutions that bridges human security interests in the Northern Hemisphere. As such, it's a venue to evolve and advance international norms toward transparent democratic governance. As a regional entity, it can expand political will to address problems of corruption that are often regional in nature, such as the 2014 exposure of the Russian laundromat scandal, where billions were exposed coming from Russia and funneled through Eastern Europe and various banks, and then onward to the rest of the world. So it's very important that there are regional mechanisms that can address these regional problems.

You'll see in my written remarks some of the details in terms of the mechanics of the operations of the OSCE, but I just wanted to mention one particular commitment that's important in recent memory that shapes a lot of the activity today in the OSCE. In 2012 at the Dublin Ministerial Council, foreign ministers from all participating States agreed to a declaration to strengthening good governance and combating corruption, money laundering, and financing of terrorism.

So under that mandate, there was substantial activity and really an increase of cooperation outside of the OSCE institutions to develop a handbook on combating corruption that came out last year. So it's an important resource that brought in expertise from the United Nations Office on Drugs and Crime, the Organization for Economic Cooperation and Development, and also the Council of Europe Group of States Against Corruption. This handbook on combating corruption is a good place to start at looking at how we identify potential individuals who should be individuals banned for visas or other asset freezes under provisions of the Global Magnitsky Act.

With that, I will conclude and look forward to having a discussion regarding some of the other priorities in the region. But I would say that the Global Magnitsky Act is broadly applicable. There are even stories that have broken recently with regards to Moldova, to

increasing challenges in Ukraine where there's potential backsliding for the forces and institutions that are moving toward reform for corruption. Additionally, there are numerous challenges in central Asia, be it in Uzbekistan or Turkmenistan. And I'm happy to discuss various cases and other recommendations in that regard during our open discussion. So thank you so much.

MASSARO: Absolutely, Alex. Thank you. I couldn't agree more that human rights and anti-corruption are inseparable. Thank you so much for your general recommendations of bringing more cases, having other national governments implement Global Magnitsky provisions, and also enabling foreign assistance for civil society and other countries, as well as your really in-depth OSCE knowledge. I think that that's one incredible contribution that you can make to this panel is, having worked with the Commission and been in Vienna, you know the nuts and bolts of the OSCE. A lot of what you just said is related to what we were just talking about last week at the Vienna ministerial. We talked to a lot of ambassadors and the secretary-general about thematic missions. We brought up the idea of anti-corruption mission. And I think there's a lot of support for something like that. So we'll continue to push that, and I hope something like that goes forward.

I'd like now to hand the floor to Charles Davidson, please.

DAVIDSON: Well, thank you, and thank you, Paul, for your extremely kind introduction. It's a pleasure to be here with Alex and Rob.

Paul asked me to address the specifics of the Global Magnitsky Act before I made some other more general comments. This is sort of a fun one, in a way, because this is a bill that one can summarize the essential of in just a few words. So it gives the U.S. government – Paul will correct me, and others, if I make any mistakes – but it gives our government the power to exclude from our territory, in other words visa ban, and freeze, or potentially seize, the assets of any non-U.S. person whom we deem to be corrupt, who has been a government official. And then there's some other qualifiers.

But that's pretty much it. It also gives us the power to go after not just the government official or senior associate of such an official, but also anyone who has materially assisted, sponsored, or provided financial material or technological support to the government official or senior associate who has committed this act that we deemed to be corrupt, or acts we deem to be corrupt. So we're not just empowered to go after what one might think of as the prime targets of this bill, but also the enablers, as we call them, of this corruption. So it's a very broad and powerful law.

In the hands of Rambo, you could really go to town with this thing. If we have a president who really wanted to swing this bat, there's a lot of assets that could be frozen, lots of apartments in New York and Miami, this, that, and the other. And it could be huge. So just its existence, of course, is a considerable deterrent.

Now, we're focusing on kleptocracy today. So let me then, for the rest of my remarks, focus exclusively on Global Magnitsky in the anti-kleptocracy context. When we're talking

about kleptocracy, from the standpoint of my program at the Hudson Institute, we're not so much interested in just kleptocracy and corruption, but really the growth of authoritarianism and the decline of freedom and democracy around the world. Then we've noted that all these authoritarian regimes, that are such a threat to freedom and democracy, well, they happen to be kleptocracies. So I'm thinking of Global Magnitsky as being a pro-freedom act also, not so much just an anti-kleptocracy act. And I like to think of it in those broad terms. And this issue of growing authoritarianism and declining freedom around the world is absolutely critical, as we know. So this is a very important and new tool in our arsenal for fighting back against the growth of authoritarianism. Sorry if I was a bit redundant there.

Now, another thing Paul asked, then, to comment on is, well, we have special situations. We have countries with whom we have a positive relationship – in other words, countries that are not identified as rivals, but say a country we're trying to fix that has kleptocratic elements – and in those cases, how do we think of the Global Magnitsky Act as a positive tool? I would in those cases – and I can't mention any names, so this is going to be a bit euphemistic, but to this crowd we kind of know who one might be thinking of – I think one characterization we could use is thinking of it as political surgery. So Global Magnitsky, we're going after one person or a small group of individuals, but it's the way the law's written. It's going after an individual. So, if we are dealing with a regime that we think has serious corruption problems, we can make political judgments. I hate the term “decapitate” because that sounds kind of violent or something, but we can go after what we think are the possible political inflection points among the most corrupt elements, the leading corrupters in a given country. We can go after the enablers of those leading corrupters. You don't need to put everybody in jail. The whole idea of criminology is you put one or two people in jail and the other people get the idea. I mean, here we're not putting people in jail, but we're visa banning and freezing assets.

For that matter, be it countries we have a positive relationship with or not, what we see and what we know is that grand corrupt elements, kleptocrats, really like to enjoy the freedoms and the pleasures, and especially the rule of law and the asset protection, that Europe and the United States and our allies provide. So if we're able to leverage, as Alex was referring to, Global Magnitsky so more of our allies adopt this, we can have a tool that can be really very powerful. And the more political coordination there is with other countries, the more powerful this can be at pushing back against kleptocracy.

The last thing I'd like to mention is the whole notion of kleptocratic corruption being exported into the West, because this is something we've been emphasizing a lot recently. It's an important notion, that when people come to the West for asset protection and other services and we welcome them, they bring with them their mores, their ways of doing things. It's not just money. There's a lot that comes with it.

So let's take in particular a country where we have a positive relationship with them. The kleptocratic pollution that's coming in is bad for us. Global Magnitsky enables us to counter that. If we have specific cases, for that matter, of certain individuals whom we deem to be particularly negative within our shores, we can use Global Magnitsky as a tool of political surgery to not let them enjoy the fruits of freedom and the punch bowl that we have been perhaps too happy to provide.

Thank you.

MASSARO: Absolutely, Charles. Extremely eloquent, as always. I love your terminology: pro-freedom act, political surgery. You know, if that's all you were contributing to the discussion it would be enough, you know? (Laughter.) But thank you so much. I really appreciate it.

So we're turning right, to Rob Berschinski. The floor is yours.

BERSCHINSKI: Thanks, Paul, for having me.

As Alex mentioned, we are meeting at a particularly timely moment right now – not only for the reason he mentioned, but also because, while I can't speak on behalf of the administration, signals are that the administration is going to release its first tranche of sanctions designations within the next week or so. I can say that, working with human rights defenders and activists around the world, there's a lot of eager anticipation around the Trump administration's first decisions under the law.

Robustly implementing the Global Magnitsky law is seen as crucial by activists abroad. Notwithstanding recent rhetoric and policy from the administration that, at least in my view, has severely damaged America's image as a leader on human rights and in efforts to fight corruption, I can assure you from my conversations that many men and women laboring under repressive and kleptocratic governments around the world still view the United States as a beacon. 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. So 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, and rapists, as well as those that steal brazenly from their own citizens – and, as my colleagues mentioned, to deny these actors travel to the United States and the ability to use the proceeds of their ill-gotten gains via our financial system. Many of us also see the advocacy around the law as an avenue to accomplish some of these effects even without the U.S. government, acting as NGOs even when the U.S. government doesn't necessarily take action on any specific case.

Recognizing this important potential, shortly after the law was passed last year a number of leading, largely but not exclusively 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 on individuals that we felt warranted additional investigation and a look by the U.S. government for potential sanctions under the Global Magnitsky Act. We did this in accordance with the law's Section 1263(c)(2), which directs the president to, quote, "consider...credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights."

I just 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, to my hosts here at the Commission – (laughter) – I'd like to offer a note of thanks on behalf of many of my NGO counterparts and activists around the world. The law really is something of a model in terms of how NGOs, the legislative branch, and the executive branch can operate as one in order to achieve U.S. policy aims and advance human rights and fight against corruption around the world.

I also want to briefly 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 White House National Security Council staff. I see a few of my former State Department colleagues lurking in the back and wanted to give them a shout-out. The administration has done what I think is an admirable job of consulting with civil society over the course of the year.

Turning to the process that some of us in civil society undertook regarding making sanctions designations recommendations, I want to offer four or five thoughts.

First is that 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, as Charles was talking to. One stat I read just this morning is that the U.N. estimates that roughly 5 percent of global economic activity – so this is a figure that is in the trillions of dollars – is lost to either bribes or loss related to skimming off the top. 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 for designations that go beyond the fundamental, essential question of has the evidentiary threshold to designate someone been met. Additional key questions that the U.S. government could 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 I think this is a point that's very relevant to today's conversation; and, second, whether a particular designation or set of designations would reinforce the idea that the United States views accountability either on the human right side or the anti-corruption side in a way that should be advanced globally, including with respect to even our partners and allies, or whether our government is only going to pursue these actions in the context of countries with which we have bilateral disagreements – again, particularly relevant in the OSCE context.

So, 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, with little distinction between international friends, competitors, and enemies. As I mentioned, it remains to be seen whether the U.S. government will adopt the same approach if and when it releases this first tranche of designations sometime in the near future.

The second point I want to offer is that Global Magnitsky's high evidentiary standard has implications for how civil society makes recommendations moving forward. Sanctions are, of course, an administrative tool rather than a judicial remedy. They're ultimately about policy and behavior modification, not necessarily achieving justice – though they have a justice component to them. That said, before taking an action as significant as blocking someone's assets, the U.S. government must have confidence that its determination will be held up in a court of law if it's challenged. This results – and I would say appropriately so – in a high evidentiary standard needing to be met before any particular designation is made.

For those of us working on the outside to expose corrupt schemes, what this often means in practice is that only in rare circumstances are we actually going to be able to deliver all the information that the United States government might need to make a designation – for instance, the quid pro quo of a corrupt act, rather than a description of circumstances that the government should then investigate. 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 going to be able to produce the smoking gun. That's where, with the tools at its disposal, the United States government will need to pick up the case. 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 U.S. government. Being public in recommendations has pretty obvious upsides. Doing so puts corrupt actors and human rights violators on notice that they're being watched. It creates doubt in their minds as to whether they'll be able to carry on their acts with complete impunity. It raises the potential that foreign governments might sideline certain actors viewed as pariahs. It certainly provides some element of satisfaction to victims, if not, again, actual justice.

Lastly, those who argue for public recommendations note that the audience for such declarations is twofold. It's not just the would-be designees or the governments of the countries of which they're citizens or where they reside, but also the U.S. government. What being public does is highlight to the U.S. government that civil society knows that these cases are out there and wants the U.S. government to investigate. While the law is clear that the U.S. government doesn't need to make any designations, even if the evidentiary standard is met, at that point public declarations from civil society can force the issue around political will around designations on behalf of the U.S. government.

There are, however, at least two important downsides to public naming and shaming that I think are worthy of serious consideration. The first of these is the reality that those publicly recommended for sanctions by NGOs may avail themselves of the opportunity to move or hide their assets prior to actual designations, and we shouldn't discount that. Also relevant is the very real potential that figures that are often wealthy and quite powerful, and who have also at times 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 engaging in this activity is quite real.

The same goes for manipulation of recommendations. One difficulty in dealing with information and allegations brought forward by certain actors, particularly on the corruption side of the law, is that there can be a fine line between those with inside information by way of being a legitimate whistleblower and those that perhaps were engaged in some form of corrupt act, and that's how they came by the information. I think we've already seen play out a little bit over the course of 2017 a little bit of initial discussion by actors that might be in the middle of corrupt acts within their countries trying to play out through the press finger-pointing against one another.

This brings me to my last point. Thank you for bearing with me.

Beyond its worldwide reach, a major innovation behind Global Magnitsky is that, as Charles alluded to with that great term "political surgery," 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 actors and their actions without necessarily suggesting or initiating a complete breakdown in bilateral relations between the United States and a foreign government.

An illustrative example of how this dynamic might work in practice is one I'll draw on the human rights side of the law, not the corruption side. This relates to atrocities that have been in the news with regularity recently related to the Burmese government's attacks on its Rohingya minority population. One can use Global Magnitsky sanctions on certain military commanders in a way that would sanction them and perhaps play a role in sidelining them, while continuing to differentiate them from members of Burma's civilian government.

I can use a historical example to give a sense of how Global Magnitsky could be used in a similar way on the corruption side by referring to an episode back in 2014 in Hungary. 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 misuse of value-added tax reimbursements. In that instance, the visa bans were implemented under a separate authority, Proclamation 7750, which allows for the suspension of entry of persons into the United States "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 U.S. government views corrupt acts committed in an absence of accountability, irrespective of whether those acts were undertaken by individuals in an allied country – again, an OSCE-participating state and also a NATO member. It's my hope that that example can serve as a model for actions under Global Magnitsky moving forward in the OSCE region and beyond.

Thank you.

MASSARO: Thank you so much, Rob. And thank you for emphasizing both this exchange of information and cooperation between government and civil society. To me, that's what the Helsinki Commission is all about. I actually just at 12:00 today was at the anti-corruption advocacy group - a group of 187, I think we are now, civil society organizations that

come together. I want to hear what every single one of them has to say and what all needs to be done.

It's amazing to me that we are the type of country that puts this in legislation, right? (Laughs.) That's who we are, it's part of U.S. Code that we reach out to civil society, and that is extraordinary. That is not normal in history, and it's amazing that we're here.

That gets me to that second point of a beacon of hope, because to me that's what it's really all about. When we fight kleptocracy, I think everyone on this panel would agree – I know Charles would because that's what he's all about – is fighting back against this corrosive influence that is essentially pushing us to betray our values, to put short-term financial gain over ideals, and strive for what we should be and what we could be, which again is that beacon of hope for the rest of the world.

So, with that in mind, I'd like to move to a point you made about U.S. enablers. I think that U.S. enablers are one of the most problematic elements of the kleptocratic equation. There is no kleptocracy without us, you know? (Laughs.) Last week, or earlier this week actually – all the time is flowing together – I met with a man named Paul Ostling. He says he's whistleblower. He blew the whistle on Brunswick Rail, which is a Russian company. He saw them engaging in financial fraud. Then he moved back to the United States. He is now under extensive lawsuits by the U.S. court system, by companies hired by Russian interests.

He's telling me, "I'm almost bankrupt. I don't know what I'm going to do. I don't know how to defend myself under this." I think that that sort of thing happens quite often. I wonder, when we talk about facilitators, when we talk about U.S. court systems and being used to facilitate kleptocratic interests or law firms, creating shell companies, money laundering, and things like that, to what extent can this law be used to combat that element of it?

Rob, if you'd like to take the first hit at that, and we can move to the right.

BERSCHINSKI: So on the final part of your question, a lot of that is beyond my area of expertise, and I would defer to Charles, who may have more to say. What I will say is that Global Magnitsky is not sufficient to the task at hand. What it does is tells foreign actors that their ill-gotten gains are not welcome in the U.S. financial system if they are designated. I mentioned in my remarks this question is a completely valid and difficult question to reconcile, one that we're still working through in civil society, of do we want to maximally name and shame in order to put corrupt actors on notice, with the potential downside that they would move their money?

I think there's a great interest in actually blocking assets, in freezing assets. But at the same time, I would suggest that probably the strongest argument one could make that the benefits of publicly outing individuals, even at the risk that they have time to move their money before the U.S. government actually sanctions them, is that at the end of the day what's more powerful than freezing the assets is the moral message that the U.S. financial system will not be used for the proceeds of kleptocracy. If actors that feel that they are going to ultimately be

sanctioned take the initiative to move their money out of a rule of law-based system and back into a lawless system, that's on them.

There's a reason why whether you are Russian or Ukrainian or Azerbaijani or Central Asia, you want to move your money into the U.S. financial system because we enjoy the rule of law. We should not allow those actors in the system. So that's point one. And just quickly, that said, to your point, Paul, this law is necessary, but not in the least bit sufficient. As we know through the Panama Papers and other massive exposés by investigative journalists, for all of what I just said the U.S. financial system is – to say nothing of New York real estate, where I live – a direct beneficiary of much of this money. There is little to nothing under Global Magnitsky that is going to change that.

MASSARO: Well, that's very helpful. Let me follow up with, could you name and shame a law firm? Could you name and shame a bank? Could you name and shame actors like that – not necessarily corrupt officials?

BERSCHINSKI: So journalists and anti-corruption activists, the tools we have at our disposal are essentially our credibility, right? At the end of the day, it's the U.S. government that designates. I represent a human rights organization, not an organization that focuses on corruption narrowly defined. But when you're talking about groups like Global Witness or Transparency International or the consortiums of journalists that have put out these explosive stories in recent months, they need to get their facts right. That's the most important thing. But to the extent that there are indisputable facts and information, I think that sunlight is a great disinfectant.

MASSARO: Excellent. Charles, do you have anything to say to that?

DAVIDSON: Well, I don't have anything to say, but I'm going to try to say just a little something there. Just highlighting this part of the act that I mentioned earlier, where we are able to target so-called enablers, people who are not the direct perpetrators but who have helped them. I think they could be anywhere, these enablers, the way I read the act. Is that correct, Paul? I think so.

So you could think of the plight of this gentleman who is being sued by people who he's blown the whistle on and all of that. Given the NGO component in the actual process of identification that Global Magnitsky gives, one could think about the NGO community that is respected by our government mobilizing in a case like that. I don't know if the Helsinki Commission can make discreet introductions or discreet, I have no idea. But one could try to turn the forces that way.

All we'd need is one case like that. Really, one case and it would completely change the mentality, the more major the law firm the better. In related areas, there was a major law firm that was called out recently. And the political tide really is kind of turning. So now would be a good time. If we could have one case like that, it would be great.

MASSARO: Discreet or indiscreetly. (Laughter.) Got it.

Alex?

JOHNSON: On this particular question I really support what my colleagues have already said. I think it's important to recognize – and I've tried to emphasize this in my opening remarks – that corruption is everywhere. It's here in the United States. It's throughout the entirety of the OSCE region. So looking at empowering civil society and other multinational institutions with mechanisms to hold even the United States to account in its role in enabling some of this corruption, it's very important.

MASSARO: Excellent. Well, thank you so much. I'll ask one more question, then we'll open up questions to the audience. So please start brainstorming. I wanted to bring up a piece that I read recently by one Karina Orlova, who I believe you know well, that discussed sanctioning Putin's propagandists, the idea that you could go after individuals who had been essentially putting up enormous amounts of disinformation or lies. The base of the question comes down to this: could you foresee sanctioning individuals that are spreading disinformation and lies, under this act? To anyone who'd like to take it.

BERSCHINSKI: So I'll start on that. First, it's worth remembering that the two prongs of the Global Magnitsky Act relate to gross violations of human rights and acts of significant corruption. So, as I understand it – and I am familiar with the article if not all the particulars – Global Magnitsky would not apply. Gross violations of human rights as interpreted by the U.S. government essentially relate to extrajudicial killing, torture, murder, rape. While acts of significant corruption are still somewhat yet to be determined, at least as relates to the act, because it hasn't been implemented yet and the Russian version of the law is slightly different than the global version of the law. But nevertheless, it doesn't sound like any of those particular acts would be captured under Global Magnitsky.

I should also add that as a representative of a human rights organization, I think we need to be very careful as we approach questions of sanctions or any sort of policy activities that could be seen as retribution against speech. And that is no defense whatsoever of disinformation, which I personally feel is a cancer eating at the soul of democracy right now. But we just need to tread very carefully in this space, lest we provide fodder to autocratic governments out there that will use any excuse in order to clamp down even further than they have on free speech.

MASSARO: Anybody else like to take that? Yeah, if you'd like to.

JOHNSON: Well, I agree with Rob, full stop. I think this does not apply in a case like that, that the scope of the law is too limited. To reiterate Rob's point regarding how this is not sufficient to the task at hand, that would have to be carefully treaded, that when you start to regulate speech and proceed in that particular direction. As it stands, there are so many cases that could be adjudicated under the current provisions.

I didn't have an opportunity to mention it during my opening statement, but just earlier this week the Organized Crime and Corruption Reporting Project broke a story about questionable financing of an apartment and expenses for a judge's daughter in London. This is

kind of a pattern and a case of a number of officials from throughout the OSCE region who have children studying in Western Europe and other places where there are so many legitimate cases even within this narrow framework that we should be pursuing and daylighting and supporting the capacity to bring to bear, before we even, I would say, touch going into some of these more problematic spaces.

MASSARO: Definitely. Thank you, Alex.

So questions, please. No questions? Orest. Yeah, well, you actually need to come up, unfortunately.

Q: OK.

MASSARO: Get some exercise. (Laughs.)

Q: Orest Deychakiwsky, formerly with the Helsinki Commission staff, now a board member the U.S.-Ukraine Foundation.

Has your coalition, Rob, given thought in terms of the mix between egregious human rights violators and corruption activists? Or do you just kind of go wherever the evidence leads you? Thanks.

BERSCHINSKI: Thanks. That's a good question. In this initial round, frankly, the group of NGOs that decided to come together, we were basically figuring this out as we went along. It's a process that I expect civil society to improve upon as the years go by, in the same way that, frankly, I'm reasonably hopeful that the U.S. government will come out with meaningful sanctions designations in the week or so ahead. But I also expect that those designations will become more impactful as more years go by.

As I mentioned in my prepared remarks, Global Magnitsky is – (laughs) – incredibly powerful, but it's so expansive that it's really hard to wrap your head around. (Background noise.) (Laughter.) And we wrestled with that fact as different human rights and anti-corruption NGOs got together to discuss what we ended up putting together over the course of the year. What we ended up with were a ratio of roughly two-to-one gross violations of human rights cases to anti-corruption cases.

That was not for any kind of ideal reason. It was mainly that as we sought to produce recommendations around cases that had a pretty solid evidentiary basis to hand over to the U.S. government, really torture cases are much easier to show than almost anything else. Why is that? It's because often the victims can personally identify their perpetrators and/or there's a well-known, well-documented body of evidence that shows extensive violations, where you can show a command responsibility such that we could recommend that somebody be designated, not just the guy that's handling the baton in a particular interrogation room, but his boss and his boss's boss.

As I mentioned in my prepared remarks, much harder to do on corruption. That's not to say that, again, some of the allegations that have been put forward, particularly by these consortiums of investigative reporters, aren't very compelling. I find that they are. But if the standard that the U.S. government needs in order to survive any legal challenges is you really have to show person X being handed the cash in exchange for a non-competitive bid for an extractive service, or whatever the quid pro quo is, that is much harder to document. So we really are going to wrestle with that moving forward, and I would expect that the U.S. government will as well.

MASSARO: Alright.

Q: Yeah, Mike Dziedzic from George Mason University.

Really interested in the aspect of the law that allows NGOs to provide information, and stipulates the government will listen. You mentioned your criterion, but I wanted to ask you a little bit more about that because it seems to be fixated on individuals. But it's really networks and governments, regimes that are involved. So in at least the first cut you took, do you look at not just the individuals but, for example, in South Sudan. If you were trying to prevent genocide in South Sudan, you'd want to do more than just go after Salva Kiir. So is that a way in which you approach this problem?

The second question is what needs to be done to make your input more effective in terms of the receptivity or just in terms of the relationship that you have with the governments, so that the information that you're generating can be more valuable and more usable?

BERSCHINSKI: Thanks for that. Just on the second question first, as I mentioned in my prepared remarks, I give great kudos to the administration for its receptivity. They were figuring out how to implement this law at the same time, essentially, the NGOs that have been focused on it were. And they have reached out both formally and informally – formal roundtables asking, soliciting input, and then plenty of informal conversations. So I don't have much at the level of just kind of generic receptivity to add. I think that the dialogue is there.

I think there's infinite potential for common databases, information sharing platforms. And that's having spent the majority of my career thus far on the government side of the table. That's never going to be anything where the U.S. government can or, frankly, should, for that matter, rely solely on information provided even by the most credible organizations. Of course, the U.S. government is going to need to independently verify everything they do. And that's really important to state. But to the extent that we, in civil society, moving forward can formalize our process around coming up with just data management tools, I think that's really an area that's ripe for additional exploration and innovation moving forward.

On your point on the networking, that's certainly true with respect to gross violations of human rights, and couldn't be more true on the corruption side. Of course, it doesn't mean much if you are just designating a lone actor. I think that the groups that were involved in our process tied as best they could to recommend individuals that we felt were emblematic of larger problem within a country. So the head of an internal security service known for systemic torture, let's

say. But you're right, if you really want to affect certain policy outcomes, you're going to be able to do it via one-offs.

MASSARO: Please, Alex.

JOHNSON: On the receptivity note, I would just want to expand on this infinite potential that Rob had mentioned. It's important that members of Congress are engaged in the process as well. Following the efforts by civil society and in conjunction with it, a number of members of Congress sent their own letters identifying key individuals that they encountered. That was an important part of engaging in this dialogue with the administration. So I would call on members of Congress to remain engaged.

Through their engagement with numerous interlocutors, their involvement with bodies like the OSCE Parliamentary Assembly, which we did not have a chance to discuss further, there's an opportunity to gather a lot of information that is useful to identify cases and potential individuals that could be sanctioned under Global Magnitsky provisions.

MASSARO: Please. You're going to have to come all the way up to the mic.

Q: Tanja Nyberg, Magnitsky Act Initiative.

I would like to speak about the example of Alexander Bastrykin, the head of Russia's Investigative Committee, who is on the Magnitsky list at the moment. I would say that he's continued doing what he does, and recently he orchestrated the arrest of the civil staff of Alexander Navalny presidential campaign. And he's continued to do it. But what is a positive is that he's not able to come here to the states, buy property in Florida, and so on. It's just an example of this. Yeah, thank you.

MASSARO: Thank you. Any other questions?

Alright, I'd like to ask another one then. We've talked a lot about the way that the sanctions had worked, but what would an appropriate global balance look like? You emphasized, Rob, that one of the issues about it is that it global. It's one of the powers about it. But what should be the philosophy behind going after five people in Latin America, 10 people in Europe, five people in Africa? Do we need the exact same number from each region?

One thing I often run into in anti-corruption work is how holistically criminals operate. There is no specialization in the criminal world. Yet, for us, we see regions and jurisdiction and all sorts of other stuff that stops us from effectively looking at this. I could entirely imagine that we run into an area where we say, yeah, we need five from this region, five from this region in order to put it on. So what is the appropriate philosophy? What is the appropriate argument structure to create the most effective list?

BERSCHINSKI: Good question. I don't think that there's probably an ideal here. But to speak in generalities, I come back to the question that was asked. I think the right question to ask is what is the impact, right? This isn't a matter of numbers. I can imagine an initial tranche

of sanctions from the U.S. government that has less impact, but many more names on it than I can imagine that being one potential. I imagine just as equally a list with fewer names but that, frankly, has more impact, on the basis of who those people are and the message that their designation sends. So I don't think we should get wrapped around the axle on numbers. I think that the right metric is quality and not quantity.

Then in terms of regional breakout, again, there are two. I think flexibility is right watch word. Part of what the NGO consortium tried to signal through our communications with the U.S. government was that we will be disappointed if the way the administration uses this tool is to go after simply those countries that one might expect. That's not to say that, for instance, on the human rights side of the law certain countries don't violate every obligation they've signed up to under international law and are certainly deserving in terms of the harm they inflict on their citizenry. But if there's a list that kind of calls out the usual suspects, we feel like the law isn't being used to its full potential.

Certainly, the same goes on the corruption side. I think it's worth reminding ourselves as we think about the OSCE region that the law is intended for environments in which criminals enjoy impunity. As Tanja was getting at with here comment, it's not perfect. A guy like Mr. Bastrykin is still going to do what he does. Global Magnitsky is no substitute for real judicial accountability. It's the minimum that can be done. And in countries in which there is real judicial accountability, we should be urging our counterparts to prosecute criminals through their judicial systems. This act is kind of a failsafe for those countries where the government simply isn't going to do that. That's where it can be most useful. And so hopefully that will guide the U.S. government in its designations.

Then just a last point that's somewhat implicated by your question, we were also a little bit concerned that the recommendations coming from civil society, if there weren't some attempt, at least, at organization, would simply reflect which organizations get fired up about making recommendations, with no real rhyme or reason. So one could imagine a very well-meaning effort on behalf of an NGO that follows corruption or gross violations of human rights dealing with one specific country coming out with 10 really solid recommendations. More power to them, but we didn't want kind of the landscape to be dominated by what's essentially serendipity. Our sense is that we can be of most value to the U.S. government if groups come together and not limit themselves, but adjudicate amongst themselves, to try and approach the problem as holistically as possible.

MASSARO: Great. Anyone else want to comment on it? Alex, maybe?

JOHNSON: Yeah. I just want to reiterate the point that these provisions should be as broadly applicable in our partners, as well as countries where there may be bilateral tension. It's really a shame and a challenge that a number of assets still are parked in some of these jurisdictions where there are robust judicial processes whereby they can be pursued. But I think it is still important to identify some of the corrupt officials who operate in those spaces. We should not be reticent about identifying those countries and naming officials from there.

MASSARO: So I actually have another question. That is, we have emphasized many times during this discussion that the Global Magnitsky Act is necessary, but not sufficient. So with this new idea that essentially started with the original Magnitsky Act that, oh yeah, we have the financial system, and we can go after these human rights violators, corrupt individuals. What else needs to be done? What is the next step on this? So let's enter a world where Global Magnitsky is applied in a really good way, to the standards that everyone on this panel would like to see. What is the next step after that? Please.

JOHNSON: So I mentioned briefly this handbook on corruption that brought together a number of international institutions. I think one of the next steps after the broad application of Global Magnitsky, the naming of a number of officials, and potentially the adoption of similar measures throughout the OSCE region. It's important to have robust cooperation between law enforcement. So utilizing these international institutions and other mechanisms to bring together the experts that then can pursue and investigate these particular cases. So there needs to be more connective tissue between law enforcement and mechanisms for exchange that themselves aren't subject to potential corruption.

MASSARO: Anyone else like to comment?

BERSCHINSKI: So I'll just jump in on that. This comes back to what we were discussing earlier, is it's worth keeping in mind Global Magnitsky only relates to sanctions on non-U.S. persons. So coming back to what you, Paul, mentioned at the outset, a huge portion of the issue is something that we, within the United States, need to tackle. This is about new laws around registries for beneficial ownership.

I was just reading today that the House Financial Services Committee here on, what I understand was a more or less party line vote, is moving to rescind an element of Dodd-Frank that's a major anti-corruption provision related to the extractives industry – so moving actively in the wrong direction. So it's all well and good. And I firmly believe in laws like Global Magnitsky in terms of calling out and penalizing corrupt actors abroad. But we need to be taking a very close look at our own house, because we are truly, all of us, enablers of a lot of this activity.

MASSARO: Do you want to make any comments, Charles? Can I force you to, on that?

DAVIDSON: Well, I could underscore that point, because Rob just mentioned our role as enablers. And Paul made a big deal of that in his introduction and in further remarks. So my program has taken the position that that is the elephant in the room, and that everything else is – I can't use the word here – if we don't tackle that. So I think that's an issue, the so-called enabler issue. Maybe we'll come up with some other diction for it at some point. We'll see. But that's really the elephant in the room. The Global Magnitsky and what we're going to experience as we try to use it, it may highlight that more and more. Its existence and attempts to use it may, therefore, help us with some of the ideas and legislation policies that we think should go through.

MASSARO: Great. Yes, please.

Q: Hi. My name is Joseph. I'm going to go with Joseph, actually. I'm a Turkish lawyer.

I fled in the United States about a year ago. I was a quite wealthy lawyer, and a well-known one, in my area of expertise. And yet, I had to leave my country, all my belongings, everything. I start a new life here as homeless, and then – (inaudible). I could manage to take my family with me, too, after I came here.

So I'm working. In my spare time, I'm trying to do something for the people who have been purged in my country. Half of the judicial system – I mean, prosecutors, judges – have been fired from their work. And then most of them, thousands, are in jail. And police officers, army, more than half of these administrations are emptied with false accusations. And it is quite difficult to find a lawyer at the moment, because if a prosecutor somehow doesn't like the lawyer's questions or the judge's, he may end up being in jail right after the court session, even during the session.

There are many judges and prosecutors who are being detained during the trial. He was a judge two seconds ago, and then he's jailed. There is just one word: Enough. There are hotlines about people who are so-called terrorists in the eyes of the government. And then even though you are a professor, doctor, or lawyer, you don't have any illegal things, even a traffic ticket, and yet, at that moment you are declared a terrorist.

So what I am trying to say is under these circumstances, is it really so difficult to find evidence? Let me give you some information about the detention. Technically, the maximum time for the detention is 24 hours. Let's say if it is a terrorist group, it should be 48 hours. It was. Now it is 30 days of detention time. And after 30 days, you can leave the jail, but police officers can take you back to the detention center again. There is no time limit.

And you can imagine that there is no control of torture whatsoever. There are tons of people who are so-called suicidal during the detention or in the jails. There are tons of people who are kidnapped. There is actual video surveillance footage. And prosecutors don't even take any applications about it. So under these circumstances, do you have any idea what can we do in order to obtain evidence?

Because without evidence, I have to try to create maybe twenty applications regarding to the Global Magnitsky. But, I'm really having difficulties to convince the people whose family members are tortured – I can't even convince them. Let's say I convince them to tell the truth. I can't find the evidence. So please help me out with this. Thank you.

MASSARO: Do you want to take that on, Rob?

BERSCHINSKI: Thanks. First of all, let me just thank you for your bravery and just give you my condolences. That's an absolutely heartbreaking story you tell personally, and one that many of us that are familiar with events going on in Turkey, unfortunately, I know very well. And it is a heartbreaking situation.

As relates to the Global Magnitsky Act, what you correctly identify is one of the limitations of the act as a tool for the U.S. government. In order for the government to designate any individual or group of individuals, a certain evidentiary standard has to be met. As I mentioned in my remarks, that bar is very high, as I understand it. Not only that, sir, you mentioned torture. That is considered by the U.S. government a gross violation of human rights.

Unfortunately, what isn't captured under the law, under the definition of gross violations that the U.S. government uses to understand the law, political imprisonments, lack of due process, all the other problems that you mentioned aren't captured at all. So activists that come to my organization and other human rights organizations tell stories that can be extremely well-documented of journalists, human rights defenders, lawyers who are imprisoned simply on behalf of the work that they do. But unfortunately, the law is written in such a way that if they are not tortured or murdered or raped, that doesn't qualify.

So, Paul, coming back to your question about where might we go moving forward, the term, from a legal perspective, "gross violations of human rights," captures only a small subset of internationally recognized human rights. That might be an area for future discussion around future legislation. To your point, sir, on documentation, this is difficult. The best I can say is if you are in touch with individual victims who have come out of prison, who were tortured, who are able to provide firsthand accounts and talk about conditions and, ideally, even name names, know who their abusers are, there are groups, like mine, that would be interested in speaking with them.

As I've mentioned before, this is not the ideal form of justice. It's only a small tool in the grand scheme of things. But it's better than nothing. We have in this initial tranche of recommendations that we gave to the U.S. government taken cases from other countries in which torture in the detention system is rife. On the basis of only one or two firsthand accounts, combined those with well-documented, credible information about systemic problems, and put those together that makes a recommendation for higher-level people within the structure to be sanctioned, under a theory of command responsibility.

So an idea that it's – again, not the low-level torturer who no one's ever heard of, who has not assets to freeze, who's not going to travel to the United States anyway, but rather the head of that prison or the city police chief, or the head of the internal security service. So we can take individual cases and try and make them bigger than what they are. But it does take a few people who are both willing to speak up and have the requisite information. And I recognize how hard that is to come by.

The last thing I'll say is those people don't need to necessarily go public. We would welcome information that can be held privately, because we recognize that in many situations governments are willing and able to exact retribution on both of the victims, their family members, their communities, and so on. So we can work very quietly, if need be.

MASSARO: Great. Thanks, Rob.

Alex, please.

JOHNSON: I want to echo Rob's thoughts, particularly on the personal challenges that you're facing. And maybe offer something a little beyond the scope of Global Magnitsky here to give you a methodology around gathering evidence. What comes to mind in the OSCE context is, going back to 2002, the Novemberists in Turkmenistan and the disappeared. So, since 2002, there have been 112 confirmed cases of individuals who are currently detained and a campaign called Prove They Are Alive has been really instrumental in terms of documenting the detainment of those individuals, the new detainments that have occurred since then, and finding creative ways to ensure that they are not forgotten and to tell that story.

While it is our hope, particularly in the context that you mentioned, that it doesn't reach a circumstance that reaches many years of indefinite detainment, it's important to look at some of these examples within the OSCE region. In that particular case, the OSCE Moscow Mechanism was invoked, and actually generated an investigative mission where there was a rapporteur who went and prepared a report on this particular acute case of a number of detainments. So there might be international mechanisms that you could also similarly gather the experts together and invoke action.

MASSARO: Well, we've come to the end of our time. So thank you so much to our distinguished panel here, and to everyone in the audience, especially those of you who asked questions. Really appreciate that. We'll close the briefing there. (Applause.)

[Whereupon, at 4:29 p.m., the briefing ended.]