



The Magnitsky Act and Transatlantic Sanctions: Evaluating Impact and Challenges in Global Human Rights Accountability

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Abstract

The Magnitsky Act represents a critical U.S. policy tool targeting human rights abuses and corruption through sanctions, including asset freezes and travel bans. Initially focused on Russia, the Act evolved into the Global Magnitsky Act, addressing abuses worldwide. This paper evaluates its origins, implementation, and impact on global accountability, emphasizing its relevance to U.S.-Europe relations amidst rising geopolitical tensions. While successful in deterring some abuses and inspiring similar legislation internationally, challenges such as selective application, evidence collection, and sovereignty concerns remain. Policy recommendations include improved U.S.-Europe coordination, enhanced transparency, and balancing sanctions with positive incentives to strengthen its global effectiveness.

Keywords: Sanctions, human rights, US-Russia, policy analysis, transatlantic relations

Introduction

The Magnitsky Act is a pivotal legislative measure from the United States designed to impose targeted sanctions on individuals and entities implicated in human rights abuses and significant corruption.¹ As the inspiration for the EU Global Human Rights Sanctions Regime, the United States and Europe are deepening their cooperation in promoting global human rights standards and ensuring accountability for egregious violations.² Given the escalating conflicts with the People's Republic of China (PRC) and the Russian Federation, where criticisms of human rights abuses and authoritarian practices have intensified, the relevance of these policies to US-Europe relations in 2024 is particularly pronounced. This policy analysis evaluates the effectiveness and strategic implications of the Magnitsky Act. To comprehend the Act's current implications, it is vital to first understand its origins and development. In particular, the case of Sergei Magnitsky and the subsequent legislative actions highlight the act's significance and impact on global human rights standards. Understanding the strengths and limitations of these sanctions regimes is crucial for shaping future US policies and strategies in addressing international human rights abuses and maintaining global security.

Background: The Case of Sergei Magntisky

In 1996, William Browder established Hermitage Capital Management, an investment fund specializing in Russian markets.³ Hermitage Capital rose to become the largest foreign portfolio investor in Russia by focusing on undervalued companies following the Soviet Union's collapse.⁴ However, Browder and his firm soon encountered extensive corruption, corporate governance abuses, and financial malpractice. In the early 2000s, Hermitage Capital's investigations exposed significant corruption in major companies such as Gazprom, Unified Energy System, and Sberbank, revealing practices like asset stripping, financial mismanagement, insider trading, and undervaluation of assets.⁵ These revelations made Browder and his firm targets of powerful Russian interests, including President Vladimir Putin. In November 2005, Browder was blacklisted by the Russian government, which labeled his firm's activities a threat to national security.⁶ Over the next two years, Browder and his associates endured "corporate raiding" by police officers who were "visit[ing] business headquarters and forc[ing] owners or staff to transfer business assets, land or property" to the Russian government.⁷ On June 4, 2007, Hermitage's Moscow office was raided by 20 Ministry of Interior officers who seized corporate and tax documents. Later that year,

¹ S. 1039 - Sergei Magnitsky Rule of Law Accountability Act of 2012, 112th Congress (2011-2012). Sponsor: Sen. Benjamin L. Cardin (D-MD). Introduced May 19, 2011. Referred to the Senate Committee on Foreign Relations. *Congress.gov*. Accessed November 18, 2024. <https://www.congress.gov/bill/112th-congress/senate-bill/1039>.

² Gesley, Jenny. 2021. "European Union: Global Human Rights Sanctions Regime Enters into Force." *Library of Congress*, January 12. <https://www.loc.gov/item/global-legal-monitor/2021-01-12/european-union-global-human-rights-sanctions-regime-enters-into-force/>.

³ Shao, Maria. 2009. "Bill Browder: A Warning Against Investment in Russia." *Stanford Graduate School of Business*, October 1. Accessed June 2024. <https://www.gsb.stanford.edu/insights/bill-browder-warning-against-investment-russia>.

⁴ Hamlin, Jessica. 2022. "Here's What Happens When Investors Ignore Corruption." *Institutional Investor*, March 2. Accessed June 2024. <https://www.institutionalinvestor.com/article/2bstoaurgvddtkoacclu68/portfolio/heres-what-happens-when-investors-ignore-corruption>.

⁵ Browder, William. 2014. "Russia: Corruption, Torture, Murder with William Browder." *Geneva Summit for Human Rights and Democracy*. <https://genevasummit.org/speech/the-fight-for-fundamental-freedoms-3/>.

⁶ The Moscow Times. 2015. "Browder: 'Putin Has Stolen Hundreds of Billions of Russia's Wealth'." *The Moscow Times*, February 16. <https://www.themoscowtimes.com/2015/02/16/browder-putin-has-stolen-hundreds-of-billions-of-russias-wealth-a43920>.

⁷ Osipian, Ararat. *The Political Economy of Corporate Raiding in Russia*. 1st ed. New York: Routledge, 2021, 1.

Browder discovered Hermitage was involved in a trial for an alleged debt of hundreds of millions of dollars without his knowledge. To investigate these illegal actions, Browder was prompted to enlist Sergei Magnitsky, an auditor with the Moscow law firm, Firestone Duncan, to investigate.

It was through meticulous investigation that Magnitsky uncovered the truth, that law enforcement was colluding with organized crime. Law Enforcement had handed over materials seized during their raids, which were then used to take control of three of Hermitage's Russian subsidiaries. In an audacious move, they fraudulently reclaimed \$230 million in taxes Hermitage had previously paid, the largest tax refund in Russian history.⁸ Magnitsky's allegations implicated a wide range of authorities, including the police, judiciary, tax officials, bankers, and the Russian mafia. Undeterred, Hermitage reported the findings to the Russian government, asserting that the embezzled money belonged to the Russian state.⁹ However, instead of investigating the identified police and criminals, the Russian authorities opened a criminal case against Magnitsky. On November 24, 2008, Sergei Magnitsky was arrested for tax evasion and fraud.¹⁰ Meant to encourage a confession, Magnitsky was held in deplorable conditions, from overcrowded cells with leaking sewage, exposure to Moscow winters, and maggot-infested foods. All requests for bail were repeatedly denied despite his deteriorating health and the non-violent nature of his alleged crimes.¹¹ Over almost a year, Magnitsky reported experiencing physical abuse and torture, alongside the use of isolation and continual movement designed to break his spirit. On November 16, 2009, Magnitsky reportedly died in custody.¹²

According to the United States government, Magnitsky's demise can be attributed to his deteriorating health from his time in prison and a severe beating from eight officers with rubber batons.¹³ His death led to international outrage, another victim of the notoriously corrupt and brutal Russian prison system. Conversely, Putin claimed, "Nobody tortured him; he died of a heart attack" (2012) asserting it was due to natural causes rather than as a result of his incarceration conditions. Unable to achieve justice within Russia due to systemic impunity, William Browder sought international intervention. In 2012, his advocacy led to the involvement of U.S. Senators John McCain and Roger Wicker, resulting in the creation of the Sergei Magnitsky Rule of Law Accountability Act.¹⁴ The bill was designed to punish those involved in Magnitsky's death and other human rights abusers by imposing targeted sanctions, including asset freezes and visa bans. On December 14, 2012 following a near-unanimous vote from the House of Representatives and the Senate, President Barack Obama signed the Sergei Magnitsky Rule of Law Accountability Act into law.¹⁵

⁸ Browder, William. "The Torture and Murder of Sergei Magnitsky in Russia." Statement at the OSCE Review Conference, Working Session 3, Organization for Security and Co-Operation in Europe, October 4, 2010, sec. 1, p. 1.

⁹ Ibid., 2.

¹⁰ Ibid., 4.

¹¹ Ibid., IV. Breach of Human Rights in Detention, 5-12.

¹² Ibid., 16.

¹³ Cardin, Ben. "Remembering Sergei Magnitsky." *Congressional Record*, 117th Cong., 1st sess., November 18, 2021, vol. 167, no. 201. U.S. Senate, Washington, D.C.

¹⁴ Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012." *Public Law* 112-208, December 14, 2012, 126 Stat. 1503.

¹⁵ The White House Office of the Press Secretary. 2012. "Statement by the Press Secretary on H.R. 6156." *The White House: President Barack Obama*, December 14. <https://obamawhitehouse.archives.gov/the-press-office/2012/12/14/statement-press-secretary-hr-6156>.

Sergei Magnitsky Rule of Law Accountability Act of 2012

The original Act detailed the use of sanctions, through travel bans and freezing of assets, to restrict individuals involved in serious human rights abuses and significant corruption from entering the United States or accessing any wealth within the U.S. financial system. While the Act established a robust framework for sanctions, it was not without its detractors. The Russian government, in particular, voiced strong opposition. For an individual to be eligible for the sanctions, they needed to be a Russian citizen. Second, they needed to be responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights.¹⁶ With the inclusion of corruption within the Act, acts such as the misappropriation of state assets and expropriation of private assets for personal or bribery would also engender sanctions.¹⁷ The Act was implemented by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of State, giving them the authority to identify and designate individuals and entities for sanctions based on the criteria outlined in the Act.¹⁸

Challenges and Criticisms

The Magnitsky Act was met with immediate hostility from the Russian government, claiming the actual cause for the bill was due to "having [to get] rid of one anti-Russian, anti-Soviet act - the Jackson-Vanick amendment [recently]...forced to do so for economic reasons" (Putin 2012) and that the new Magnitsky Act was a poorly concealed attempt at reinstating another anti-Russian act. The amendment that Putin referenced was a provision within the 1974 Trade Act of the United States, designed to put pressure on the Soviet Union (and later, other countries) to allow free emigration.¹⁹ The primary objective of the amendment was to promote human rights by leveraging trade relations. Any nation that restricted rights was denied the "Most Favorable Nation" (MFN) status, which lessened tariffs and other trade barriers in dealings with the United States.²⁰ As a significant point of contention during the Cold War, it was repealed only on December 14, 2012 with the passage of the Magnitsky Act.²¹ In response, Russia enacted the Dima Yakovlev Law on December 28, 2012, mirroring a majority of the Magnitsky Act details (sanctions), with the vital addition of a complete ban of American adoption of Russian orphan children. Named after an adopted Russian toddler, Dima Yakovlev, who died from neglect by an American parent, it marked the entrenchment of heightened tension between the two nations.²²

The Russian Law, which paralleled the Magnitsky Act in its use of sanctions, implemented travel bans and asset freezes on U.S. officials and individuals accused of violating the rights of Russian citizens. Soon after the passing of the law, the Russian government revealed a blacklist called the Guantanamo List to whom the sanctions would apply, primarily including American

¹⁶ S. 284 - Global Magnitsky Human Rights Accountability Act: Sec. 3. Authorization of Imposition of Sanctions. 114th Congress (2015–2016), § 1.

¹⁷ *Ibid.*, (3)

¹⁸ Title 31, Subtitle B, Chapter V, Part 584," *Code of Federal Regulations* (National Archives).

¹⁹ Congressional Research Service. "The Jackson-Vanik Amendment and Permanent Normal Trade Relations." December 20, 2023, para. 1.

²⁰ *Ibid.*, (para. 2)

²¹ Camp, Dave. "Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012." July 19, 2012. *Congress.gov*.

²² Human Rights Watch. 2012. "Russia: Reject Adoption Ban Bill: Response to U.S. Magnitsky Act Would Harm Orphans, Tighten Noose on Civil Society." December 21. para. 1.

citizens deemed by the Russian government as “dangerous” to national security.²³ The comprehensive prohibition on adoptions of Russian children by U.S. citizens was aimed to curtail American influence in Russian domestic affairs as the United States had long been one of the primary destinations for Russian orphans. With hundreds of disrupted adoption processes, the global response was significant.²⁴ Concerns were expressed worldwide in regard to the use of children as political tools and the impact on their prospects for finding nurturing homes. The final pillar of the Dima Yakovlev Law was the restriction of non-governmental organizations (NGOs) in Russia that receive funding from abroad. With these organizations often labeled as “foreign” agents, they were immediately subjected to increased scrutiny and regulatory burdens. This provision was essential to prevent future Magnitsky situations, as most foreign-funded NGOs in Russia were involved in human rights and political activities. Rather than avoiding another death, the restriction was designed to control the flow of information outside of Russia.

The United States government condemned the Dima Yakovlev Law, clearly identifying it as a retaliation to the Magnitsky Act rather than a genuine attempt to protect Russian citizens. Expressing concern over its impact on adoptions and civil society, the U.S. position on the matter was that the new law harmed all parties, including Russia. Further refinement of the NGO restrictions detailed within the Dima Yakovlev Law was released on July 20, 2012, with the N 121-FZ Law known as the The Foreign Agent Law of 2012.²⁵ It was not a stand-alone measure, but instead an amendment to existing laws, including the "On Combating Money Laundering and the Financing of Terrorism" (Law No. 115-FZ), which was legislation passed in 2001 meant to target "criminally obtained proceeds (money laundering)...which can be closely connected to corruption, tax evasion, illicit trafficking in narcotic drugs or other criminal activities" (Bank of Russia 2024).²⁶ While the Magnitsky Act aimed to address human rights abuses and corruption in Russia through sanctions, Law No. 115-FZ was a response that revealed Russia's view of any foreign agent as a potential terrorist threat due to international corruption, rather than domestic issues.

These new Russian policies had far-reaching implications, extending beyond U.S. entities to include all foreign organizations operating in Russia. To fully grasp the Act's broader implications, it is important to evaluate its overall impact and effectiveness in promoting human rights and accountability. By expanding the definition of “foreign agents” to include NGOs and organizations that received funding from abroad, rather than solely the United States, and engage in what the Russian government deems “political activity,” European countries were embroiled in unexpected restrictions. To understand the broader implications of the Magnitsky Act, it is important to analyze its overall impact and effectiveness in promoting human rights and accountability.²⁷ An example of a European organization that became involved was the German Friedrich Ebert Foundation (affiliated with the Social Democratic Party), which operates within Russia to promote labor rights, support democratic governance, and encourage dialogue between

²³ The Moscow Times. 2013. "Russia Has Denied Visas to Several on Guantanamo List." *The Moscow Times*, August 7. para. 3.; Bennetts, Marc. 2013. "Russia's 'Guantanamo List' Targets Americans." *The Washington Times*, January 21. <https://www.washingtontimes.com/news/2013/jan/21/guantanamo-list-targets-americans/>.

²⁴ Rothman, Lily. 2017. "How Russian Adoptions Became a Controversial Topic." *Time*, August 1. para. 5.

²⁵ Roudik, Peter. 2021. "Russian Federation: Restrictions on Media with Foreign Funding Imposed." *Library of Congress*, May 14.

²⁶ Bank of Russia. 2024. "Countering Money Laundering and Currency Control." *Bank of Russia*, May 31. Accessed June 2024. https://www.cbr.ru/eng/counteraction_m_ter/, para. 3.

²⁷ Human Rights Watch. 2013. "Laws of Attrition - Russia: Worst Human Rights Climate in Post-Soviet Era: Crackdown on Russia's Civil Society after Putin's Return to the Presidency." April 24. para. 9.

Russia and Germany.²⁸ The foundation began to face frequent inspections and audits by Russian authorities, establishing a hostile and uncertain operating environment.²⁹ Disrupting normal operations and diverting resources from programmatic activities made it difficult for the foundation to maintain a public image of credibility.

Law No. 115-FZ imposed onerous reporting requirements, including detailed financial disclosure and labeling of all publications and materials produced by a “foreign agent,” which significantly increased the administrative burden. The educational programs and labor rights advocacy the company was known for within Russia were curtailed considerably, as the concerns for political mobilization and scrutiny were high. This, in turn, had a detrimental effect on the foundation's credibility, a key asset for any foreign entity operating in Russia. The foundation continued to attempt operations until April 8th, 2022 when the “Russia's Ministry of Justice removed a number of international organizations, including all party-affiliated German foundations, from the register of foreign non-governmental organizations... [requiring that] Friedrich-Ebert-Stiftung must cease its activities in Russia” (Schulz and Fandrych 2022) despite maintaining a presence in Russia for over thirty years.³⁰ In the face of this challenge, American-based NGOs demonstrated remarkable adaptability, swiftly adjusting their funding strategies to support Russian NGOs indirectly through third-party organizations and international partners. Further, European and U.S. organizations began to operate in joint more consistently in 2015, such as the European Endowment for Democracy (EED) collaborating with U.S. partners to fund pro-democracy initiatives, leveraging local knowledge and presence to navigate the restrictive environment.³¹

Impact and Effectiveness

The concept of deterrence, central to the Magnitsky Act, is about dissuading individuals from engaging in human rights abuses and corruption by imposing significant personal costs, such as travel bans and asset freezes. In actual practice, the Magnitsky Act's deterrence effect has been mixed. However, when it came to the specific sanctions for those directly involved in the death of Sergei Magnitsky and other related human rights abuses, the Act demonstrated notable efficacy. With figures like Alexander Bastrykin, Head of the Investigative Committee of Russia, and Oleg Silchenko, an Interior Ministry Official, successfully targeted for their involvement in his arrest, detention, and death.³² The sanctions against these individuals served as a clear message to other officials, underlining the potential for international isolation and bringing home the risk of personal consequences for egregious human rights violations and corruption.

Global Magnitsky Human Rights Accountability Act of 2016

The original purpose of the Magnitsky Act was to constrain sanctions solely to the entity of Russia. However, the period between 2012 and 2015 was defined by the advocacy efforts of human rights organizations, activists, and lawmakers who continued to advocate for an expansion

²⁸ Friedrich-Ebert-Stiftung. "Friedrich-Ebert-Stiftung (FES) – Foundation for Social Democracy!" *About Us*. Friedrich-Ebert-Stiftung.

²⁹ Tumanov, Grigoriy, Elena Chernenko, Galina Dudina, and Vladislav Litovchenko. 2013. "Russia's Crackdown on Foreign NGOs Strains Ties with Europe." *WorldCrunch*, March 29. para. 3.

³⁰ Schulz, Martin, and Sabine Fandrych. 2022. "Statement on the Withdrawal of the Registration of the Friedrich-Ebert-Stiftung in Russia." Berlin, April 10.

³¹ Babayan, Nelli, and Thomas Risse. 2015. "So Close, but Yet So Far: European and American Democracy Promotion." *Transworld*, July. 5.

³² Office of Foreign Assets Control. 2013. "Magnitsky Sanctions Listings." April 12.

of the principles of the Act to a global scale, making the argument that human rights abuses and corruption were not confined to Russia. With the occurrence of numerous high-profile cases of human rights violations and corruption worldwide, the need for a comprehensive tool to hold perpetrators accountable, regardless of their nationality, became apparent. Such examples can be found in the Syrian Civil War, which began in 2011, just under two years before the passing of the Magnitsky Act.³³ With the international community primarily concerned with the use of chemical weapons against civilians during the war by the Assad regime, including the infamous Ghouta attack in August of 2013.³⁴ Due to the routine use of indiscriminate violence during the conflict, civilian casualties were high and widespread displacement rippled across the region. Despite UN efforts, existing mechanisms proved inadequate to quelling the violence.³⁵

The judicial system within Syria was incapable of independently prosecuting those responsible for war crimes due to the regime's control and involvement in the abuses. Further, Syria was not a signatory to the Rome Statute, which determined the jurisdiction of the International Criminal Court (ICC).³⁶ Only a referral by the UN Security Council (UNSC) would allow investigation into a non-signatory nation by the ICC.³⁷ However, when referrals were attempted, it was blocked by China and Russia, two of the permanent five members of the UNSC. Despite over sixty countries supporting a French-drafted text calling for an investigation, China and Russia "blocked Western resolutions relating to the situation in Syria" (BBC 2014) for the fourth time in May 2014. With the vetoes handicapping the ability of the UNSC to mitigate the rising tide of human rights abuses, there came a further emphasis on targeted sanctions against individuals and entities responsible for gross human rights abuses. Additional recognition was stated that targeted sanctions would limit harm to the individual or organization, sparing civilians the burden of further attack. The need for tailored sanctions was further emphasized within the Yemeni Civil War, which saw a rare coalition formed between the United States, the United Kingdom, France, Russia, and China on the issue of not referring Yemen to the ICC.³⁸ A referral would require investigating both sides of the conflict, interfering with the interests of the U.S., the U.K., and France. Russia and China once again took a stance of non-intervention in the situation of violating a state's sovereignty. The combined geopolitical interests and strategic alliances of these UNSC members prevented any meaningful action from being taken in Yemen from organizations such as the ICC, a level of harm that could have lessened by targeted sanctions against identified perpetrators of human rights abuses.

Thus, given the state of multilateral mechanisms mired in politics and conflicts of interest, a new solution was needed. In 2014, a resolution by the European Parliament, titled "European Parliament resolution of 2 April 2014 on the EU-Russia summit," was proposed to address various aspects of EU-Russia relations, including the need for robust measures to address human rights abuses and corruption.³⁹ Explicitly calling on EU member states to adopt measures similar to the

³³ Center for Preventive Action. 2024. "Conflict in Syria." Updated February 13.

³⁴ Suleiman, Ali Haj. 2023. "'Foaming at the Mouth': 10 Years Since Chemical Attacks in Syria's Ghouta." *Al Jazeera*, August 21.

³⁵ Heydemann, Steven. 2016. "Why the United States Hasn't Intervened in Syria." *Brookings*, March 17. 1.

³⁶ Bensouda, Fatou. 2015. "Statement of the Prosecutor of the International Criminal Court on the Alleged Crimes Committed by ISIS." *International Criminal Court*, April 8. Para. 2.

³⁷ International Criminal Court. n.d. "About the Court: How the Court Works." Accessed November 18, 2024. <https://www.icc-cpi.int/about/how-the-court-works>.

³⁸ Crawford, Julia. 2024. "Yemen: A Decade of War with No Sign of Justice." *JusticeInfo*, March 28. Para. 12.

³⁹ European Parliament. 2014. "Joint Motion for a Resolution on the EU-Russia Summit." February 5. 2014/2533(RSP).

U.S. Magnitsky Act, the European Parliament, with Guy Verhofstadt and Rebecca Harms as primaries, urged for the imposition of EU-wide travel bans asset freezes on Russian officials and individuals responsible for serious human rights violations and corruption.⁴⁰ For Europe, following the annexation of Crimea and the beginning of the Donbas War in East Ukraine, it became essential for the EU to have a more coherent and assertive foreign policy toward Russia.⁴¹ A revolutionary policy proposition for Europe, this resolution set the stage for subsequent actions by the EU to address human rights abuses and corruption.

With a rise in international interest in the containment of Russian human rights abuses and corruption alongside the correction of global issues, the United States proposed a solution through the Global Magnitsky Act. Garnering significant bipartisan support in the U.S. Congress, lawmakers from both sides of the aisle recognized the importance of having a tool to address human rights abuses and corruption on a global scale. According to Browder, the support was partially due to the fact that "[t]here wasn't a pro-Russian-torture-and-murder lobby to oppose it" (2015, p. 329) on the House floor. Furthermore, it was guaranteed passage within the National Defense Authorization Act (NDAA) for Fiscal Year 2017.⁴² The NDAA, a must-pass piece of legislation that authorizes funding and sets policies for the U.S. Department of Defense, further underscored the strength of the act. As part of the broader NDAA, President Barack Obama signed the Global Magnitsky Human Rights Accountability Act into law on December 23, 2016.⁴³ The act empowers the U.S. President with the authority to impose sanctions on foreign individuals and entities responsible for significant human rights abuses or acts of corruption. The expansion of the original Magnitsky Act, which was limited to Russia, into a global tool for promoting accountability and human rights is a testament to its potency.

Challenges and Criticisms

With the expansion of the potential target pool from Russia to the world, the main issue became implementation. The verification and evidence-gathering processes, already complex, became even more so. Collecting sufficient evidence to support sanctions is often tricky, especially in countries with opaque legal systems and limited freedom of information. Furthermore, the global expansion of sanctions has made coordination with other countries a necessity, despite the challenges posed by differences in legal frameworks and policy priorities. The implementation of similar acts within their governments may make it easier for U.S. allies to be equally committed to implementing similar sanctions, but it can also create gaps in enforcing global human rights accountability measures. A global policy, therefore, demands more robust monitoring and enforcement to ensure compliance. This underscores the need for the United States to take a more active role in monitoring financial transactions, travel activities, and business dealings of individuals within the jurisdictions of other countries. Financial institutions and other private sector entities must remain compliant with the U.S., and more stringent enforcement mechanisms must be implemented.

With these problems came a wave of criticisms as it was pointed out that the Global Magnitsky Act allows the United States to unilaterally impose sanctions on individuals and entities

⁴⁰ The Parliament. 2014. "Parliament Calls for Stronger Russian Sanctions." April 17. Para. 2.

⁴¹ Ragozin, Leonid. 2019. "Annexation of Crimea: A Masterclass in Political Manipulation." *Al Jazeera*, March 16.; Fisher, Max. 2014. "Everything You Need to Know About the 2014 Ukraine Crisis." *Vox*, September 3. Para. 1.

⁴² 114th Congress. 2016. "National Defense Authorization Act for Fiscal Year 2017, Subtitle F—Human Rights Sanctions." December 23. 130 Stat. 2533.

⁴³ 114th Congress. 2016. "Global Magnitsky Human Rights Accountability Act." Sponsored by Sen. Benjamin L. Cardin [D-MD], April 18.

in other countries without the consent or cooperation of the targeted nation.⁴⁴ This is seen as external interference in the internal affairs of a sovereign state, with such interference being a violation of sovereignty, as argued by China and Russia. The previous criticism of the Magnitsky Act by Russia has now been carried forward to the global version, with Russia once again strongly condemning them as politically motivated actions designed to undermine its sovereignty and interfere in its internal affairs. The U.S. focus shifting beyond Russia has sparked global concern, particularly from the PRC. The bedrock principle of sovereignty, a core tenet of international law and the foreign policy of certain nations, is directly challenged by the U.S. sanctions on officials, particularly in issues such as corruption or human rights.

For Beijing, matters in regions like Xinjiang and Hong Kong are purely internal and not subject to international interpretation. The view on the imposition of sanctions is that it interferes with domestic affairs, violating the principle of non-interference enshrined in the United Nations Charter and other international agreements. With Beijing asserting that Washington uses human rights as a pretext to exert political pressure and destabilize countries. There is frequent dispute over the U.S.'s portrayal of the situations in these regions, with arguments that actions taken are necessary for national security, social stability, and economic development, and for the protection of human rights within the context of a country's specific historical, cultural, and economic circumstances. There is evident skepticism towards the imposition of Western human rights standards, as there is a refusal to be subjected to the will of the U.S. They argue that the Act is used selectively to target countries that oppose U.S. policies, the criticism serving to undermine the legitimacy of the Global Magnitsky Act and suggesting it serves U.S. geopolitical interests more than universal human rights.

Critics point out that while the U.S. sanctions officials from adversarial states, it often overlooks similar abuses by allies, leading to accusations of double standards. This selective application can weaken international support and complicate diplomatic relations, as targeted nations view the sanctions as coercive tools rather than genuine efforts to promote accountability and human rights. The unilateral nature of the Global Magnitsky Act, allowing the U.S. to impose sanctions without other nations' consent, raises further concerns about respect for sovereignty and international law. Countries targeted by these sanctions often criticize them as extraterritorial applications of U.S. law, infringing on domestic affairs and violating principles of non-interference. To address these criticisms, the U.S. must apply the Act consistently and impartially, demonstrating a genuine commitment to human rights and corruption prevention irrespective of geopolitical context. Strengthening multilateral frameworks and seeking broader international consensus could also help mitigate perceptions of bias, enhancing the Act's credibility and effectiveness in combating global corruption and abuse of power.

Impact and Effectiveness

The Global Magnitsky Act has had a substantial impact on the promotion of human rights and accountability on a worldwide scale. The act, which entails imposing travel bans and asset freezes on individuals and entities implicated in human rights abuses and corruption, has resulted in significant personal and financial consequences for those targeted. However, to enhance the act's effectiveness and address its limitations, several strategic policy recommendations are necessary. These repercussions serve as a deterrent against such activities. The increased visibility of several high-profile cases involving sanctioned individuals and entities has raised global awareness, pressuring governments to address these issues internally. Furthermore, the act has

⁴⁴ China Daily. 2023. "America's Coercive Diplomacy and Its Harm." May 19, para. 10.

inspired similar legislation in other countries, including Canada, the United Kingdom, and the European Union, thereby fostering a more coordinated international effort to combat human rights abuses and corruption. Additionally, the act has empowered non-governmental organizations (NGOs) and human rights activists by providing them with a tool to seek justice and accountability. It has also offered recognition and support to victims of human rights abuses and corruption. Although the act has effectively deterred some individuals and entities from engaging in abuses, particularly those concerned about losing access to international financial systems and travel, it has been less effective in deterring high-level officials and powerful entities, often due to protection from their governments.

Despite its positive impact, the act faces challenges in its implementation. Gathering sufficient evidence to support sanctions presents difficulties, especially in countries with opaque legal systems and limited freedom of information, which hinders the timely and practical application of sanctions. Additionally, differences in legal frameworks and policy priorities among countries can complicate coordination and enforcement. Critics have also raised concerns about the selective application of the act, accusing it of targeting countries opposing U.S. policies while overlooking abuses by allies, which undermines its credibility. Some countries view the act as an infringement on their sovereignty and an example of extraterritorial application of U.S. law, leading to diplomatic tensions and resistance to cooperation. Notwithstanding these challenges, the act has set a global standard for addressing human rights abuses and corruption. Its long-term influence may lead to the establishment of more robust international mechanisms and a greater willingness among countries to adopt similar measures, strengthening the global fight against impunity. To enhance its impact, it is imperative for the United States to ensure consistent and impartial application, improve international coordination, and address criticisms of selectivity and sovereignty. This would reinforce the act's role in promoting global human rights and accountability.

Policy Recommendations

To bolster the effectiveness of the Global Magnitsky Act and enhance transatlantic relations, the United States should implement several strategic policy recommendations. These aim to address current challenges and improve the act's impact on global human rights and anti-corruption efforts. By adopting these measures, the U.S. can ensure the act remains a powerful tool in promoting global accountability. Enhanced coordination with European allies, improved information-sharing mechanisms, and support for European legal frameworks can significantly increase its impact. Additionally, engaging in multilateral diplomacy, promoting transparency, and fostering partnerships with civil society organizations are crucial for robust enforcement. By balancing sanctions with positive engagement and addressing unintended consequences, the U.S. can develop a more comprehensive and practical approach to global human rights and anti-corruption efforts, fostering stronger transatlantic alliances.

To enhance the Global Magnitsky Act's effectiveness, the United States should focus on improved coordination and harmonization with European allies. Establishing a formal joint sanctions mechanism with the European Union would ensure consistency in targeting human rights abusers and corrupt officials. This could involve creating a transatlantic task force that implements Magnitsky-style sanctions, a platform for shared intelligence and coordinated actions. Working with European partners to harmonize the criteria and standards for determining sanctions targets would create a unified approach, helping to prevent loopholes and increasing pressure on the targeted individuals and entities. Strengthening information-sharing and intelligence cooperation

is also crucial. Enhancing intelligence-sharing agreements with European countries will gather comprehensive and actionable evidence against potential sanctions targets, improving the accuracy and effectiveness of sanctions. Developing shared databases of sanctioned individuals and entities, accessible to relevant authorities in both the U.S. and Europe, will ensure that all partners are aware of and can enforce the same sanctions, fostering a more robust global response to human rights abuses and corruption.

To further strengthen the Global Magnitsky Act, the United States should support European legal frameworks and engage in multilateral diplomacy. Offering technical assistance and expertise to European countries developing or refining their Magnitsky-style sanctions laws can include providing legal advice, training programs, and sharing best practices for implementation. Additionally, funding capacity-building initiatives to enhance European nations' ability to implement and enforce sanctions, including support for financial intelligence units and law enforcement agencies, is essential. Engaging actively in multilateral forums such as the United Nations and the Organization for Security and Cooperation in Europe (OSCE) can help advocate for the broader adoption of Magnitsky-style sanctions and build international coalitions. Moreover, launching diplomatic initiatives to encourage other democratic nations beyond Europe to adopt similar sanctions frameworks will foster a global network of accountability measures.

Promoting transparency and accountability is not just important; it's the bedrock of enhancing the Global Magnitsky Act. Increasing transparency in the designation process by regularly publishing detailed reports on the individuals and entities sanctioned, including explanations of the evidence and criteria used, will foster greater understanding and trust. Establishing oversight mechanisms, such as an independent review board, can ensure that sanctions designations are made based on robust evidence and in a non-discriminatory manner. Additionally, forming human rights and anti-corruption partnerships is crucial. Partnering with European civil society organizations to identify potential sanctions targets and monitor the impact of sanctions will provide valuable insights and on-the-ground information. Increasing funding and support for non-governmental organizations (NGOs) that work on human rights and anti-corruption issues in Europe will enable them to contribute effectively to the sanctions process, ensuring a fair and just enforcement process.

Balancing sanctions with positive engagement is vital to improve the Global Magnitsky Act's effectiveness. Complementing sanctions with positive incentives for countries and officials who demonstrate genuine efforts to improve human rights and governance, such as economic aid, development assistance, and diplomatic engagement, can encourage reform. Maintaining open communication channels with targeted countries to foster dialogue and potentially resolve issues leading to sanctions can help mitigate diplomatic tensions and promote constructive engagement. Additionally, addressing unintended consequences is crucial. Regularly assessing sanctions' economic and social impacts on targeted populations ensures that measures do not disproportionately harm innocent civilians. Implementing clear guidelines for humanitarian exemptions is necessary to ensure that sanctions do not impede the delivery of essential goods and services to vulnerable populations.

In conclusion, to enhance the effectiveness of the Global Magnitsky Act and strengthen transatlantic relations, the United States should implement a series of strategic policy recommendations. By improving coordination with European allies through a formal joint sanctions mechanism and shared criteria, the U.S. can ensure consistency and increased pressure on human rights abusers and corrupt officials. Strengthening information-sharing and intelligence cooperation will further enhance the accuracy and effectiveness of sanctions. Promoting

transparency and accountability through public reporting and oversight mechanisms, along with fostering partnerships with civil society organizations, will ensure a robust and fair enforcement process. Balancing sanctions with positive engagement and addressing unintended consequences will create a more comprehensive and practical approach to global human rights and anti-corruption efforts, offering a beacon of hope for a more just and accountable world.

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