Targeted Sanctions and Human Rights:

Reflecting on the Global Human Rights Sanctions Regime in the UK and Beyond

04 April 2025

Council Room, King's Building, Strand, King's College London

Preamble

In 2020, the UK established the Global Human Rights Sanctions Regime. Over the past 5 years, it has been used to sanction the perpetrators of Magnitsky's torture in Russia, Khashoggi's murder in Saudi Arabia, as well as Israeli settlers in the West Bank. With 35 countries enforcing targeted sanctions against gross human rights violators, the debate over their legitimacy and effectiveness has never been more pressing.

This event brings together policymakers, legal experts, and human rights advocates to explore this innovative yet controversial tool for human rights accountability. Gain firsthand insights from those shaping sanctions legislation and advocacy, as well as top lawyers who have defended sanctioned individuals in landmark cases—from the Kadi case in the Court of Justice of the European Union to the Shvidler case in the Supreme Court of the UK. Many thanks to the speakers for their valuable contributions to this collection of speeches. Hope you enjoy this dynamic and thought-provoking discussion on targeted sanctions and human rights.

Contents

Opening Speech

Alastair Morgan
Visiting Senior Research Fellow at the Department of War Studies at KCL

I am grateful to Yifan Jia for inviting me to today's conference. Many here can cover the topic in more depth but also with more breadth, so I should be brief. I hope that I can throw some sidelights on the issues from my time as British Ambassador in Pyongyang from December 2015 to December 2018, and then as Coordinator of the UN Panel of Experts on North Korea Sanctions from April 2019 to April 2021. A second reason for brevity is that my experience is now dated. The British Embassy has been temporarily closed since 27 May 2020 and Russia vetoed the renewal of the Panel of Experts mandate in March 2024. There is now even less visibility of what is happening inside North Korea. It is unlikely, however, that the human rights situation has improved. Indeed, the tighter border restrictions and the refoulement of North Koreans from China suggests that it hasn't.

As Coordinator of the Panel of Experts, I was concerned with the Security Council's sanctions imposed in response to North Korea's nuclear weapons and ballistic missile programmes, not human rights violations. There was, though, an interface with human rights and humanitarian issues. There was also an issue over the extent to which these sanctions were targeted, a focus of consideration today.

As Ambassador in Pyongyang, I had constant sight of restrictions on human rights in Korea. Restrictions on freedom of the press, of speech, of political choice, of assembly, of religion and so on were highly visible. Many of these rights were guaranteed in the Constitution but they did not exist in practice. We had less sight of the more extreme human rights abuses. We could not witness detention facilities or labour camps, though we did attend trials such as Otto Warmbier's, and we regularly witnessed corvée labour.

As British Ambassador in Pyongyang, with my staff I engaged on human rights issues. We helped draft the section on North Korea in the FCO's annual human rights report. We raised human rights in meetings. But we did not approach the issue just through coercion and criticism. We also attempted to engage where we could, including through supporting small projects. The area in which there was most progress was rights of the disabled, very likely because extending rights to the disabled, unlike extending other freedoms, posed no threat to the regime.

As Ambassador, my direct involvement with sanctions was limited, and restricted to counter-proliferation not human rights sanctions. I was sometimes asked for my views on potential sanctions, and to report on the impact and response within North Korea to those that were imposed. I also participated in meetings in London to review sanctions designations, witnessing some issues relating to evidentiary standards, particularly over coordination between different jurisdictions, that may be considered by a later panel.

I had already left British government service and joined the UN Panel of Experts when Foreign Secretary Raab announced the UK's new Global Human Rights Sanctions Regime in July 2020. The British government wanted to include North Korean designations in the first tranche of

sanctions under the new regime and included two organisations responsible for the enforcement of what Raab called the DPRK's 'wretched gulags'. This raises questions concerning the targeting of sanctions and their likely effectiveness. While there may indeed be well-evidenced, extreme violations of human rights at North Korea's labour camps, it is unlikely that the designated organisations will have assets abroad or that their employees will travel. In that case, can the sanctions have any effect? Should others be targeted?

At the time that I was working for the British government, there was a different approach between the UK and the US – and indeed there were different approaches at different times in the US - over whether to designate Kim Jong Un and members of his immediate family for counter-proliferation or for human rights sanctions. The ruling family would, I am sure, like to hold assets overseas, even if their travel outside North Korea is heavily circumscribed. Under the monolithic leadership system which they proclaim, Kim Jong Un is clearly accountable for a regime in North Korea of which the restriction of human rights is an intrinsic part, even if the Supreme Leader does not personally instigate or know of every gross violation of human rights. When I was working for the British government, however, views differed on the possible consequences of designating the Supreme Leader or his family members, including for the amelioration of human rights in North Korea.

Although as Coordinator of the UN Panel of Experts I was working on sanctions related to North Korea's nuclear weapons and ballistic missile programmes not human rights, the Security Council's in its resolutions did draw a link with human rights. For example, in Resolution 2397 of 22 December 2017, we see the Council:

'Underlining once again the importance that the DPRK respond to other security and humanitarian concerns of the international community including the necessity of the DPRK respecting and ensuring the welfare, inherent dignity and rights of people in the DPRK, and expressing great concern that the DPRK continues to develop nuclear weapons and ballistic missiles by diverting critically needed resources from the people in the DPRK at tremendous cost when they have unmet needs.'

Earlier resolutions had provided for targeted sanctions – counter-proliferation measures, an arms embargo and restrictions on luxury goods – but these had not proved effective. As North Korea's tests and launches escalated in 2016 and 2017, the Security Council responded by expanding the scope of its sanctions resolutions until they covered much of North Korea's previous external trade. The resolutions stated that they were 'not intended' to have adverse humanitarian consequences for the civilian population of North Korea, or the UN and other humanitarian organisations operating in North Korea, but it was to be expected that such broad sanctions would be likely to have such consequences. This was difficult for the Panel to investigate. Evidence of effects was hard to come by, and it was difficult to disaggregate sanctions from other causes. Outside the Panel, Russia and China sought to use the issue to undermine sanctions, and this was contagious within the Panel. Meanwhile, United States officials, aware of Russian and Chinese objectives, sought to prevent the Panel from considering the issue at all. I expect today's panel discussion of targeted sanctions to be less contested.

When a UN Commission of Inquiry on Human Rights in North Korea reported in February 2014, it recommended that the issue should be considered by the UN Security Council, who should impose sanctions and make a referral to the International Criminal Court. At the time Russia and China ensured that there were no sanctions and no referral, though they were unable to prevent the Security Council from meeting to consider the matter. North Korean officials did eventually engage with the Commission of Inquiry, in an unsuccessful effort to remove reference to Kim John Un. Since then, they have refused to engage with the UN Special Rapporteur on Human Rights, or other UN human rights activity specifically targeted at the DPRK. They do engage with the UN's Universal Periodical Review mechanism, though to what positive end is less apparent.

North Korea argues that the Special Rapporteur role was created by 'a politically motivated, confrontational anti-DPRK human rights resolution, which was aimed at eliminating the socialist system on the pretext of human rights.' It is indeed the case that restrictions on human rights in North Korea are intrinsically bound up with the nature of the regime. It is also the case that some autonomous human rights sanctions regimes, for example some US sanctions, are expressly aimed at the system. But it is not the case that all statements and sanctions targeted at extreme abuses of human rights in North Korea are simply 'pretext'. Sanctions can draw attention to serious abuses of human rights. In some instances, they may be effective in punishing the perpetrators. It is to be hoped they can also eliminate, or help eliminate, further abuses. They may even have some impact upon a regime that denies that such abuses exist.

I look forward to today's panel discussion.

Westminster and the Development of Sanctions Policy

The Rt Hon the Lord Garnier KC
Member of the House of Lords, Barrister at 4 Pump Court

May I begin by thanking Dr Kirkham for chairing this first Panel and Yifan Jia for organising this conference. It will I am sure prove to be a fascinating and productive day.

In her 2023 paper, *Global Human Rights Sanctions and State Sovereignty: Does the New Tool Challenge the Old Order?* Yifan wrote:

Global Human Rights Sanctions Regimes (GHRSRs), commonly referred to as Magnitsky sanctions, are sanctions frameworks designed to address perpetrators of severe human rights violations committed abroad.

First established in the United States, she wrote, they were soon replicated in 35 other jurisdictions, including the UK and the EU, in our case through *the Global Human Rights Sanctions Regulations 2020*. GHRSRs can target individuals and entities and include visa bans, asset freezes, and transaction restrictions. The detail may differ state to state, but the overall policy and effect is the same. They look to punish those who have committed severe human rights abuses such as torture, extrajudicial killing, slavery and forced labour, disappearances and arbitrary arrest, as well as international crimes such as genocide and crimes against humanity.

What I will loosely call the West has shown its disapproval of human rights violations by targeting governments and individuals with a variety of measures that prevent travel, or impose financial, economic and trading restrictions. Natalia Kubesch will shortly talk about *Magnitsky Sanctions as a Tool for Accountability for Human Rights Abuses,* but I am going to speak about the development of sanctions policy here in the UK.

Last November Natalia and Skylar Thompson wrote this in the academic publication *"Just Security":*
Without a comprehensive survivor-centred approach, diplomatic responses risk prioritizing the appearance of accountability over addressing the actual rights and needs of victims and their families. Genuine justice requires moving beyond symbolic gestures to implement tangible, survivor-centred actions that reflect a true commitment to accountability. [my emphasis]

I agree with that which is why I am going to talk about the effective projection of power rather more than the detail of the law. I will leave to others later today the analysis of the law and of how the English courts have interpreted and applied it. But if the intention today is to inform future policy development, a look at how the present state of affairs in this area of public policy was arrived at may be helpful, even if for reasons of time it will be taken at something of a gallop.

You cannot talk about modern sanctions without mentioning Sergei Magnitsky. He was, of course, a Russian lawyer who uncovered large-scale tax fraud. While working for Hermitage

Capital in Moscow, a firm based in London and run by the financier Bill Browder, he discovered that millions of dollars of Hermitage tax payments had been syphoned off by Russian officials. He pointed out that Putin's Russia was a kleptocracy. That was very rude of him – so he was arrested; but he refused to recant. As we all know, this very brave man died, indeed was murdered in jail in 2009.

Bill Browder, someone I have been privileged to meet on a couple of occasions here in London, started a campaign to have sanctions imposed on the officials involved – to get them banned from visiting the US and using the US financial system. A *Magnitsky Act* naming the Russians involved was passed by the US Congress in 2012. It was later broadened to become the *Global Magnitsky Act of 2016*, applying to gross human rights abusers anywhere. Other countries subsequently introduced their own versions of the legislation.

There was increasing pressure for the UK to follow suit. Various measures came before Parliament, Private Members' Bills and amendments to Government Bills, although *"Magnitsky"* did not appear in their titles, and they did not refer to Russia.

Arguments used against introducing Bills or changing existing laws to enact Magnitsky sanctions included questions about the definition of *'gross human rights abuse'* and the suggestion that powers to sanction gross human rights abusers were already there in existing legislation. Some questioned the effectiveness of Magnitsky legislation: it was argued that there are countless powerful human rights abusers; and choosing which of them to sanction was a subjective business. Inconsistencies in application would make designations more likely to be litigated. And of course, the effective international reach of any law depends on deployable power and the ability of the sanctioning country to impose its will on others.

Remember, *genuine justice requires moving beyond symbolic gestures*. At the risk of meandering down, if not memory lane, the seaways of 19th century history, we can learn something about efficacy of sanctions regimes from the Trent episode of 1861. The United States Navy boarded a British mail packet, the RMS Trent, in international waters as it sailed from Cuba to Britain with two Confederate envoys on board. They had evaded the US Navy's blockade of Charleston, South Carolina, and made their way to Cuba to board a ship bound for England. The US was blockading Confederate ports both for military and for economic reasons. Britain respected the blockade but was neutral in the conflict between the north and south, albeit economically interested in importing Confederate cotton. The captain of the US ship, Charles Wilkes, was an enthusiastic fellow. He decided that the two Confederate envoys were contraband and the Trent liable to be seized. His second in command, Lieutenant Fairfax, thought that was a somewhat eccentric interpretation of the law on smuggling. Wilkes essentially carried out what we would nowadays call the unlawful rendition of the two Confederate diplomats on their way to London. Their mission was to remind the British of the importance of raw cotton to the British economy, to persuade them to support the Confederacy against the United States, and to recognise its independence. Fairfax persuaded Wilkes that seizing the Trent as well as the envoys would not be helpful, rather as General Mike Jackson told his NATO commander, General Wesley Clark, that he was not going to start WW3 for him by provoking the Russians in Kosovo. Anyway, the two envoys did not end up in Guantanamo but in a Boston prison and the Trent carried on to England.

The Prime Minister in 1861 was Lord Palmerston. As Foreign Secretary in 1850 he had ordered the blockading of, and threatened to bombard, Piraeus after the home of a Gibraltarian merchant in Athens, Don Pacifico, had been attacked by an antisemitic mob in 1847. The Greek government had refused to pay compensation. In a five hour defence of his actions in the House of Commons, Palmerston declared in his so-called *civis romanus sum* speech, that a British subject ought everywhere to be protected by the strong arm of the British government against injustice and wrong, comparing the reach of the British Empire to that of the Roman Empire, in which a Roman citizen could walk the earth unmolested by any foreign power.

Palmerston called the action by Captain Wilkes *"a declared and gross insult"*, demanded the release of the two diplomats and ordered 3,000 troops to Canada. There was talk of invading Maine and the American Pacific northwest with a view to their being subsumed into Canada. Much of the British public and many newspapers immediately saw it as an insult to British honour and a flagrant violation of maritime law. The *London Chronicle*'s response was typical: *Mr. Seward (the American Secretary of State) … is exerting himself to provoke a quarrel with all Europe, in that spirit of senseless egotism which induces the Americans, with their dwarf fleet and shapeless mass of incoherent squads which they call an army, to fancy themselves the equal of France by land and Great Britain by sea*.

If you wondered where Trump and Vance leant their diplomacy and statecraft, now you know. Treating the United States perhaps like Trump and Vance are treating Ukraine's President Zelensky, Palmerston wrote to Queen Victoria on 5 December 1861 saying that if his demands were not met:

"Great Britain is in a better state than at any former time to inflict a severe blow upon and to read a lesson to the United States which will not soon be forgotten."

The short point is that to enforce sanctions effectively (and I suggest that historically, sanctions took the form of naval blockades of target ports to prevent sea trade), to move beyond the *symbolic to the tangible*, you need the ability to project power and economic damage, and allies that will assist you by respecting your sanctions and by creating their own parallel sanctions. Of course, on their face sanctions are legal instruments, backed by legislation or international treaties, but at heart they are blunt expressions of foreign policy showing an intention to project power. After some months, rather than face war with Britain as well as with the Confederacy and without the support of the French, President Lincoln ordered the release of the two Confederate diplomats and calm was restored. Had Britain then been what Vance nowadays calls *a random country,* no doubt the interpretation of the law of the sea and the mid-19th century equivalent of the US sanctions regime would not have been decided in our favour; but in the mid-19th century we were the premier naval and economic power.

The US was of course trying to do no more than Britain had done in the 18th century. The First League of Armed Neutrality was an alliance of European naval powers between 1780 and 1783 intended to protect merchant shipping against the Royal Navy's policy of unlimited search of neutral shipping for French contraband during the American Revolutionary War and Anglo-French War. According to one estimate, 1 in 5 merchant vessels were searched by the Royal Navy under this policy. By September 1778, at least 59 ships had been taken prize

– 8 Danish or Norwegian, 16 Swedish and 35 Dutch, as well as others from Prussia. They all protested but as the combined navies of the League's membership – that is Russia, Sweden (which ruled Finland) and Denmark (which ruled Norway), all of them countries that were neutral as between France and Britain and Britain and the United States - were smaller than the Royal Navy, Catherine the Great of Russia called it not so much armed neutrality as armed nullity.

To return to the 21st century, the Magnitsky amendments to UK legislation were widely welcomed in Parliament. Two statutes had 'Magnitsky' elements added to them: the *Proceeds of Crime Act 2002* and the Sanctions and Anti-Money Laundering Act (SAMLA) 2018. The *Criminal Finances Act 2017* amended the *Proceeds of Crime Act 2002* to expand the definition of *'unlawful conduct'* to include gross human rights abuse or violation. SAMLA includes gross human rights violation as a reason for imposing sanctions on a person or an entity. After the passage of the 2018 Act, the Government brought forward more detail on Magnitsky sanctions in the form of secondary legislation using the powers in that Act. But whereas we acted on our own in the 18th and 19th centuries, because we could, now we have to act in concert with other countries and international institutions and, as often as not, in line with the United States. Without those alliances our sanctions laws would have a greater symbolic quality than a practical one and, usually, if a person is designated here, they will have been designated by the EU, by the USA, and by other jurisdictions too.

Leaving aside events in Myanmar, the DRC, Venezuela, Iran, North Korea and other human rights abusing countries, there have been two major catalysts for the increase in UK sanctions in the last 15 years, Crimea and Ukraine. It began at a glacial pace post-2014 given the Russian conduct we were responding to, but following Russia's annexation of Crimea in 2014 the EU introduced sanctions against Russia which we, as an EU member state, implemented. To ensure that the UK continued to operate an effective Russian sanctions after we left the EU, the Russia (Sanctions) (EU Exit) Regulations 2019 were implemented under SAMLA and came into force on 31 December 2020 replacing the equivalent EU provisions. These regulations covered financial sanctions, including asset freezes, immigration measures, trade sanctions and enforcement powers. A second set of sanctions regulations, implemented in February 2022, broadened the definition of an "involved person" who could be designated by the Sec of State and thus sanctioned. In essence they expanded the definition of those individuals or entities who are or who have been involved in obtaining a benefit from or supporting the government of Russia.

The policy behind the sanctions was explained by the Government as follows:

"designations … will bring coercive pressure to bear against the Government of Russia to encourage it to cease actions destabilising Ukraine, and undermining and threatening its territorial integrity, sovereignty and independence"; "designations … will constrain the Government of Russia's ability to maintain its activities with regard to Ukraine. Many of the entities and individuals that could be designated under the amended criteria contribute financially to Russia's exchequer or provide resources to the Government of Russia"; "the amendment itself as well as designations made using it will send a strong signal of condemnation to Russia".

If you have applied to lift or ameliorate the conditions of a designation set by the Sec of State, you will have noticed that the court is not interested in whether the designation in any given case is effective so long as it is based on a sufficiency of evidence (which can include newspaper reports) and complies with the statute and regulations. It does not affect the outcome of the application that the designation of a particular person will actually have no influence upon Putin's designs on Ukraine. Even if the court knows that designating, for example, a very rich expatriate Russian or a family member will make no difference to the Russian military-industrial complex or to the Russian economy as a whole, (and let's not concern ourselves with the desire to send a strong signal of condemnation to Russia), it will not affect the outcome of the application. The courts leave foreign policy and the assessment of the national interest to government.

The Government announced the first new sanctions under the Sanctions Act in July 2020. They imposed asset freezes and travel bans on Saudi citizens alleged to have been involved in the murder of Jamal Khashoggi, the Saudi journalist murdered in the Saudi consulate in Istanbul. They also targeted Russian officials involved in the mistreatment of Sergei Magnitsky in jail. But in addition to SAMLA, resort can be made to the United Nations Act 1946, the Immigration Act 1971, the Anti-Terrorism, Crime and Security Act 2001, the Export Control Act 2002, the Counter-Terrorism Act 2008 and the Policing and Crime Act 2017. Sanctions Regulations may be made to introduce UK-specific measures or measures required by the United Nations Security Council or other international bodies. They often take the form of financial measures such as asset freezes, restrictions on access to financial markets and provision of financial services, directions to cease banking relationships or activities, and anti-money laundering provisions. Measures may also restrict or impose controls on immigration, trade, aircraft and shipping.

Over the last 15 years sanctions regulations have been politically uncontroversial. British politicians used to argue for and against sanctions against apartheid in South Africa. No one in Parliament would want to be seen to be in favour of the invasion of Ukraine, in favour of the murder of Magnitsky or Khashoggi, supportive of the Myanmar military junta or the authorities in Iran, and they aren't. Debates on the implementation of sanctions regulations, be they for human rights abuses or for invasions of neighbouring countries, are usually initiated by the Government at short notice and extend beyond 90 minutes only if there is a demand by a large number of MPs to be seen to be supportive of the sanctions. If there are complaints, they are procedural – not enough time, too short notice - and not about the substance, although occasionally some will say they do not go far enough. For the Government sanctions are a weapon whose effectiveness depends on acting in concert with other powers; for Parliament they are an opportunity for showing solidarity with our friends and the victims of human rights abuses or, depending on your level of cynicism, virtue signalling. For lawyers and the courts they are a foreign policy omelette we cannot unscramble, and for a DP they are confounded nuisance but not life-threatening. Perhaps for Putin, so long as China and India buy Russian oil, even at a discount, they are just noise that does not penetrate the Kremlin.

I regret to say, however, that absent gunboats sailing up the Congo or the Irrawaddy, absent human rights abusers ending up in international courts and jailed (and very occasionally they do and they are), absent the Russian economy totally imploding and real democracy emerging,

my fear, given the current US administration, and I regret this very much, is that *genuine justice requiring our moving beyond symbolic gestures to implement tangible, survivor-centred actions that reflect a true commitment to accountability,* is a policy aim that in too many cases is some way from its goal.

Magnitsky Sanctions as a Tool for Accountability for Human Rights Abuses

Natalia Kubesch
Legal Officer at Redress

Introduction:

- Thank you for inviting me to speak alongside such **distinguished panellist** today.

- Express gratitude many of panellist who have been very generous In offering pro bono support other the years – as I am sure you can all imagine, these are incredibly challenging times for civil society organisations specifically those working in international justice and we wouldn't be able to complete the work we do without your support.

- In my remark, I'll discuss **REDRESS' work on Magnitsky sanctions**, focusing on two key advantages of these tools in deterring and holding human rights abusers accountable.

- I'll also share relevant case studies and conclude with observations on current shortcomings and potential improvements to the UK's use of Magnitsky sanctions.

- **Introduction to REDRESS:**
  - For those of you who do not know us. REDRESS is an NGO that represents **survivors of torture worldwide** to help them obtain **justice** and **reparations.**

  - As part of our work, we use **targeted human rights sanctions** to prevent and seek accountability for human rights abuses. Where possible, we also aim to **repurpose the proceeds of these crimes as reparations** for survivors.

  - To date, we've submitted **evidence for sanctions designations** against individuals and entities involved serious human rights violations or corruption in regions like Xinjiang, Sudan, Russia, Iran, Myanmar, Lebanon and Nicaragua.

  - **Many of these have led to UK Designations, though some have not. [PAUSE]**

  - Additionally, we co-**chair the Global Magnitsky sanctions coalition,** representing over 300 NGOs advocating for accountability through targeted sanctions. We train NGOs in compiling sanctions dossiers, help them file them and advocate for improvements in the global use of Magnitsky sanctions.

  - While we often take a **critical stance,** we see ourselves as a **constructive partner** to the UK Government. We want to support the Government's efforts to hold perpetrators accountable, regardless of their position or country of origin.

- Likewise, we work **collaboratively** with the private sector and share the same goals of combatting illicit finance and uphold human rights, including due process and property rights protections.

- In remainder of my talk, I'll drawing on my experience at REDRESS to discuss how targeted sanctions can **prevent future abuses** and provide **symbolic relief** to victims by acknowledging their suffering.

- Let's begin with sanctions as a deterrent for future human rights violations. The idea is that **imposing economic costs** - through asset freezes and travel bans – perpetrators **may reconsider their actions.**

- Now admittedly, the evidence on sanction's deterrent effect is mixed: Despite a global uplift in sanctions, Russia continues its war in and Iran is still torturing political prisoners. However, we have begun to see some promising success stories in our work.

- Let me highlight two examples: one from Cambodia and another regarding the arbitrary detention of Russian opposition figure Vladimir Kara-Murza.

  - **Cambodia:**
    - Last year the UK Government **sanctioned alleged scam operators** in Cambodia involved in **forced labour and cyber fraud**. victims were **trafficked** into the region often under the false pretence of well-paid jobs and **forced to work in cyber fraud centres** that subjected to widespread abuses, including **torture**. This was quite an innovative use of sanctions by the UK, directly targeting violations with a **clear profit motive.**

    - This summer the US followed by sanctioning the **Cambodian senator and tycoon Ly Yong Phat** and several of his entities and hotels used for these scams.

    - While these sanctions may have zero effect on Yong Phat's assets, they can **impact his business relationship**s, in countries, such as Thailand. Partners will now be more **cautious in their dealings** with him. Sanctions **threaten his investment** in the West and any linked assets he holds in the global financial system.

    - However, most importantly, the Global Magnitsky label **undermines any illusion of legitimacy that** Yong Phat might have lent to the Cambodian ruling party**,** which has been com**plicit in torture and extrajudicial killings**.

  - **Vladimir Kara-Murza**

- Kara-Murza was detained in Russian on spurious charges of treason in April 2022, and sentenced to 25 years in prison for his anti-corruption activism and voacal criticism of the Kremlin's war in Ukraine.

- In response this detention, across the five jurisdictions, a total of 32 individuals were sanctioned for their involvement in Kara-Murza's case. Targeted individuals included Russian judges, prosecutors, law enforcement officials, and a so-called expert witness who all played a role in Kara-Murza's arbitrary detention

- The sanctions were notable not only for their multilateral dimension and responsiveness to a coordinated civil society campaign, but also for being the first time Magnitsky-style targeted sanctions were used solely on the basis of a single person's arbitrary detention.

- While much is unknown about the complex negotiations that resulted in the prisoner exchange and Kara-Murza's release, these sancitons likely played an important role in ensuring he was not elf tbehind.

- The multilateral sanctions were a vital step to building diplomatic consensus that Kara-Murza's case mattered and keeping international attention on him at a dangerous time. The sanctions put the US and partners on the record that his detention was arbitrary and a sanctionable human rights abuses, and that his situation was heightened priority for them. They generated additional media coverage, providing more opportunities to keep public attention and thereby bolstered other avenues for CSOs to strengthen the pressure campaign, including before UN bodies.

- This example leads me to my second point: sanctions can **provide symbolic relief for victims** and hold perpetrators publicly accountable by condemning those responsible.

- **Sanctions show State's readiness to act, signalling that certain actions "will not stand". If a sanction was able to convey recognition, acknowledgement, and a sense of justice for victims, it will have had real impact**

- To illustrate this, I'd like to share some anonymous statements from survivors of human rights violations in Iran.

- As some of you may know, after the death of Mahsa Amini in September 2022, UK and its partners-imposed sanctions on over 150 individuals and entities involved in the regime's brutal crackdown against protesters, many of whom were women.

- Working with partners in Iran, we asked a group of volunteers what the impact of these sanctions has been for them and their responses were telling:

- One political prisoner said **"the sanctions provided symbolic relief that the world acknowledges our suffering and offers a glimmer of hope that someone out there is trying to hold these officials accountable**"

- Another individual who had been arrested for participating in Iran's anti-government protests explained that the sanctions "demonstrate global solidarity supporting our fight".

- Finally, the mother of a student that went missing following the outbreak of the nationwide protests said "**every time such a sanction is imposed, I feel like my child's disappearance isn't forgotten – it's a sense of validation**.

- These statements, though just a small selection**, powerfully show how sanctions can fostering accountability, solidarity and a sense of justice**. Notably, these sanctions were among the **first to recognise the suffering of a single female victim** – Mahsa Amini – **highlighting the plight of women in Iran on the global stage.**

- However, sanctions are not a cure-all.

- They are just one tool in the fight against impunity for human rights violations.

And their application has significant flaws. I'll briefly address some of these briefly by way of conclusion:

- Firstly, the UK Governments tends to sanction countries or individuals from nations **it doesn't consider allies**. We see far more sanctions imposed on Syria, Iran, Russia and North Korea than countries like India, Pakistan, Egypt or the UAE, **despite credible reports of serious human rights violations in those nation**s. This selectivity can be viewed as **double standards** and risk undermining the legitimacy of the sanctions regime.

- Secondly, there is a lack of transparency in the Government's decision-making regarding sanctions. After submitting evidence, we receive no feedback and are simply **told the Government can't comment**. This is despite the fact that responsiveness to civil society has led to particularly impactful sanctions in the past and increases the perceived legitimacy of government efforts to address abuses and corruptions. While the Government has **published strategic priorities, they seem inconsistently applied**. For example, in the most recent sanctions strategy the Government claims to lead in using sanctions to combat conflict-related sexual violence. **Yet, we have seen no sanctions related to the horrific scale of such violence during the *ongoing war in Tigray.***

- Thirdly, lack of transparency is compounded by i**nsufficient oversight** of Government decisions, both through Parliament or other challenges, and **a court system that grants the Government broad discretion** in its sanctions assessment. **. With lack of transparency, civil society often feels like**

"sanctions privateers",– essentially guessing which cases align with foreign policy goals and are worth submitting on - **rather than consistently targeting the most serious human rights violations, no matter where they are based.**

- *On the flip sight lack of transparency, also impedes sanctions' ability to affect behavioural change as it is unclear what steps if any a sanctioned person can take to get delisted. While the Sanctions and Anti-Money Laundering Act included some protections for designated persons, including a requirement for the Minister to review designations every three years, these were removed via the Economic Crime Act 2022.*

- This leads me to the last point – but probably the most fundamental point – in the field of international justice, sanctions are quite literally facing a make it or break it point. Sanctions are extraoridnalry powerful which without appropriate protections in place can easily be abused to twart international justice processes – the elephant in the room are the US sanctions against ICC – to date only Kari Khan but are expecting a broader range next week which risk the very existence of an institution that is meant to ensure accountability for the most seirous crimes. To guard against this risk, we need international eladership by UK and EU to implement all tools available to support the Court and mitigate the risks posed by the abuses sanctions.

- To address these issues, the sanctions regime needs substantial reform, including greater information sharing with civil society, Parliamentary oversight and more transparent and consistent decision-making processes. This must be coupled with UK Government now seizing the opportunity to show leadership in the use of sanctions as a force for good.

- Magnitsky-style sanctions may be only one tool in the policy toolkit for supporting human rights and confronting corruption – but they are a tool that commands attention, has tangible impacts, raises needed awareness of the experiences of victims and survivors, and shines a stigmatizing light on the perpetrators. When used credibly and effectively, these sanctions can help make governments more accountable to their people and reduce the harms to human dignity and international security that happen when they are not.

Magnitsky Sanctions: A Powerful Weapon, Weakened by Inconsistent Implementation

Jonas Helyar
Advocacy Director at the Global Magnitsky Justice Campaign

Good morning, everyone!

It's a real privilege to join you all today.

My name is Jonas Helyar, and I'm the Advocacy Director of the Global Magnitsky Justice Campaign, led by Sir Bill Browder.

To give a brief summary of what we do at the GMJC, we campaign to hold human rights abusers accountable, advocate for the freedom of political prisoners, and press governments worldwide to adopt Magnitsky legislation.

This legislation as you all know, freezes assets and bans visas of human rights abusers and corrupt individuals. It's named after Sergei Magnitsky, Sir Bill's lawyer, who exposed massive corruption in Russia and paid the ultimate price for his bravery—dying in prison after being tortured for a year.

Our mission doesn't stop at legislation; we push governments to take action against specific cases of human rights abuses through the implementation of sanctions.

Since joining Sir Bill's team, I've focused on cases of arbitrary detention and state hostage-taking—issues that highlight glaring inconsistencies in how the British Government apply Magnitsky sanctions.

Today, I'll discuss two cases that exemplify this inconsistency in the UK's approach:

- Vladimir Kara-Murza—a British/Russian citizen and leading Russian opposition figure
- and Ryan Cornelius—a British businessman held in Dubai for over 17 years on trumped-up charges.

These cases reveal how the UK's selective application of sanctions undermines the effectiveness of its Magnitsky Act.

The Magnitsky Act:

The UK Magnitsky Act is a transformative piece of legislation, enabling the government to freeze assets and impose travel bans on individuals complicit in severe human rights abuses. Its potential lies in its flexibility, allowing for application across a wide range of cases.

Yet, this flexibility has in my eyes, become its Achilles' heel, as it has often been wielded as a geopolitical tool, and has not been used consistently in instances of human rights abuse, particularly in instances of arbitrary detention and state hostage taking.

One reason for this is that arbitrary detention as a concept does not Arbitrary detention is universally recognized as a grave human rights violation. The UN condemns it, international

law prohibits it, yet the UK lacks a firm standard to trigger sanctions in such cases. This isn't just a theoretical gap—it has real-world consequences that risk lives.

Vladimir Kara-Murza:
I will start with Vladimir Kara-Murza—a man of immense courage who worked alongside Sir Bill Browder to push for global adoption of the Magnitsky Act. He tirelessly opposed the Kremlin's corruption and its war in Ukraine, knowing full well the risks involved.

In April 2022, following Russia's full-scale invasion of Ukraine, Vladimir returned to Russia and went on MSNBC and CNN and called Vladimir Putin a war criminal and made the fatal '*error'* of calling the war in Ukraine, a war.

He was swiftly arrested and put in pre-trial detention. He was ultimately charged with 'high treason' and sentenced to 25 years in a strict prison regime.

Why was Vladimir arrested and put in prison, you may ask. Well, it was clear to everyone close to him that it was not solely for speaking out against Putin – after all he had been doing that for years – it was partly as a punishment for his work advocating for the adoption of Magnitsky Acts and for his relation to Sir Bill.

When Bill and the GMJC learned of his arrest, we thought first – how do we boost Vladimir's importance so that the Russians don't murder him like they did Sergei Magnitsky, and so many others. Our first step was to use the very legislation that Vladimir had helped pass – the Magnitsky Act – against those responsible for his imprisonment.

The logic was twofold. One, if governments around the world sanction the perpetrators behind his incarceration, then by definition they have to care about his wellbeing. And two, it shows the Kremlin that Vladimir is an important person and is too valuable for them to murder. Which bought us time to try and manufacture a prisoner exchange.

We began our sanctions lobbying, by trying to get the UK Government to adopt sanctions, given that Vladimir is a British citizen. However, the foreign secretary at the time – James Cleverly – was simply not interested in the case. While he released statements stating that the UK would not tolerate the poor treatment of its citizens, he was in no rush to do anything more.
We then made use of the most powerful tool in an activist's playbook – embarrassment.
We went to Canada and the United States and pushed them for sanctions.

Canada was the first to act. We convinced them to use the Magnitsky Act and in November 2022 they sanctioned 23 individuals. They followed up with an additional 15 individuals in August 2023.

The US soon followed suit and sanctioned 8 people.

We then returned to the UK and made the argument that "Vladimir is a British citizen, why is Canada and the US leading on this when he's a British citizen?" –

Finally, upon Vladimir's sentencing in April 2023, the UK sanctioned 5 people with the Foreign Secretary proudly stating that the sanctions sent "a clear message that the UK will not stand for this treatment of one of its citizens."

We in essence, had to shame them into acting.

While these sanctions were welcome, they came far too late.

The question we had at the time was why did it take public embarrassment from other nations to spur the UK into action? And, in light of James Cleverly's statement that the UK wouldn't stand for this treatment of its citizens, why does this resolve seem absent in similar cases?

Ryan Cornelius:

This takes me to another case that exposes the inconsistency in the UK's approach to sanctions in instances of state hostage taking – this being the case of Ryan Cornelius.

I won't go into too much detail on Ryan's case, as it is rather complicated and has been going on so long that it would take up all of my time. But to summarise:

Ryan has been arbitrarily detained in Dubai for over 17 years. But, unlike Vladimir, his plight has been met with deafening silence from the UK government. This is despite incredibly well documented evidence of an unfair trial, and inhumane treatment.

Ryan is being held on charges that the UN Working Group on Arbitrary Detention has deemed to be unjust. His original sentence of 10 years was extended by 20 years at the behest of Dubai Islamic Bank (DIB)—who used Ryan's imprisonment as leverage to seize his assets – both personal and business rendering his family as essentially homeless.

Despite turning 70 last year—a milestone that should have triggered clemency under UAE law—Ryan remains incarcerated due to DIB's influence.

His health is deteriorating; he was diagnosed with tuberculosis which went untreated for over a year, high blood pressure, and lingering effects from COVID.

Yet despite a huge amount of evidence that his detention is arbitrary and calls from MPs like Sir Iain Duncan Smith for sanctions against DIB officials, the UK government has taken no action under the Magnitsky Act.

Not a single sanction has been put on any individual whatsoever for their role in his incarceration.

Why? To all those involved, the answer seems painfully clear: money.

Unlike Russia—which has become a pariah state due to its invasion of Ukraine—the UAE is a lucrative trading partner for the UK.

Links include:

- Only recently, you may have seen that DP World has begun a billion-pound project to expand the London Gateway. Well, DP World is owned by Dubai World – and who sits on the board of that organisation? Mohamed Shaibani, the Chair of the Dubai Islamic Bank.

- Furthermore, there are ongoing negotiations with the Gulf Cooperation Council (GCC) over a multibillion-pound trade deal.

While this may sound like speculation, the alignment of financial interests and government inaction is hard to ignore.

This is a trend not just constrained to Ryan's case; it is something that can be seen across multiple cases in recent years.

APPG on Arbitrary Detention and Hostage Affairs
In my role at the GMJC, I helped to establish the APPG on Arbitrary Detention and Hostage Affairs.

This APPG is holding an ad-hoc inquiry into state hostage taking currently and have held a number of evidence sessions with the families and lawyers of individuals currently arbitrarily detained abroad.

The story from all of our evidence session has been clear – the British Government does not use sanctions policy consistently in these cases.

Jimmy Lai, Alaa Abd El-Fattah, Jagtar Singh Johal, Ryan Cornelius etc.

In none of these cases, has the British government sanctioned anyone. This is in the face of widespread human rights abuses in each which under the UK Magnitsky Act – is sanctionable.

Empowering Change:
The overarching point that I am trying to get across. Is that sanctions in Vladimir's case worked well. It heightened his importance and ultimately played a part in saving his life.

Ryan's case on the other hand, demonstrates a policy of inaction and wilful blindness on behalf of the Government.

These two cases highlight a pattern:

1. When it's politically convenient—as with Russia—the UK uses sanctions effectively; when financial interests are at stake—as with Dubai—it turns a blind eye.

This inconsistency undermines the very purpose of the Magnitsky Act. Sanctions should be a moral compass guiding foreign policy—not a bargaining chip traded for economic gain.

In my position as an activist, I believe that we must demand better from the Government. The UK has an obligation to protect its citizens abroad and uphold human rights universally—not selectively based on geopolitical calculations.

Consistency is everything.

Closing Call to Action
So, the question I will leave you with is:

1. What can we do to make the use of sanctions in cases of arbitrary detention more common?

The answer in my view is to allow Parliament to have more power to scrutinise the Government's sanctions.

If anyone here has ever watched Foreign Office questions in the House of Commons Chamber, you will see any time sanctions comes up in conversation – whether that be why the government has acted, or why it has not – the answer is always the same:

"we do not speculate on future sanctions designations."

This logic makes sense to an extent - you shouldn't show your hand before playing it for risk that when it comes to sanctioning someone, they've moved their assets.

However, I believe that there are methods to scrutinise the Government more on their inaction in certain instances.

I have been kicking around a policy recently, where a new Joint Committee should be created, made up of experts from the House of Lords – perhaps Lord Garnier would like to be involved – which accepts written evidence calling for sanctions on individuals/entities etc. the committee then assesses the validity of these claims, and if they are accurate, the committee can then recommend sanctions for the Government to enact.

The Government would continue to have ultimate say over sanctions and can choose not to – but they would have to justify their inaction in scheduled oral evidence sessions.

This would allow the Government to maintain control over its sanctions approach, which is important, but would allow a platform for proper scrutiny over government action vs inaction. A good model to look at to base this off, would be the US Helsinki Commission.

Conclusion:
To wrap up, what Vladimir and Ryan's case demonstrates is that the sanctions policy is not consistent.

The Government must use the tools at its disposal consistently to send a clear message in cases of arbitrary detention, that the UK will not abandon its citizens, and it will hold those responsible for their treatment, accountable for their actions.

Arbitrary detention is a crime against humanity—and Britain has the tools to combat it.

Thank you!

The Application and Limitations of Targeted Sanctions: Lessons from Practical Cases

Ben Keith
Barrister at 5 St Andrew's Hill

Introduction

This speech addresses three significant aspects of targeted sanctions regimes. Firstly, it examines cases where applications for sanctions with assistance from the organisation Redress and Hermitage have been unsuccessful, despite seemingly clear grounds for implementation under the Magnitsky regime. These cases demonstrate instances where targeted sanctions have failed to produce tangible impacts against perceived human rights abuses.

Secondly, it explores the concept of 'bad human rights sanctions'. This section considers how sanctioning mechanisms, whilst ostensibly designed to prevent human rights abuses and persecution, may be employed from an internationalist perspective by nations such as the United States to target individuals or organisations with whom they disagree politically rather than on genuine human rights grounds. This raises the concerning possibility that sanctions are increasingly being deployed against those with opposing viewpoints rather than for legitimate human rights purposes.

Case Studies: Failed Applications for Magnitsky Sanctions

The UAE Detentions

Two primary cases illustrate the limitations of the Magnitsky sanctions regime in practice. One of these, as Hermitage mentioned in their presentation, involves Ryan Cornelius. A comparable case concerns Zack Shahin, an American citizen. These cases share significant similarities: both individuals are detained in the United Arab Emirates on similar charges, though the UK and US administrations have responded somewhat differently, despite neither government imposing sanctions despite repeated applications.

Ryan Cornelius, a UK national, was a successful businessman in the United Arab Emirates who secured a substantial loan from Dubai Islamic Bank. The Chairman of this bank, Mohammed al-Shaibani, also serves as the Head of the Ruler's Court in Dubai. During a regime change, attempts were made to seize Mr Cornelius's business, resulting in Dubai Islamic Bank confiscating land valued at approximately half a billion dollars against which he had secured a loan. Subsequently, Mr Cornelius faced a fraud trial, was convicted, and received a ten-year custodial sentence, which he served in full.

We have consistently maintained that this represented a corporate raid orchestrated by Dubai Islamic Bank's owners to generate enormous profits for themselves. However, the more significant injustice occurred on the day of his scheduled release. The United Arab Emirates authorities demanded that he repay $500,000,000 allegedly owed to Dubai Islamic Bank,

despite the bank already possessing the land purchased with the loan. Upon failing to repay this sum, he received an additional twenty-year prison sentence.

This extended sentence was imposed under Article 37 of the United Arab Emirates Criminal Code, a new law with retroactive effect. At the time of Mr Cornelius's conviction, no confiscation regime existed that could result in additional penalties. By this stage, Mr Cornelius had been stripped of all financial resources and property, though his family had fortunately relocated to the United Kingdom. He remains incarcerated to this day. In 2022, we secured a finding from the UN Working Group on Arbitrary Detention that he was being illegally detained.[1]

Another UK national, Charles Ridley, faces a remarkably similar situation. He too was subject to a corporate raid, albeit from a different division of the Dubai government. He is likewise detained under Law 37 for failing to repay money allegedly taken, through the application of retroactive legislation.

Zack Shahin's circumstances are comparable. As a successful businessman and CEO of Deyaar, the UAE's second-largest real estate company, he worked closely with the UAE government until relations deteriorated and his business was seized. His situation was considerably worse than Ryan's; he was held incommunicado for 17 days, subjected to torture and mistreatment, denied food, water, sleep and sanitation facilities in Al-Awir Prison. He was coerced into signing confessions in languages he did not understand and denied both legal representation and consular assistance.[2]

Following his release and acquisition of his passport, he left the UAE and arrived in Yemen, only to be arrested on the runway by UAE police who forcibly returned him to the UAE to serve an additional sentence imposed after his return. On the day of his scheduled release, he received a further 20-year sentence, bringing his total to 41 years. He currently holds the unfortunate distinction of being the longest-serving American prisoner overseas.[3]

This provides additional context to what Hermitage discussed in their earlier presentation. We have sought to secure these men's release from Dubai through both diplomatic and legal channels. With assistance from the organisation Redress and Human Rights First in the United States, we have attempted to implement sanctions in both the United Kingdom and United States for our respective clients, targeting those named in Parliament by Iain Duncan Smith, including members of Dubai Islamic Bank and senior UAE politicians.[4]

As legal practitioners, we recognised that there was minimal likelihood of any government, whether Conservative or the current Labour administration, granting these sanctions. Our motivations were partly to maintain pressure on diplomatic negotiations, as neither man will be released through legal processes alone. Their freedom can only be secured through diplomatic means, despite the fact that, for instance, Ryan Cornelius has reached the age of 70 (beyond which Dubai law prohibits detention), yet he remains in custody approaching his 71st birthday.

We have publicised our sanctions applications and attempted to secure sanctions in both the UK and US, but none have been forthcoming. The evident explanation is that the UK desires to maintain relations with the UAE as a trading partner.[5]

The Problematic Nature of Human Rights Sanctions

The second aspect concerns problematic applications of human rights sanctions. Whilst Magnitsky sanctions are discussed as mechanisms targeting human rights abusers or corrupt individuals to exert pressure, effect political change, and halt abuses (and as the organisation Redress noted, they can be particularly effective in specific cases seeking concrete outcomes such as prisoner release), other regimes conversely impose sanctions on our politicians, lawyers, and activists merely for public criticism.

From 2021, China imposed sanctions on numerous UK politicians and academics for their comments regarding the Xinjiang situation and persecution of Uyghurs.[6] Those sanctioned included Iain Duncan Smith, Nusrat Ghani, Tom Tugendhat, Neil O'Brien, Tim Loughton, Lord David Alton, Baroness Kennedy, academic Joanna Smith Finley, and Sir Geoffrey Nice KC, who headed the Uyghur tribunal. They also sanctioned Essex Court Chambers, a major commercial chambers, for a report authored by them under Alison McDonald's leadership. Additionally, sanctions were applied to the China Research Group, the Conservative Party Human Rights Commission, and the Uyghur Tribunal.

These sanctions directly responded to public criticism of the persecution of Uyghurs and torture in the Xinjiang region. These sanctions remain in effect today. While these sanctions have not silenced them, largely because they are UK politicians, it creates a chilling effect when one nation can sanction parliamentarians of another for what we consider protected free speech.

This relates to the earlier question: Chinese authorities might argue this represents mere reciprocity. If Western nations criticise China, China will respond in kind and impose sanctions for such 'impertinence'. The significant human rights issues currently unfolding in Hong Kong, including Jimmy Lai's trial and the Hong Kong administration's attempts to prosecute Bill Browder as an accomplice to Jimmy Lai for exercising 'foreign influence', demonstrate that if we employ Magnitsky sanctions, we must recognise that hostile states will respond similarly, potentially creating uncomfortable situations.

A recent illustration emerged this week when the Russian parliament passed an amendment to their Foreign Agents Law, which requires any person or organisation receiving funding from outside Russia to register as a foreign agent. The new Russian legislation effectively criminalises criticism by journalists or NGOs, potentially classifying them as enemies of the state and subject to sanctions.

Finally, though time constraints prevent detailed examination, Ukraine maintains its own sanctioning regime. Beyond sanctioning numerous Russians, Ukraine has also sanctioned many Ukrainian nationals, including political opponents of the current administration. Former President Petro Poroshenko, for instance, faced sanctions imposed by the current administration, reportedly targeting political adversaries.[7]

Reference

[1] UN Working Group on Arbitrary Detention, Opinion No. 51/2022 concerning Ryan Cornelius (United Kingdom), https://digitallibrary.un.org/record/4004275
[2] The Times, "Dubai's forgotten prisoner: How an American executive vanished into the UAE's legal black hole," https://www.thetimes.co.uk/article/americas-longest-serving-prisoner-overseas-ryan-cornelius-dubai-uae-2v9n6tq7p
[3] UN Working Group on Arbitrary Detention, Opinion No. 7/2023 concerning Zack Shahin (United States of America), https://digitallibrary.un.org/record/4013843
[4] Hansard, "Detained British Nationals Abroad," House of Commons debate, 5 December 2024, https://hansard.parliament.uk/commons/2024-12-05/debates/ECA5EAC3-C9C6-4C67-9C81-D4ACF28B7323/DetainedBritishNationalsAbroad
[5] Politico, "Brexit Britain, UAE's human rights blind spot," https://www.politico.eu/article/brexit-britain-uae-human-rights-dubai/
[6] BBC News, "China sanctions UK MPs and groups over Xinjiang criticism," https://www.bbc.com/news/uk-56535571
[7] Reuters, "Ukraine imposes sanctions on ex-president Poroshenko," https://www.reuters.com/world/europe/ukraine-imposes-sanctions-ex-president-poroshenko-2024-03-25/

Modern Slavery, Human Rights Sanctions and the Proceeds of Crime Act

John Binns
Partner at BCL Solicitors LLP

Introduction

1. **By way of semi-autobiographical context: at King's for my degree back in 1992-1995, I was an idealistic law student interested in human rights. Nowadays I work in financial crime and advise clients who are subject to financial sanctions. Despite that, I still consider myself to be on the 'right' side of ongoing cases and debates that involve the interaction of crime, human rights, and sanctions.**

The Legal Background

The Proceeds of Crime Act 2002 (POCA)

2. The Proceeds of Crime Act 2002 (POCA) offers various routes for financial recovery from criminal conduct, including abuses of human rights, either with or without criminal convictions:

a. Parts 2 to 4, though misleadingly headed 'confiscation', are best understood as aiming for disgorgement of the benefit convicted defendants have obtained from crime.

b. Part 5 is about civil recovery (without convictions) of property that can be shown to have been obtained through unlawful conduct, with an increasingly important subcategory that enables summary forfeiture (in the magistrates' courts) of specific forms of property, including funds in bank accounts, which have been obtained through or intended for use in such conduct. Law enforcement agencies have made good use of powers to freeze accounts using such powers on the low threshold of 'reasonable grounds to suspect'.

c. Part 7 prohibits (as 'money laundering') dealings and arrangements that concern the proceeds of crime.

d. Part 8 concerns investigative powers (including Unexplained Wealth Orders).

POCA's Magnitsky Clause

3. In a twist to Part 5, the usual requirement to show that 'unlawful conduct' overseas was also unlawful where it occurred ('dual criminality') has been disapplied by a 'Magnitsky clause', albeit in an oddly specific way, where the property has been obtained through conduct that involves torture (or inhuman or degrading treatment (IDT)) of someone involved in (and because of their involvement in) investigating corruption or championing human rights.

Human Rights Sanctions

4. More usefully perhaps, the UK's sanctions regulations target the finances of those whom ministers have 'reasonable grounds to suspect' have been involved in conduct that would (if done by a state) amount to the most egregious human rights abuses in the calendar, equivalent to breaches of articles 2 (the right to life), 3 (torture/IDT), or 4 (forced labour). But importantly, sanctions have no 'end game', freezing funds on an indefinite basis but with no facility to obtain their permanent forfeiture.

Potential of the Current Law

Modern Slavery

5. How can these tools be used to combat modern slavery? Of the 3 types of abuses caught by human rights sanctions, modern slavery can be characterised as an economic crime, carried out for profit. That means POCA and/or sanctions can already be used to combat it. It also suggests we might think of ways to change those laws with a view to doing so more effectively.

The World Uyghur Congress Case

6. The Court of Appeal considered the use of POCA to combat modern slavery last year in a judicial review, brought the World Uyghur Congress (WUC) against the National Crime Agency (NCA). Broadly speaking, the WUC cited what the NCA and the courts agreed was compelling evidence that goods produced through forced labour in China had passed through supply chains to wholesalers and retailers in the UK. They then challenged the NCA to pursue their proceeds through Part 5 of POCA and/or the UK businesses involved through criminal cases under Part 7. The NCA and the High Court said that there were legal problems with pursuing either route, but the Court of Appeal disagreed, with the result that both are (in theory) available for use. But the NCA may still cite their limited resources, and/or the issues they may face in convincing the courts that the applicable thresholds are reached.

The Use of Sanctions

7. Might sanctions be the answer? The threshold for designating persons is the same as for summary freezing orders under POCA ('reasonable grounds to suspect'), but the power is that of the Foreign Secretary, with limited scrutiny from the courts. The assets frozen by sanctions are those of the designated person within UK jurisdiction, and not just those identifiable as the proceeds of the relevant conduct. As of now, there is no 'end game' that would enable the assets' permanent forfeiture (and issue that is under discussion in the context of Russia sanctions).

Some Ideas for Change

Corporate Disgorgement

8. For now, POCA's 'confiscation' (disgorgement) provisions require a criminal conviction. But it is not obvious why this should always be so, particularly where the conduct involved is egregious and/or the responsibility lies with a corporate offender rather than an individual. The advantage of a disgorgement (value-based) regime is that it need not identify particular assets, but can proceed on the basis that criminal conduct has resulted in proceeds with an identifiable value. The payment of an equivalent value can then be made, regardless of whether that payment uses the original ('dirty') benefit of the crime or a different ('clean') source.

Dual Criminality

9. Insofar as 'dual criminality' presents a barrier to pursuing the proceeds of modern slavery in civil recovery proceedings, the precedents of POCA's 'Magnitsky clause' and human rights sanctions suggests that the most egregious overseas breaches of human rights, including modern slavery, might be considered as 'unlawful conduct' regardless of whether they also breached local laws.

Sanctions and POCA

10. Fundamentally, the power to impose sanctions on a suspected perpetrator (or benefactor) of modern slavery is a useful tool that can and should be used in conjunction with the powers to obtain financial accountability against those perpetrators. But on the current system, this requires cooperation between different arms of government in the Foreign Office (which holds the powers to impose financial sanctions), the Treasury (which implements them) and the Home Office (via law enforcement). Better coordination could ensure that sanctions do have an 'end game', involving a judicial determination of whether the designated person has in fact been involved in the alleged conduct, what benefit has been obtained, and what should be forfeited or paid.

The Need for Due Process

11. What these discussions highlight is that a truly legal process for identifying suspects, freezing assets and deciding on permanent results must involve due process, and the involvement of appropriate (and different) agencies in each stage. For now, the problem with sanctions is that the laws are written and enforced not just by the executive branch of government but by a politician (the Foreign Secretary), with very little scrutiny by the legislative or judicial branches. That creates a problem with legitimacy insofar as opposing states can say (with justification) that they are subjective, political measures that have the character of 'rule by law' rather than 'rule of law'. Where the problem is serious enough to warrant creative measures, and the different arms and agencies of government can properly be brought to bear to tackle it, then the law can and should be able to rise to this challenge.

Sanctions and the Rule of Law

Guy Martin,
Head of International Law & Consultant at Carter-Ruck

Good afternoon, I am Guy Martin. I am Mr Kadi's solicitor, and I am a consultant in Carter-Ruck solicitors.

We first started acting for Mr Kadi nearly 30 years ago in 1995 when he and his fellow trustees of the charity he set up were accused by a London-based newsletter of involvement in a plot to assassinate the then President of Egypt, President Mubarak. That libel litigation was brought in the High Court in London and settled in May 2001 just a few months before the tragic events of September the 11th: Mr Kadi and his fellow trustees of Muwafaq were completely vindicated of the allegations published in the newsletter which agreed to pay a substantial six figure sum to them. The publishers undertook never to repeat the allegations and agreed to participate in an agreed Statement in Open Court retracting the allegation concerning the attempted assassination of President Mubarak of Egypt and apologising to Mr Kadi and his fellow Trustees.

At the end of May 2001, Mr Kadi could be forgiven for thinking that this was the end of his legal worries, at least for the time being. Not so: only a few months later, and only a few weeks following the shocking events of September the 11th, he was included in asset freeze lists as well as a travel ban by the US, the UK, the European Union and then the UN and -- following the UN -- all countries around the world. This was to be the beginning of 23 years of Mr Kadi's involvement in litigation including most importantly Mr Kadi's two actions before the Courts in Luxembourg.

The action taken by the UN and the freezing measures implemented were of the utmost seriousness because they were taken under what is known as chapter VII of the UN Charter. This is the section of the Charter which deals with military action and the like and imposes mandatory obligations on States to implement it.

No one could have predicted, back in October 2001, that the most receptive tribunal in terms of its willingness to consider the rule of law implications of Mr Kadi's predicament and the legal implications of his treatment by the international community would be the Court of Justice in Luxembourg.

No one could have foreseen that Mr Kadi's name would become not only famous but synonymous with the leading legal precedent on international law and European law in the field of sanctions, or that his European litigation would bring about groundbreaking changes in the UN process and UN listing system in the form of the creation by the UN of the post of UN Ombudsperson.

The reason this case is so famous is that it was the first time an EU court was looking at a UN-derived listing and that the UN as a result created the Office of Ombudsperson in response to criticism from the court about the lack of UN process. This was a massive change resulting from this case.

There is another reason this case is famous – it's about the relationship between an EU and a UN listing; the court applied all the same rule of law due process safeguards it had always applied to EU listings but this time to a UN-derived listing, and importantly (and controversially) said it would apply those principles to the EU implementation of a UN measure even though the EU member states were required by international law to implement the UN asset freeze.

It is a hugely important point for Mr Kadi that his case has brought about changes which have benefited not just him but others in a similar position who perhaps would have been less able, or less inclined, to endure the years of litigation he has gone through.

So, a word about Mr Kadi, the man: he is an architect, a prominent Saudi businessman and philanthropist. One of his proudest achievements is the establishment of Dar El Hekma College, one of the first private colleges **for women** in Saudi Arabia, which offers university level degrees based on the American model and in an English-language setting. Mr Kadi is committed to supporting education. He finds it very gratifying that many people in the audience here today are students.

The exact processes by which Mr Kadi's name appeared simultaneously in identical lists of 39 names published by the US and UK Treasury remain opaque. One thing that is clear is that the impetus came from the United States with the UK and EU and UN following suit based on the sketchiest of information. The listing process was reflected by the words of the General Counsel of the US Treasury at the time, David Aufhauser: Speaking several years after the event he referred to what he described as a "*call to action a week after the attack which meant that the conventional barriers vanished*". An executive order was quickly signed attaching a lowered legal standard to a broadened mandate, and then a parallel UN resolution gave it force worldwide.

"*It was almost comical*" he said, "*we just listed out as many of the usual suspects as we could and said let's go freeze some of their assets."*

That phrase "*almost comical"* first used 20 years ago has since then been echoed by US commentators in recent months. Refer to FT article about mobile phone group chat that was used to discuss plans for military attacks. Needless to say the senior Trump officials have responded to criticism with brazen defiance.

Whatever the position the designation of Mr Kadi in October 2001 was far from comical.

The US Treasury counsel Mr Aufhauser there uses the word "*lists"* and, in preparing for this panel discussion I have done some research on the use of lists as a means of for targeting individuals including a regime's political enemies. There are of course examples from recent history. I cite for example novels written in the last century at the time of Stalin by Solzhenitsyn or Arthur Koestler. There are also examples of the use of lists to identify and target political opponents in the Spanish Civil War. There is another more recent example from the USA, that of Senator Joe McCarthy: after three largely undistinguished years in the Senate, McCarthy rose suddenly to national fame in February 1950 when he asserted in a speech that he had a list of "*members of the Communist Party and members of a spy ring*"

who were employed in the State Department. McCarthy was never able to prove this sensational charge.

In Mr Kadi's case, in the 23 years since his initial listing no authority anywhere in the world has brought any criminal prosecution or indictment against him. Important and respected government authorities such as Switzerland have abandoned their investigations into him. And when I say "abandoned" I am referring to the exact word used by the Swiss which is the French word "abandonne". Yet despite this, the asset freezing measures and a travel ban which were purportedly preventative and temporary were allowed to remain in place for 13 years.

Mr Kadi has spoken of the effect on him personally of these measures. For my part I would simply restate the words of our distinguished former Supreme Court judge Lord Hope in one of the first judgments delivered by Supreme Court. See §60 of the judgment of Lord Hope (with whom Lord Walker and Baroness Hale agreed) in HM Treasury v Ahmed [2010] *"[T]he restrictions strike at the heart of the individual's basic right to live his own life as he chooses... It is no exaggeration to say ... that designated persons are effectively prisoners of the state. I repeat: their freedom of movement is severely restricted without access to funds or other economic resources, and the effect on both them and their families can be devastating"*.

I am also concerned about the quality and evidential strength of material relied on by the authorities. Quite frequently the listing authorities rely on press articles or internet pages referring to a person which have no basis in fact. Where the client has not complained about these they may well be taken as 100% accurate and relied on by listing governments. I think this emphasises the critical need for clients to take immediate action against publishers where inaccurate material is written about them. In the context of AI where AI is generating articles I think there is even more need to be vigilant about these kinds of misinformation.

Returning then to broad principles, the answer to all these issues is a strict adherence to the Rule of Law. At times of serious emergency, there is something to be said for the imposition of temporary restrictions for a limited period while investigations take place, and to allow them to take place. But in my view, these have to be strictly limited in time and on no account permitted to be allowed to continue for over a decade as they did in the case of Mr Kadi.

In the context of targeted sanctions imposed on an individual, what do we mean by the rule of law? Advocate General Poiares Maduro supported the annulment of the European freezing regulations on Mr Kadi. Repeating the words of the former President of the Supreme Court of Israel he said "*It is when the canons roar that we especially need the laws…. Every struggle of the state against terrorism or any other enemy is conducted according to rules and law…. There are no "black holes*". "

In bold language AG Maduro added that both the right to be heard and the right to effective judicial review constitute fundamental rights. He described it as *"anathema in a society that respects the rule of law"* for there to be any possibility that sanctions against an individual may be disproportionate or misdirected, and for the Court to have no way of knowing whether that is the case in reality. Immunity from review would constitute "*a significant derogation from the scheme of judicial protection of fundamental rights laid down by the EC Treaty" .*

How have sanctions procedures improved since 2008 when the first of the Kadi judgements of the ECJ was handed down? I think they have improved: one example is the statement by the United Nations dated 16 October 2024 headed "UN expert concerned at reported use of family ties as sole grounds for sanctions designations". This is a very welcome development.

But there are still three areas I cite by way of example where procedures are lacking

1. In the UK delegated legislation is still used to impose sanctions. Regulations are subject to the "*made affirmative*" procedure if they are non UN regulations and do not repeal revoke or amend any provision of primary legislation. This means they need retrospective parliamentary approval. I stress the word retrospective. The procedure raises concerns about democratic oversight owing to the long delays that can occur between the provisions coming into force and them being debated in Parliament.

2. While there have been improvements in UN procedures the Ombudsperson is a procedure only available to persons sanctioned under UNSCR 1267 and not any other UN regime. I think this is a major lacuna in the UN procedures.

3. It is still the case that persons are being listed on the basis of family connection only. Last month a UN expert urged the Council of the EU and the Government of Switzerland to review their imposition of sanctions on Aleksandra Melnichenko the spouse of a sanctioned Russian billionaire and to allow access to evidence used for her designation under restrictive measures frameworks.

Towards Criminal Punishment? The Nature of Global Human Rights Sanctions

Yifan Jia
PhD Candidate & Visiting Lecturer at the Dickson Poon School of Law at the KCL

As a criminal lawyer myself, the first time I saw these sanctions imposed on individuals, they struck me as very similar to criminal punishments.

When I explored the debate further, I found that all the sanctioning bodies—including the executive and judiciary across various jurisdictions—were making significant efforts to deny this similarity. The reason is clear: they seek to avoid extending the high level of human rights protections typically afforded to individuals facing criminal charges. At least, that seems to be part of the reason.

If you examine the justifications offered to support the claim that sanctions are not criminal punishments, they generally fall into two categories. One, used by EU courts, is that sanctions are preventive measures and therefore not considered punitive. The other, commonly cited in the US, is that sanctions are not meant to punish but to change behaviour.

However, if these are the arguments presented by sanctioning bodies, they don't actually refute the idea that sanctions resemble criminal punishments—in fact, they seem to reinforce it. This is because both prevention and behaviour modification are recognized functions of criminal punishment. You cannot simply dismiss a measure as not being a form of criminal punishment by pointing out that it only fulfils some of the functions.

That said, it may be overly broad to treat all targeted sanctions on individuals as a single category. Even when the measures themselves are identical, the purpose behind their imposition—or the context of different sanctions regimes—can lead to significantly different legal and conceptual conclusions.

Let's focus on the UK Global Human Rights Sanctions Regime.

The purpose of the regime is to deter and promote accountability—language that strongly echoes the justifications for criminal punishment. The repeated framing of sanctions as a tool to combat impunity further underscores their punitive character.

The discussion around whether targeted sanctions constitute criminal punishment in the UK differs from the debate in the EU. In the Court of Justice of the European Union (CJEU), the focus is on whether the sanctions are punitive. In contrast, the European Court of Human Rights (ECtHR) centres its analysis on whether the sanctions are criminal in nature.

Are these the same? I would argue that while the core arguments are quite similar, the approach taken by the ECtHR is more structured. This is because the Court applies an established set of criteria—the Engel criteria—to assess whether a measure falls within the scope of Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial.

In terms of sanctions, there are fewer cases in the ECtHR compared to the CJEU, as the latter has handled the majority of such cases.

However, with Brexit and the establishment of the UK's autonomous sanctions regime, sanctions in the UK must align more closely with the ECtHR's standards.

The Engel criteria, which guide the ECtHR's analysis, consist of three factors: the classification of the offence under domestic law, the nature of the offence itself, and the severity of the potential punishment.

The classification of an offense under domestic law is not the decisive factor. According to the Engel criteria, sanctions can be considered criminal if they either pertain to a criminal offense or if the severity of the potential punishment is significant enough to be regarded as a criminal penalty.

The severity of the punishment varies significantly from case to case. Therefore, the primary focus is on whether the sanctions are connected to criminal offences.

There are several factors to consider when assessing whether these sanctions are targeting criminal offences. First is whether they are generally regulated by criminal law. If we wish to impose sanctions on individuals based on these violations, we must interpret these human rights violations as wrongful acts. These wrongful acts in the UK sanctions may include murder, torture, and forced labour. They are criminal in nature.

Second, we need to look at whether they have a punitive or deterrent effect. These sanctions are primarily designed to address the Magnitsky case, which involves a one-time, isolated event that has already occurred. It is challenging to argue that these sanctions serve a preventive function. Moreover, because they do not target ongoing issues like armed conflicts or nuclear programs, it is difficult to assert that their aim is to change behaviour. Thus, punitive seems to be the only reasonable justification.

Thus, most of the sanctions under the UK global human rights sanctions regime should be considered as criminal in nature.

Kadi Case and the Rule of Law

（Mr Kadi was unable to attend the conference, but consented to share his prepared remarks）

Sheikh Yassin Kadi
Architect and Businessman

Good morning! I am Yasin Kadi. I am an architect and businessman, and my name has been unwittingly attached to the law of targeted sanctions.

I'm witness to a long struggle for the Rule of Law, and I'm very grateful to everyone who stood by my side. It is an undeniable truth that the absence, or dilution, of the Rule of Law is the main reason for all the injustices and suffering I have faced over the last 23 years.

There is a strong connection between peace and justice. The ancient 2 Muslim scholar Ibn Kather said: Justice is obligatory on every person, with every person, on every occasion. Justice is absolute. If we want to establish peace in this world we should promote equal justice and value the principles of democracy.

To explain about me: I was born in 1955 and am Saudi Arabian. I was educated at the Royal School in Jeddah. In my early 20s I started my own business in Jeddah in the fields of computers, catering, textiles and banking. In the early 1980s I trained as an architect in large engineering firm in Chicago. It was in 1990 that I developed a professional relationship with Khalid Bin Mahfouz who was at that time the leading banker in Saudi Arabia. I advised him on the introduction of Islamic banking products at National Commercial Bank, the oldest and largest bank in Saudi Arabia. I became an expert in the creation of different Islamic banking instruments.

As well as being very active in business throughout the 1990s I supported charitable projects throughout many countries in the world, including Sudan and the Balkans. It is a source of great sadness to me that it was my charitable projects that were used to justify my listing in 2001. I would have been better off had I spent money in a casino. 3 It was only a month after September the 11th that I was listed by the US and the UK in identical lists of 39 names, and a week later by the UN and the EU. These listings caused my life to be turned completely upside down and launched me unexpectedly into worldwide litigation which consumed my life for the next 23 years.

To say that the listings have had a profound impact on my life is an understatement. Aside from over a decade of litigation, I was effectively a prisoner of state and could not leave the Kingdom. This was a terrible blow, as previously I had spent more than 50% of my time travelling abroad. I regret more than anything that my situation came about because of the terrible events of 9/11 which was a tragedy for the American people and for the whole world, including all civilised Muslims. Civilised Islam of course has nothing to do with terrorism, terrorists do not represent us, and we should all join hands against it.

I am personally strongly opposed to terrorist activity in all forms. I consider those that support or participate in terrorism to be offensive to the Muslim faith and humanity in general and deserving of the most severe condemnation.

In the last 23 years there have been some unspeakably dark periods. 4 From my family's point of view, the listing caused immense worry and anxiety. For example, when I told them I may have to sell our house, but then I realised this was a hopeless plan because the proceeds would be frozen.

And of course, from my personal standpoint it caused mental anguish and suffering spanning many years.

From the business point of view, I was regarded as a pariah, because nobody was prepared to deal with me or even talk to me. There were times, for weeks on end when I felt unable to speak, even to my family, let alone my lawyers.

The first I learned of the allegations against me was not at the time of my listing but much later: because of my litigation claim in the High Court in London against UK Treasury my lawyers were handed a document sent by US Treasury to UK Treasury which the US Treasury claimed included details about me. This contained fundamental false statements concerning me, including that I have a brother, Omar Al-Qadi, who was allegedly a director of Mercy International-USA. As the US could so easily have discovered, I have no fewer than 6 sisters, but no brother.

As well as unjustified accusations by the authorities, I have had to endure a Tsunami of attacks in the media. I have been falsely accused, among other things, of investing in a company that was responsible for hacking into the computer systems of the Pentagon and White House to bring about the "operational collapse of the computer systems during the morning of 9/11". This unbelievable claim has been attributed to quote unquote "knowledgeable US intelligence sources".

Also, it is said that I engaged in money laundering with guess who: George W. Bush, (and I add between brackets that I never received any commission).

Even after my delisting, and even after the Swiss, Turkish, and other authorities abandoned their investigations against me, I have never been indicted in any country of the world. Despite this, the banks continued to persecute my family: my late uncle and his wife had their bank accounts cancelled by UBS, apparently after an official recognised their PO Box address as one of mine. Those accounts, which UBS closed, contained their life savings.

To finish up, we have seen that when people have the chance, they will choose democracy and human rights should then follow, but there have 6 sadly been cases where even democratically elected governments have been undermined by Western powers.

Having suffered through my ordeal, I am determined to commit whatever help I can to promoting the Rule of Law and to supporting events like this which is extremely important to me.