

Submission by Tony Kevin to JSCFADT “Inquiry into the use of targeted sanctions to address human rights abuses”

My name is Tony Kevin and I live at [REDACTED]. I am a retired former Australian senior diplomat with 30 years career service including postings to the former Soviet Union (1969-71) and in the Australian permanent delegation to the UN in New York (1974-76). My last posts were as Ambassador to Poland, Czech Republic and Slovakia (1990-94) and to Cambodia (1994-97). I retired from DFAT after thirty years’ meritorious service in 1998 at age 55. I have since written and had published six non-fiction books on various public interest topics, two of which were awarded writing prizes. My two most recent books were

“Return to Moscow” (UWA Publishing, 2027)

“Russia and the West – the last two action-packed years 2017-19” (self-published, 2019).

I continue to be as active as possible in the public discussion of foreign policy issues of concern to Australia as a sovereign country and UN member nation that supports an international rules-based order. I hope this late submission may be accepted.

I submitted views in writing and testified before the PJCIS in early 2018 on its reference to examine the government’s Foreign Interference Bills subsequently passed into law with amendments. I believe my submission and testimony contributed to that Committee’s advice to the Government and Opposition, which the Government and Opposition both accepted, to make the bills less draconian in terms of not requiring Australians to report under the foreign agents of influence reporting obligation their contacts to discuss policy matters with accredited foreign diplomats here. My testimony on that occasion is readily accessible in Hansard.

The JSCFADT has been asked to examine the use of targeted sanctions to address gross human rights abuses, having particular regard to:

1. The framework for autonomous sanctions under Australian law, in particular the Autonomous Sanctions Act 2011 (Cth) and the Autonomous Sanctions Regulations 2011 (Cth)
2. The use of sanctions alongside other tools by which Australia promotes human rights internationally
3. The advantages and disadvantages of the use of human rights sanctions, including the effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses
4. Any relevant experience of other jurisdictions, including the United States regarding their Global Magnitsky Human Rights Accountability Act (2016)

5. The advisability of introducing a new thematic regulation within our existing Autonomous Sanctions Regime for human rights abuses.

I offer the following comments under each term of reference which I would be pleased to expand upon further in person, if invited by the Committee to do so:

Under the term of reference 1, “The framework for autonomous sanctions under Australian law, in particular the Autonomous Sanctions Act 2011 (Cth) and the Autonomous Sanctions Regulations 2011 (Cth)”, I appreciate that these laws are now in place since 2011 and that they have occasionally been used at our Foreign Minister’s discretion in particular situations, e.g., in the case of Syria. I appreciate that the train has left the station on this: I would like however briefly to list why I would have opposed these laws and advised against them at the time, because my views are relevant to the present Committee reference.

Sanctions imposed by powerful countries individually, or by groups of likeminded countries, against particular countries or selected individuals from those countries, if not authorised under UN Security Council resolutions, violate international law and commonly accepted international practice which proceeds from a basis of sovereign independence and mutual respect for states’ sovereignty.

Sanctions are an intermediate step between peace and war. They inevitably worsen relations between the countries in question, both proponent and target.

Such strong measures should in my view only be imposed when the international community as a whole, acting through its established peace and security mechanism the UN Security Council, has authorised them. This was one of the bitter lessons of World War Two. Aggression and crimes against humanity by any country or group of countries can only be deterred, and where necessary militarily opposed, by collective international security action, including sanctions or the threat of sanctions.

This is what the UNSC is for, and why great powers in the UNSC have the veto power as Permanent Members. There can be legitimate argument about reforming the membership of the Permanent Five (currently US UK France China and Russia). I believe there should be no argument about the principle that only the UNSC should have authority to approve collective action against any country deemed to have acted aggressively and/or gravely violated human rights under the UN Charter.

It has become common practice since the late 1980s by groups of ‘likeminded’ Western countries or ‘coalitions of the willing’ to threaten action or to take action, including economic sanctions and/or military action, against countries they have deemed to be a threat to world peace and/or to have gravely violated human rights. Such actions by likeminded Western countries have only been taken against countries assumed to be weak, not against powerful countries. Such actions by like-minded countries, taken outside and without the support of the UNSC-based global system of collective security, have sometimes led to regime change in targeted countries. Examples are Kosovo in the former Yugoslavia, Libya, and Iraq.

My observation of US-led sanctions against Russia since around 2007 leads me to the following conclusions. The Magnitsky sanctions laws were passed by the US Congress in a climate of extreme hostility and suspicion towards the Russian Government led by President Putin. Specialist interest groups were able to drive US policy in anti-Russian directions, to the detriment of international

detente and peace and security. The sanctions weapon was again resorted to by the US and its Western partners at the time of the overthrow of the elected Ukrainian government by a Western-supported coup in Kiev in 2014, the subsequent referendum decision in Crimea to exit Ukraine and seek entry into Russia, the ongoing civil war in Eastern Ukraine, and the still unexplained shootdown of MH17 over Eastern Ukraine by persons unknown.

The operation of Western sanctions against Russia and individually named Russians has corrupted and soured the conduct of normal East-West diplomacy since 2007, and pushed Russia towards estrangement from neighbouring Europe and towards a closer strategic and economic alliance with China. The sanctions against Russia have had no other discernible effect on Russian state actions or on its observance of human rights at home. This proud nation has made abundantly clear that it will not be dictated to or bullied by any country or group of countries.

China, an equally proud and independent nation, takes a similar position in response to any threatened Western-led sanctions.

In general, sanctions outside the UNSC threaten international peace and security, by creating conditions conducive to inflamed relations and risk of outbreaks of war; we see this now in the cases of Iran and Venezuela. US-led sanctions against Iran have brought war in the Gulf dangerously closer.

Sanctions outside the UNSC threaten global systems of trade and investment and the global cooperation institutions that support these global systems. It is a vital Australian interest to support such global cooperation.

We see now in the case of dangerously worsening US- China trade relations, that the world risks 'decoupling' into a US and European Community - centred trade and investment region, and an Asia-centred Eurasian region led by China and Russia, leaving Australia in a dangerously vulnerable international situation.

Sanctions outside the UNSC system often have grave unintended consequences of causing serious human rights abuses in themselves, e.g., the complete destruction of the Libyan state and the narrowly averted destruction of the Syrian state, both creating huge casualties and huge numbers of refugees. The current US-led sanctions against Venezuela and Iran are having a serious impact on the public health services of these nations. So-called humanitarian exceptions do not work and simply invite corruption, as Australia's experience of UN-based sanctions against Saddam's Iraq showed in the 1990s. Profiteers made money while sick Iraqi children died for lack of essential medicines.

Under terms of reference 2, 3, 4 and 5, I offer these further comments.

I support the views as I understand them of DFAT (submission 63) and the Australian Law Council (submission 99) to the effect that the Foreign Minister of Australia should retain maximum policy flexibility discretion at her discretion, to consider the use of targeted sanctions against states or individuals within those states, in the context of Australia's overall foreign policy objectives and the various instruments available to Australia to seek positively to influence other countries' behaviour (through diplomatic dialogue and persuasion, and/or activity in the UN Human Rights Council, etc).

For example, no Australian Foreign Minister would responsibly impose sanctions on human rights grounds against our allies the US and UK, although both countries show examples of grave human rights violations, e.g., the UK Government's current harsh and abusive treatment of Julian Assange in

Belmarsh Prison. in the US's harsh and cruel recent treatment of Chelsea Manning and Maria Butina, and in general US grave violations of asylum-seekers' and undocumented immigrants' and their children's human rights.

Australia itself could be a target of human rights-based autonomous sanctions imposed by other governments for its current cruel treatment of asylum-seekers in detention which violates UN human rights standards.

Countries like Russia and China that put a high value on respect for national sovereignty would not impose such autonomous sanctions against Australia. Other countries might, if autonomous sanctions became accepted international practice. Fortunately this seems unlikely.

The selective application of autonomous sanctions on human rights grounds gives rise to huge anomalies and inconsistencies. Why should the Syrian or Iranian governments be sanctioned on human rights grounds, but not the Saudi Arabian Government? Why, when Australia would not risk sanctioning China over alleged human rights violations in the Uighur territories of China, are we ready to take part in US-led sanctions against smaller target countries, outside the UNSC system ? Does this not throw the sanctions instrument into disrepute? Does it not also expose Australian Governments to accusations of hypocrisy and double standards?

I agree with para 41 of submission 99 from the Law Council of Australia:

"It is also possible that taking action on human rights violations may also be considered to be contrary to Australian Government policy. This is particularly the case with respect to violations by powerful persons in States on which Australia depends to achieve broader economic, trade or foreign policy outcomes. Individuals may also be involved in gross human rights violations which are localised in scale, or are far removed from Australia's key foreign policy interests. As such, they may not be considered to meet the relevant definition and thresholds above."

I agree with paragraphs 19-21 of the DFAT submission:

"19. Sanctions are one of the tools available in Australia's 'toolbox' of measures to support its commitment to advance and protect human rights globally, as outlined in the 2017 Foreign Policy White Paper. The ability to impose sanctions on human rights grounds enables Australia to take quick, decisive action to signal its concern in response to egregious or systematic human rights abuses. Having access to a broad suite of tools, including sanctions, enables a scaled and calibrated response to situations of international concern, by reference to effectiveness in achieving positive human rights outcomes and bilateral and regional equities

20. Whether sanctions are the most appropriate mechanism for responding to a situation of international concern will depend on the particular circumstances. In some cases, different measures may be more appropriate or have more significant impact. Other tools include: making bilateral representations; working with countries to advance and protect human rights through development assistance, humanitarian support and technical cooperation programs; making recommendations through the UN Human Rights Council Universal Periodic Review process; making national statements, or leading or supporting joint statements or resolutions in the Human Rights Council or other United Nations fora; and reducing certain forms of bilateral engagement (e.g. senior

political contact or military exercises). Such tools can be deployed in combination as part of a broader strategy, and their effectiveness may only become apparent over a longer term.

21. While sanctions are an important tool for responding to situations of international concern, it is important to ensure that they are not imposed in a way that undermines Australia's relations with other countries such that Australia does not have the ability to influence and effect positive change. For example, in some circumstances the imposition of sanctions may make it more difficult for Australia to achieve its human rights objectives by limiting avenues of engagement on human rights issues."

I conclude that the Foreign Minister of Australia should continue to have the maximum discretion afforded to her under the present autonomous sanctions laws and regulations, and that she should not face additional constraints on her freedom of action as a result of the present reference.

Finally, it should not be inferred from the above argument that I do not care about human rights violations in other countries outside Australia. Obviously there are particularly egregious human rights violations in particular countries at particular times that should be challenged. But I do not see the present conduct of the present governments of China, Russia, Venezuela, Iran or Syria as coming within this category. I note that Australia is silent or virtually so on grave human rights violations in some other countries e.g., Saudi Arabia.

I believe that given good will and proper international diplomacy, the UN Security Council rules and mechanisms can be made to work in the case of real, proven, cases of genocidal violations of human rights. Such was the case in respect of the Rwanda genocide.

The existing P5 veto powers protect our world of sovereign states from being ganged up on by any aggressive powerful countries or groups of countries. The UN Security Council has not failed: it is there to do its job of opposing aggression and even grave human rights abuses within countries, when the agreement or abstention of the five Permanent Members is there.

Thank you for considering listing this submission in Committee Hansard. I would be pleased to speak further on any aspect of it.

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