

Hon. Irwin Cotler, MP, PC, OC

A unique opportunity for action

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The great Soviet dissident Andrei Sakharov once said to me: “I do not know what will help the cause of human rights; I do know that it will not be helped by silence.” In that spirit, we all have an obligation to speak out against human rights violations wherever they occur, to stand in solidarity with victims, to remember publicly their struggles and sacrifices, and to assure human rights defenders that they are not alone.

Yet, as important as it is to raise awareness, words alone can often seem like a maddeningly ineffectual response to repression, unjust detention, torture and death. Over time, they can certainly have a significant cumulative impact, shaming and pressuring perpetrators into changing course, but expressions of concern or condemnation work slowly and are – in and of themselves – unlikely to bring offenders to justice, even if the repressive behavior eventually stops.

In Syria, for example, repeated international condemnation has not put an end to over two years of atrocity that is only expanding in scale and scope. Thousands are being killed each month, millions are displaced, and as the number of victims increases, the number of op-eds, communiqués, and non-binding resolutions increases as well, and to little effect. I have written several of those op-eds myself, and I have made many statements on the subject in the Canadian House of Commons, but I have no illusions about the extent to which they have an immediate or direct impact.

In Darfur, after years of rallies and protests and even indictments by the International Criminal Court, the survivors of the genocide remain largely displaced and dispossessed, and those responsible for it have not faced tangible consequences of any kind. In fact, Ahmed Haroun – a former Sudanese minister and one of the men charged by the International Chamber of Commerce (ICC) – was appointed by Sudanese President al-Bashir – himself indicted by the ICC – to lead an investigation into the very massacres he orchestrated. Again, I was one of the many who spoke out and attended demonstrations, fully aware that our condemnation would have to be matched by direct action if the genocide was to be stopped and the perpetrators punished.

In many such cases, the arguments against intervention are similar: the risk of escalating the conflict, the danger to our troops should we intervene militarily, the possibility of aggravating the suffering of civilian populations, the difficulty of achieving multilateral consensus, and a general reluctance to infringe on the sovereignty of other states, though claims of sovereignty cannot immunize governments from being held to account for their human rights violations. For these reasons, the international community regularly opts for the relative inefficacy of words when faced with grave violations of human rights.

However, with respect to recent and ongoing Russian abuses – and especially in response to the detention, torture and death of Sergei Magnitsky, and the subsequent cover-up – we have a unique opportunity to take consequential action against human rights violations and violators without raising the usual concerns. In this case, individual countries – and regional bodies – are capable of implementing specific, concrete measures that will advance the cause of human rights in Russia by imposing meaningful penalties on perpetrators and thus deterring such abuses in the future, all without complex international negotiations, without military force, and without trespassing on Russian sovereignty.

It is therefore incumbent upon us to do so. While the Russian government may regard its justice system – and its violations of human rights – as a matter of “domestic jurisdiction”, other states may set their own immigration and banking policies as they see fit. Accordingly, asset freezes and visa bans have already been implemented in the United States with the US Magnitsky Law, but their effectiveness depends heavily on the degree to which they are internationalized. For the US law to have the maximum impact, it must become

part of a coordinated global effort in which legislative means are complemented by inter-parliamentary cooperation, governmental and intergovernmental action, juridical remedies, and public awareness campaigns.

To begin with, we must acknowledge that human rights violations are always of global concern, and in fact, many countries have already been directly drawn into Russian human rights violations, however unwittingly. Last fall, a Russian man who had been cooperating with Swiss authorities and corroborating several of Sergei Magnitsky's accusations, was found dead in the UK under mysterious circumstances. Switzerland is one of five countries – the others are Lithuania, Latvia, Cyprus, and Moldova – that have opened money-laundering investigations related to the fraud uncovered by Magnitsky, and it appears that the ill-gotten funds may have also been sent to Austria, Finland, and Hong Kong.

Indeed, the most important way in which the international community is necessarily involved in the criminality of Russian oligarchs is that the proceeds of their crimes are stored and spent beyond Russia's borders. In addition to depositing their money in foreign banks, the perpetrators vacation at foreign resorts, send their children to foreign schools, and do business with foreign companies.

Clearly, therefore, this is not simply a domestic Russian matter, and it is precisely the international scope of Russian corruption – and of the human rights violations that, in the Magnitsky case, have been integral to the criminality and cover-up – that should empower the international community to deliver a concrete and consequential legislative response. Despite the impunity with which Russian human rights abusers operate at home, we can impose meaningful punishment and remove much of the incentive for their crimes by denying them the ability to travel and trade around the world.

The US Magnitsky Law thus constitutes an auspicious first step, but it is only that. As long as the rest of the world continues to indulge Russian offenders, the impact of the US law will be restricted; the offenders may be inconvenienced, but they will simply holiday on the French Riviera instead of Miami Beach. On the other hand, if other countries enact similar measures, the offenders' ability to use their illicit funds will be severely curtailed.

Moreover, as an increasing number of jurisdictions declare themselves off-limits to Russian violators of human rights, not only may Russian oligarchs

be deterred from committing such violations, but potential whistleblowers within Russia may be emboldened by the tangible support of the international community, which may in turn serve as further deterrence. Thus, Magnitsky-style laws can be part of a virtuous cycle that will ultimately help Russia to police itself.

On the parliamentary front, it is encouraging that legislators around the world have spoken out against Russian corruption and the violation of Sergei Magnitsky's human rights. Last fall, the European Parliament voted overwhelmingly to recommend visa sanctions and asset freezes against the perpetrators; this past March, ten French parliamentarians published an open letter condemning Magnitsky's Kafkaesque posthumous trial; and in December 2012, I was proud to be one of 20 parliamentarians from 14 countries who formed the Justice for Sergei Magnitsky Inter-Parliamentary Group. Each member of the organization is seeking to make progress on the issue in his or her own country, and to pressure the Russian government to finally hold the perpetrators accountable. In Canada, our Parliament's Foreign Affairs Subcommittee on International Human Rights has held hearings on the matter at which Bill Browder testified along with Russian opposition-member Vladimir Kara-Murza. I have also proposed a bill that would enact similar measures to those contained in the US law, and I have formally asked the Canadian government to adopt such measures without delay.

Indeed, governments are empowered to address Russian human rights abuses in a way that individual legislators are not. The Canadian government, for example, could fast-track our own Magnitsky legislation, employ administrative remedies such as seizing assets even in the absence of a specific law, or explicitly announce that it will apply existing immigration laws – which bar those who violate human rights from entering Canada – to Russian officials complicit in the Magnitsky affair. In Europe, the German Justice Ministry has recently declared that it will reject Russian attempts to use Interpol to intimidate Bill Browder, and the Norwegian Foreign Minister has called for the matter of sanctions against implicated Russian officials to be raised at the UN Security Council, as well as at the Council of Europe and the OSCE. In this vein, governments around the world should be raising the issue in both bilateral discussions with Russian representatives and in international forums.

At least one international forum – the European Court of Human Rights (ECHR) – is already dealing with the case in the form of a complaint filed

against Russia by Sergei Magnitsky's mother. Russia is a contracting state of the ECHR, having ratified the European Convention on Human Rights in 1998. Russia has also ratified the International Covenant on Civil and Political Rights, and the international community should take its cue from Magnitsky's mother and seek to enforce Russia's international obligations. This can be done through, for example, treaty monitoring provisions such as the Human Rights Committee under the International Covenant on Civil and Political Rights, Russia's responsibilities under the Universal Periodic Review of the Human Rights Council, and the provisions of the Helsinki Final Act, which include "the right of the individual to know and act upon his rights".

Finally, in addition to the internationalization of these legislative, parliamentary, governmental, intergovernmental, and juridical efforts – indeed, as a catalyst for them – we must not neglect the need to increase public awareness of the Magnitsky case and of Russian abuses more generally. The award-winning documentary *Justice for Sergei*, which has been screened at festivals from Mumbai to Vancouver, can serve as an important part of bringing the case and cause of Sergei Magnitsky to the forefront of public consciousness on a global scale. Indeed, while awareness alone is not enough, the importance of calling attention to continuing Russian abuses – and of calling out officially Russia's posthumous anti-Magnitsky propaganda as the self-serving, obfuscatory calumny that it is – is not to be minimised. The Russian government's threats and misinformation must be met with a clear, principled, and forceful response.

Regrettably, Russian threats have recently proven effective at derailing legislative action, and the international community must unite its efforts to ensure that no individual country will again be bullied into backing down. The Irish legislature, for instance, had been studying a substantive motion that would have enacted sanctions against those complicit in the Magnitsky case. After spurning three invitations to attend hearings, the Russian ambassador sent a letter that – for the first time – overtly linked the passage of Magnitsky legislation to a specific threat, namely prohibiting Irish adoptions of Russian children. The Irish parliament subsequently watered down the motion and removed its coercive aspects.

Previously, Russia had responded to the US Magnitsky Act by banning American adoptions and ceasing cooperation with the US on a number of

fronts, although without explicitly referring to these measures as direct consequences of the legislation. As well, countries in Eastern Europe may fear that Russia will cut off gas exports or internet service in retaliation. However, rather than be intimidated by the Russian reaction, the international community should be buoyed by it. Its swiftness and severity make clear that the measures passed in the US – and those being contemplated elsewhere – can have a meaningful impact on Russian officials.

Moreover, Russia's response only serves to underscore the importance of internationalizing such efforts. Small countries acting on their own are susceptible to Russian intimidation; as disappointing as Ireland's reversal was, it would indeed have been impressive for one small country – alone in Europe – to take on the Russian government. Norway has also recently expressed similar recalcitrance with respect to imposing unilateral sanctions. A global movement, on the other hand, would be much more difficult for Russia to counter with petty threats. Supranational organizations such as the European Union or the OSCE are particularly apt venues for these kinds of measures, whereas the United Nations Security Council will not avail for substantive action – as the Norwegian government has suggested – because of Russia's veto. It is therefore important that individual countries move forward with bold, principled legislation, each country making it easier for the next to do the same, while engaging in intergovernmental and inter-parliamentary cooperation and consequential action.

Ultimately, nations that value human rights and the rule of law must engage on the Magnitsky file and enact Magnitsky Laws, or be exposed as having far less concern for these noble principles than our usual rhetoric would suggest. In this instance, there is no need for military force, no question of infringing on the sovereignty of an independent state, and no need for deal-making at the UN with world leaders of questionable repute. Given the absence of the customary excuses for not intervening or responding to human rights violations, inaction can only be explained by a lack of will.

Sakharov encouraged us to speak out in favor of human rights while we tried to determine what more could be done. In this case, we know precisely what to do; words, therefore, are no longer enough.