

# IN MEMORY OF SERGEI MAGNITSKY: A LAWYER'S ROLE IN PROMOTING AND PROTECTING INTERNATIONAL HUMAN RIGHTS

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## ABSTRACT

Private practitioners can, and should, play a larger role in the promotion and protection of human rights through their representation of clients and the standards to which they hold themselves professionally. Since the United Nations' introduction of international human rights concepts to the world community, we, as a global community, have struggled to find ways to enforce the rights we have sworn to protect. International and domestic enforcement mechanisms are limited in their ability to protect the rights of individuals who are outside the jurisdictional reach of those laws. In response, members of the international community developed and deployed—and are continuing to develop and deploy—new alternative enforcement strategies, many of which target transnational companies. Lawyers who represent transnational companies must recognize the latent liability international human rights violations pose to their clients' businesses. Further, lawyers must counsel their clients on how to identify and mitigate (or avoid altogether) lurking human rights violation risks. In an effort to facilitate this outcome, bar

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associations and professional legal organizations have begun tackling human rights issues through direct advocacy and educational efforts, and by considering amendments to Rules of Professional Conduct. By raising awareness of international human rights issues among members of the legal profession, not only will attorneys provide better counsel and advocacy for their clients, they will also be working to create a more just world.

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## I. INTRODUCTION

The importance of, and the role attorneys can play in, promoting and protecting international human rights can best be demonstrated through the deplorable treatment of Russian

attorney Sergei L. Magnitsky at the hands of his own government. The treatment of Sergei Magnitsky serves as a shocking illustration of the position attorneys occupy, and the ability they possess to raise awareness of corruption and abuse, as well as the grave injustices visited upon victims of human rights violations.

Sergei Magnitsky was a Russian tax attorney who uncovered a tax fraud embezzlement scheme linked to the Russian government.<sup>1</sup> The scheme was perpetrated against investment fund Hermitage Capital Management and its London-based hedge fund manager William F. Browder, who at one time was the largest portfolio investor in Russia.<sup>2</sup> Using stolen Hermitage Capital Management documents, certain Russian Interior Ministry officials, and others at their direction, filed tax refund claims amounting to \$230 million in an attempt to claim refunds on alleged tax overpayments made by Hermitage Capital Management.<sup>3</sup> After Magnitsky uncovered the tax scheme, he went to the authorities with this information. Magnitsky was then arrested by Interior Ministry officials, who claimed he had evaded paying taxes and embezzled money. Magnitsky was held without bail on charges of assisting in a \$17.4 million tax fraud.<sup>4</sup>

In prison, Magnitsky was subjected to subhuman treatment. He developed abdominal pains, was refused medical treatment on

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1. Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, § 402, 126 Stat. 1496, 1503 [hereinafter Magnitsky Act]; Oliver Bullough, *The Last Days of an Honest Man*, N.Y. TIMES: LATITUDE (Dec. 5, 2012, 7:54 AM), <https://latitude.blogs.nytimes.com/2012/12/05/a-play-about-the-russian-lawyer-sergei-magnitsky-hits-london/>.

2. Magnitsky Act, *supra* note 1; Andrew E. Kramer, *Turning Tables in Magnitsky Case, Russia Accuses a Nemesis of Murder*, N.Y. TIMES (Oct. 22, 2017, 7:54 AM), [https://www.nytimes.com/2017/10/22/world/europe/russia-sergei-magnitsky-william-browder.html?\\_r=0](https://www.nytimes.com/2017/10/22/world/europe/russia-sergei-magnitsky-william-browder.html?_r=0).

3. Magnitsky Act, *supra* note 1; Bullough, *supra* note 1; David Meyer, *The U.S. Investor Behind the Magnitsky Act Was Arrested in Spain on a Russian Warrant*, FORTUNE (May 30, 2018), <http://fortune.com/2018/05/30/bill-browder-arrested-spain-interpol-russia-magnitsky-act/>.

4. Magnitsky Act, *supra* note 1; Bullough, *supra* note 1; Miles Parks, *Businessman Paints Terrifying and Complex Picture of Putin's Russia*, NPR (July 28, 2017, 1:12 PM), <https://www.npr.org/2017/07/28/539802914/businessman-paints-a-terrifying-and-complex-picture-of-putins-russia>; Ellen Barry, *Russian Officials Receive Blame in Lawyer's Death*, N.Y. TIMES (July 6, 2011), <https://www.nytimes.com/2011/07/07/world/europe/07russia.html>.

multiple occasions, and was eventually beaten to death.<sup>5</sup> After Magnitsky's death, a Russian report concluded that the investigation into Magnitsky's alleged crimes, conducted by the Interior Ministry officials who Magnitsky had accused of embezzlement, was tainted by "obvious conflict[s] of interest."<sup>6</sup> The report also concluded that while in prison, Magnitsky was "completely deprived of medical care before his death" and ultimately subjected to "inhumane and humiliating" treatment.<sup>7</sup>

Magnitsky's treatment and the circumstances surrounding his death sparked a global response. Due in part to Browder's unrelenting advocacy, the United States passed the Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 ("Magnitsky Act").<sup>8</sup> Although the stated purpose of the Act was to establish normal trade relations with Russia,<sup>9</sup> the Act actually "target[ed] individuals who are responsible for or participated in efforts to conceal the legal liability for, or financially benefitted from, the detention, abuse, or death of Sergei Magnitsky, or were involved in the criminal conspiracy uncovered by Magnitsky."<sup>10</sup> The Act emphasized the importance of international human rights by stating that "[h]uman rights are an integral part of international law, and lie at the foundation of the international order," and by outlining the

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5. Barry, *supra* note 4; see generally Russian Presidential Human Rights Council Report, Preliminary Conclusion of the Working Group on the Study of Circumstances of Sergey Magnitsky's Death, the Working Group on Civic Engagement in Judicial Reform, the Working Group on Citizen Participation in Prevention of Corruption and Public Safety (July 2011), <http://russian-untouchables.com/rus/docs/Civil-Right-Council-conclusion-report-Executive-summary-ENG.pdf> (publishing findings by Russian President Medvedev's Human Rights Council—now The Council under the President of the Russian Federation for the Development of Civil Society and Human Rights—of evidence of foul play and abuse by Russian officials involved in Sergei Magnitsky's death) [hereafter Russian Presidential Human Rights Council Report].

6. Russian Presidential Human Rights Council Report, *supra* note 5, at 1; Magnitsky Act, *supra* note 1.

7. Russian Presidential Human Rights Council Report, *supra* note 5, at 2, 4; Magnitsky Act, *supra* note 1.

8. Magnitsky Act, *supra* note 1.

9. Elizabeth Clark Hersey, *No Universal Target: Distinguishing Between Terrorism and Human Rights Violations in Targeted Sanctions Regimes*, 38 BROOK. J. INT'L L. 1231, 1245 (2013).

10. Press Release, U.S. Dep't of Treas., Treasury Targets Individuals Involved in the Sergei Magnitsky Case and Other Gross Violations of Human Rights in Russia (Dec. 20, 2017), <https://home.treasury.gov/news/press-releases/sm0240>.

various ways in which Magnitsky's human rights were violated by Russia.<sup>11</sup> Specifically, the 2012 version of the Magnitsky Act required the President to compile a list of Russian citizens connected to Sergei Magnitsky's murder and submit that list to Congressional committees.<sup>12</sup> Once compiled, Congress had the power to prohibit those individuals from entering the United States and to freeze any assets they hold in the United States.<sup>13</sup> Through the Magnitsky Act, Congress blocked eighteen Russian officials and businessmen from entering the United States and froze all identified individuals' assets located within the United States.<sup>14</sup>

The Magnitsky Act has had a significant impact on Russian human rights abusers by restricting their movements and limiting their investment opportunities. The Act's effectiveness is evidenced by the Russian government's continued and substantial efforts to (1) punish the United States for passing the

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11. Magnitsky Act, *supra* note 1, § 401, 126 Stat. at 1502–03.

12. *See id.* §§ 404(a), 404(d) (noting the President also has authority to remove individuals from the list if he determines they did not engage in the activity for which they were added, for violations, if prosecuted appropriately, or if they demonstrated significant behavioral changes).

13. Christina Champenois, *Does the Russian Adoption Ban Violate International Law?*, 11 BYU INT'L L. & MGMT. REV. 29, 37 (2015).

14. *See* Magnitsky Act, *supra* note 1, § 407, 126 Stat. at 1509 (delegating authority to the Secretary of State and the Secretary of Treasury to add or remove individuals to or from the list of sanctioned individuals); *see also* *Magnitsky Sanctions Listings*, U.S. DEP'T OF TREAS. (Apr. 12, 2013), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx> (listing the eighteen individuals affected by the Magnitsky Act).

Act,<sup>15</sup> (2) discredit Magnitsky and Browder,<sup>16</sup> and (3) have the Act repealed.<sup>17</sup>

Sergei Magnitsky's actions serve as a reminder of the importance of the rule of law and that lawyers are in a unique position to both protect and promote international human rights. There are many ways private practitioners can work through their practices and use their unique skill sets to protect and promote international human rights. On one hand, lawyers can work to protect human rights indirectly by counseling clients on how to avoid or mitigate the existence or development of human rights violations in their businesses. Additionally, attorneys can protect and promote human rights directly through the legal profession by incorporating international human rights concepts into the ethical and professional rules, by educating fellow attorneys, and through direct advocacy.

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15. Hillary Evans, Note, *Russian Roulette: The Magnitsky Act's Implications for U.S.-Russian Relations in an Increasingly Precarious Legislative Game*, 29 MD. J. INT'L L. 210, 210–11 (2014) (arguing Russia's Dima Yakovlev bill, which banned all American adoptions of Russian children, is "essentially a tit-for-tat reaction" to the United States' Magnitsky Act); Amanda Taub, *When the Kremlin Says 'Adoptions,' It Means 'Sanctions'*, N.Y. TIMES (July 10, 2017), <https://www.nytimes.com/2017/07/10/world/americas/kremlin-adoptions-sanctions-russia.html>.

16. See Maria Tsvetkova & Steve Gutterman, *Russia Convicts Lawyer Magnitsky in Posthumous Trial*, REUTERS (July 11, 2013), <https://www.reuters.com/article/us-russia-magnitsky/russia-convicts-lawyer-magnitsky-in-posthumous-trial-idUSBRE96A09V20130711> (detailing the Russian government's posthumous trial and conviction of Magnitsky and Browder, in absentia, for tax evasion in 2012); Andrew E. Kramer, *Russia Plans to Retry Dead Lawyer in Tax Case*, N.Y. TIMES (Feb. 7, 2012), <https://www.nytimes.com/2012/02/08/world/europe/russia-to-retry-sergei-magnitsky-posthumously.html> (explaining that this is the only posthumous criminal trial in Russia's history); Stephanie Baker, *Interpol Blocks Russia Request to Arrest Hermitage's Browder*, BLOOMBERG (Oct. 26, 2017, 12:24 PM), <https://www.bloomberg.com/news/articles/2017-10-26/interpol-blocks-russia-s-warrant-to-arrest-hermitage-s-browder> (reporting Russian officials' ongoing efforts to have Interpol arrest Browder; as of late 2017, Russia had made five requests to Interpol for the arrest of Browder); Kramer, *supra* note 2 (reporting on new charges brought by Russian prosecutors in late 2017 alleging Browder himself murdered Magnitsky); Bill Browder, *I'm Bill Browder. Here's the Biggest Mistake Putin Made When Trying to Get Access to Me Through Trump*, TIME (July 17, 2018), <http://time.com/5340545/bill-browder-vladimir-putin-magnitsky-act-donald-trump/> (reporting on the Helsinki summit in July 2018, where Putin implied he would allow American investigators to interview the Russian officials indicted for their efforts to affect the outcome of the 2016 United States Presidential Election in exchange for the United States' help in extraditing Browder to Russia).

17. Taub, *supra* note 15 (reporting that Russia, through attorneys such as Natalia Veselnitskaya, has lobbied to repeal the Magnitsky Act since its passage).

Human rights violations represent manifest injustices and result from abusive imbalances of power.<sup>18</sup> Sergei Magnitsky's efforts to combat corruption and his death at the hands of human rights abusers serves as a disturbing beacon—a call for all attorneys to seek justice by promoting and protecting international human rights. His sacrifice renewed global interest in developing and implementing legal and extralegal solutions designed to deter future international human rights abuses. As attorneys, we can and should defend his legacy by actively incorporating international human rights issues into our practices, ensuring his sacrifice was not in vain.

Part I of this article will provide an overview of how international human rights have developed and been traditionally enforced. Part II will discuss the limitations of those enforcement mechanisms. Part III will focus on alternative enforcement strategies and how those strategies affect transnational corporations<sup>19</sup>—which are particularly relevant to private practice. Part IV will outline recent developments in the legal profession by bar associations—namely the State Bar of Texas—which are designed to help attorneys better identify and address international human rights in their practices. Lastly, Part V will discuss practical steps attorneys can take to better integrate international human rights issues into their practices.

## II. WHAT'S BEEN DONE: A BRIEF HISTORY OF INTERNATIONAL HUMAN RIGHTS AND THE EXISTING INTERNATIONAL LEGAL FRAMEWORK

Despite the enumeration of certain individual rights in

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18. Turkuler Isiksel, *The Rights of Man and the Rights of the Man-Made: Corporations and Human Rights*, 38 HUM. RTS. Q. 294, 343 (2016).

19. U.N. ESCOR, U.N. Sub-Comm'n on the Promotion and Prot. of Hum. Rts., *Economic, Social, and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 13, 2003) (defining transnational corporations as "entities operating in more than one country or [as] a cluster of economic entities operating in two or more countries") [hereinafter Norms].

several Western democracies' foundational documents,<sup>20</sup> human rights issues were conspicuously absent from the international stage until recently. Prior to the twentieth century, those human rights that had been recognized and incorporated into legal frameworks were, for the most part, a creature of domestic, national law.<sup>21</sup> The first modern effort to secure human rights at the international level occurred just after World War I with the League of Nations.<sup>22</sup> But it was not until the human rights atrocities witnessed during World War II that the international community came together to champion the creation and enforcement of human rights on an international scale.<sup>23</sup> This post-WWII endeavor yielded the United Nations, an international institution formed to not only safeguard global peace, but to protect human rights as well.<sup>24</sup>

#### A. *International Policies and Frameworks*

In 1946, the United Nations established the Commission on Human Rights to set standards governing the conduct of member nation states in regard to international human rights.<sup>25</sup> Out of the Commission came the Universal Declaration of Human Rights ("UDHR").<sup>26</sup> The promulgation of the UDHR in 1948 is

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20. See, e.g., *English Translation of Magna Carta*, BRIT. LIBR. (July 28, 2014), <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>; *English Bill of Rights 1689: An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*, AVALON PROJECT, [http://avalon.law.yale.edu/17th\\_century/england.asp](http://avalon.law.yale.edu/17th_century/england.asp) (last visited Jan. 8, 2019); *Declaration on the Rights of Man-1789 (Fr.)*, AVALON PROJECT, [http://avalon.law.yale.edu/18th\\_century/rightsof.asp](http://avalon.law.yale.edu/18th_century/rightsof.asp) (last visited Feb. 25, 2019); U.S. CONST. pmb., amends. I–X.

21. See generally Dinah Shelton, *An Introduction to the History of International Human Rights Law* 1–31 (Geo. Wash. L. Sch. Pub. L. & Legal Theory Res., Research Paper No. 346, 2007) (providing greater insight into human rights law prior to the twentieth century).

22. Frans Viljoen, *International Human Rights Law: A Short History*, 46 U.N. CHRON. 8, 9 (2009).

23. See *id.*

24. See *id.*; see also Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Belg.-Fr.-Lux.-Neth.-U.K., Mar. 17, 1948, 19 U.N.T.S. 51 (exemplifying another global legal construct's promotion of these same values).

25. See *Introduction*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hrbodies/chr/pages/commissiononhumanrights.aspxz> (last visited Feb. 25, 2019).

26. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at 71 (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights].

seen as a watershed moment for the development of international human rights.<sup>27</sup> The adoption of the UDHR marked the first instance in which the international community formed a consensus on what “human rights” entailed.<sup>28</sup> The UDHR recognizes the “inherent dignity” and “inalienable rights of all members of the human family.”<sup>29</sup> To that end, the UDHR outlines civil, political, economic, social, and cultural rights that should be afforded to all humans, regardless of race, sex, culture, religion, or status.<sup>30</sup> These include, among other things, the right to liberty, property, freedom of speech, access to judicial relief, and the presumption of innocence until proven guilty in a public trial.<sup>31</sup> The UDHR also delineates certain negative rights, such as the right to be free from slavery, torture and cruel punishment, and arbitrary detention.<sup>32</sup>

Despite being a landmark document, its limitation is apparent: the UDHR is only a declaration. Setting aside its political impact, the UDHR does not itself have binding force.<sup>33</sup> Regardless, it remains to be an important metric for human rights violations and its promulgation is generally accepted as an important moment in the development of human rights.<sup>34</sup> These values are also reflected in the Charter of the United Nations,<sup>35</sup> which seeks to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”<sup>36</sup> While it similarly does not create binding obligations on its signatories,

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27. *Id.*

28. Asbjørn Eide, *The Historical Significance of the Universal Declaration*, 50 INT'L SOC. SCI. J. 475, 476 (1998).

29. Universal Declaration of Human Rights, *supra* note 26, pmb1.

30. *Id.* art. 2.

31. *Id.* arts. 3, 6, 11, 17, 19.

32. *Id.* arts. 4, 5, 9.

33. Mary Ann Glendon, *The Rule of Law in the Universal Declaration of Human Rights*, 2 NW. J. INT'L HUM. RTS. 1, 4–5 (2004).

34. DAVID LITTLE ET AL., HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC PERSPECTIVES ON RELIGIOUS LIBERTY (STUDIES IN COMPARATIVE RELIGION) 35–37 (1988) (noting that the Declaration was based largely on the patterns of culture dominant in the West and that the Declaration passed the Pakistani delegation with no limitations on its provisions).

35. U.N. Charter art. 2, ¶ 3.

36. *Id.* pmb1.

the UDHR has inspired numerous treaties and national constitutions, reflecting the most important values as understood by the international community.<sup>37</sup>

Following the proclamation of the UDHR, the United Nations has continued to define the scope and extent of international human rights by adopting additional treaties and covenants which further expound on human rights.<sup>38</sup> These additional conventions seek to prevent specific types of harms such as racial discrimination,<sup>39</sup> slavery,<sup>40</sup> genocide,<sup>41</sup> or torture,<sup>42</sup> and to protect specific groups such as women,<sup>43</sup> children,<sup>44</sup> refugees,<sup>45</sup> and migrants.<sup>46</sup>

Though international human rights law has ordinarily been used to “protect individuals principally against abuse of state power by public officials, . . . this distinction between public

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37. See, e.g., [European] Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, E.T.S. No. 005, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953, as amended by protocol nos. 3, 5, 8, and 11 entered into force Sept. 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998, respectively); Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

38. See, e.g., *infra* notes 39–46.

39. See International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

40. See Slavery Convention, Sept. 25, 1926, 60 L.N.T.S. 254.

41. See Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

42. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

43. See Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, 193 U.N.T.S. 135 (entered into force July 7, 1954); see also Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

44. See Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

45. See Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

46. See International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003).

authorities and private actors is breaking down.”<sup>47</sup> In addition to the UDHR and other treaties addressing international human rights, the United Nations has most recently taken steps to address and prevent international human rights violations committed by businesses by promulgating a conceptual framework for businesses to follow—“Protect, Respect and Remedy: a Framework for Business and Human Rights” (“Framework”)<sup>48</sup>—and guiding principles to help implement that Framework—the “United Nations Guiding Principles on Business and Human Rights” (“Guiding Principles”).<sup>49</sup>

Although previous attempts had been made by the United Nations and other organizations to codify international human rights principles applicable to the business community,<sup>50</sup> the business community’s impact on human rights came to the societal forefront in the 1990s with (1) the expansion of oil, gas, and mining operations into increasingly remote areas of the world and (2) the growth of offshoring the production of clothing and footwear in countries with poor working conditions and scant, if

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47. INT’L COUNCIL ON HUM. RTS. POL’Y, BEYOND VOLUNTARISM: HUMAN RIGHTS AND THE DEVELOPING INTERNATIONAL LEGAL OBLIGATIONS OF COMPANIES 46 (2002), [https://reliefweb.int/sites/reliefweb.int/files/resources/F7FA1F4A174F76AF8525741F006839D4-ICHRP\\_Beyond%20Voluntarism.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/F7FA1F4A174F76AF8525741F006839D4-ICHRP_Beyond%20Voluntarism.pdf).

48. See John Ruggie (Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) [hereinafter Framework], named after John Ruggie, a United Nations’ Special Representative and drafter of the Principles which now colloquially bear his name.

49. See John Ruggie (U.N. Special Representative on Business & Human Rights), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Hum. Rts. Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) [hereinafter Guiding Principles]. The Human Rights Council endorsed the Guiding Principles in its Resolution 17/4 of June 16, 2011. See generally Hum. Rts. Council Res. 17/4, U.N. Doc. A/HRC/17/4 (June 16, 2011).

50. See David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 AM. J. INT’L L. 901, 902 (2003); see also U.N. ESCOR, 46th Sess., Supp. 2, UN Doc. E/1990/94 (Apr. 1990) (reflecting the United Nations’ early attempts at developing an international code of conduct for transnational businesses); U.N. Comm’n Transnat’l Corps., *Draft United Nations Code of Conduct on Transnational Corporations: Report to the Special Session*, U.N. ESCOR (1983), reprinted in 23 I.L.M. 626 (1984); see ORG. ECON. CO-OPERATION & DEV., GUIDELINES FOR MULTINATIONAL ENTERPRISES 31–34 (2011), <https://www.oecd.org/daf/inv/mne/48004323.pdf> (reflecting the OECD’s own attempts at developing an international code of conduct for transnational businesses in the 1970s).

any, labor protections.<sup>51</sup> Realizing the impact that businesses have on international human rights, the United Nations proposed the Framework to provide businesses and governments foundational principles on which to consider international human rights issues such as the protection and respect of human rights and the remedy of their violations.<sup>52</sup>

The Framework (and corresponding Guiding Principles) are built around three foundational pillars: protection, respect, and remediation.<sup>53</sup> Pursuant to the Framework, it is generally the state's duty to protect human rights domestically and internationally.<sup>54</sup> The Framework notes several ways in which the state can protect human rights in relation to the business community: incentivizing changes in corporate cultures through market pressures, reporting requirements, and expanded criminal liability<sup>55</sup>; balancing the interests of domestic and foreign investors with the state's duty to protect human rights through its development agencies<sup>56</sup>; and seeking guidance from, and coordinating with, other nation states to effectively regulate transnational business practices, especially regarding business conducted in conflict zones.<sup>57</sup>

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51. *Introductory Description of the Special Representative's Mandate and the UN "Protect, Respect and Remedy" Framework for Business and Human Rights* 1, BUS. & HUM. RTS. RES. CTR. (Sept. 2010), available at <https://www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf> (stating that "[t]he debate concerning the responsibilities of business in relation to human rights became prominent in the 1990s, as oil, gas, and mining companies expanded into increasingly difficult areas, and as the practice of offshore production in clothing and footwear drew attention to poor working conditions in global supply chains").

52. See generally Framework, *supra* note 48 (providing framework for businesses and governments to follow in regard to international human rights); see also BUS. & HUM. RTS. RES. CTR., *supra* note 51, at 1 (explaining that the proposed Framework, and later the Ruggie Principles, followed failed efforts in 2004 by a Sub-commission of the United Nations' Commission on Human Rights to have the United Nations impose binding obligations on companies by promulgating a set of "Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights").

53. *Our Purpose: Bylaws for the International Human Rights Committee*, INT'L L. SEC., ST. B. TEX., <https://ilstexas.org/human-rights-committee/> (last visited Feb. 1, 2018); Framework, *supra* note 48, ¶¶ 10, 18–26; see Guiding Principles, *supra* note 49.

54. Framework, *supra* note 48, ¶¶ 27–50.

55. *Id.* ¶¶ 29–32.

56. *Id.* ¶¶ 33–42.

57. *Id.* ¶¶ 43–49.

The bulk of the Framework is devoted to how corporations should respect international human rights, which rights to recognize, and to what degree that responsibility extends to transnational companies.<sup>58</sup> It emphasizes that although the corporate duty to respect human rights exists independent of the state, failure to do so may subject a company to trial in the court of public opinion.<sup>59</sup> Further, the Framework recognizes that the Norms (discussed below) undermined its own effectiveness by identifying specific rights that the business community should recognize and respect.<sup>60</sup> Unlike the Norms, which sought to impose an enforcement framework on transnational companies, the Framework focuses more on awareness and transparency.<sup>61</sup> Awareness requires due diligence—taking steps “to become aware of, prevent and address adverse human rights impacts”—and can be accomplished by performing impact assessments; putting into place, and fully integrating through training, corporate policies addressing human rights; and tracking corporate due diligence performance.<sup>62</sup> Awareness also involves avoiding complicity in human rights violations when due diligence and monitoring practices identify such instances. Although in many instances mere knowledge of or tangential receipt of benefits from abuses may not subject a company to legal liability, it is in companies’ best interest—especially considering the public relations liability that may stem from complicity—to take active steps to untangle any business practices from known human rights abuses and condemn those responsible.<sup>63</sup> Moreover, through a strong due diligence practice, companies can avoid complicity altogether.<sup>64</sup>

The Framework also recognizes that a company’s “sphere of influence” in regard to international human rights is somewhat limited.<sup>65</sup> A company’s “sphere of influence” extends to “the

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58. *Id.*

59. *Id.* ¶ 54.

60. *Id.* ¶¶ 50–53.

61. *Id.* ¶¶ 56–64.

62. *Id.*

63. *Id.* ¶¶ 73–81.

64. *Id.*

65. *Id.* ¶¶ 65–72.

potential and actual human rights impacts resulting from a company's business activities and the relationships connected to those activities."<sup>66</sup> A company's impact on human rights issues and its activities or relationships that cause harm to human rights fall directly within a company's sphere of influence, while the leverage a company may have over the actors causing the direct harm does not.<sup>67</sup>

Lastly, the Framework emphasizes the importance of accessible remedies and grievance mechanisms—judicial, non-judicial, company-level and state-based non-judicial forums.<sup>68</sup> The Framework notes that states should strengthen judicial capacity to provide effective remedies, clarify and promote the availability of any non-judicial grievance processes, work to encourage companies to adopt grievance mechanisms, and recognize grievance processes developed by national human rights institutions.<sup>69</sup> Likewise, companies should strengthen policies to identify and address early human rights issues before they escalate, and provide internal processes for evaluating and mediating complaints.<sup>70</sup>

The Guiding Principles largely take the concepts laid out in the Framework and organize them into more concrete, identifiable goals, providing specific recommendations in commentary for how states and corporations can implement the Framework.<sup>71</sup> Focusing on the corporate responsibility to respect human rights, the Guiding Principles encourage through their foundational principles that transnational corporations "[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

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66. *Id.* ¶ 72.

67. *Id.*

68. *Id.* ¶¶ 88–99.

69. *Id.* ¶ 96; see also G.A. Res. 48/134, United Nations Paris Principles (Dec. 20, 1993) (demonstrating that many of these grievance processes and the national human rights institutions that administer them are accredited under the Paris Principles). According to the Global Alliance of National Human Rights Institutions, "[t]he United Nations Paris Principles provide the international benchmarks against which national human rights institutions can be accredited by the Global Alliance of National Human Rights Institutions." *Paris Principles*, GANHRI, <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx> (last visited May 15, 2019).

70. Framework, *supra* note 48, ¶¶ 93–95.

71. See Guiding Principles, *supra* note 49, iv.

[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”;<sup>72</sup> and put in place policies and processes, including: a “policy commitment to meet their responsibility to respect human rights; [a] human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights”;<sup>73</sup> and “[p]rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”<sup>74</sup> They also identify specific operational principles related to policy commitment, due diligence, and remediation in an attempt to provide businesses a roadmap for implementing these changes.<sup>75</sup>

### *B. International Enforcement Mechanisms*

Realizing the limitations of the UDHR and other non-binding conventions, the United Nations sought to create new mechanisms for enforcing international human rights starting in the 1950s.<sup>76</sup> In 1966, the United Nations adopted the International Covenant on Civil and Political Rights (ICCPR), which entered into force on March 23, 1976,<sup>77</sup> along with the International Covenant on Economic, Social and Cultural Rights (ICESCR), which became effective on January 3, 1976.<sup>78</sup> Together, the ICCPR, ICESCR, and the UDHR formed the International Bill of Human Rights.<sup>79</sup> The International Bill of Human Rights calls on countries to publicly report on compliance

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72. *Id.* at 13.

73. *Id.* at 16.

74. *Id.*

75. *Id.* at 16–25.

76. Makau wa Mutua, *Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement*, 4 BUFF. HUM. RTS. L. REV. 211, 215–16 (1998).

77. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

78. International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, S. Treaty Doc. No. 95-19, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

79. *International Human Rights Law*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited May 15, 2019).

with the covenants every five years.<sup>80</sup> Additionally, an aggrieved party may petition the Human Rights Committee to review violations of the rights set forth in the covenants.<sup>81</sup> The member state will have an opportunity to submit written explanations clarifying the matter and indicate what remedy it has applied.<sup>82</sup> A summary of the Human Rights Committee's finding is eventually published in a report to the General Assembly.<sup>83</sup>

In 2004, the United Nations, through a sub-commission of the United Nations Commission on Human Rights, sought to strengthen those limited enforcement mechanisms for governmental and private actors by drafting a set of "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" ("Norms").<sup>84</sup> These Norms sought to impose binding obligations on companies through existing international human rights law.<sup>85</sup> Under the proposal, nation states and companies shared responsibilities and duties "to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights," with nation states having "primary" responsibilities and companies having "secondary" responsibilities.<sup>86</sup> The duties and responsibilities assigned to companies were also limited to their "spheres of influence."<sup>87</sup> The Norms set forth concrete and onerous compliance requirements for transnational corporations, such as adopting internal policies that required compliance with the Norms; "periodically report[ing] on and tak[ing] other measures fully to implement the Norms"; incorporating the Norms into contracts and dealings with contractors, subcontractors, suppliers, licensees, and

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80. U.N. Hum. Rts. Off. of the High Comm'r, *Civil and Political Rights: The Human Rights Committee*, Fact Sheet No. 15 (Rev. 1) (May 2005), <https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

81. *Id.* at 10.

82. *Id.* at 11.

83. *Id.*

84. Framework, *supra* note 48, ¶ 1; Norms, *supra* note 19, pmb1.; Weissbrodt & Kruger, *supra* note 50, at 901.

85. Framework, *supra* note 48, ¶ 1; Norms, *supra* note 19, § A.1; Weissbrodt & Kruger, *supra* note 50, at 913-15.

86. Framework, *supra* note 48, ¶ 1; Norms, *supra* note 19, § A.1; Weissbrodt & Kruger, *supra* note 50, at 911-12.

87. Framework, *supra* note 48, ¶ 1; Norms, *supra* note 19, § A.1; Weissbrodt & Kruger, *supra* note 50, at 912.

distributors; submitting to “periodic monitoring and verification by United Nations”; and providing reparations to persons and communities adversely affected by the company’s compliance failures.<sup>88</sup> Due in part to strong opposition by corporations and the business community,<sup>89</sup> the Norms were not adopted by the United Nations Economic and Social Council. The Council determined it “had no legal standing” to adopt the Norms, despite its confirmation of “the importance and priority it accords to the question of the responsibilities of transnational corporations and related business enterprises with regard to human rights.”<sup>90</sup>

Ultimately, although significant strides have been made in identifying and raising awareness of human rights issues at the international level—in both the humanitarian and business contexts—the United Nations’ power remains limited: it is difficult to establish “hard law” legal structures which enforce international human rights violations, especially against nation states that have not ratified such agreements.<sup>91</sup> Many violations go unaddressed and unpunished because they occur in places outside the jurisdictional reach of international bodies like the United Nations or other cooperative nation states.<sup>92</sup>

### III. THE “HARD LAW” PROBLEM: LIMITATIONS ON ENFORCING INTERNATIONAL HUMAN RIGHTS THROUGH TRADITIONAL LEGAL MECHANISMS IN THE UNITED STATES

As explained in Part I, the United Nations has attempted to put into place mechanisms framing and incentivizing private actors to abide by the human rights concepts adopted in numerous conventions and treaties. These efforts have largely failed because of the “hard law” problem: international bodies like

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88. Norms, *supra* note 19, § H.15–19.

89. Pini Pavel Miretski & Sascha-Dominik Bachmann, *The UN “Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”: A Requiem*, 17 DEAKIN L. REV. 5, 8–9 (2012).

90. ECOSOC Dec. 2004/279, U.N. Doc. E/2004/INF/2/Add.2 (July 22, 2004) (requesting that the High Commissioner for Human Rights report on the issue in order for the Commission “to identify options for strengthening standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights, and possible means of implementation”).

91. Miretski & Bachmann, *supra* note 89, at 9.

92. Framework, *supra* note 48, ¶¶ 88–91.

the United Nations have no ability to enforce measures in the face of noncompliance. As a result, the ability to enforce these concepts remains with nation states, which are hamstrung by the limited jurisdictional reach of purely domestic law.

Nation states have always been the primary actors in protecting human rights.<sup>93</sup> This responsibility has been affirmed time and time again.<sup>94</sup> And, despite the relative unenforceability of international law, countries are under an obligation to protect their citizen's human rights, including protecting individuals from the actions of private corporations.<sup>95</sup>

The United States and other nation states have continued their enforcement efforts by passing laws to enforce international human rights violations in their own countries and abroad.<sup>96</sup> The United States, for example, has enacted federal laws: allowing civil claims for torts committed in violation of the law of nations or a treaty of the United States;<sup>97</sup> allowing civil claims against individuals who, acting in an official capacity for any foreign nation, committed torture and/or extrajudicial killing;<sup>98</sup> criminalizing genocide;<sup>99</sup> and establishing legal protections and remedies for victims of slavery.<sup>100</sup> These efforts, which are largely reactive and seek to punish human rights violations which have already occurred, have been met with limited success. This limited success is best illustrated by examining the history of the Alien Tort Statute (the "ATS"),<sup>101</sup> the primary mechanism for enforcing human rights in the United States.

The ATS was initially adopted by the First Congress as part

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93. Norms, *supra* note 19, pmb1.

94. *Id.*

95. *Id.* § A.1.

96. Weissbrodt & Kruger, *supra* note 50, at 901.

97. The Alien Tort Statute, 28 U.S.C. § 1350 (1948).

98. *Id.* § 2(a).

99. Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091.

100. 18 U.S.C. § 1595(a) (2003).

101. *See, e.g.,* Fernandez v. Wilkinson, 505 F. Supp. 787, 795 (D. Kan. 1980); Paul L. Hoffman & Nadine Strossen, *Enforcing International Human Rights Law in the United States*, 26 STUD. TRANSNAT'L LEGAL POL'Y 477, 485–86 (1994); Vanessa R Waldref, *The Alien Tort Statute after Sosa: A Viable Tool in the Campaign to End Child Labor?*, 31 BERKELEY J. EMP. & LAB. L. 160, 161–66 (2010) (asserting liability under other legal theories, such as customary international law concepts, in cases also brought in the United States).

of the original Judiciary Act of 1789.<sup>102</sup> It gives federal courts “original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”<sup>103</sup> Although it is unclear what the original purpose or intent of the ATS was—Judge Friendly of the Second Circuit famously referred to it as a “legal Lohengrin”<sup>104</sup>—“scholars suspect that Congress included such a provision in the Judiciary Act to serve economic motives and bolster the United States’ fledgling presence on the international scene.”<sup>105</sup> Despite this ambiguity, the ATS was ultimately interpreted as allowing non-U.S. citizens to have the right to sue for human rights violations in U.S. courts.<sup>106</sup>

The ATS lay mostly dormant for two centuries after it was enacted.<sup>107</sup> It was resurrected, however, in the 1980s in the Second Circuit’s landmark decision of *Filartiga v. Pena-Irala*.<sup>108</sup> In *Filartiga*, the Filartiga family (Paraguayan citizens) sued a former Paraguayan police officer for kidnapping and torturing a member of the Filartiga family.<sup>109</sup> The Filartiga family argued that the ATS gave the court jurisdiction over the lawsuit.<sup>110</sup> The Second Circuit agreed, finding that although there was “no universal agreement as to the precise extent of the ‘human rights and fundamental freedoms’ guaranteed to all,” the court found that the kidnapping and torture allegations violated the law of nations.<sup>111</sup>

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102. Waldref, *supra* note 101.

103. 28 U.S.C. § 1350 (1948).

104. *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975), *abrogated by* *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247 (2010) (stating that “no one seems to know whence [the ATS] came”).

105. Carolyn A. D’Amore, *Sosa v. Alvarez-Machain and the Alien Tort Statute: How Wide Has the Door to Human Rights Litigation Been Left Open?*, 39 AKRON L. REV. 593, 596 (2006) (quoting GARY CLYDE HUFBAUER & NICHOLAS K. MITROKOSTAS, *AWAKENING MONSTER: THE ALIEN TORT STATUTE OF 1789* 7 (2003) (explaining it “was the framers’ way of show[ing] European powers that the new nation would not tolerate flagrant violations of the ‘law of nations,’ especially when Ready victims were foreign ambassadors or merchants”).

106. *See id.* at 609–17; Waldref, *supra* note 101, at 176–79.

107. Waldref, *supra* note 101, at 163.

108. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

109. *Id.* at 878.

110. *Id.* at 880.

111. *Id.* at 882–88.

Following the *Filartiga* decision, non-U.S. citizens increasingly used the ATS to litigate human rights violations carried out by foreign aliens overseas.<sup>112</sup> Courts have found that a successful claim could be maintained under the ATS when: (1) it was brought by an alien of the United States; (2) for a tort; and (3) committed in violation of the law of nations or a treaty of the United States.<sup>113</sup>

The United States Supreme Court, however, curbed the use of the ATS to address human rights violations in *Sosa v. Alvarez-Machain*<sup>114</sup> and *Kiobel v. Royal Dutch Petroleum Co.*<sup>115</sup> *Sosa* was the first time the Supreme Court had considered the scope and applicability of the ATS to redress alleged international human rights violations; in doing so, the Court engaged in a historical analysis of the statute.<sup>116</sup> The Court concluded that although the First Congress would have understood the ATS to support private causes of action in tort, they “found no basis to suspect Congress had any examples in mind beyond those torts corresponding to Blackstone’s three primary offenses: violation of safe conducts,

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112. See, e.g., *Paul v. Avril*, 812 F. Supp. 207, 211 (S.D. Fla. 1993) (denying request to dismiss ATS action against former head of the Haitian military); *De Blake v. Republic of Arg.*, 965 F.2d 699, 704, 716 (9th Cir. 1992) (awarding \$2.7 million judgment against foreign government for human rights violations committed by predecessor government); *Kadic v. Karadzic*, 70 F.3d 232, 236 (2d Cir. 1995) (holding that the federal court had jurisdiction over claims of the alien plaintiffs against the defendant-Bosnian-Serb self-proclaimed leader “for genocide, war crimes, and crimes against humanity in his private capacity”); *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1535, 1539 (N.D. Cal. 1987) (holding that two Argentinians’ claims of torture, murder, and prolonged arbitrary detention against an Argentinian general amounted to a cause of action under the ATS); *Xuncax v. Gramajo*, 886 F. Supp. 162, 176–177 (D. Mass. 1995) (holding Guatemalan citizens’ allegations of torture, arbitrary detentions, summary executions, and disappearances were sufficient to sustain jurisdiction under the ATS); *Abebe-Jira v. Negewo*, 72 F.3d 844, 845–47 (11th Cir. 1996) (holding that the claims of “torture and cruel, inhuman, and degrading treatment” of Ethiopian citizens against officials in the controlling dictatorship of Ethiopia were actionable under the ATS); *Jama v. U.S. I.N.S.*, 22 F. Supp. 2d 353, 363 (D.N.J. 1998) (holding that the poor and inhuman treatment given to alien asylum-seekers was actionable under the ATS); *Doe v. Unocal Corp.*, 395 F.3d 932, 936 (9th Cir. 2002) (alleging human rights violations by Unocal, a California oil and gas company, during construction of the Yadana gas pipeline project in Myanmar).

113. See, e.g., *Paul*, 812 F. Supp. at 211; *Kadic*, 70 F.3d at 238 (confirming that its “decision in *Filartiga* established that this statute confers federal subject-matter jurisdiction when the following three conditions are satisfied: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations [i.e., international law]”).

114. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 697 (2004).

115. *Kiobel v. Royal Dutch Petrol. Co.*, 569 U.S. 108, 124 (2013).

116. *Sosa*, 542 U.S. at 714–24.

infringement of the rights of ambassadors, and piracy.”<sup>117</sup> Thus, the Court narrowed the set of claims that plaintiffs could bring under the ATS.<sup>118</sup> Although the ATS created jurisdiction for courts to hear non-U.S. citizen’s tort claims, the Court said it did not create any specific new causes of action.<sup>119</sup>

Harkening back to the statute’s enactment, the Court determined that the ATS’s drafters intended the causes of action to only be those from the common law.<sup>120</sup> Thus, under *Sosa*, federal courts may only hear claims “based on the present-day law of nations” and if the claim rests on norms of “international character accepted by the civilized world and defined with specificity comparable to the features of the 18th-century paradigms.”<sup>121</sup> In short, claims based on “customary international law must be based on legal norms that are universal, specific, and concrete.”<sup>122</sup>

In supporting its conclusion, the Court first noted that “the prevailing conception of the common law has changed since 1789 in a way that counsels restraint in judicially applying internationally generated norms.”<sup>123</sup> The legal frameworks developed to address concepts of limited jurisdiction support the distaste in the United States for creating “general” common law.<sup>124</sup> The Court also noted an antipathy for considering claims that involve limiting the powers of other sovereign nation states.<sup>125</sup> And finally, the Court emphasized that despite the ATS’s existence, Congress has not given courts a “mandate to seek out and define new and debatable violations of the law of nations”; the Court also stated that “modern indications of congressional understanding of the judicial role in the field have not

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117. *Id.* at 724.

118. *Id.* at 738.

119. *Id.* at 721, 724.

120. *Id.* at 724.

121. *Id.* at 725.

122. Waldref, *supra* note 100, at 166–67.

123. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004).

124. *Id.* at 725–26 (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (stating that “the general practice has been to look for legislative guidance before exercising innovative authority over substantive law”).

125. *Id.* at 727–28.

affirmatively encouraged greater judicial creativity.”<sup>126</sup> As a result, the Court counseled “great caution in adapting the law of nations to private rights.”<sup>127</sup>

Despite these limitations, cases continued to be brought under the ATS for international human rights violations.<sup>128</sup> However, in 2013 in *Kiobel*, the Supreme Court once again considered the reach of the ATS. In *Kiobel*, the Court heard a dispute between Nigerians living in the United States and Dutch and Nigerian corporations.<sup>129</sup> The plaintiffs claimed Royal Dutch and its affiliates helped the Nigerian Government violate the law of nations when it enlisted the Nigerian military to suppress local opposition to Royal Dutch’s oil exploration.<sup>130</sup> The plaintiffs alleged the Nigerian military attacked local villages, while beating, raping, and killing the residents who protested.<sup>131</sup> The question the Court sought to answer was whether the Court had the authority to hear claims that occurred outside the United States,<sup>132</sup> concluding it did not.<sup>133</sup> Leaning on the judicial cannon of “presumption against extraterritorial jurisdiction,”<sup>134</sup> the Court

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126. *Id.* at 728.

127. *Id.*

128. *See, e.g.*, *Bowoto v. Chevron Corp.*, 557 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008), *aff’d*, 621 F.3d 1116 (9th Cir. 2010) (noting that plaintiffs alleged violent attacks occurred against them on the offshore drilling facility known as the “Parabe platform” after its occupation, and that Chevron Nigeria Ltd., the owner of the platform, paid Nigerian Government Security Forces to harm the protestors); *Sarei v. Rio Tinto, PLC*, 221671 F. Supp. 2d 1116, 1120–21, 1127 (C.D. Cal. 2002) (discussing plaintiffs’ allegations that the Papua New Guinea government, working with the Rio Tinto mining company with whom the government was in business, killed about 15,000 people in an effort to put down a revolt stemming in part from the mining practices of Rio Tinto); *Kpadeh v. Emmanuel*, 261 F.R.D. 687, 688 (S.D. Fla. 2009) (discussing a civil lawsuit against Charles McArthur Emmanuel [a/k/a Chuckie Taylor, or “Mr. Taylor”] as the commander of the Liberian Anti-Terrorism Unit for his carrying out acts of torture, cruel punishment, arbitrary arrest, and prolonged detention).

129. *Kiobel v. Royal Dutch Petrol. Co.*, 569 U.S. 108, 111–13 (2013).

130. *Id.* at 113.

131. *Id.*

132. *Id.* at 115.

133. *Id.* at 117.

134. *Id.* at 121–22 (noting that the purpose of the presumption is to “protect against unintended clashes between our laws and those of other nations which could result in international discord”) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)); *see also* Zachary D. Clopton, *Replacing the Presumption Against Extraterritoriality*, 94 B.U. L. REV. 1 (2014) (discussing the historical and modern justifications of presumption against territoriality).

held that the ATS does not extend to conduct that occurs entirely in a foreign territory.<sup>135</sup> In dicta, the Court also noted that even claims that “touch and concern the territory of the United States” may be insufficient to confer jurisdiction; the claim “must do so with sufficient force to displace the presumption against extraterritorial application.”<sup>136</sup> With *Kiobel*, the United States Supreme Court largely constrained the ATS’s applicability to cases within the United States which effectively neutered the ability to enforce *international* human rights violations through the ATS.<sup>137</sup>

Last, and most recently, the Court once again revisited the scope of the ATS in 2018 in *Jesner v. Arab Bank, PLC*.<sup>138</sup> In *Jesner*, the Court considered whether foreign corporations could be named defendants under the ATS.<sup>139</sup> Subscribing again to its judicial-restraint approach for fear of foreign entanglement,<sup>140</sup> the Court held that foreign corporations could not be sued for human rights violations abroad.<sup>141</sup> This conclusion led the Court to reexamine the purpose of the ATS, noting that it “was intended to promote harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations in circumstances where the absence of such a remedy might provoke foreign nations to hold the United States accountable,” and was not intended to provide courts sweeping powers to create law.<sup>142</sup> The Court also relied on practical considerations, reasoning that if U.S. law allowed foreign corporations to “be held liable under

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135. *Kiobel v. Royal Dutch Petrol. Co.*, 569 U.S. 108, 124 (2013).

136. *Id.* at 124–25.

137. See *International Law — Alien Tort Statute — Second Circuit Holds that Kiobel Bars Common Law Suits Alleging Violations of Customary International Law Based Solely on Conduct Occurring Abroad. — Balintulo v. Daimler AG*, 727 F.3d 174 (2d Cir. 2013), 127 HARV. L. REV. 1493, 1493–96 (2014) (discussing how the court in *Balintulo* broadly applied the *Kiobel* Court’s bar to suits brought in the United States against actions abroad).

138. *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1393 (2018).

139. *Id.* at 1399.

140. *Id.* at 1403.

141. *Id.* at 1407 (commenting that courts are not “well suited to make the required policy judgment implicated by foreign corporate liability”).

142. *Id.* at 1402–03, 1406 (noting that the general reluctance to provide judicially created private rights of action “extends to the question [of] whether the courts should exercise the judicial authority to mandate a rule that imposes liability upon artificial entities like corporations”).

the ATS, that precedent-setting principle ‘would imply that other nations, also applying the law of nations, could hale our [corporations] into their courts for alleged violations of the law of nations.’”<sup>143</sup> Notably, in their dissent, four Justices made clear that they would have permitted ATS suits against both U.S. and foreign corporations.<sup>144</sup>

Moreover, the Court’s holding in *Jesner* calls into question whether the ATS still applies to U.S. corporations for international human rights violations that satisfy the dicta in *Kiobel*—that the claim touches and concerns the territory of the United States with sufficient force to displace the presumption against extraterritorial application.<sup>145</sup>

The history of the ATS makes apparent the limitations of enforcing international human rights through traditional legal mechanisms like federal statutes and courts. Although it appeared that these rights could be enforced through the ATS, as evidenced by *Filartiga* and its progeny, the Supreme Court’s decisions in *Sosa*, *Kiobel*, and *Jesner* now make it clear that the ATS is not the swiss-army knife human rights advocates hoped it would be. By further limiting the scope of the ATS, its effectiveness as a tool to combat abuses has been severely curbed. Accordingly, it is unclear to what degree the ATS can still be relied on as a vehicle to enforce international human rights violations moving forward.<sup>146</sup>

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143. *Id.* at 1405. The Court also reasoned that “allowing plaintiffs to sue foreign corporations under the ATS could establish a precedent that discourages American corporations from investing abroad, including in developing economies where the host government might have a history of alleged human-rights violations, or where judicial systems might lack the safeguards of United States courts.” *Id.* at 1406.

144. *Id.* at 1431 (Sotomayor, J., dissenting).

145. *Id.* at 1398, 1408.

146. *Id.* at 1419, 1436–37 (Sotomayor, J., dissenting). Even assuming rulings litigated through the traditional domestic law process (i.e., the courts) find violations of international human rights based on recognized international law, enforcing such rulings might be impossible. As one scholar notes, “states have found it easy to ignore such decisions as the result of three related factors: (1) ambiguous mandates and limited legal authority; (2) lack of meaningful legal or practical incentives to induce state compliance; and (3) insufficient institutional legitimacy to induce voluntary compliance.” Douglas Donoho, *Human Rights Enforcement in the Twenty-First Century*, 35 GA. J. INT’L & COMP. L. 1, 22 (2006).

#### IV. COMBATTING HUMAN RIGHTS VIOLATIONS: ALTERNATIVE ENFORCEMENT MECHANISMS

Although nation states have historically been the principal protectors of international human rights,<sup>147</sup> that reality is changing today. Nation states remain integral to the enforcement of international human rights; in recognizing the limitations of international law and traditional legal mechanisms, these bodies are developing and implementing new creative legal mechanisms to hold human rights violators liable for their actions.<sup>148</sup> These measures, such as the Global Magnitsky Act, rely on domestic legal constructs for enforcement and have been specifically designed to impose meaningful sanctions while avoiding the unenforceability concerns that hindered prior international efforts.<sup>149</sup> Additionally, private actors and activists are working to enforce international human rights through coordinated activist campaigns.<sup>150</sup> Worldwide communication technologies are increasingly providing underdeveloped communities greater access to the developed world (and vice versa): individuals have gained more powerful platforms to organize social causes, and activists and the public at large have used these tools to affect greater change through social media platforms and awareness campaigns.<sup>151</sup> This Section will explore some of these alternative enforcement mechanisms.

Even though these enforcement mechanisms are meant to target human rights abusers, they can also pose significant liability to well-meaning transnational corporations.<sup>152</sup> Transnational corporations alter the economic and legal landscapes in which they operate.<sup>153</sup> They interact with numerous business partners and their supply chains may stretch around the world. Human rights violations can be a minefield of risks for transnational companies; these risks are largely hidden and easy

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147. Norms, *supra* note 19, § A.1.

148. See discussion *infra* Parts III–IV.

149. See discussion *infra* Part III.

150. See discussion *infra* Parts III–IV.

151. *Id.*

152. *Id.*

153. Norms, *supra* note 19, pmb1.

to overlook, lying in wait to be discovered by investigators or intrepid reporters, and once discovered, it is difficult to quantify the potential exposure a company may face.

The first way in which attorneys work to stem international human rights abuses is to counsel clients on the risks specific to their field and location of operation. By discussing the risks and consequences of potential international human rights violations with companies, attorneys act as a first line of defense by raising awareness of these issues. By decreasing the likelihood of future abuses, proper counseling makes it more likely that clients will avoid in the future potential pitfalls in operating their businesses. As a result, attorneys need to be aware of legal and extralegal sources of liability for international human rights violations, understand and actively consider how the operation of their client's business may expose their client to liability, identify problem areas, and be prepared to offer solutions. The answers to these problems aren't necessarily going to be found in a book somewhere; rather, they will require creativity and ingenuity. Educating attorneys on these issues is key; an attorney cannot counsel clients on issues about which he is ignorant.

#### A. *The Magnitsky Act(s) Revisited*

As discussed in the Introduction, Russian attorney Sergei Magnitsky's discovery and reporting of corrupt and fraudulent actions by Russian Interior Ministry officials resulted in his unjust imprisonment and eventual torture and death.<sup>154</sup> The circumstances surrounding his death prompted Congress to pass the Magnitsky Act, which banned and froze the assets of the individuals involved with Magnitsky's imprisonment and death.<sup>155</sup> Since the passage of the Magnitsky Act, the international community has pushed to make it the preeminent enforcement mechanism combatting international human rights abuses.

In response to the Act's success, the United States expanded the Act in 2016 to apply globally, renaming it the Global

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154. See *infra* Introduction and notes 4–7.

155. See *infra* Introduction and notes 8, 13.

Magnitsky Human Rights Accountability Act.<sup>156</sup> The law now proactively targets those who violate human rights, including those responsible for murders and torture.<sup>157</sup> Under the Act's expansion, the President is authorized "to block or revoke the visas of certain 'foreign persons' (both individuals and entities) or to impose property sanctions on them."<sup>158</sup> "People can be sanctioned (a) if they are responsible for or acted as an agent for someone responsible for 'extrajudicial killings, torture, or other gross violations of internationally recognized human rights,' or (b) if they are government officials or senior associates of government officials complicit in 'acts of significant corruption.'"<sup>159</sup>

As of late 2018, the United States had imposed sanctions on eighty-one individuals for human rights violations, including Maung Maung Soe, a Burmese general, and Yahya Jammeh, the former president of Gambia.<sup>160</sup> In 2018 alone, the United States imposed sanctions on three Nicaraguan officials for corruption and human rights violations in connection with the country's fatal political uprising,<sup>161</sup> and the seventeen Saudi Arabian nationals.

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156. Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, § 1263, 130 Stat. 2533, 2534 (Dec. 23, 2016); Alex Horton, *The Magnitsky Act, Explained*, WASH. POST (July 14, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/07/14/the-magnitsky-act-explained/?utm\\_term=.c05edb04b053](https://www.washingtonpost.com/news/the-fix/wp/2017/07/14/the-magnitsky-act-explained/?utm_term=.c05edb04b053); *The US Global Magnitsky Act: Questions and Answers*, HUM. RTS. WATCH (Sept. 13, 2017, 10:40 AM), <https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act> (noting that in 2016, Congress built on the original law and renamed the Act the "Global Magnitsky Human Rights Accountability Act"); Patricia Zengerle, *U.S. Congress Votes to Apply Magnitsky Human Rights Act Globally*, REUTERS (Dec. 8, 2016, 12:37 PM), <https://www.reuters.com/article/us-usa-rights-congress-magnitsky-idUSKBN13X2AH>.

157. Alan Rappeport, *U.S. Punishes Chechen Leader in New Sanctions Against Russians*, N.Y. TIMES (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/us/politics/trump-sanctions-russia-chechnya.html>.

158. HUM. RTS. WATCH, *supra* note 156.

159. *Id.*

160. OFF. OF FOREIGN ASSETS CONTROL, SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST (2018), <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>; see also Gardiner Harris, *U.S. Imposes Sanctions on 52 People and Entities for Abuse and Corruption*, N.Y. TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/world/global-magnitsky-act-sanctions.html>; Catie Edmondson, *U.S. Imposes Sanctions on 3 Top Nicaraguan Officials After Violent Crackdown*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/us/politics/us-nicaragua-sanctions.html>.

161. Edmondson, *supra* note 160 (noting that the three individuals responsible were Francisco Diaz, Fidel Antonio Moreno Briones, and Francisco Lopez); Press Release, Heather Nauert, Department Spokesperson, Under Secretary for Public Diplomacy and Public Affairs and State Department, Nauert Statement on Global Magnitsky Designations for Nicaragua (July 5, 2018) (on file with the U.S. Department of State).

involved in the extrajudicial killing of Saudi journalist Jamal Khashoggi.<sup>162</sup> The sanctions imposed on the Nicaraguan officials were an effort to expose those responsible for the violence against Nicaraguan citizens.<sup>163</sup>

The Global Magnitsky Act is the prime example of an alternative *legal* enforcement mechanism. Most traditional criminal legal mechanisms, such as the Foreign Corrupt Practices Act,<sup>164</sup> require the United States to have personal jurisdiction over the defendant. The Global Magnitsky Act removes this requirement by virtue of the types of sanctions it allows to be imposed: blocking assets and property located in the United States (if any exist), prohibiting Americans from engaging in transactions with sanctioned individuals, and prohibiting sanctioned individuals from traveling to the United States.<sup>165</sup> These sanctions all require a lesser degree of due process or are completely within the discretion of the United States.<sup>166</sup> Limiting access to property and having the ability to conduct business and travel are all ways to impose significant burdens on human rights violators while minimally involving the judicial system, resulting in faster, more effective responses to such violations.

Corporations of all types that conduct transactions inside, or outside, the United States need to be aware of the Global Magnitsky Act, the individuals currently sanctioned under it, and the consequences of violating those sanctions—in particular the

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162. Press Release, Michael R. Pompeo, Speaker, Sec'y of St., Pompeo Statement on Global Magnitsky Sanctions on Individuals Involved in the Killing of Jamal Khashoggi (Nov. 15, 2018) (on file with the U.S. Department of State).

163. Press Release, Nauert, *supra* note 161.

164. 15 U.S.C. § 78dd-1 *et seq.*

165. Global Magnitsky Human Rights Accountability Act, *supra* note 156; 31 C.F.R. §§ 584.201–206; Exec. Order 13818, 82 Fed. Reg. 60,839 (Dec. 20, 2017).

166. Property may be blocked pursuant to Section 203 of the International Emergency Economic Powers Act, which authorizes the blocking of the property and interests in property of a person during the pendency of an investigation. 50 U.S.C. § 1702(a)(1)(B); *see also* 31 C.F.R. § 584.201(a) n.4. Additionally, under Section 212(f) of the Immigration and Nationality Act, the United States, through the President, is granted the power to suspend or otherwise restrict the entry of individual aliens and classes of aliens. 8 U.S.C. § 1182(a); *see* KATE M. MANUEL, CONG. RESEARCH SERV., R44743, EXECUTIVE AUTHORITY TO EXCLUDE ALIENS: IN BRIEF (Jan. 23, 2017). In 2011, separate and apart from the Magnitsky Act, President Obama proclaimed that aliens who have participated in serious human rights violations were barred from entering the United States. Proclamation No. 8697, 76 Fed. Reg. 49275, 49277 (Aug. 9, 2011).

ban on conducting transactions with sanctioned individuals or entities. The Act, through the International Emergency Economic Powers Act, 50 U.S.C. § 1705, imposes strict liability on any persons or entities that violate the Global Magnitsky Act, which as of December 31, 2017, included fines up to \$289,238.00.<sup>167</sup> If found to have willfully violated sanctions imposed under the Act, the violator faces a fine of up to \$1,000,000 and twenty years imprisonment.<sup>168</sup>

The success of the Global Magnitsky Act has spawned a number of similar laws in other countries such as the United Kingdom,<sup>169</sup> Canada,<sup>170</sup> and former Soviet bloc countries including Estonia,<sup>171</sup> Latvia,<sup>172</sup> and Lithuania.<sup>173</sup> In addition to

167. 31 C.F.R. § 584.701(a)(1) & n.1.

168. *Id.* § 584.701(a)(2).

169. In 2017, the United Kingdom passed the Criminal Finances Act 2017, amending the Proceeds of Crime Act 2002, to allow for the freezing of terrorist assets. Criminal Finances Act 2017, c. 22 (U.K.). In 2018, the United Kingdom passed the Sanctions and Anti-Money Laundering Act 2018, allowing for the impositions of sanctions for human rights violations, similar to the Global Magnitsky Act. Sanctions and Anti-Money Laundering Act 2018, c. 13 (U.K.).

170. Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c 21 (Can.).

171. Obligation to Leave and Prohibition on Entry Act, RT I 1998, 98/99, 1575 (Est.) (entered into force Apr. 4, 1999), <https://www.riigiteataja.ee/en/eli/519092014004/c/onsolide>; see also Andrew Rettman, *Estonia Joins US in Passing Magnitsky Law*, EUOBSERVER (Dec. 9, 2016, 11:58 AM), <https://euobserver.com/foreign/136217>.

172. Press Release, Saeima Approves Proposed Sanctions Against the Officials Connected to the Sergei Magnitsky Case (Feb. 8, 2018) (on file with the Selma Press Service on Latvijas Republikas Saeima's website).

173. See Statement of Amendment of Article 133, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/49467830190711e7b6c9f69dc4ecf19f?positionInSearchPosition=0&searchModelUUID=b56b5af9-ce2b-49a9-9175-05a5b33ef114> (last visited May 20, 2019) (amending Article 133 of the Lithuanian Law on the Legal Status of Aliens to allow for aliens to be “banned from entering the Republic of Lithuania for a period of more than 5 years if he or she may endanger the security of the state or public order, or the security or public order of another Member State of the European Union or the North Atlantic Treaty Organization, if there is information or serious grounds for suspecting that the alien has committed, participated in, or otherwise contributed to, large-scale corruption or money laundering, or to human rights violations leading to the death or serious injury of a person who has been the subject of a human rights violation, has been unjustly convicted for political reasons, or has suffered other serious negative consequences”).

the sanction regime already in place to punish terrorists,<sup>174</sup> the European Ministers of Foreign Affairs unanimously approved the Dutch proposal for the E.U.-wide Magnitsky Act, titled the “EU Global Human Rights Sanctions Regime.”<sup>175</sup> The European Union is now currently considering how to implement through legislation the EU Global Human Rights Sanctions Regime, which will allow for the imposition of visa bans and freeze assets.<sup>176</sup>

The Global Magnitsky Act and other countries’ “Magnitsky Acts” represent a new way of approaching human rights violations by not only seeking to punish past abuses but preventing future abuses.<sup>177</sup> It admittedly does not have the same breadth of applicability that a more general statute would, but what it loses in scope, it gains through precision. By targeting individual rights abusers, it accomplishes several things at once: it advertises their human rights violations; imposes a direct financial penalty (assuming the individual or entity has assets in the United States); limits the ability of the individual or entity to conduct business that touches the United States or involves its citizens; and limits the individual’s or entity’s movements.<sup>178</sup> Targeting powerful, well-financed human rights abusers provides strong disincentives to commit human rights violations and lessens one of the principal motives behind human rights abuses—consolidating power in order to profit from political

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174. The “EU Terrorist List,” established in response to the terrorist attacks of September 11, 2001, allows the European Union to impose restrictive measures, such as freezing funds and assets, and enhanced measures related to police and judicial cooperation in criminal matters on groups and entities engaged in terrorism. See *EU Terrorist List*, COUNCIL OF THE EUR. UNION, <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/> (last updated May 17, 2019); see also Council Common Position 2001/931/CFSP of 27 Dec. 2001, 2001 O.J. (L 57) 1; Council Regulation (EC) No. 2580/2001, 2001 O.J. (L 344) 1.

175. Rikard Jozwiak, *EU Ministers Discuss New Human Rights Sanctions Regime*, RADIOFREEEUROPE: RADIOLIBERTY (Dec. 10, 2018, 2:09 PM), <https://www.rferl.org/a/eu-ministers-discuss-new-human-rights-sanctions-regime/29648134.html>.

176. *Id.*

177. HUM. RTS. WATCH, *supra* note 156.

178. See U.S. HELSINKI COMM’N, HOW-TO GUIDE: SANCTIONING HUMAN RIGHTS ABUSERS AND KLEPTOCRATS UNDER THE GLOBAL MAGNITSKY ACT (May 24, 2018), <https://www.csce.gov/international-impact/publications/sanctioning-human-rights-abusers-and-kleptocrats-under-global>.

position.<sup>179</sup> The effectiveness of the Global Magnitsky Act, and similar legislation in other countries, is further increased by the acts' targeting of not only abusers but also those who conduct business with abusers. This pariah effect further incentivizes compliance through constant vigilance; in an effort not to inadvertently violate existing sanctions, transnational corporations and their attorneys should closely monitor sanctions updates. Because violating some Magnitsky Act sanctions involves substantial monetary penalties on companies participating in certain transactions, attorneys representing transnational companies must pay close attention to sanction lists in the United States and other countries. Further, attorneys must counsel their clients frequently on the consequences of Magnitsky Act noncompliance.

*B. The United Kingdom's Modern Slavery Act of 2015 and Australia's Proposed 2018 Modern Slavery Act*

The United Kingdom's Modern Slavery Act of 2015 ("MSA"),<sup>180</sup> intended to improve the United Kingdom's law enforcement in the area of "modern slavery," similarly attacks human rights abuses in a proactive manner. The MSA, which received royal assent on March 26, 2015, implements the United Kingdom's anti-trafficking obligations under the UN Trafficking Protocol and others.<sup>181</sup> The MSA consolidates existing criminal offenses in the area and increases the penalties for committing the offenses.<sup>182</sup> The MSA's main addition, however, is an increase in "transparency."<sup>183</sup> Under the MSA, entities conducting business in the United Kingdom with worldwide revenues in excess of £36 million are each required to produce a transparency

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179. See HUM. RTS. WATCH, *supra* note 156; see, e.g., Press Release, U.S. Dep't of Treas., U.S. Sanctions Human Rights Abusers & Corrupt Actors Across the Globe (Dec. 21, 2017) (on file with the U.S. Dep't of Treas.) (showing that some of the world's most notorious human rights abusers are very wealthy).

180. Modern Slavery Act 2015, c. 30 (U.K.).

181. *Id.* c. 30, Explanatory Notes ¶¶ 1, 5.

182. *Id.* ¶ 3.

183. Raj Panasar, *The Modern Slavery Act 2015: Next Steps for Businesses*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (Mar. 10, 2017), <https://corpgov.law.harvard.edu/2017/03/10/the-modern-slavery-act-2015-next-steps-for-businesses/>.

statement describing the steps taken to ensure that their businesses and supply chains are free from modern slavery and human trafficking.<sup>184</sup>

In addition to the United Kingdom, the Australian government has introduced its own modern slavery law, which would require more than 3,000 businesses to disclose details regarding their business operations and supply chains.<sup>185</sup> The law, which is modeled after the United Kingdom's Modern Slavery Act, requires companies to be more transparent in their business dealings and with regard to what steps they have taken to combat modern slavery in Australian operations.<sup>186</sup> This bill follows a 2017 report produced by the Australian government on supply chain modern slavery advocating for targeted regulatory action through the creation and implementation a "modern slavery in supply chains reporting requirement" for businesses.<sup>187</sup> The bill requires companies with more than \$100 million in revenue to publish annual slavery statements.<sup>188</sup> Critics of the bill claim it does not go far enough to hold businesses accountable, calling for the adoption of penalties for corporations which fail to report or report misleading information.<sup>189</sup> Critics have also called for the establishment of an anti-slavery commissioner to enforce the legislation.<sup>190</sup>

### C. *Alternative Non-Legal Enforcement Concerns*

In addition to the steps nation states, and the international community, have taken to combat and punish human rights

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184. *Id.*

185. Gareth Hutchens & Ben Doherty, *Modern Slavery Bill Welcomed, but No Penalties for Breaching Act*, GUARDIAN (June 28, 2018), <https://www.theguardian.com/australia-news/2018/jun/28/modern-slavery-bill-welcomed-but-no-penalties-for-breaching-act>; Kieran Guilbert, *Thousands of Companies to Take Action Under Australia's Anti-Slavery Law*, REUTERS (May 10, 2018, 11:05 AM), <https://www.reuters.com/article/us-australia-slavery-lawmaking/thousands-of-companies-to-take-action-under-australias-anti-slavery-law-idUSKBN1IB2D8>.

186. *Id.*

187. ATTORNEY GENERAL DEPT, MODERN SLAVERY IN SUPPLY CHAINS REPORTING REQUIREMENT: PUBLIC CONSULTATION PAPER AND REGULATION IMPACT STATEMENT 3, 5 (2017) (Austl.).

188. Guilbert, *supra* note 185; Hutchens & Doherty, *supra* note 185.

189. Hutchens & Doherty, *supra* note 185.

190. Guilbert, *supra* note 185; Hutchens and Doherty, *supra* note 185.

violations, human rights activists have also sought to impose non-legal liability on human rights abusers—in particular companies—by harnessing the power of shareholder activists and public relation campaigns.<sup>191</sup> Using these alternative strategies, activists, such as Amnesty International, seek to force the business community to address potential human rights abuse in their businesses and supply chains.<sup>192</sup> As a result, both companies—and the attorneys who represent them—should be conscious of activist activities and vigorously consider international human rights risks in their businesses and supply chains.

One way in which activists have forced transnational companies to address alleged international human rights abuse is through shareholder activism campaigns.<sup>193</sup> The impetus behind shareholder activism campaigns can vary, from general concerns of corporate governance and profit maximization to more noble pursuits, such as forcing companies to address known environmental and human rights concerns. For example, after reports surfaced that forced labor, child labor, and human trafficking concerns were present in six of the largest sugarcane

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191. Simon Billenness & Paz y Miño, *Amnesty International: Shareholder Activist*, AMNESTY INT'L, <https://www.amnestyusa.org/amnesty-international-shareholder-activist/> (last visited Oct. 2, 2018).

192. Amol Mehra & Stephen Winstanley, *Respecting Human Rights: Shareholders Shift from Policy to Action*, CSR WIRE (Apr. 22, 2013, 9:45 AM), <https://www.csrwire.com/blog/posts/812-taking-action-to-respect-human-rights-shareholders-shift-from-policy-to-action>.

193. Billenness & Paz y Miño, *supra* note 191; Paula Loop et al., *The Changing Face of Shareholder Activism*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (Feb. 1, 2018), <https://corpgov.law.harvard.edu/2018/02/01/the-changing-face-of-shareholder-activism/> (“Activism is about driving change. Shareholders turn to it when they think management isn’t maximizing a company’s potential. Activism can include anything from a full-blown proxy contest that seeks to replace the entire board, to shareholder proposals asking for policy changes or disclosure on some issue. In other cases, shareholders want to meet with a company’s executives or directors to discuss their concerns and urge action. The form activism takes often depends on the type of investor and what they want.”).

producing countries,<sup>194</sup> an effort was mounted by an activist group to force Monster Beverage to address the lack of transparency in its supply chain.<sup>195</sup> The CEO of a corporate accountability activism group, As You Sow, presented a resolution at Monster Beverage's 2018 annual shareholder meeting.<sup>196</sup> Although the resolution only garnered 20% of company shareholder votes,<sup>197</sup> the attempt to force Monster Beverage to address human rights concerns should serve as a cautionary tale to those companies and attorneys who remain unaware of issues surrounding international human rights risks.

Similarly, the use of forced child labor and other abusive employment practices in the mining of the mineral cobalt has recently caused problems for technology companies, and other companies in industries which rely on lithium-ion batteries.<sup>198</sup> Cobalt is an essential component in the manufacture of lithium-ion batteries, which are used in almost all consumer electronics.<sup>199</sup> These batteries are also used extensively in the automobile industry, as manufacturers increasingly integrate electronics into new automobile designs, and are essential to the growing electric car movement.<sup>200</sup> The other issue with cobalt supply is that the bulk of all cobalt mined worldwide occurs in one

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194. See U.S. DEP'T OF LAB., BUREAU OF INT'L AFF., LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (Oct. 3, 2018), <https://www.dol.gov/sites/default/files/documents/ilab/ListofGoods.pdf> (noting that the U.S. Department of Labor has identified human rights abuses for sugarcane produced in Bolivia, Brazil, Dominican Republic, Myanmar, Pakistan, and Guatemala); KNOW THE CHAIN, HOW FOOD AND BEVERAGE COMPANIES TACKLE FORCED LABOR RISKS IN SUGARCANE SUPPLY CHAINS 5–6 (2017), [https://knowthechain.org/wp-content/uploads/KTC-SugarcaneReport-Final\\_August-2017.pdf](https://knowthechain.org/wp-content/uploads/KTC-SugarcaneReport-Final_August-2017.pdf).

195. Cyrus Nemati, *Monster Beverage Shareholders Vote to Fix Slavery Problem*, AS YOU SOW (June 8, 2018), <https://www.asyousow.org/press-releases/2018/6/8/monster-beverage-shareholders-vote-to-fix-slavery-problem>.

196. *Id.*

197. *Id.*

198. *Industry Giants Fail to Tackle Child Labour Allegations in Cobalt Battery Supply Chains*, AMNESTY INT'L (Nov. 25, 2018), <https://www.amnesty.org/en/latest/news/2017/11/industry-giants-fail-to-tackle-child-labour-allegations-in-cobalt-battery-supply-chains/> [hereinafter *Industry Giants Fail to Tackle Child Labour*].

199. Anthony King, *Battery Builders Get the Cobalt Blues*, CHEMISTRY WORLD (Mar. 12, 2018), <https://www.chemistryworld.com/news/battery-builders-get-the-cobalt-blues/3008738.article>.

200. *Id.*

country—the Democratic Republic of Congo (“DRC”)—and the DRC is plagued by conflict and political instability.<sup>201</sup>

As a result, the price for cobalt has skyrocketed recently, from approximately \$32,000 per metric ton in early 2017, to over \$80,000 per metric ton in early 2018.<sup>202</sup> The increase in price, and continued expected increase in demand,<sup>203</sup> has led to lethal health hazards, illegal taxation, and child labor due to a lack of governmental oversight or protections.<sup>204</sup> Although the DRC has a Labour Code in place, it is not effectively enforced.<sup>205</sup> Taking advantage of the DRC’s inability to monitor and enforce safety and labor regulations, artisanal mining operations—mining practiced informally (and often illegally) by individuals, groups or communities—are often operating in violation of the safety and labor standards. Importantly, children who work in the mines often work long hours under difficult conditions, sometimes underground, are required to transport heavy loads, are exposed to hazardous substances, and risk of physical abuse.<sup>206</sup>

Activists have called on companies to “identify, prevent, address and account for human rights abuses in their cobalt supply chains.”<sup>207</sup> This includes “[p]ublic disclosure of human rights risk assessments” and admitting to existing human rights abuses in their supply chains.<sup>208</sup> Amnesty International is calling on any company to remediate any harm suffered if the company “has contributed to, or benefited from, child labour or adults working in hazardous conditions” by “working with other companies and the government to remove children from the worst forms of child labour and support their reintegration into school,

201. *Id.*; Kenneth Roth, *The Pushback Against the Populist Challenge*, in HUMAN RIGHTS WATCH: WORLD REPORT 2018 1, 173 (2017).

202. King, *supra* note 199.

203. *Id.*

204. See AMNESTY INT’L, “THIS IS WHAT WE DIE FOR”: HUMAN RIGHTS ABUSES IN THE DEMOCRATIC REPUBLIC OF THE CONGO POWER THE GLOBAL TRADE IN COBALT 4–70 (2016) [hereinafter Congo Cobalt Trade Report].

205. See *id.* (illuminating the lack of effective enforcement by noting that the DRC employs only twenty mine inspectors for the southern DRC “copperbelt” mining region).

206. *Id.*

207. *Industry Giants Fail to Tackle Child Labour*, *supra* note 198.

208. *Id.*

as well as addressing health and psychological needs.”<sup>209</sup> They have also published every company’s response to their inquiries regarding their cobalt mining practices.<sup>210</sup> Certain companies, like Apple, have responded by publishing the names of its cobalt suppliers and has taken an active role in promoting responsible cobalt sourcing.<sup>211</sup> Tesla, whose business model is largely built around battery technology, has gone so far as to redesign their batteries to significantly reduce their use of cobalt.<sup>212</sup>

Grassroots activism based on shareholder status will likely only continue to gain traction in coming years as traditional shareholder activism campaigns have continued success. This modern day form of public shaming, by raising the public’s awareness of alleged corporate abuse, acts as a sufficient threat to hold companies accountable for international human rights violations. As a result, attorneys representing companies operating in at risk countries and in vulnerable industries—such as manufacturing (technology, clothing), mining, oil and gas production, and certain forms of agriculture—should take steps to understand their clients’ supply chains and manufacturing processes in order to identify areas of concern before activists do.

## V. PROMOTING INTERNATIONAL HUMAN RIGHTS THROUGH THE LEGAL PROFESSION

In Part III, this paper discussed how attorneys can promote and protect international human rights through proper counsel and representation of transnational corporations. But it is imperative that the legal community, a body acutely aware of

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209. *Id.*

210. Congo Cobalt Trade Report, *supra* note 204 (commenting that Amnesty International’s published summary of responses from downstream companies included responses from Apple, Daimler AG, HP Inc., Lenovo, Microsoft Corporation, Samsung, Sony, Volkswagen, and others).

211. *Industry Giants Fail to Tackle Child Labour*, *supra* note 198.

212. James Attwood & Martin Ritchie, *Elon Musk Warns That Tesla’s Cobalt Use Is Heading Toward Zero*, BLOOMBERG (May 2, 2018, 1:04 AM), <https://www.bloomberg.com/news/articles/2018-05-02/tesla-supercharging-its-model-3-means-less-cobalt-more-nickel>; Carroll Lee, Response to *What is Tesla’s Business Model?*, QUORA (Oct. 26, 2018), <https://www.quora.com/%20What-is-Teslas-business-model>; Jonas Elmerraji, *Tesla’s Battery Tech Is Unrivaled*, THESTREET (June 19, 2018, 7:52 AM), <https://www.thestreet.com/investing/electric-car-makers-can-not-compete-with-tesla-battery-tech-14626638>.

moral and ethical obligations, promotes such ideas through the practice of law as well.

In recognition of the growing importance of international human rights issues to attorneys, the clients they represent, and the profession in general,<sup>213</sup> numerous domestic and international bar associations and legal organizations have taken steps to address international human rights. While some have worked to advocate for, and raise awareness of, human rights issues, others have moved to change the rules and codes of conduct governing the practices of their members to include recognition and respect of international human rights.<sup>214</sup> Effective and responsible advocacy for our clients requires attorneys to be educated on issues which might affect those clients' businesses. Additionally, considering the ethical and moral guidelines governing our profession, it is incumbent on attorneys, and the organizations which represent our profession, to consider how, and in what ways the legal profession should participate in promoting and protecting international human rights. Although this movement is still in its infancy, some bar associations have taken steps to contribute to the global community's movement to better respect, promote, and protect those rights.

For example, the American Bar Association and other local bar associations, such as the New York City Bar Association and the Bar Association of San Francisco, have all established International Human Rights Committees or Sections.<sup>215</sup> They have taken meaningful steps to protect and promote international

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213. Memorandum from the University of Texas School of Law's Human Rights Clinic to the International Human Rights Committee of the Texas Bar Association 7–8 (Dec. 22, 2017) (on file with the University of Texas School of Law) (discussing the fact that international human rights issues are of particular importance to Texas given its status as “international” state considering geographic, economic, and socio-cultural factors and because “the practice of law in Texas will likely be disproportionately affected by the ever-increasing scope and relevance of international human rights law”) [hereinafter University of Texas Memo].

214. *Id.* at 7–8, 18, 20.

215. ABA *SIL International Human Rights Committee*, AM. BAR ASS'N, <http://apps.americanbar.org/dch/committee.cfm?com=IC950000> (last visited Oct. 10, 2018); *International Human Rights Committee*, N.Y.C. BAR ASS'N, <https://www.nycbar.org/member-and-career-services/committees/international-human-rights-committee> (last visited Oct. 2, 2018); *International Human Rights Section*, BAR ASS'N S.F., [https://www.sfbar.org/cle/sections\\_humanrights.aspx](https://www.sfbar.org/cle/sections_humanrights.aspx) (last visited Oct. 2, 2018).

human rights through educational programs.<sup>216</sup> The ABA, the New York City Bar Association, and the Bar Association of San Francisco are also involved in direct advocacy. The ABA's SIL International Human Rights Committee additionally "[m]onitors the drafting and adoption of international covenants; [a]dvocates for foreign human rights lawyers persecuted for their work; and [i]nvestigates cases of alleged human rights abuses throughout the world."<sup>217</sup> The Bar Association of San Francisco International Human Rights Committee "protest[s] well-documented, governmental violations of human rights, particularly those violations that involve lawyers and judges."<sup>218</sup> Additionally, the New York City Bar Association International Human Rights Committee has engaged in letter writing campaigns to raise awareness of specific human rights issues and violations.<sup>219</sup>

In addition to counseling companies on human rights issues and the way those issues impact their businesses, attorneys are exploring ways to promote and impact human rights issues directly through the administration of professional standards. This Section will discuss efforts made on this front by bar associations in both the United States and internationally.

In Texas, the State Bar of Texas, through its International Law Section, established the International Human Rights Committee ("Committee") to consider the impact of human rights issues on the practice of law in Texas.<sup>220</sup> The Committee was established in recognition that Texas lawyers who represent transnational clients "may be confronted more frequently with the human, legal, and reputational risk associated with violations

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216. *Id.*

217. AM. BAR ASS'N, *supra* note 215.

218. BAR ASS'N S.F., *supra* note 215.

219. *See, e.g., Committee Report: Letter Regarding Persecution of the Rohingya People in Myanmar*, N.Y.C. BAR ASS'N (July 25, 2018), [https://s3.amazonaws.com/documents.nycbar.org/files/2018405-Rohingya\\_Letter.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2018405-Rohingya_Letter.pdf); *Committee Report: Letter to the President of the United Republic of Tanzania on the Treatment of LGBT Individuals*, N.Y.C. BAR ASS'N (Apr. 6, 2018), [https://s3.amazonaws.com/documents.nycbar.org/files/2017360-TanzaniaLGBT\\_FINAL\\_4.5.18.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2017360-TanzaniaLGBT_FINAL_4.5.18.pdf); *Committee Report: Politicization of the Judiciary in Poland*, N.Y.C. BAR ASS'N (June 27, 2018), [https://s3.amazonaws.com/documents.nycbar.org/files/2018408-Poland\\_Judiciary\\_Letter.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2018408-Poland_Judiciary_Letter.pdf).

220. INT'L L. SEC., ST. B. TEX., *supra* note 53.

of internationally recognized human rights.”<sup>221</sup> Those lawyers, as a result, may need guidance and advice on how to counsel clients on these issues, as the Committee “is charged with providing information and guidance on this topic for practicing lawyers in Texas.”<sup>222</sup>

The Committee’s responsibilities include:

- Studying the issues that confront practicing lawyers due to violations of international human rights;
- Developing guidance for lawyers practicing in the international arena on the issues presented by international human rights violations;
- Providing information on international human rights at the State Bar of Texas’s annual meeting, the International Section’s Annual Institute, or at other state or local meetings;
- Assisting law firms and law schools to further address the issues of internationally recognized human rights and the issues presented in international law practices in their training and education programs;
- Encouraging lawyers within the International Section and within the State Bar of Texas, to take leadership roles with regard to addressing violations of internationally recognized human rights;
- Reviewing the rules of disciplinary procedures of the State Bar of Texas to determine if any amendments would be appropriate in order to further advise and guide the members of the bar on the issue of internationally recognized human rights;
- Establishing a network of lawyers within the state of Texas with experience in international matters and international human rights to provide technical assistance to lawyers confronted with such issues; and
- Discussing with government officials and other stakeholders the importance of addressing issues related to internationally recognized human rights by

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221. *Id.*

222. *Id.*

the legal profession in Texas.<sup>223</sup>

In furtherance of these objectives, the Committee commissioned the University of Texas School of Law's Human Rights Clinic to review the Texas Disciplinary Rules of Professional Conduct to evaluate what guidance they should provide to attorneys whose practices are affected by international human rights issues.<sup>224</sup> In November 2017, the University of Texas presented its findings ("University of Texas Report"), which included several recommendations on how the State Bar of Texas should amend the Texas Disciplinary Rules of Professional Conduct to accommodate human rights concerns.<sup>225</sup> These findings were focused on altering the Texas standards governing client representation, better promoting the education of human rights issues among attorneys, and considering adopting a Texas-specific human rights policy.<sup>226</sup>

The University of Texas Report found that the Texas Rules of Professional Conduct fail to provide attorneys any guidance on the implications of international human rights issues on the practice of law.<sup>227</sup> For example, unlike the ABA Model Rules,<sup>228</sup> the Texas Disciplinary Rule of Professional Conduct 2.01 omitted any statement addressing the scope of considerations attorneys should consult in providing advice.<sup>229</sup> Instead, it provides only that "[i]n advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and render candid advice."<sup>230</sup> In the words of the Report, the Rules need "to illuminate the relevance and moral urgency of human rights obligations—not obscure them."<sup>231</sup> The Report emphasized that by expanding the scope of the Rules to address international human rights directly; for example, adding "human rights

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223. *Id.*

224. University of Texas Report, *supra* note 213, at 3.

225. *Id.* at 3, 17–19.

226. *Id.* at 17–19.

227. *Id.* at 3.

228. MODEL RULES OF PROFESSIONAL CONDUCT r. 2.1 (AM. BAR ASS'N 2017).

229. University of Texas Memo, *supra* note 213, at 11, 17.

230. TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT r. 2.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (Vernon 2013) (Tex. State Bar R. art. X, §. 9).

231. University of Texas Memo, *supra* note 213, at 17.

principles” as one of the enumerated factors a lawyer might consider in advising a client, the Rules could provide attorneys better guidance on the role of international human rights in the practice of law.<sup>232</sup> The Report recommended amending, or adding commentary to, the Rules to clarify that a lawyer’s duty to give candid advice encompasses human rights concerns.<sup>233</sup>

The Report also found that, because “Texas is one of—if not the most—‘international’ states in the US” in terms of geographic, economic, and socio-cultural factors, international human rights issues will disproportionately affect Texas attorneys and their practices.<sup>234</sup> Because the Rules require an attorney provide competent and diligent representation, attorneys need to be knowledgeable of international human rights principles.<sup>235</sup> The University of Texas Report recommended either adding, as a new rule, an express international human rights acknowledgement to the Texas Disciplinary Rules, or noting in the Texas Disciplinary Rules’ Commentary the need for professional development on the ways international human rights affect the practice of law in Texas.<sup>236</sup>

Next, the University of Texas Report found the State Bar of Texas should adopt and implement a Human Rights Policy.<sup>237</sup> The Report noted that considering the responsibilities already placed on all Texas business enterprises regarding human rights,<sup>238</sup> such a policy was a logical step and is a “unique opportunity to lead by example and guide Texas law firms in adopting and

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232. *Id.* at 17.

233. *Id.*

234. *Id.* at 18.

235. *Id.*

236. *Id.*; see e.g., MODEL RULES OF PROFESSIONAL CONDUCT, *supra* note 228, r. 1.1 cmt. [8] (“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”).

237. University of Texas Memo, *supra* note 213, at 19.

238. See TEX. GOV’T CODE ANN. § 81.029(j)–(k) (explaining the Executive Director of Texas’ bar is required “to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin”; the policy statement must be updated annually and “reviewed by the state Commission on Human Rights” to ensure it “show[s] the intent of the state bar to avoid the unlawful employment practices”).

implementing a policy on human rights.”<sup>239</sup>

The Report also found that the State Bar “should address the need for human rights education through training materials” and continuing legal education, as well as investigate the need to integrate human rights into the bar exam.<sup>240</sup> Sponsored training programs and increased educational efforts “would help provide context to and empower lawyers to have the appropriate knowledge to be both advocate and advisor to their clients.”<sup>241</sup> In early 2018, these recommendations were sent to the State Bar of Texas International Law Section, and the State Bar of Texas is recommending their implementation.<sup>242</sup>

Lastly, a number of other countries’ bar or legal associations have also adopted affirmative duties to respect human rights in their professional codes of conduct.<sup>243</sup> For example, the Geneva Bar Association and the Law Society of England and Wales’ Business and Human Rights Program are involved in an ongoing process of engagement with stakeholders in formulating a human rights policy.<sup>244</sup>

## VI. PRACTICE POINTERS AND CONCLUSION

International human rights issues are changing the way private practitioners practice law. In counseling and defending clients, attorneys must evaluate how new domestic and foreign

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239. University of Texas Memo, *supra* note 213, at 19.

240. *Id.*

241. *Id.* at 20.

242. *Human Rights Clinic*, U. TEX. L. SCH., <https://law.utexas.edu/clinics/human-rights/> (last visited Feb. 25, 2019).

243. See *Basic Rules on the Duties of Practicing Attorneys*, JAPAN FED’N B. ASS’N (Nov. 10, 2004), available at [http://www.nichibenren.or.jp/library/en/about/data/basic\\_rules.pdf](http://www.nichibenren.or.jp/library/en/about/data/basic_rules.pdf); *Code of Professional Conduct for Members of the Swedish Bar Association*, SWEDISH BAR ASS’N (Aug. 29, 2008) (revised 2016), [https://www.advokatsamfundet.se/globalassets/advokatsamfundet\\_eng/code-of-professional-conduct-with-commentary-2016.pdf](https://www.advokatsamfundet.se/globalassets/advokatsamfundet_eng/code-of-professional-conduct-with-commentary-2016.pdf); *Model Code of Professional Conduct*, FED’N L. SOC’Y CAN. (2017), <https://flsc.ca/wp-content/uploads/2018/03/Model-Code-as-amended-March-2017-Final.pdf>; L. COUNCIL AUSTL., POLICY STATEMENT ON HUMAN RIGHTS AND THE LEGAL PROFESSION: KEY PRINCIPLES AND COMMITMENTS (2017), <https://www.lawcouncil.asn.au/docs/3fac5d09-2152-e711-93fb-005056be13b5/Human%20Rights%20Policy.pdf>.

244. *Stakeholder Engagement*, LAW SOC’Y, <https://web.archive.org/web/20170630134706/http://communities.lawsociety.org.uk:80/human-rights/what-we-do/business-and-human-rights/stakeholder-engagement/> (last visited Feb. 25, 2018); *For the Public*, LAW SOC’Y, <https://www.lawsociety.org.uk/for-the-public/> (last visited Feb. 25, 2018).

laws affect their transnational clients' businesses. They must monitor and analyze how evolving legal and regulatory frameworks are changing to better enforce domestic and international human rights laws. Importantly, attorneys must consider alternative forms of liability, such as public relations concerns and shareholder activism efforts, and advise transnational clients on how to limit exposure to, and mitigate if necessary, these types of liabilities. This involves anticipating and avoiding issues before they arise, as it often involves containing the damage associated with an existing issue.

In addition to addressing international human rights issues reactively through clients, attorneys are also uniquely positioned among professions to combat human rights violations through proactive measures. Attorneys are trained to write and speak persuasively. They are also sensitive to ethical concerns and understand the important role that the law plays in providing structural protections. As evidenced by the steps certain legal organizations have taken to evaluate the impact international human rights issues are having on the legal profession, lawyers should recognize and embrace the fact that they have an opportunity to help curb international human rights abuses through client representation, educating other attorneys, and raising awareness of these issues.

Sergei Magnitsky died exposing the corrupt business practices engaged in by his government. In death, his actions caused the United States to pass a law affecting real change by punishing human rights abusers and preventing future abuses. We as practicing attorneys, and the legal profession at large, should honor his memory by taking more comprehensive steps to integrate into our practices and our profession attention to international human rights issues.

