



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE
AND TRADE

Magnitsky laws

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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Friday, 15 May 2020

Members in attendance: Senators Abetz, Kitching, Sheldon and Mr Andrews, Mr Hayes, Mr Hill, Mr Khalil, Ms Vamvakinou.

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CLOONEY, Ms Amal, Barrister, Doughty Street Chambers; and Deputy Chair, High-Level Panel of Legal Experts on Media Freedom

Evidence was taken via teleconference—

[09:21]

SUBCOMMITTEE CHAIR: Ms Clooney, can you hear me?

Teleconference interrupted—

Ms Clooney: Hello. Can anyone hear me?

SUBCOMMITTEE CHAIR: Yes, we can.

Ms Clooney: Good. That's going to make things a bit easier!

SUBCOMMITTEE CHAIR: Welcome to this inquiry. There are some formalities I have to go through, which I'm sure you'll understand. Although your evidence is protected by parliamentary privilege, this protection cannot be enforced outside Australia. I remind you of the obligation not to give false or misleading evidence. To do so may be regarded as a contempt of the parliament. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If you object to answering a question, you should state the grounds upon which the objection is taken, and the subcommittee will determine on whether to insist on an answer, having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, you may request that the answer be given in camera. Such a request may, of course, be made at any other time. Can you refrain from naming individuals who may be associated with current cases so as to protect the privacy of individuals. Finally, in accordance with the committee's resolution of 24 July 2019, this hearing is being broadcast on the parliament's website, and the proof and official transcripts of proceedings will be published on the parliament's website.

We have the submission from the High-Level Panel of Legal Experts on Media Freedom. I invite you to make some opening comments, if you would like to do so.

Ms Clooney: Yes, please. Good morning to you, Mr Chair, and all the members of the committee. I am so grateful for the invitation to address the committee today, and I thank you for your attention to the issue of human rights at this difficult time in the world. I'm so heartened and so impressed as I read about the great progress that Australia and New Zealand have made in responding to the global health crisis, and I hope that that trajectory continues to be a positive one.

I am a barrister at Doughty Street Chambers in London. I specialise in international law and human rights. I am also admitted to practice in the United States, and I'm a visiting professor at Columbia Law School. I'm appointed to the UK Attorney-General panel of experts in public international law and on the prevention of sexual violence in conflict. I'm currently the UK special envoy on media freedom and the deputy chair of the high-level panel of legal experts convened at the request of the governments of the UK and Canada.

As a barrister I focus on representing victims of human rights abuses, and I see through this work that the current health crisis has only served to exacerbate what was an existing human rights crisis. Abusers, as you know, thrive when no-one is watching, and new powers seized by autocratic governments in the name of a pandemic are unlikely to be rescinded when it has passed, yet, in the last few months, we've seen more than 80 governments rush through emergency laws that grant them sweeping new powers over their people. Governments have criminalised so-called fake news on the pandemic and have had scores of journalists arrested while deadly untruths have spread. Meanwhile, international crimes from genocide in Iraq and Myanmar to war crimes in Syria and Yemen remain unpunished. Leading governments are distracted, divided or simply disinterested. It seems at times that there is so much bad news in the world that our moral nerve endings have been deadened, meaning abuses will thrive and impunity will remain the norm. That is why what you are considering here today is so important. You, as leaders of one of the world's leading democracies, can do something about the global human rights crisis. You may not be able to solve every problem in the world or respond to every abuse, but you can make sure that your country is not a safe haven for despots and war criminals. You can send a message to those who engage in corruption and human rights abuses that Australia's banks and schools and beaches are off-limits, that there are certain values you don't only stand for but will stand up for through the consistent and fair use of asset freezes and travel bans against abusers of human rights.

I commend Foreign Minister Payne for convening this inquiry and all of you for all of your work in advancing it. I support the proposal that Australia should adopt a new law allowing for targeted sanctions against human rights abusers around the world, sometimes referred to as Magnitsky law. I have submitted to the inquiry a report that I authored comparing existing targeted sanctions [inaudible] and outlining 11 recommendations on how

legislation should be structured. These recommendations were endorsed by a 15-member panel of legal experts chaired by the former president of the UK Supreme Court, Lord Neuberger, who I understand you'll be hearing from later today. The recommendations were also endorsed by representatives of the United Nations, the International Bar Association as well as leading NGOs. The report specifically highlights Australia as a state that could very usefully adopt Magnitsky legislation, so I'm really pleased to be part of this conversation today. And I am, of course, happy to answer any questions that arise from your view of the written submission.

I just wanted to make three points now and then reserve the rest of the time available for our discussion. First, a new targeted sanctions regime would give Australia one of the most effective tools for human rights enforcement. Victims of human rights abuses often have limited points of pressure against a government or group that's attacking them. Sadly, at a time when powerful governments are embracing isolationism, and when the US, China and Russia are united in their disdain for the International Criminal Court, sanctions are very often the only possible recourse, and they are an important tool because they can raise the cost of abusive behaviour by denying abusers access to travel, cash and luxury goods. As my fellow barrister and your fellow Australian Geoffrey Robertson has put it, if:

... all advanced democracies, with desired banks, schools and hospitals—
used sanctions against human rights abusers—

the pleasures available to the cruel and ... corrupt would be considerably diminished. They will not be ... in prison, but they will not be able to spend their profits ... where they wish, nor travel the world with impunity. They may then come to recognise that violating human rights is a game not worth the candle.

I have seen in my own work as a human rights lawyer how useful such sanctions can be. Often the spectre of their potential use is a game changer, with a state suddenly far more attentive or even willing to resolve a case once sanctions are on the table. In recent years, I have reached out to the Australian government for support on human rights issues in the region, including last year on the case of two Reuters journalists arbitrarily detained in Myanmar. It's [inaudible] Australia's leadership on such issues, particularly in the absence of any human rights court in Asia. I am grateful for the support I have received from foreign minister Payne in the past, and I will continue to reach out to Australia for assistance in such cases in the future, but, when it seeks to engage, Australia should be able to go beyond the rhetoric of condemnation and actually impose a cost on behaviour that it deploras.

Second, adopting a new law would allow Australia to be a global human rights leader. Magnitsky legislation would allow Australia to work with key states to respond to mass atrocities. Because sanctions are imposed by individual countries, Australia could act even though it does not have a permanent seat on the UN Security Council and even when council action is stymied. It can form part of a coalition of the committed, working with other leading governments that are determined to make progress on human rights and act together to create accountability for abuse. At a time when authoritarian leaders are becoming more united and innovative in finding ways to abuse human rights, surely governments that are defending human rights should do the same? Yet, so far, only three states, the US, Canada and the UK, have robust global powers to impose targeted sanctions on human rights grounds. I think it's time that Australia joined the club.

Third, my final point is that Australia can adopt a new law that becomes a model for other democracies. Existing legislation in the US, the UK and Canada provides a road map for a new law. Australia can build on this and introduce its own law that will serve as a model for others, including European states that are currently considering similar legislation. My written report highlights two major lessons learnt, as I see it, from the practice so far. First, legislation should provide a basis for action that is broad enough to counter the types of human rights violations that are actually being perpetrated around the world. Second, legislation should aim to reduce the scope for selectivity and abuse in the selection of sanctions targets. More specifically, I believe that legislation should allow for the imposition of sanctions in response to any serious abuse of international human rights law or international humanitarian law. I believe that sanctions for such serious abuse should mean not only responding to extrajudicial killings and torture, but also, for instance, sexual violence, corruption, persecution on grounds of race, religion or sexuality, detention on false charges and silencing of the media. I believe that sanctions should apply not only to individuals but to companies, not only to government officials but also to terrorists and business persons and to the network of collaborators who facilitate their crimes. And I believe that legislation should seek to limit the extent to which sanctions powers can be misused. So, in addition to highlighting the need to have adequate due process protections in place, I have recommended that governments establish an independent expert committee that is responsible for recommending targets. This could improve the objectivity of the process and create space for governments to impose sanctions against nationals, even of states that may be political allies or trading partners.

Mr Chair and members of the committee, today only a handful of countries have laws that allow sanctions to be imposed for global human rights abuses, which means that one of the most promising tools that we have for enforcing human rights is not being used to meet some of the most serious global challenges that we face. What you are considering in this inquiry is the opportunity for Australia to lead with a new paradigm that when human rights are under attack targeted sanctions will be a counterattack, and that victims can expect accountability, not impunity. You are writing your country's history, so let this be a new chapter in which Australia is a global leader on human rights. Thank you and I look forward to your questions.

SUBCOMMITTEE CHAIR: Thank you, Ms Clooney. Can we measure the deterrent impact of this type of legislation?

Ms Clooney: Well, that's very difficult. There hasn't really been a definitive study, and this is obviously something that's very difficult to prove. What would have happened if sanctions hadn't been in place? I have collected examples in the report of sanctions regimes that appear to have been effective, and some of these were based on interviews with former US government officials who worked under the Obama administration when the global Magnitsky act was first introduced. They mentioned a number of countries where they think the sanctions that were imposed under global Magnitsky worked very well. They mentioned the Democratic Republic of Congo, where there were sanctions imposed on people linked to Joseph Kabila. They mentioned Uganda, Cote d'Ivoire, Burundi, Myanmar. They highlight in the report some submissions by the UK which highlighted Iran and Russia as examples of sanctions programs currently under country based regimes in the UK but that have had a positive effect. We quote in the report an opposition figure from Belarus who says he is living proof of the effectiveness of sanctions, because he would never have gotten out of prison if sanctions hadn't been imposed against Belarus. There are also some other examples where you can draw that conclusion. For instance, the US issued sanctions against an American pastor in Turkey. You may remember Pastor Brunson. Those sanctions were imposed at a very high level against Turkish officials in August 2018, and Pastor Brunson was released in October 2018. I do think examples—it may be that they are considered anecdotal for the time being, but remember that these sanctions regimes are quite new and that deterrents specifically, I think, are particularly difficult to prove. But I can certainly say that my own experience has been, as a human rights lawyer, that you don't have that many things to threaten abusive governments with. Even thinking through situations where there is the ability to take a case, for example, to a UN committee, these types of international mechanisms don't have robust enforcement machinery behind them. So, in a way, you also need to be able to highlight to governments that if we win the case at the UN this may lead to the imposition of sanctions. There still has to be, ultimately, a cost. That's why I've said that in my view this is really one of the most effective tools that you could have in your toolkit.

Mr HAYES: Do you see implementing Magnitsky-style legislation as more symbolism than something to give actual legal effect?

Ms Clooney: Well, I think symbolism is part of it. I would say there are two main aims. One is to condemn and signal a condemnation of the behaviour, and the other is to raise a cost. I think what's particularly valuable here—we have other tools that signal condemnation—but this is one of the relatively few tools that raise the cost. You often hear, 'Hit them where it hurts—in their wallets,' and it's true if you go after people personally. The value of this as well, in terms of the signal that it's sending, is that you're not going after an entire country—you're not having ordinary citizens pay the price for the behaviour of their officials or a small number of individuals; you're going after those who are most responsible. So there is the signalling factor. Those individuals then can't travel to where they want to go. Even sanctions just by the United States have an extraordinary impact, not just in terms of not being able to have a bank account in the US but in terms of not being able to effect US dollar transactions or effect transactions with US persons. Even the adoption of sanctions by a relatively small number of states that are important in the global financial system has an enormous practical impact. So I think it goes beyond condemnation and actually imposes a practical cost, and that's why it's so valuable.

Mr HAYES: As a regime, Magnitsky would have a cumulative effect if there were international coordination of like-minded jurisdictions. Hence, if a person were specifically identified and sanctions were imposed, would other jurisdictions simply take on that evidence and act accordingly?

Ms Clooney: Yes, absolutely. There are academic studies that have shown that sanctions imposed by more than one body make them more effective. I know the UK government has signalled that it's of that view as well, and I notice Canada, the UK and others have welcomed what you're doing in this inquiry and I think would be prepared to work closely with you. One of the recommendations in the written report that I submitted is actually that a committee should be formed among the like-minded states that have this power in order to share evidence

and information. Obviously Australia, being part of the Five Eyes group, would be able to do that relatively easily with those partners.

Mr HAYES: If implementing Magnitsky legislation is about changing behaviours, what sorts of reviews should occur after sanctions have been implemented?

Ms Clooney: I think that one of the elements of the due process requirements should be that individuals have the opportunity to challenge designations as being arbitrary. I think they should have the opportunity to show that humanitarian exemptions might be needed and also that they meet the criteria for delisting. I think part of what can be valuable, as well, in the operation of these sanctions is if there can be some sort of carrot and stick. The stick might be the imposition of sanctions, but the carrot might be the delisting of an individual; therefore, it creates incentives for behavioural change.

Mr HAYES: I have one final question. If we move towards implementing Magnitsky-style legislation with targeted sanctions, should it, in your opinion, be subject to parliamentary oversight or judicial review?

Ms Clooney: That's a really interesting question. I think judicial review on the grounds that I just discussed—in other words, when an individual wants to challenge the sanctions—is a robust and positive type of new process protection. I think there's another potential role for a parliamentary committee or other type of group or committee that could be convened outside of the executive branch, and that would be to actually recommend what the targets should be. That may or may not have a quasi-judicial constitution, but I think one of the main problems in how sanctions have worked, and certainly one of the main criticisms that you always hear, is that they're selective—states will have this legislation, but they'll only use it against soft targets, or they'll only use it against states that aren't friends or who they don't need to trade with et cetera. But, on the other hand, it's understandable that a foreign minister can't come into office and, on the first day, sanction their counterparts in 100-plus countries where human rights violations might be occurring on some level.

So I think one of the most important contributions that can be made to reduce selectivity and potential abuse of sanctions powers is to give a role to an independent panel, and there are many different ways of doing that. We give some guidance factors in the written report as to how that could be done, but, in principle, it could be a parliamentary committee or it could be a group of experts, including retired judges or people with that kind of profile. But I think that that's something that doesn't really exist yet in the existing systems in the US, UK and Canada. There's a sort of informal version of it in Canada, but not a group that has any real power vis-a-vis the executive, and in the UK and the US you've got a system where the legislative branch can trigger a reporting requirement by the executive branch. It hasn't worked in the US in the case of the aftermath of the Khashoggi killing, where the executive branch refused to issue the report that had been requested, but there is a system in place where the legislative branch can trigger the need for the executive branch to review certain material and report back. I think that could be taken a step further, and giving an independent body a formal role in recommending the designation of targets would be a step forward that Australia could consider in its own system, if you decide to adopt one.

Mr HAYES: Thank you, Ms Clooney.

Mr HILL: I think that has largely answered the first question I was going to ask. There's this tension we've heard about in other discussions. Ultimately, I suppose, it's a decision of government to impose sanctions that are seen as being in our broad national interest, and, therefore, not every bad guy or girl is going to get on the list. But they're interesting suggestions, and you said there's more detail in your report about how you thought those mechanisms could work.

Ms Clooney: Yes. One of the recommendations is about the idea of a panel. It's recommendation No. 10 at page 74. The thinking behind it was: how do you deal with the reality of the fact that foreign ministries—DFAT in your case—or whatever it may be are going to have to deal with other states on a number of different fronts? And I think it would help a foreign minister to be able to say to their counterpart in a meeting: 'Sorry. This isn't personal. This isn't against your country. It's against particular individuals, and this has happened because a particular committee has recommended it, and this is how it works in my country. We base it on behaviour, and once that threshold is met this is our response.' That can become the norm, which it isn't at the moment. I think that makes it more difficult sometimes for the executive branch of a government to act where perhaps it should.

Mr HILL: Thank you. We'll have a look at that. I will turn to two other issues. The submission of the Free Russia Foundation, the organisation of our previous witness, Mr Kara-Murza, is obviously very strongly supportive of Magnitsky-style legislation. The submission said:

... the Magnitsky legislation is a pale substitute for justice. The penalty for torture, murder, wrongful imprisonment, or grand corruption should not be a cancelled holiday or a frozen bank account—but a real trial in a real court of law.

You've obviously had very extensive experience in international criminal law and international justice. Given that this submission raises the issue of combating impunity for serious violations of human rights by trying to pursue accountability through criminal justice processes in the first instance—obviously only if circumstances warranting persecutions are likely—I'd be curious what advice you could give us or what you'd say in relation to that and how targeted sanctions could play an effective or constructive role with criminal justice processes.

Ms Clooney: Thank you for the question. I totally agree; this is not a substitute. In fact, most states don't consider, or don't say overtly at least, that the purpose of sanctions is punitive. They are a form of accountability. It's obviously not as powerful as criminal prosecution, which is often warranted. The situation is pretty bleak on this front. I'll just give one example, in terms of the lack of international criminal accountability. For the last few years I've been representing victims of genocide from Iraq from the Yazidi community, where the perpetrator group is ISIS and the crime is genocide. It has been impossible to get any kind of international court set up to deal with these crimes or any kind of international accountability process. Actually, even if you look at sanctions, that has also been woefully inadequate. ISIS at one point had an annual turnover of US\$2 billion, and there are 14,000 foreign fighters from 110 countries. Many of them are going back to their countries of origin et cetera. But, when you look at the UN sanctions list for ISIS and al-Qaeda—and I actually checked this in the last few days—there are approximately 60 ISIS members who feature on the list and none of them have a rationale that relates to the fact that they have been committing genocide against this group, the Yazidis. I'm afraid that, both in terms of criminal accountability and even as it relates to sanctions, neither form of accountability is being used as it should be, even when we are talking about the gravest crime imaginable, which is genocide.

Mr HILL: Is there any risk, in your experience, that the availability of sanctions may decrease the pursuit of criminal accountability or could it assist it in some way?

Ms Clooney: I don't see that as being a risk, at least not in any situation that I have come across and can think of. In fact, I think it could increase the prospect because it could be one of the conditions of delisting. If a criminal process is taking place, that can be a basis for the removal of sanctions.

Mr HILL: In relation to recommendation 8, you said that states should ensure that sanctions can be applied to secondary participants. In your opening remarks you touched on some of the categories or examples. One of the issues we would be grappling with in recommendations to the design of a piece of legislation would be the inclusion or pursuit of family members. In the case of Australia, one example that I know of in my community very well—and, actually, Mr Hayes will know as well—is the Cambodian-Australian community, where Cambodian regime senior members who have been effectively proven by Amnesty and Human Rights Watch to be guilty of gross human rights violations own property, send their children to school in Australia, come for holidays, and so on. There's a question about whether the pursuit and sanctioning, effectively, of family members who are benefiting from these crimes is morally correct, and, indeed, how you might put it into practice. Have you turned your mind in your report to the issue of family members?

Ms Clooney: We note that one of the authorities in the US—not the global Magnitsky act but a separate authority—captures family members as well. It's for visa denials. On the one hand, I think the starting point has to be: the son shouldn't pay for the crimes of the father. What we think is particularly valuable about these types of sanctions is they target those who are most responsible and not a population comprehensively, as sanctions previously used to do in a number of situations. Having said that, at the other end of the spectrum, those who work on corruption will say it's often the case, and more often the case in some communities than others, that corrupt actors will hide assets by transferring them to family members, and obviously there are situations where family members may be complicit. Between those two is where you'll have the policy dilemma. I would have thought that you would want the ability, the power, in your legislation to impose sanctions on that basis, but in practice you would essentially use that power rather sparingly and only when there is no other way to achieve the policy aim and only where it's fair to do so.

Mr HILL: Thank you for that answer. That's a good articulation of the dilemma that we're grappling with. You mentioned corruption then, and in your opening remarks you talked about the requirement for the legislation to be broad enough to cover enough categories of violations. To what extent do you think targeted sanctions also should be applied in cases of corruption? That's one of the questions also facing the committee: do we go beyond a more traditional view of human rights violations, and, if so, how broad do we go? You've obviously put a lot of attention into the pursuit of journalists and so on, given your many roles, but there is the issue of corruption and what the threshold for that may be.

Ms Clooney: Thank you. I definitely think that corruption should be included, as it is in the US. As you know, under the US system they broadened the requirement from significant corruption to corruption more generally under the executive order that followed the adoption of the global Magnitsky act so that they could capture more

situations of that nature. It's also artificial to completely separate corruption from human rights violations. If you look at the Transparency International index of the most corrupt states, those in the bottom 20 are not going to be the ones that have particularly exemplary human rights records. There's actually a correlation between states that do very poorly on human rights and those that are corrupt. We also know that, if we try and combat corruption, we can try and advance many people's human rights, because, as the UN has previously reported, the amount that's lost in corruption is more than 10 times what countries receive in aid and the amount that's lost in corruption could feed the world's hungry 80 times over. So, if we can start to do anything to combat this problem, it would be of great assistance to many vulnerable people around the world and people whose human rights are affected—their right to education, their right to food, and even, sometimes, their right to life. I think the two are very much entwined. The experience of the US has been that it's been good to include it in their system and, in fact, they've broadened their basis for doing so. In some cases, it's also easier to prove corruption than it may be to prove some types of human rights violations. I would suggest having the broader legislative basis and then determining, based on policy and resources, what you will prioritise.

Mr HILL: Thank you. What time is it where you are?

Ms Clooney: I'm in Los Angeles and it is almost five o'clock. I have colleagues in London who are going to appear tomorrow morning London time, but I got a very respectful afternoon hour, so thank you.

Mr HILL: Excellent. I was thinking that you are remarkably coherent if you're in London. Thank you so much.

Ms Clooney: Are you saying I'm not coherent from Los Angeles!

Senator KITCHING: Thank you very much, Ms Clooney, for your time, your words of encouragement and the support that you've given to the Australian examination of Magnitsky legislation. Obviously, Bill Browder has been incredibly helpful, and you have been as well, as has Professor Cotler. Thank you very much for all of your support. I come to this from a position of wanting to protect liberal democracies and the values of democracies. It was recently Victory in Europe Day and there were celebrations—socially-distanced celebrations, obviously—in the UK and I was reminded of the quotes that are outside the British headquarters at Camp Taji in Iraq. At British headquarters there, they've got a quote from the great Winston Churchill. He said:

Never give in—never, never, never, never—in nothing, great or small, large or petty—never give in except to convictions of honour and good sense. Never yield to force; never yield to the apparently overwhelming might of the enemy.

They have a photograph of the Queen and a quote underneath saying:

When life seems hard, the courageous do not lie down and accept defeat; instead, they are all the more determined to struggle for a better future.

I see Magnitsky legislation in those terms. I know you've done a lot of work in areas such as genocide and war crimes, and you have acted for repressed groups. The Yazidis genocide was the culmination, in some ways, of an utterly brutal and barbaric so-called caliphate. How could Australia use these laws to promote the protection of human rights in our region? Are these laws able to promote peace and stability in conflict zones? And how do you see the role of NGOs or other bodies on the ground interacting with the bodies administering these laws? The work that you have done on behalf of freedom of the press and journalists is very important because having a free press is one of the tenets of a democracy. How do you see these laws interacting in those kinds of areas?

Ms Clooney: Thank you for the quote and the interesting questions. In terms of the region, that's why we highlighted Australia in the panel's report at the very top of our list of states that we hope will adopt this kind of legislation. In Europe you have a regional human rights court. There is a similar mechanism in Africa and in the South American region. You don't have that in Asia. So, when I deal with cases in Asia, I'm looking for regional leadership from democracies, from governments that believe in human rights values. If Australia had this kind of tool, it would be extremely helpful so that the states in that region would be aware that this was a possibility and was something that could be done by a regional power, rather than be imposed from a country further afield. Obviously, there's ASEAN, but there's no accountability mechanism in the region similar to others. So that's one point.

In terms of NGOs, I think this is something that could probably be handled in a way that's an improvement on the existing regime. The existing Magnitsky regimes are a positive example on many fronts, but when you speak to NGOs who try to get sanctions imposed, it's a bit haphazard as to how they're supposed to submit information. Some regimes only accept open-source information. There's often no feedback loop et cetera. So this partly feeds back into the idea of having an independent expert committee, which could deal with those submissions, filter them and give a smaller amount of material to the decision-making body within the executive. But even if you didn't have that, I think setting up a mechanism—even just simple, practical things like having a form that all

NGOs fill in so that you get the information in a uniform way and can sift through it in line with the policy priorities that are adopted—would be an improvement on the way it works in some of the existing regimes.

Senator KITCHING: Could I ask you a specific question? Disturbing documents were released recently from Xinjiang; thousands of pages were released and given to various media outlets. I think there's a great deal of concern around the world about Xinjiang and the practices that go on there. For example, there are Chinese tech companies doing artificial intelligence there and the monitoring of human beings. How could sanctions be used in cases like Xinjiang? Should entities that are benefiting from forced labour, for example, be covered under Magnitsky legislation?

Ms Clooney: I think the internment of a million people on religious grounds is certainly a basis for the imposition of human rights based sanctions. If the question is could such sanctions also capture companies that are complicit in the types of abuse that we're talking about, then I would say absolutely. I think that would be a positive. Companies are used to operating on the basis of incentives, and we need to redress the balance there where it may be profitable to do this kind of thing. At the moment there's often no penalty.

Senator KITCHING: Yes. Thank you very much, Ms Clooney.

Ms Clooney: By the way, Senator, I notice that you had written an article, which I very much appreciated, where you highlighted the fact that like-minded democracies should act in concert in imposing these kinds of measures. I very much agree with that, and I think that really captures the spirit of Australia coming into the club, as I put it in my opening remarks. At this juncture, I think it would be a great model for the region. Hopefully, New Zealand would then follow, and, hopefully, the EU and some states within Latin America as well. So I just wanted to say that I very much agree.

Senator KITCHING: Thank you!

Ms VAMVAKINO: Ms Clooney, thank you for your presentation. I'm feeling the possible weight of history here in relation to what Australia does in respect of the Magnitsky act. What would be the ramifications, in your view, if the reverse were to happen and Australia were not to proceed with the adoption of the Magnitsky act? Can you reflect on that a little bit for me, please?

Ms Clooney: Yes. Even in the absence of Magnitsky powers, obviously under the existing legislation there is still the opportunity to act on the basis of your current powers in relation to specific countries. But what we're talking about is the opportunity to do it on a much broader basis, on a much more principled basis and in a way that, as I said, could be a model to so many other like-minded democracies and countries in the region. I think Australia, as a member of the Commonwealth, is a leading democracy in the region in which you sit, where there are, unfortunately, as in other regions, grave human rights problems. I think this would be a great step forward, and I think not taking it would be a huge missed opportunity.

Ms VAMVAKINO: Thank you. I'm just wondering whether there would also possibly be a case for Australia to be a permanent member of the UN Security Council. Given our capacities as a middle-range model power, is there an opportunity for us to perhaps be a permanent member?

Ms Clooney: Having recently addressed the UN Security Council, I certainly think that many improvements could be made to it. Certainly, the way the veto power works and membership being based on an historic deal being struck that no longer reflects the current state of the world are two of the issues that I think are problematic. I definitely think there can be improvements, and it's a conversation that I think Australia should pursue.

Ms VAMVAKINO: Thank you very much for that.

SUBCOMMITTEE CHAIR: Senator Sheldon?

Senator SHELDON: Did you call me, Chair?

SUBCOMMITTEE CHAIR: Yes; go ahead.

Senator SHELDON: Sorry, I'm homeschooling the kids. It's a bit of a juggling act. Thank you, Ms Clooney, for your presentation and for answering all of our questions. You may have answered this question, but I've been in and out of this teleconference a bit this morning and may have missed it. As you've outlined, the effectiveness of the Magnitsky legislation in different parts of the world goes to restrictions and, let's get straight to the point, condemnation of henchmen or henchwomen of various state actors. I know there's a very small sample of evidence around this because of the limited use of the legislation in the different jurisdictions, but has there been evidence where it's actually led to counterproductive responses in the sense that the human rights abuses may have increased or those particular actors of a state have been replaced with others who have become even more severe? Have you got actual positive evidence that there have been examples of states backing off when the legislation has been used?

Ms Clooney: I do have evidence of the latter—in other words, anecdotally, certainly in cases that I've worked on, situations in which even the threat of sanctions before the actual imposition of sanctions has been helpful. One of the examples that's mentioned in passing in the report involves the Maldives, where I represented the former President Mohamed Nasheed, who was the only democratically elected leader of the Maldives. He was imprisoned on bogus grounds, and it was only once it became clear that there was a credible prospect of sanctions being imposed by the United States that he was released and allowed to travel outside the country. That changed the entire trajectory of the country. So, in the presidential elections that followed, his party was elected. That has brought in a government that's now enacting legal reforms to promote human rights. They've rejoined the Commonwealth; they've re-engaged with the United Nations. That's an example of how it can work even before sanctions are imposed.

I think, in terms of trying to find counter examples, the US has the most extensive practice, so I did interview officials from the US. They might be better placed than me to give you a more holistic account of what happened in each instance in which sanctions were imposed. I'm happy to provide the names of suggested people for you to speak to.

I did give an answer earlier—which, for the benefit of the others, I don't want to repeat—where I did go through quite a number of examples of situations in which the UK and US governments have said that sanctions have been effective—or at least former officials on the US side, and current officials on the UK side. Certainly, my own experience, anecdotally, supports the view that even the threat of them can be extremely powerful.

Senator SHELDON: Thank you. That's good to know. I only raised those counterexamples in the context—and you would be familiar with this situation—of where sometimes, when human rights activists in diaspora communities speak up quite loudly on behalf of their brothers and sisters in their home countries, it has the effect of those states cracking down even harder on them in response. That's the worry with respect to that.

Ms Clooney: Yes, that's understandable. Obviously, there are many considerations that come into play in terms of who should be sanctioned and when. Also, there's got to be an emphasis on source protection. This is an issue that I saw raised in the written submission by The Sentry, given their experience in corruption-related sanctions. I think that's an issue that requires some thought, but it's certainly not a reason not to proceed.

Senator SHELDON: Thank you very much.

Mr HILL: I want to turn to one of the more interesting recommendations in your report—and when I say 'interesting', I'm not meaning to be smart about it, but it's not something I've read in any of the other submissions—which is recommendation 6:

Sanctions should be used to respond to serious systemic restrictions on media freedom, including shutdowns of the internet. There's a short section in the report, but it's thought-provoking. You point out:

...Internet shutdowns are on the rise and 'have become one of the defining tools of government repression in the 21st century'.

You name one of the world's most populous countries as the country that has imposed the most shutdowns. Then you give a couple of potentially challenging examples for Western governments of media shutdowns. I don't think there'd be any difficulty with calling out Al Jazeera's shutdown in Sudan, but then there are the shutdowns of independent news outlets in Turkey and—very concerningly for the EU, with Hungary being an EU member—the government takeover of Hungary's most-read daily newspaper. These are potentially quite challenging circumstances for governments. Could you tell us a little more about the human rights perspective on this new frontier?

Also—and I probably won't articulate this clearly because I'm thinking aloud, which is always dangerous in committees, with the *Hansard!*—if we think about a set of norms that we have as Western democracies, where it's a given that media freedom is a public good and it's something we fight for, imposing that on, say, a country like China, where internet freedom is not a thing and media freedom is not a thing, that's a really challenging kind of recommendation or frontier for Magnitsky-style legislation to take. You'd effectively be saying the whole of the Chinese government is guilty, but it's coming from a very different value set there. So, I'd be curious to hear a little more comment on recommendation 6.

Ms Clooney: In researching the report, I was actually surprised that there had been action taken by the EU and by the US on internet shutdowns. One of the recommendations that I have for any state that's newly adopting Magnitsky legislation would be to ensure that its terms are broad enough to capture that kind of activity, because, as the human rights abuses that we're seeing are evolving and including things like that—and we saw it happen with devastating effect in Kashmir and also in the Rohingya camps in Bangladesh—shutting down the internet

has huge human rights implications. It's good to see that that has been the basis for some sanctions already, and I would hope that your system would be nimble enough to be able to capture new types of threats like this.

In terms of whether media freedom is only a Western ideal: the reason I was framing what the test should be as serious abuses of international human rights law and international humanitarian law is that we've got wide agreement. Over 170 states have signed up to the International Covenant on Civil and Political Rights; that guarantees freedom of expression. This is a global norm. The problem is that states want to be part of the club—they want to be in the UN, in the Commonwealth, in the EU—and they say that these are the values that they respect as well, but what we need to do is have much better enforcement machinery at the international level than the one that we currently have. That's why what you're considering could, I think, be a really valuable contribution.

Mr HILL: Thank you. It's a very thoughtful report.

SUBCOMMITTEE CHAIR: Ms Clooney, I have one final question. It relates to the UK, which has Magnitsky-type legislation but has not sanctioned anyone, as I understand it. Is there any reason for that in particular?

Ms Clooney: I caught the tail end of the previous witness speaking about this. Actually, they are at a very advanced stage in being able to operationalise the Sanctions and Anti-Money Laundering Act in the UK. It requires secondary legislation. I think if we hadn't had the pandemic it would have come out already. I understand there's some delay now that's attributable to what's happening on the health front. So, there is political will. The Foreign Secretary, as the previous witness did highlight, is a strong proponent of Magnitsky sanctions. I think the sanctions act has some really useful language, if you're looking for a broad base for action. Obviously, there's the executive order that supplements the Global Magnitsky Human Rights Accountability Act in the US, but section 1 of the sanctions act in the UK also has some broad bases for action. The question is going to be whether or not the secondary legislation that operationalises the UK's autonomous sanctions power, including the Magnitsky clause within it, will be narrow or broad—how much it will narrow the terms of the act. That's something that we're all looking closely at. It may be that they issue a series of statutory instruments to operationalise the act and broaden what might be initially a first step. We'll just have to see. But, obviously, given that the UK, along with Canada, is leading the global campaign for media freedom, I very much hope that the sanctions powers in the UK will be used to combat the severe threats to media freedom, amongst other human rights abuses, that we're seeing around the world.

SUBCOMMITTEE CHAIR: Thank you very much. I thank you for the very detailed submission that you've made to this committee. It's certainly very informative and will be very helpful in terms of our deliberations and, hopefully, our final report. I thank you, also, for giving your time to come and discuss these issues with us today. We appreciate that. We will have a transcript forwarded to you. If there are any corrections to errors in the transcription, please make them and return them to us. Thank you once again. Have a good day.

Ms Clooney: Thank you so much. I really appreciate your time and the invitation to participate. Good luck.

Sitting suspended from 10:18 to 10:53