ESSAY

PROSECUTE, SUE, OR DEPORT? TRANSNATIONAL ACCOUNTABILITY IN INTERNATIONAL LAW

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INTRODUCTION

On April 8, 2015, the United States deported Salvadoran General Carlos Eugenio Vides Casanova, whom *The New York Times* described as "the highest-ranking foreign official to be deported under laws enacted in 2004 to prevent human rights violators from seeking haven in this country."[1] Thirteen years earlier, a Florida jury found General Vides and a co-defendant liable for $54.6 million in damages for torture and killings by El Salvador National Guard troops under the general's command, the same conduct for which he was ultimately deported.[2] On the same day that General Vides was deported, the U.S. Department of Justice filed a request seeking the extradition of Salvadoran Colonel Inocente Orlando Montano Morales, the former Vice Minister of Defense and Public Safety, to face murder charges in Spain for his role in the 1989 Jesuit massacre in El Salvador.[3]

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1 Julia Preston, *U.S. Deports Salvadoran General for Role in '80s Killings*, N.Y. TIMES, Apr. 9, 2015, at A8.

2 *Id.*

3 *United States Seeks Extradition of Former Salvadoran Military Officer to Spain to Face Charges for Participation in 1989 Jesuit Massacre*, U.S. DEP'T OF JUSTICE OFFICE OF PUB. AFFAIRS (Apr. 8, 2015), http://www.justice.gov/opa/pr/united-states-seeks-extradition-former-salvadoran-military-officer-spain-face-charges [http://perma.cc/YAV9-BNR8]. Montano had been sentenced

These cases are high-profile, but not unique. The United States is in the process of deporting 150 Bosnians who immigration officials believe participated in war crimes and other atrocities during the 1990s conflict in the former Yugoslavia.[4] The State Department is also seeking to prohibit the entry of certain accused human rights violators. For example, in February, the United States announced new visa restrictions for individual Venezuelan officials accused of human rights violations and corruption in Venezuela.[5] Venezuelan President Nicolas Maduro condemned the visa restrictions as an attack on Venezuelan sovereignty.[6] Similarly, the chief representative in Washington of Republika Srpska said that the Bosnians "are being hounded just because they wore the uniform of the Serbian Army, or the Army of the Republika Srpska."[7] The United States has not found these objections persuasive as a matter of either law or policy.

When one country imposes consequences for internationally unlawful conduct on an individual who acted on behalf of another country, it enforces international law horizontally. This is because sovereign states are, in theory, situated on a level plane vis-à-vis each other, despite their obvious differences in size and resources. The principle of sovereign equality and the need to conduct foreign relations impose certain limits on one state's ability to exercise jurisdiction over another state or its officials. For example, sitting heads of state, ambassadors, and foreign ministers, who enjoy "status-based" or *ratione personae* immunity, are shielded from the legal processes of foreign states, even though they are subject to proceedings in certain international criminal tribunals.[8] Other foreign officials, and former

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to twenty-one months in prison for visa fraud in August of 2013. *Former Salvadoran Military Officer Sentenced for Perjury and Concealing Information from U.S. Government*, DEP'T OF JUST. U.S. ATTORNEY'S OFFICE, DISTRICT OF MASS. (Aug. 27, 2013), http://www.justice.gov/usao-ma/pr/former-salvadoran-military-officer-sentenced-perjury-and-concealing-information-us [http://perma.cc/QGM2-66HN].

4 Eric Lichtblau, *U.S. Moves to Deport Bosnians; 300 Linked to '90s War Crimes*, N.Y. TIMES, Mar. 1, 2015, at A1; *see also Former Bosnian Prison Guard Extradited to Bosnia-Herzegovina for War Crimes Trial,* U.S. IMMIGR. & CUSTOMS ENFORCEMENT (July 7, 2015), *https://www.ice.gov/news/releases/former-bosnian-prison-guard-extradited-bosnia-herzegovina-war-crimes-trial [http://perma.cc/5VQS-J2H7*]; ICE Arrests 50 Fugitives Across the US During Operation No Safe Haven II, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (August 14, 2015), https://www.ice.gov/news/releases/ice-arrests-50-fugitives-across-us-during-operation-no-safe-haven-ii#wcm-survey-target-id [http://perma.cc/A4GR-LQGM].

5 *United States Expands Venezuela Visa Bans*, BBC NEWS (Feb. 3, 2015), http://www.bbc.com/news/world-latin-america-31104879 [http://perma.cc/LGG4-4VAT].

6 *Id.*

7 *U.S. Wrong to Deport 150 Bosnian Serbs for 'War Crimes'—Serbian Press*, SPUTNIK NEWS (Mar. 4, 2015), http://sputniknews.com/europe/20150304/1019053466.html [http://perma.cc/PH4L-3DRK].

8 *See* Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. Rep. 3, ¶ 61 ("[A]n incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings

heads of state and ambassadors, enjoy "conduct-based" or *ratione materiae* immunity for certain official acts, although the precise scope of this immunity remains contested.[9]

Some have claimed that the principle of sovereign equality categorically prohibits one state from exercising jurisdiction over another state's current—and even its former—officials. This extreme position asserts that, even if a foreign state itself is not a named defendant, pronouncing on the lawfulness of conduct that is *attributable* to a foreign state impermissibly violates that state's sovereignty. Yet those who take this position rarely challenge measures, such as immigration consequences, that also involve pronouncing on the conduct of foreign states. The idea that an individual's conduct is immune from scrutiny if it is attributable to a foreign state turns out to be more rhetoric than reality.

This Essay argues that we should view criminal, civil, and immigration consequences ("detention," "damages," and "deportation") as manifestations of the same underlying principle: that individual officials can bear personal responsibility for their acts under international law, and that the domestic institutions of one state can in certain circumstances attach consequences to that responsibility without violating the sovereignty of foreign states.

The integrated approach proposed here has at least three important implications. First, it supports the view that an individual's and a foreign state's immunity need not be *congruent* simply because individual and state responsibility are occasionally *concurrent*. Second, it suggests that we should treat states' decisions (and foreign states' reactions) regarding detention, damages, *and* deportation as all being relevant to delineating the contours of conduct-based immunity under customary international law, which is based on consistent state practice accompanied by a belief that such practice is legally required (*opinio juris*). Third, it highlights that, although we tend to think of state sovereignty in absolute terms, our understandings of sovereignty—as manifested in the state practice and *opinio juris* described below—are actually varied and context-dependent. Our ultimate goal should be to tailor horizontal enforcement regimes that respect the core of

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before certain international criminal courts, where they have jurisdiction."); *see also* Rome Statute of the International Criminal Court art. 27, July 17, 1998, 2187 U.N.T.S. 90 ("Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.").

[9] On March 9, 2015, the United States Supreme Court denied a petition for certiorari in *Samantar v. Yousuf*, leaving intact (for now) the Fourth Circuit's analysis of conduct-based immunity under United States common law. 699 F.3d 763 (4th Cir. 2012), *cert. denied*, 135 S. Ct. 1528 (2015).

state sovereignty while promoting individual accountability consistent with due process.

I. DETENTION: CRIMINAL CONSEQUENCES

The Nuremberg Trials set a precedent for using criminal law to consider individual responsibility under international law, even though the consequences of conviction at Nuremberg included remedies such as restitution of property, which some view as civil in nature.[10] As the Israeli Supreme Court later reasoned in *Israel v. Eichmann*, "[t]he underlying principle in international law that governs such crimes is that the individual who has committed any of them . . . must account in law for his behaviour."[11] International treaties such as the Convention Against Torture emphasize extradition and prosecution as the primary vehicles for individual accountability, but also contemplate civil penalties.[12] U.S. legislation implementing the Convention Against Torture provides for both criminal and civil consequences.[13] Although many international lawyers think in terms of individual *criminal* responsibility for conduct such as torture, nothing intrinsically limits individual responsibility to the criminal sphere.[14]

The provisions of the Convention Against Torture were tested in 1998, when Spain requested that the United Kingdom extradite Augusto Pinochet to face criminal charges for torture committed in Chile. Pinochet argued that he was entitled to conduct-based immunity because his alleged acts were the acts of a foreign state. The U.K. House of Lords denied immunity

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[10] *See* Charter of the International Military Tribunal art. 28, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 ("In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.").

[11] CrimA 336/61 Attorney General v. Eichmann 17 PD 2033 (1962) (Isr.), http://www.trial-ch.org/fileadmin/user_upload/documents/trialwatch/eichmann_appeal.pdf [http://perma.cc/CX3X-Z7HB].

[12] *Compare* Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art. 4-5, Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 85 (requiring parties to establish criminal jurisdiction over resident offenders), *with id.* at art. 14 (requiring parties to establish compensation for victims).

[13] 18 U.S.C. § 2340A (2001) (*criminalizing* torture and attempted torture outside of the United States and conspiracy to commit torture); 28 U.S.C. § 1350 (1948) (creating a civil cause of action for torture and extrajudicial killing under color of foreign law, but not under color of U.S. law).

[14] James Crawford (now a judge on the International Court of Justice) wrote in 2002: "So far this principle [of individual responsibility] has operated in the field of criminal responsibility, but it is not excluded that developments may occur in the field of individual civil responsibility." JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT, AND COMMENTARIES 312 (2002).

for torture committed after the United Kingdom, Spain, and Chile all had ratified the Torture Convention.[15] They reasoned that, since the international crime of torture requires state action, it would be logically inconsistent (and utterly self-defeating) to create a horizontal accountability regime for torture that allowed defendants to invoke immunity on the grounds that they had acted on behalf of a foreign state.[16] The widespread adoption of domestic legislation implementing the Rome Statute for the International Criminal Court (ICC) authorized domestic jurisdiction over additional forms of internationally unlawful conduct, including conduct performed under color of foreign law.

Sovereign states themselves are generally immune from suit in other countries' domestic courts for their non-commercial acts, but the same is not necessarily true of individuals. Accordingly, in *ex parte Pinochet*, the House of Lords acknowledged that Chile itself could not be "impleaded" in a U.K. court for torture under the U.K. State Immunity Act, but Lord Millett emphasized that criminal trials of individuals do not implead the state.[17] This approach is consistent with the United States' prosecution and imprisonment of Chuckie Taylor Jr. for torture committed under color of Liberian law,[18] with the United Kingdom's criminal investigation of Prince Nasser bin Hamad Al Khalifa for alleged torture in Bahrain,[19] and with the pending criminal trial in the United Kingdom of a Nepalese army officer for torture in Nepal,[20] among other examples. In 2008, the Paris Public Prosecutor distinguished the allegations against Pinochet from those against former U.S. Defense Secretary Donald Rumsfeld, which he deemed fell within the scope of conduct-based immunity because they "cannot be

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15 R v. Bow St. Metro. Stipendiary Magistrate *ex parte* Pinochet Ugarte [2000] 1 AC 147 (HL) 156 (appeal taken from Eng.).

16 *Id.* at 278 (Lord Millett).

17 *Id.* at 268.

18 *See Roy Belfast Jr., A/K/A Chuckie Taylor, Sentenced on Torture Charges*, DEP'T OF JUST. (Jan. 9, 2009), http://www.justice.gov/archive/opa/pr/2009/January/09-crm-021.html [http://perma.cc/L7U2-M35E] ("Belfast's prosecution on the torture charges was the first ever under a statute that criminalizes torture and provides U.S. courts jurisdiction to hear cases involving acts of torture committed outside the United States . . . .").

19 *See* Oliver Windridge, *Removing the Cloak of Immunity—the Director of Public Prosecutions for England and Wales Accepts No Immunity from Criminal Investigation into Torture*, OPINIO JURIS (Oct. 16, 2014, 12:00 PM), http://opiniojuris.org/2014/10/16/guest-post-removing-cloak-immunity-director-public-prosecutions-england-wales-accepts-immunity-criminal-investigation-torture/ [http://perma.cc/S2PB-XL5C] ("[T]he DPP appears to have accepted that Prince Nasser does not enjoy immunity from torture allegations . . . .").

20 *Id.*; *see also* Owen Bowcott, *Nepalese Colonel Faces Torture Trial in UK*, GUARDIAN (Feb. 27, 2015), http://www.theguardian.com/law/2015/feb/27/nepalese-colonel-faces-torture-trial-in-uk [http://perma.cc/KCF7-6K3L] ("Torture, like war crimes, is subject to universal jurisdiction, allowing those who allegedly committed crimes abroad to be tried in Britain.").

dissociated from his functions."[21] By contrast, in 2015, a French appeals court determined that U.S. General Geoffrey Miller was subject to subpoena in response to a criminal complaint lodged by three former Guantanamo detainees.[22] Consequently, some former U.S. officials might avoid traveling to certain European countries.[23] This has the noteworthy effect of making criminal (and civil) liability the functional equivalent of immigration measures, again showing the underlying connections among these three forms of accountability.

II. DAMAGES: CIVIL CONSEQUENCES

In addition to claiming civil damages as *parties civiles* in criminal proceedings, injured parties have sought redress against foreign officials through civil suits. The procedures and remedies associated with civil suits often differ from those available in criminal trials, but both types of proceeding impose consequences on defendants for violating a legal duty. The conceptual difference between civil and criminal proceedings against an individual from the perspective of respecting state sovereignty is vanishingly small.

The scope of a domestic court's authority to adjudicate claims and provide remedies for extraterritorial harms generally depends on legislative or constitutional authorization. In the United States, the Torture Victim Protection Act (TVPA) provides a civil cause of action for torture or extrajudicial killing committed under color of foreign law.[24] Some plaintiffs have also invoked the less explicit Alien Tort Statute, a provision in the 1789 Judiciary Act that provides federal courts with jurisdiction over civil actions for "a tort only, committed in violation of the law of nations or a treaty of the United States."[25] Relying on these provisions, U.S. courts have

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21 Letter from the Public Prosecutor to the Paris Court of Appeal to Patrick Baudouin (Feb. 27, 2008), http://ccrjustice.org/files/Rumsfeld_FrenchCase_%20Prosecutors%20Decision_02_08.pdf [http://perma.cc/9WAG-RJE7].

22 *La justice française ordonne l'audition de l'ancien commandant de Guantanamo*, LE MONDE (Apr. 2, 2015), http://www.lemonde.fr/ameriques/article/2015/04/02/la-justice-francaise-ordonne-l-audition-de-l-ancien-commandant-de-guantanamo_4608666_3222.html [http://perma.cc/84T5-TCEA].

23 *See* Julian Borger, *Senate Report on CIA Torture Could Lead to Prosecutions of Americans Abroad*, GUARDIAN (Dec. 10, 2014), http://www.theguardian.com/us-news/2014/dec/10/cia-report-prosecutions-international-law-icc [http://perma.cc/VGL3-EV4U] ("US officials and military officers implicated by the Senate report on torture could face arrest in other countries as a result of investigations by their national courts . . . .").

24 Torture Victim Protection Act of 1991, Pub. L. No. 102-256; 106 Stat. 73 (1992) (codified as amended at 28 U.S.C. § 1350 (2012)).

25 28 U.S.C. § 1350 (1948).

awarded money damages against foreign defendants who have come within their personal jurisdiction.[26]

An individual's harmful conduct may constitute both a crime and a tort from the perspective of a domestic legal system. In the United States, civil and criminal proceedings are not fungible—for example, civil proceedings cannot perform the function of incapacitation—but they can have overlapping goals, including norm articulation, symbolic vindication for the victims, and general deterrence. Both types of proceeding impose consequences for violations of legal norms designed to protect individuals.

Civil proceedings in U.S. courts have drawn more criticism than criminal proceedings because they are party-initiated. The ultimate decision to allow a particular case to proceed rests with the judiciary rather than the executive branch, although judges often defer to the executive branch's determination that adjudicating a case would have untenable foreign policy consequences. When defendants assert conduct-based immunity from civil proceedings, they argue that imposing civil consequences on individual officials is tantamount to "impleading" the foreign state. However, where only the individual defendant's assets are at stake, civil proceedings do not "implead" the foreign state any more than criminal penalties or immigration consequences for the same underlying conduct.[27] Nevertheless, some courts in the United Kingdom and Canada have interpreted their State Immunity Acts as providing immunity from civil (but not criminal) proceedings for human rights violations to current and former officials of foreign states, compounding the tendency to treat these forms of consequences as distinct.[28]

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26 *See, e.g.*, Filartiga v. Pena-Irala, 577 F. Supp. 860 (E.D.N.Y. 1984) (awarding over $10 million in damages under the Alien Tort Statute in an action against a former Paraguayan police official). For another example, see Kadic v. Karadžić, 70 F.3d 232, 239-41 (2d Cir. 1995), which applied the Alien Tort Statute to Karadžić, the President of the self-proclaimed Republika Srpska. This decision led to a default judgment and jury award of $745 million against Karadžić in August of 2000. *Punishing War Criminals*, CHRISTIAN SCI. MONITOR (Aug. 18, 2000), http://www.csmonitor.com/2000/0818/p10s1.html [http://perma.cc/H367-UDSL].

27 Samantar v. Yousuf, 130 S. Ct. 2278, 2290-92 (2010).

28 *See, e.g.*, Kazemi Esate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176, para. 2 (Can.) (holding that Iranian officials had immunity in a civil suit arising out of the torture of a Canadian journalist while in Iran); Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya [2006] UKHL 26, [2007] 1 AC (HL) 270 [13] (appeal taken from Eng.) (finding that Saudi Arabian officials had immunity against civil claims arising out of torture that occurred in Saudi Arabia). A chamber of the European Court of Human Rights later held that the U.K.'s grant of immunity did not interfere disproportionately with the claimants' right of access to court under Article 6 of the European Convention on Human Rights. Jones v. United Kingdom, App. Nos. 34356/06 & 40528/06 (Eur. Ct. H.R. 2014) 32 para. 215, http://hudoc.echr.coe.int/eng?i=001-140005#{"itemid":["001-140005"]} [http://perma.cc/T9TJ-KK6E].

III. DEPORTATION: IMMIGRATION CONSEQUENCES

Immigration consequences have received less attention in this context than criminal and civil proceedings. In some respects, however, immigration measures should elicit *greater* concern from potential defendants. The procedural protections available to individuals accused of internationally unlawful acts on behalf of foreign states are often less robust in the immigration context.

The U.S. Department of Justice's Office of Special Investigations (now the Office of Human Rights and Special Prosecutions) has worked to secure the voluntary departure and involuntary removal of Nazi-era war criminals from the United States.[29] These conduct-based immigration measures impose personal consequences on individuals for carrying out the policies of a foreign government in foreign territory.[30] In fact, certain grounds for inadmissibility (which include grounds for denying entry to the United States, and grounds for removal from the United States) specifically require action on behalf of a foreign state, including committing particularly severe violations of religious freedom,[31] participation in Nazi persecution,[32] or committing acts of torture or extrajudicial killing under color of foreign law.[33]

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[29] Status-based international law immunities do not prevent a host country from compelling a foreigner to leave or denying entry; to the contrary, the accepted procedure when a foreign diplomat commits a crime on the territory of a host state is to declare the individual persona non grata and require his or her departure. Vienna Convention on Diplomatic Relations art. 9, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95.

[30] As a technical matter, the grounds for deportation might be giving false information on immigration documents, but the substantive bar relates to the individual's pre-application conduct. *See, e.g.*, *In re* D-R-, 25 I. & N. Dec. 445, 450-53 (B.I.A. 2011) (upholding an order for removal based on misrepresentation of a material fact and extrajudicial killing); *see also* Glenna MacGregor & Jessica C. Morris, *Human Rights Enforcement in U.S. Immigration Law: A Missed Opportunity for Engagement with International Law?*, 5 J. MARSHALL L.J. 467, 481 (2012) (discussing *In re D-R-*); William J. Aceves & Paul L. Hoffman, *Using Immigration Law to Protect Human Rights: A Legislative Proposal*, 20 MICH. J. INT'L L. 657, 663 (1999) (noting reliance on concealment or misrepresentation as grounds for deportation).

[31] *See* 8 U.S.C. § 1182(a)(2)(G) (2013) ("Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom . . . is inadmissible."); *see also* 8 U.S.C. § 1182e (denying admission to foreign nationals that "have been directly involved in the establishment or enforcement of population control policies forcing a woman to undergo an abortion against her free choice or forcing a man or woman to undergo sterilization against his or her free choice").

[32] *See* 8 U.S.C. § 1182(a)(3)(E)(i) (listing aliens who participated in Nazi persecutions as ineligible for admission into the United States).

[33] *See* 8 U.S.C. § 1182(a)(3)(E)(iii) (noting that any alien who committed an act of torture or extrajudicial killing outside of the United States is ineligible for a visa or admission into the United States).

The so-called "persecutor bar" and related provisions focus on an individual's past acts, not on any current threat she may pose to national security interests. The criminal consequences, civil penalties, and immigration responses (including denial of entry, removal, and prosecution for fraud) described here all signal disapproval of certain types of unlawful conduct and prevent host countries from serving as a safe haven for human rights violators. Although denying entry might be thought of as withholding of a benefit rather than imposing a sanction, this distinction seems illusory when the consequence is an individual's physical removal from her country of residence.[34]

Countries including the United States have also used travel bans against named foreign officials to condemn human rights violations and to influence current policy. In 2011, a U.S. Presidential Proclamation consolidated previous executive orders and banned the entry of "persons who participate in serious human rights and humanitarian law violations and other abuses."[35] In February 2014, the State Department imposed a visa ban on twenty senior Ukrainian officials accused of being in the "chain of command responsible for ordering" a violent crackdown on protesters.[36] A later series of executive orders expanded the list of Russian and Ukrainian officials subject to visa bans and other sanctions.[37] These measures, which can also be accompanied by asset freezes,[38] reinforce the idea that individuals who engage in internationally unlawful conduct can face personal consequences even when they act on behalf of foreign states, without running afoul of

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[34] A list of notable actions by the United States is available from U.S. Immigration and Customs Enforcement. *Human Rights Violators Investigations*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (last updated Apr. 2, 2013), http://www.ice.gov/factsheets/hrv.htm [http://perma.cc/XNQ3-ZAKN]. Although the Anti-Atrocity Alien Deportation Act of 2003, S. 710, 108th Cong. (2003), was not enacted, language from the bill was incorporated into the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (2004). For the legislative history of the Anti-Atrocity Act, see S. REP. NO. 108-209 at 3 (2003).

[35] *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses*, Presidential Proclamation No. 8697, 76 Fed. Reg. 49,277 (2011).

[36] Stephen Castle & Michael R. Gordon, *U.S. Imposes Visa Ban on 20 Ukrainian Officials as Further Sanctions Are Threatened*, N.Y. TIMES (Feb. 19, 2014), http://www.nytimes.com/2014/02/20/world/europe/ukraine-reaction.html?_r=0 [http://perma.cc/7YGF-PCSE].

[37] *Ukraine and Russia Sanctions*, U.S. ST. DEP'T, (last visited Aug. 8, 2015), http://www.state.gov/e/eb/tfs/spi/ukrainerussia/ [http://perma.cc/7EQX-GC8T].

[38] *See, e.g.*, Global Magnitsky Human Rights Accountability Act, S. 284, 114th Cong. (2015). The bill was reintroduced by Senators Bill Cardin and John McCain this January. *Cardin, McCain Reintroduce Global Magnitsky Human Rights Accountability Act*, BEN CARDIN (Jan. 28, 2015), http://www.cardin.senate.gov/newsroom/press/release/cardin-mccain-reintroduce-global-magnitsky-human-rights-accountability-act [http://perma.cc/PNZ6-JAQH].

either domestic or international law. Sovereignty does not inexorably trump accountability; it depends on the context and what other values are at stake.

CONCLUSIONS

Bright-line immunity rules might be alluring, but they do not always best reflect the realities of inter-state relations or serve the needs of the international community. Holding individuals responsible for international law violations can involve—and require—pronouncing on foreign states' conduct. This is not necessarily objectionable. Treating criminal, civil, and immigration consequences (detention, damages, and deportation) as manifestations of a common phenomenon, rather than in isolation, can help us design more conceptually and doctrinally coherent accountability regimes across geographic borders.

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