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Chair's Column

Joe Raia

Welcome back! What a privilege to welcome the return of International Law News, our very own ILN. Hard times make us stronger and wiser. When the Section suspended publication of ILN, it was determined to enhance the value of the publication as an information asset and eliminate the recurring financial losses. While I have the privilege of writing this welcome, many others took the laboring oar in surveying the audience (our section members) to learn what we wanted; in evaluating costs and publishing models; and, in re-inventing the operating model, including former Section Chair Lisa Ryan, former Publications Officer Clifford Sosnow, current Publications Officer Caryl Ben Basat, and new ILN Editor-in-Chief Alan Gutterman. We are all indebted to them for their good work and determination to realize a renewed ILN.

ILN began in 1972 as the Section's newsletter, one year after the Section changed its name from "Section of International and Comparative Law" to "Section of International Law," reportedly to become more relevant to the "new world of transnational business." ILN began seven years after the Section's then new scholarly periodical, *The International Lawyer*. Although, ILN may have started as a newsletter, we can all agree that it became much more. Perhaps, we can describe it as the Section's magazine – offering thoughtful and rigorous articles that were equally accessible and to the point. In recent years, we saw editions of ILN devoted to specific topics like data privacy.

When the Section asked members in a survey what kind of ILN they would most appreciate, the overwhelming response was to continue to offer the kind of informative and timely articles we had all gotten used to reading in ILN. And so it goes with this first issue of ILN after its brief, but too long, hiatus. I think that you will find that ILN has not skipped a beat in quality, timeliness, and accessibility. For this first issue, our Editor-in-Chief offers a combination of different articles – a capriccioso – that brings to your attention some impacts from the pandemic, issues related to human rights, and a blockchain application. There is an article on the evolving expectations that businesses have responsibilities for human rights and how Section members led a collaborative effort to submit comments to the UN Working Group on Business and Human Rights. (Those comments also provide a practical example how Section committees/members can effectively repurpose content and simultaneously communicate their activities to the rest of the Section). And, if you have not yet heard, there is a new European Public Prosecutor's Office, the EU's first supranational

authority responsible for investigating and prosecuting criminal offences affecting EU financial interests, including fraud, cross-border VAT fraud, money laundering, misappropriation and corruption.

In the end, ILN is the Section's gift to itself. ILN is what the Section makes of it – the articles we submit, and edit, and read. ILN presents an open invitation to you to write and submit articles that allow you to demonstrate and share your expertise with a wider audience. Now that we have it back, let's use it fully.

Joe Raia is Chair of the ABA International Law Section and Shareholder at Gunster in Miami, FL. He has contributed to ABA policy and comparative work on multiple legal and policy issues. He served for several years on the board of the Italy America Chamber of Commerce Southeast, Inc., a member of the Italian government's Assocamerestero network. He is a member of the International Advisory Committee of the Beacon Council, the economic development agency for Miami-Dade County, Florida. He frequently speaks on matters relating to international dispute resolution.

International Law News

Contributor Guidelines

The *International Law News* is seeking high quality, original content that contributes value to legal professionals counseling their clients on matters that involve international law and cross-border transactional practice and representing their clients in the resolution of cross-border disputes. We are accepting contributions for any of the current focus areas recognized in the organizational structure of the ABA International Law Section:

- Americas
- Asia/Pacific
- Contracts, Transportation, Energy & Environment
- Corporate and Supply Chain
- Cyber, Art and Technology
- Disputes
- Diversity and Inclusion
- Europe/Eurasia/Middle East/Africa
- Finance
- Human Rights and Corporate Social Responsibility
- Legal Practice, Ethics and Delivery of Legal Services
- Trade, International Organizations and Regulatory Practice

The *International Law News* is interested in content that falls into several different categories. First, we are happy to consider short **briefings**, around 150 words, which provide readers with a quick insight on current events, such as a recent court decision, new legislation or an important policy announcement. Second, we welcome **articles**, around 750 – 1,000 words, which provide readers with practical analysis and advice that they can use in their practices. Finally, in appropriate cases, we will publish **longer-form content** that offers a deeper analysis of a particular topic and includes a modest amount of footnotes and references to other sources in order to provide readers with a full picture of the topic and ideas about how to incorporate the analysis into their work. Longer-form content should not be a small law review article, but does provide contributors with an opportunity to discuss more complex matters. Long-form content should not exceed 2,500 words unless an exception is approved in advance by the Editor-in-Chief.

The *International Law News* is scheduled to be published quarterly during the second week of January, April, July and October, although consideration is being given to publishing more frequently depending on demand and the development of a reliable pipeline of contributors. In that regard, we are open to ideas for regular contributions on a particular topic that can run in each issue. A submitted piece could take anywhere from a few days to a few months to move from submission to publication, depending on the nearest publication date, available peer reviews, length of piece, and editorial calendar, though **it's best to plan for about a month's turn-around time**. Contributors are strongly urged to provide us with at least one month to review and edit a submission (e.g., submissions for the April issue should be delivered by the end of February); however, we also welcome communications letting us know that a submission will be made so that we can plan our editorial calendar.

Content should be submitted to Alan Gutterman, the current Editor-in-Chief of the *International Law News*, at alangutterman@gmail.com. Please submit your article as an MS Word file or an RTF file, via an e-mail attachment. At this time, Alan will review the submissions and determine, at his sole discretion, when they are accepted and what editorial changes might be appropriate. Eventually we will form an Editorial Board to assist in those activities and we welcome volunteers who would be interested in actively editing content to conform it to our guidelines. Among the factors that will be considered when submissions are reviewed are relevance, value, originality, timeliness, accuracy of law, quality and consistency with our guidelines. We present a variety of topics to readers, and so submissions may be rejected because of overlap with others already accepted. While we do not reprint republished articles, we are willing to work with contributors to re-purpose client alerts. A submission does not guarantee the piece will be published. Please note that because of deadline pressures, you may not see the final digital version until the submission is published.

All submissions should conform to the following guidelines:

- Our standard reference books are *Webster's Collegiate Dictionary (for spelling and hyphenation)*; *The Chicago Manual of Style (for all style, punctuation, and capitalization matters in written text as well as general rules of book making)*; *A Uniform System of Citation (the Blue Book--for citation forms in endnotes)* and *The Elements of Style (by Strunk and White)*. Note that Blue Book rules apply only to citations.
- Always use footnotes (as few as possible) and do not bury information in the footnotes (footnotes should consist almost exclusively of citations). Minimize spot citations; in other words, *Id.* is not that important.
- Include two or three biographical sentences for each author.

In the event that a submission does not comply with the guidelines, it will be returned to the author for review and correction.

When making a submission for an article or long-form content, please provide a short summary (two sentences). In addition, all submissions should be accompanied by a short biographical statement, two or three sentences, that will be published along with the submission.

If a submission is accepted for publication, authors are expected to sign a publication agreement granting the ABA the right of first publication (a submission cannot be published unless and until such an agreement is signed).

Now More Than Ever

Businesses' Duties to Respect Human Rights

Alan S. Gutterman

Recognized international human rights have traditionally been framed as creating duties and obligations for States under treaties and other instruments and elements of international human rights law. For a long time, relatively little attention, if any, was paid to businesses' responsibilities for supporting respect for human rights. Many clung to the argument that States had the exclusive responsibility when it came to human rights and that the role of businesses should be confined to complying with the laws and regulations promulgated by States with respect to workplace conduct, use of natural resources, and the like.¹ In recent years, however, the criticism of businesses that accompanied the globalization that dominated the last decades of the 20th Century has shifted more and more attention toward holding businesses, as well as States, accountable for human rights duties and obligations.

The day-to-day operational activities and strategic decisions of businesses inevitably have an impact, both positive and negative, on one or more universally recognized human rights. On the positive side, businesses play a unique role in society as the creators of wealth, sources of employment, deliverers of new technologies, and providers of basic needs.² At the same time, however, businesses, fixated on profits as the main and often seemingly exclusive goal and purpose of the enterprise, have repeatedly treated their workers poorly, engaged in dangerous or corrupt business activities, polluted the environment, developed and marketed products and services that cause harm to consumers, and become involved in development projects that have displaced or marginalized communities.³ The concern about these negative impacts of business activities has increased as corporations themselves have grown in size to the point

where many of them are larger than many of the States in which they operate.

Human rights activists have complained that States, particularly developing countries, are often unable or unwilling to enforce human rights obligations in the treaties they have ratified, including regulating activities of businesses. They have argued that the only real hope is that businesses will assume human rights duties and responsibilities, either voluntarily or pursuant to some form of mandatory framework that creates business human rights obligations directly rather than through a State. Arguably, the stakes are high for businesses, including the possibility of reputational damage and/or disruptions to supply chains caused by human rights crises in foreign countries. As such, they have real incentives to step in and take up the slack caused by a growing sense that environmental and social challenges are overwhelming the resources and regulatory tools of the public sector. One commentator pointed out that "businesses can no longer leave it to markets, governments or a relatively weak civil society to respond . . . [and] . . . [i]t's in businesses' interests to take an urgent and proactive role in delivering the transformational change required."⁴

There is a growing consensus that businesses have a duty to respect human rights, and environmental and intergovernmental bodies have attempted to establish guidelines that could serve as points of reference for the duties and responsibilities of businesses as they conduct their business activities. The International Labour Organization adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy in 1977; the Organisation for Economic Co-Operation and Development (OECD) adopted the Guidelines for Multinational Enterprises in 1976 as part

¹ G. Brenkert, "Business Ethics and Human Rights: An Overview," *Business and Human Rights Journal* 1 (2016): 277

² C. Mayer, *Prosperity: Better Business Makes the Great Good* (Oxford: Oxford University Press, 2019)

³ A. Sharom, J. Purnama, M. Mullen, M. Asuncion, and M. Hayes, eds., *An Introduction to Human Rights in Southeast Asia* (vol. 1) (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 160. See also C. Lewis, "Businesses' Human Rights

Responsibilities," *Forced Migration Review* 41 (December 2012): 25 ("Pollution from factories and mining projects . . . [has] . . . deprived people of their livelihoods, water sources and access to religious and cultural sites. Even where a company is not causing damage to the environment, its mere presence can alter the social composition of the local community or create tensions among different groups and lead to displacement of individuals, families or whole communities.")

⁴ <https://www.sustainablepurpose.com>

of the OECD's Declaration and Decisions on International Investment and Multinational Enterprises; and the United Nations has engaged in several projects to promote the accountability of businesses for human rights, including the UN Global Compact (adopted in 1999) and the Guiding Principles on Business and Human Rights (commonly referred to as the "Guiding Principles"). Governments have also been involved in multi-stakeholder initiatives to develop sector-specific guidance for human rights due diligence and have acted through various types of domestic legislation.

Probably the most highly publicized initiative relating to the relationship between international human rights and the operations of business enterprises has been the Guiding Principles, which implement the UN's "Protect, Respect and Remedy" Framework. This document was developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises after extensive consultation and was endorsed by the Human Rights Council, the key independent UN intergovernmental body responsible for human rights, in its resolution 17/4 of June 16, 2011.⁵ The Guiding Principles were not intended to impose new legal obligations on business or to change the nature of existing human rights instruments. Instead, their aim is to articulate the meaning of these established instruments for both States and companies and to address the gap between law and practice.⁶ Since they were first approved, the Guiding Principles have become the global standard for the respective roles and duties of States and businesses relative to human rights and have been integrated as central elements of other well-known international standards such as the OECD Guidelines for Multinational Enterprises, the International Finance Corporation Performance Standards, and ISO 26000.

Interpretive guidance to the Guiding Principles noted that enterprises recognize that their social responsibilities begin with legal compliance and that the responsibility of enterprises to respect human rights is itself often reflected, at least in part, in laws and regulations. However, the Guiding Principles define enterprises' responsibilities to respect human rights to

extend beyond applicable laws and regulations to include respect for all internationally recognized human rights wherever they operate. In effect, enterprises are expected to include the risk of causing or contributing to gross human rights abuses among all the other legal issues they face in their operations and business relationships. The Guiding Principles are intended to serve as a uniform standard that can be referred to in a variety of contexts for clarity and predictability, including situations where there are no national laws or regulations to protect human rights or where the content and enforcement of laws and regulations that do exist fall short of internationally recognized standards.⁷

Business and human rights, like corporate social responsibility (CSR), is an emerging topic that will soon be a lasting element of corporate governance, compliance, and risk management practice. A number of the topics included under the umbrella of CSR, particularly in the environmental and labor areas, already have developed their own rich collection of laws, regulations, case law, and practice tools. The same will soon be true of business and human rights and other topics, such as stakeholder engagement, social enterprises (e.g., benefit corporations), board oversight of sustainability, community development, and nonfinancial reporting. Given the growing number of societal and political issues that can reasonably be placed under the rubric of human rights, and the apparent inability of governments to deal effectively with those issues, it would seem that attention will inevitably turn to how and when businesses will deploy their substantial resources to develop solutions.

A sense of urgency regarding businesses' responsibilities vis-à-vis human rights has accelerated over the last year as our world has undergone dramatic stresses. First of all, our world changed as the Covid-19 pandemic swept over us. The UN High Commissioner for Human Rights described the Covid-19 outbreak as "a serious threat to the right to life and to health of people everywhere" and argued that the international human rights framework could provide "crucial guideposts that can strengthen the effectiveness" of the collective global response to the pandemic.⁸ A joint call issued by 60 UN

⁵See http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. The Guiding Principles are sometimes referred to as the "Ruggie Principles," referring to John Ruggie, the Special Representative for Business and Human Rights, who introduced the principles in 2007 and led the efforts that eventually led to endorsement of the Guiding Principles.

⁶ *Handbook on Corporate Social Responsibility (CSR) for Employers' Organizations* (European Union CSR for All Project, April 2014), 18.

⁷ *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (New York: UN Human Rights Office of the High Commissioner, 2012), 76–77 (commentary on Guiding Principle 23).

⁸ As reported and quoted in *Respecting Human Rights in the Time of the Covid-19 Pandemic: Examining Companies' Responsibilities for*

human rights experts included a reminder that the response to the Covid-19 crisis should go beyond public health and emergency measures to address all other human rights as well and emphasized that “the business sector in particular continues to have human rights responsibilities in this crisis.”⁹ In a paper examining companies’ responsibilities for workers and affected communities in the time of the Covid-19 pandemic, the Institute for Human Rights and Business (IHRB) pointed out that companies that have the capacity to act (because of their assets or the resources at their command) can be expected to play a role in helping states meet their obligations to protect human rights. The IHRB went on to say:¹⁰

Companies have clear responsibilities towards their employees. But it is also the case that they have a responsibility towards contractors and their employees (in particular those who work on premises) as well as suppliers, associates, and other partners, consumers, and wider society and the general public who are affected by a company’s presence and operations.

Experts have identified a range of key human rights concerns relating to the outbreak and management of the Covid-19 pandemic, including the need to respect rights, include everyone, and ensure access; protection of the vulnerable; focusing on the disproportionate impact of the crisis on women; eliminating racism and xenophobia; placing limitations on restrictions and surveillance; deploying and using technology; and permitting dissent.¹¹

As Covid-19 raged, businesses, as well as society in general, were challenged yet again by the horror of watching George Floyd, a black man, die in the custody of the Minneapolis police department on May 25, 2020, an event that set off days of large public demonstrations against racial injustice all around the world, often accompanied by vandalism and looting as well as disproportionate police responses that escalated the tensions. As has often happened in the past when such incidents have occurred, businesses large and small were quick to issue statements through social media expressing their concerns about social justice and

supporting the Black Lives Matter movement. Many large and well-known brands made commitments to contribute substantial sums to social justice initiatives and supporting minority businesses. However, Darren Walker, the president of the Ford Foundation, criticized the traditional and predictable response of companies in the face of racism in a quote published in an article in *The New York Times*: “The playbook is: Issue a statement, get a group of African-American leaders on a conference call, apologize and have your corporate foundation make a contribution to the N.A.A.C.P. and the Urban League ... That’s not going to work in this crisis.”¹² The same article led with the headline “Corporate America Has Failed Black America” and went on to say: “... many of the same companies expressing solidarity have contributed to systemic inequality, targeted the black community with unhealthy products and services, and failed to hire, promote and fairly compensate black men and women”.¹³

Surveys have shown that a majority of Americans want business leaders to seize the challenges and opportunities that have gripped society’s attention in the wake of the events of 2020 by taking a stand and making and fulfilling commitments to action across a broad spectrum of issues and contexts that includes embedding equality, diversity and inclusion in the boardroom, the workforce and all aspects of organizational culture; financial equity and security; community engagement; involvement in the public square through advocacy for racial justice and reimagining products and services.¹⁴ Discrimination on the basis of race is a fundamental human rights issue and while States have the primary responsibility under international human rights laws to protect the freedom of everyone and guarantee their dignity and ability to enjoy all of the universally recognized human rights, businesses have a duty to respect those rights and take the necessary steps to promote racial non-discrimination and equality wherever they operate. Businesses have also been called upon to contribute to the Sustainable Development Goals established by the UN such as access to basic services, participation in decision making, full and productive employment and decent

Workers and Affected Communities (Institute for Human Rights and Business, April 2020), <https://www.ihrb.org/focus-areas/covid-19/report-respecting-human-rights-in-the-time-of-covid-19>, 9.

⁹ *Id.* at 10.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 10. See also Covid-19: Business and Human Rights (Business and Human Rights/Semilla, April 2020).

¹² D. Gelles, Corporate America Has Failed Black America, *The New York Times* (June 7, 2020), BU1.

¹³ *Id.*

¹⁴ For further discussion of implementing each of the listed commitments, see A. Gutterman, “Racial Equality and Non-Discrimination”, available at the website of the Sustainable Entrepreneurship Project (www.seproject.org).

work, reducing income inequality, ensuring equal opportunity, promoting peaceful and inclusive societies, providing justice for all and building effective, accountable and inclusive institutions at all levels.

While 2020 has been difficult for many businesses, there are also heartening examples of companies providing relief to their communities and support to essential workers, taking extraordinary steps to protect the safety and economic well-being of their employees and repurposing aspects of their business in order to provide new products and services required by consumers to get through the pandemic.¹⁵ We can expect that the lessons from the pandemic will change the landscape for business and human rights in the years to come, and we can hope that our leaders in business and government heed the concerns of their stakeholders. As lawyers, we must continue to educate ourselves to be able to make a meaningful contribution to one of the most important topics of our time and help clients that are no longer simply asking about “what is legal,” but instead are seeking wise counseling on “what is right.”

This article is an excerpt from the author’s new book, *Business and Human Rights: Advising Clients on Respecting and Fulfilling Human Rights*, published by the ABA Section of Business Law. More information on the book is available [here](#).

Alan S. Gutterman is currently a partner of GCA Law Partners LLP in Mountain View, CA and a prolific author of practical guidance and tools for legal and financial professionals, managers, entrepreneurs, and investors on topics including sustainable entrepreneurship, leadership and management, business law and transactions, international law and business and technology management. He is the Editor-in-Chief of the *International Law News*, which is published by the ABA International Law Section, and co-editor and contributing author of several books published by the ABA Business Law Section including *The Lawyer’s Corporate Social Responsibility Deskbook*, *Emerging Companies Guide (3rd Edition)* and *Business and Human Rights: Advising Clients on Respecting and Fulfilling Human Rights*. More information about Alan and his work is available at his personal website.

¹⁵ [Beyond the Call: How Companies Have Stepped Up during COVID-19 \(May 12, 2020\)](#).

It Is Time for a New Artist's Contract

Supported by Blockchain Technology

Susan Schwartz

The Artist's Reserved Rights Transfer and Sale Agreement (the "Artist's Contract") was a groundbreaking document drafted in 1971 by artist and curator Seth Siegelau and attorney Robert Projansky. The Artist's Contract asserted artists' rights to control their works after the works were sold. These rights included the right to resale royalties, to payments when their works were exhibited for a fee, to control the manner in which their works were exhibited, and to retain the copyright in their works. Part manifesto, part vision of an art world which treated artists fairly, the Artist's Contract was drafted after a series of public hearings by the Art Workers Coalition in New York City.

The Artist's Contract arose from the turbulence of the late 1960s, when the Civil Rights, Women's Rights and Antiwar movements were in full sway. In New York, a group of artists disaffected by museum practices formed the Art Workers' Coalition, which advocated for legal and institutional policies giving artists greater control over the terms and conditions of ownership of their work. The Coalition drafted a series of demands which reflected the artists' desire for a more equitable art world, in which artists were represented on museums' boards, paid royalties when their works were exhibited, and women and artists of color were represented in museum collections. The Art Workers' Coalition held a series of public hearings concerning their demands which Siegelau and Projansky attended.

This was also the time which saw the rise of conceptual art, and many conceptual artists incorporated documentation into their practices. Such documentation frequently included instructions for the construction and installation of the artists' works. These "contracts" would become an integral part of the artworks. Other artists also used contractual terms to assert their rights in their works after their works were sold. Daniel Buren adopted the practice of requiring "avertissements" (warnings) for his works in 1968. These warnings prohibited the exhibition, photography or reproduction of Buren's work without his consent; required that Buren be notified when his work was transferred, and required that each subsequent owner of the work acknowledge the warning.

Buren's warnings remained in force for 50 years after his death, and required that after his death Buren's heirs were to receive 15% of the proceeds from any transfer of his work. Artist Edward Kienholz retained a 15% equity interest in his completed works after they were sold; this interest was enforceable by a lien. Kienholz also sold "concept tableaus," which were instructions for a piece of art to be constructed by the artist in the future. These tableaus sold for more than his completed works. Kienholz' contract for the tableaus provided that he was to be paid construction union scale wages for installing the work, including reasonable living expenses. Kienholz also reserved the right to determine when the work was completed, and to freely reproduce the work.

Out of this heady stew Siegelau and Projansky drafted the Artist's Contract. Siegelau's stated objective in drafting the Artist's Contract was: "[T]o remedy some generally acknowledged inequities in the art world, particularly artists' lack of control of the use of their work and participation in its economics after they no longer own it." Some key terms of the Artist's Contract were: A 15% resale royalty was to be paid to the artist each time the work was sold for a profit; notice to the artist when the work was sold or transferred; subsequent owners were to be bound by the contract; the artist could veto exhibitions of the work; the artist received 50% of any exhibition fees; the artist would be consulted if repairs become necessary, and the artist retained all reproduction rights in the work.

Works subject to the Artist's Contract were tagged with a notice form which could be affixed to the work or, for conceptual works, to the work's documentation. This provided notice to subsequent purchasers that the artist retained rights in the work after it was sold.

It was the first term of the contract, the resale royalty provision, which proved to be the most controversial. Many artists at that time believed that this term commodified their practices. Other artists embraced the concept of resale royalties, which were an accepted practice in Europe, where they were referred to as "droit de suite." Artist Hans Haacke used the Artist's Contract throughout his career for works sold for more than

\$1,000. In 1975, Haacke's work, "On Social Grease," sold for \$15,000. The work was resold at Christie's auction house in 1987. Haacke insisted that the contract be displayed next to the work prior to the auction, and that the contract's terms be read to bidders during the auction. The work sold for \$90,000 — three times its pre-sale estimate and the highest price paid for Haacke's work at the time. Haacke received \$10,000 as a result of his use of the Artist's Contract. In contrast, artist Robert Rauschenberg's work "Thaw" was sold to collectors Robert and Ethel Scull for \$900 in 1958 - long before the Artist's Contract was drafted. The work was resold at Sotheby's in 1973 for \$85,000. Rauschenberg did not receive any portion of the increase in value of his work. Had he used the Artist's Contract, he would have received \$12,615. This aroused Rauschenberg's ire, and became an advocate for resale royalties for artists.

While Congress has repeatedly considered and rejected amendments to the Copyright Act to provide artists with resale royalties, Rauschenberg's advocacy was one of the factors which led California's legislature to enact the Resale Royalty Act of 1976. The Act provided artists with a portion of the increased value of their works upon resale. The Act was challenged in court and ultimately invalidated in the Ninth Circuit's 2018 decision in Close v. Sotheby's, 894 F. 3d 1061, 1071 (9th Cir. 2018). The Ninth Circuit noted that artists could still obtain resale royalties by way of contract, stating; "Federal copyright law permits (by not forbidding) purely private arrangements between an artist and a first purchaser with respect to subsequent sales."

While there has been no successful legislation providing for resale royalties over the last 50 years, during the same time secondary market sales of living artists' works have soared. Collectors, galleries and auction houses have reaped the benefits from these sales; artists have gained nothing. "Emerging" artists, in the first years of their careers, have seen their works "flipped" by repeated resales, creating an overheated market for their works and locking the artists into a "style" before their practices have fully matured. Emerging technologies have made it possible for artists to track sales of their works in the secondary market, and blockchain registries allow artists to control the title to and authentication of their artworks. Blockchain registries are allowing artists to sell fractional interests in their artworks, or to retain resale royalty rights. Artist's reserved rights, whether fractional ownership shares or resale royalties, can be noticed on the artist's website,

sales platforms, blockchain registries, and through smart pages or QR codes affixed to their artworks. These new technologies facilitate artists' enforcing rights in their works after the works are sold.

It is time for an updated Artist's Contract, allowing artists to define the interests and rights they claim in their works after their works are sold, and spelling out methods of notice and enforcement using new technologies. The contract would be a highly visible part of an artist's practice, and would put collectors on notice of the artist's continuing interests in their works. On the 50th anniversary of the Artist's Contract, the art-world inequities the contract was designed to correct may finally be corrected due to the intersection of contract law and technology.

Susan Schwartz is attorney in Burbank, California specializing in art law and criminal defense. She is a graduate of UCLA Law School where she was a member of the Law Review, Moot Court Honors Program and an editor of the Federal Communications Law Journal. Susan earned a Master's Degree in Art Business, with honors, from the Drucker School at the Claremont Colleges' Center for Arts Management. She was a prosecutor for the Los Angeles County District Attorney's Office, where she worked in the Public Integrity, Justice System Integrity and Hardcore Gang Divisions. She is co-chair of the American Bar Association's International Criminal Law Committee, and a vice-chair of the International Animal Law Committee. Susan has collaborated with artist Virginia Broersma on the Fair Artist's Reserved Equity (FARE) contract, an update of the 1971 Siegelau-Projansky Artist's Reserved Rights and Transfer Agreement. The FARE contract allows artists to assert their rights in their artworks after the works are sold by using current technology, including blockchain registries and QR codes, to give notice to subsequent purchasers of the artist's reserved rights. A current draft of the FARE contract can be found at susanschwartzlaw.com

T Visas

Securing Lawful Immigration Status in the U.S. for Human Trafficking Survivors

Jacquelyn B. Bradford

The Trafficking Victims Protection Act of 2000 created the T Visa along with a variety of measures designed for prevention, protection, and prosecution. The T Visa is a non-immigrant status for foreign-born survivors of human trafficking. Generally, to be eligible for the T Visa the labor or sex trafficking victimization must have occurred within the United States. The T Visa is both a law enforcement tool to encourage victims to participate in investigations and prosecutions and a humanitarian tool to allow survivors of human trafficking to regain safety and stability.

Survivors may apply for T Visas for themselves and certain family members to remain and/or be reunited with their family in the U.S. T Visa holders are eligible for many public benefits and have a path to apply for lawful permanent residency (“green card”). The T Visa application is complex and standards of adjudication are often in flux so it is important for survivors to apply with the assistance of an immigration attorney trained in T Visas. In recent years, many policy changes within U.S.C.I.S. and other federal agencies have created hurdles for survivors to be granted T Visas and to thrive during the increasingly long application processing times. Aside from these hurdles, survivors face many other challenges to accessing T Visas. For example, most survivors do not know they qualify as a victim of human trafficking and when a survivor is identified there are often barriers to accessing services such as a lack of legal providers. There are 5,000 T Visas available for principal victims each year. However, less than 2,000 principal T Visa applications are submitted annually. Based upon my experience, I do not believe this reflects a lack of eligible victims, rather the difficulties in identifying victims and in accessing services.

During law school, I hoped to have a career helping protect the rights of vulnerable populations. I also love interacting with individuals from different countries and cultures. So when the opportunity to represent foreign-born survivors of human trafficking became available at my civil legal aid, I happily applied for it. I’ve represented children as young as 6 and adults over 60 from North America, South America, Europe, Africa, and Asia. I am

regularly in awe of my clients’ resiliency and seeing them achieve their goals is a joyful experience.

For attorneys interested in gaining expertise in T Visas or serving survivors of human trafficking, there are many non-profits that provide excellent training materials such as the Coalition to Abolish Slavery & Trafficking, Freedom Network USA, ASISTA, and the Immigrant Legal Resource Center to name a few.

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Impact of the Pandemic: International Franchising

Kristin Corcoran

As the pandemic surged globally in the spring of 2020, many looked to China to determine the likely effect on businesses in other regions. The initial signs were hopeful—that the pandemic was a storm that could be weathered for a finite period, with the retail sector being hit hard, followed by gradual, steady re-opening. In March, according to the Harvard Business Review, “only six weeks after the initial outbreak, China appears to be in the early stages of recovery”, noting the resumption of the movement of people and goods.¹ While companies anticipated scrambling to handle the crisis, dealing with shutdowns and addressing employee and consumer concerns around safety, many global chains thought naïvely or perhaps overly optimistically, that this was a problem with a beginning, middle and end, expecting that in six or maybe eight weeks, there would be a return to something approaching normal levels of activity.

International franchising and distribution represented a large part of the market share impacted by COVID-19, and it soon became clear that the governments of various countries needed to stabilize franchised businesses for the sake of the wider economy. Franchising results in significant job creation and provides a pathway to business ownership in many countries, notably South Korea, India, USA, Taiwan, and Brazil. In countries such as India, Taiwan and South Africa, it was noted that “[b]ecause of the size of their populations, per capita income, urbanization rates and income distribution, emerging markets offer the largest and most dynamic markets for international franchisors.”²

For those reasons, throughout the spring of 2020, governments passed stimulus plans to help businesses, emphasizing the support of small businesses, many of which were franchises. Europe, in particular, passed legislation designed to support those displaced by the shutdown of certain industries that were bearing the brunt of the effect of closures due to the pandemic particularly in retail, hospitality and restaurant services.

The government plans were designed to support both employees and employers. Whether it was a moratorium on evictions in the UK or the Franchising Association of South Africa asking that takeaway and fast food be considered essential services, many governments’ first steps were to stabilize franchise businesses in retail sectors. Some governments offered “top down” business focused solutions, like in the UK, which offered VAT reductions and a number of COVID-19 loans to businesses, as compared to countries like Brazil which focused on “bottom up” programs that were more employee focused. Both approaches seemingly looked to China for these models, as China employed both a “top-down” and “bottom-up” approach to stabilizing the business sector.³

The support did not just come from the government, but from franchisors as well. Franchisors and franchisees cooperatively considered a reduction of business expenses, maintaining at least part of the revenue stream through online, delivery or other alternative channels, and emergency measures, including royalty waivers and deferrals. Franchisors and franchisees quickly determined what to communicate to employees and customs to successfully implement changes to their business model. Global franchisors, faced with franchisees losing significant revenue, were required to make quick decisions to allow for alternative sources of supply, for example, without the usual due diligence and vendor vetting, or let franchisees take the lead to directly source supply within certain parameters, or for a limited period of time. There was legal risk, of course, when allowing a new vendor, without proper due diligence or a finalized contract, to provide supply to a franchise system. Quality and pricing may not be scrutinized as they typically would. Not to mention the review of regulatory compliance, such as can be found particularly in food supply, where nutrition and allergen laws are critical for the protection of consumers’ health

¹ Martin Reeves, Lars Fæste, Cinthia Chen, Philipp Carlsson-Szlezak, and Kevin Whitaker, *How Chinese Companies Have Responded to Coronavirus* (March 10, 2020), <https://hbr.org/2020/03/how-chinese-companies-have-responded-to-coronavirus>.

² Vanessa Pilla Galetti Bretas, Ilan Alon *The Impact of COVID-19 on Franchising in Emerging Markets: an Example from Brazil*, Global Business and Organizational Excellence (June 22, 2020), <https://onlinelibrary.wiley.com/doi/10.1002/joe.22053>.

³ Reeves, *How Chinese Companies Have Responded to Coronavirus*

and safety. However, when faced with a broken supply chain and potential loss of revenue if not fixed urgently, some brands were willing to take a calculated risk to allow franchisees opportunities to capture at least some percentage of their customary sales revenues.

As an example of “outside the box thinking”, in Brazil and India, delivery-only outlets have sprung up seemingly overnight. Many franchisors had considered use of these low-rent, high yield locations, but the pandemic accelerated use of this model. While “dark” or “cloud” kitchens can be cost effective, particularly where dine-in is not allowed, a franchisor may be concerned that a franchisee operating such an outlet for multiple brands will not protect the franchisor’s proprietary information or increase the risk of cross-contamination of allergens or increase food safety risk. Also, franchisors may not have fully considered how to adapt training, operational standards, reporting requirements, or even the royalty structure that would apply to this arrangement. However, when the alternative is the loss of income and perhaps permanent closure, some franchisors took the leap. For many franchisors, rushing to put a solution in place has led them to adopt a “we’ll fix it later” approach, suspending certain franchise agreement terms and agreeing to address the myriad legal issues after the crisis abates.

Unfortunately, the pandemic has lasted longer than the original six to eight-week period China saw in early 2020. While other countries in Asia more closely followed the China timeline of shutdown with steady reopening, for most of the world, especially in Europe and the Americas, this has not been the case. As it became clear that the pandemic would rage on through the remainder of 2020, some of the solutions that were designed to carry franchise businesses for a short duration have had unintended consequences for other parts of the economy. Government actions to protect franchisees from collection efforts, including the payment of rent, led to consequences for others, chiefly suppliers and landlords. While larger landlords, like those in the UK, may be able to survive without rent payments for a few months, some landlords, like many in Brazil, are smaller owners who are just as vulnerable to the loss of

revenue as the small businesses that the government was trying to “save”.⁴

With vaccines on the horizon, is there an end in sight? If so, will the pandemic have a long-lasting effect on franchising? Thus far, franchise business models that were adaptable and nimble fared better, especially those that could leverage their digital presence and offer contactless services such as curbside takeaway and delivery. Some quick service restaurants have seen an increase in revenues during the pandemic, with pizza concepts and other delivery-centric restaurants seeing substantial increases. Many of those businesses state that those adaptations will remain post-pandemic because they have proven profitable, efficient, and overall improved the business model.

However, permanent closures of many franchise outlets are expected. Both wellness and hospitality segments were hard hit, as were many restaurant brands. Some have already sought the intervention of the courts. Chuck E. Cheese, operating in 16 countries outside the US, has filed for bankruptcy protection, stating “...it also became clear that decisive action would be necessary to address COVID-related financial challenges.”⁵ The Mexican franchisor of the KidZania amusement parks attempted to terminate its contract with a US based franchisee. In granting an injunction against the termination, the court noted the parties’ discussions had been ongoing in February and March, just as the pandemic began to surge. The issues in dispute will need to be addressed in the already pending International Chamber of Commerce arbitration.⁶

While much of the focus has been on shoring up existing franchises, what has become of development and growth of existing chains? Some retailers with company-owned and franchised outlets are assessing and restructuring their business. In October, Gap announced that it is transferring retail stores in Europe, primarily in the UK, France, Ireland and Italy, to franchisees. Those that do not transfer will likely close.⁷

The news is not all bleak. The Global Entrepreneurship Monitor (GEM) reported the highest number of new business ownership in the UK for the past twenty years. Some of the newly unemployed

⁴ Bretas, *The Impact of COVID-19 on Franchising in Emerging Markets*

⁵ Vince Sullivan, *Chuck E. Cheese Hits Ch. 11 Following COVID-19 Closures*, Law360 (June 25, 2020) <https://www.law360.com/articles/1286675/chuck-e-cheese-hits-ch-11-following-covid-19-closures>.

⁶ Joyce Hanson, *Franchisee Stops KidZania Theme Parks From Ending Deal*, Law360 (May 7, 2020)

<https://www.law360.com/articles/1270963/franchisee-stops-kidzania-theme-parks-from-ending-deal>.

⁷ Jonathan Eley, Alistair Gray, *Gap to switch to franchise model in Europe*, Financial Times (Oct. 22, 2020) <https://www.ft.com/content/b15fac4e-2297-4127-83ad-5c5bd4899bb3>.

having decided to take advantage of low interest rates, available properties and skilled unemployed staff to begin new ventures as small business owners. There is a pathway to success, and GEM concluded that many businesses in a “brave new post-COVID-19 world, will need to increase their capacity to adapt, improving their flexibility, resiliency and responsiveness.”⁸ Many emerging franchisors are already poised to accelerate the use of technology to collaborate and communicate among their stakeholders, including franchisees and suppliers. If they remain flexible in adapting their business model to the changing landscape, meeting the needs of consumers as the crisis subsides, they will not only survive the pandemic but also grow in units and sales. While larger, more established franchisors will also look to adapt, their size and complexity may impede their ability to roll out the changes as quickly as smaller franchise brands.

Turning once more to China as a possible window into what can be expected in other parts of the world, estimates of its recovery from the economic effects of COVID-19 are at about 90% to date. It is not possible to know if the rest of the world will have the same recovery, although GEM estimates economies could shrink between 5-10%. What is certain is that there will be no complete return to a pre-COVID world. But smart franchise systems willing to apply the lessons learned may emerge from the pandemic with new and improved business models ready to meet the needs of post-COVID consumers.

With more than 25 years of experience in global franchise law, Kristin Corcoran provides the legal support needed to grow businesses and franchise concepts internationally. She is a partner in the law firm Appleby & Corcoran LLC, found on the web at: <https://applebycorcoranlaw.com>

⁸Aileen Ionescu-Somers, PhD, Anna Tarnawa, and the Global Entrepreneurship Research Association (GERA), *Diagnosing COVID-*

19 Impacts on Entrepreneurship Exploring policy remedies for recovery, (2020).

Lawyers in Refuge

An interview series with lawyers who have fled their home countries

International Refugee Law Committee

The attacks in the Arakan, Burma (Myanmar) against Rohingya peoples and members of different religious minority groups which took place in 2017 brought international attention to atrocity crimes that have continually taken place for over 50 years. Currently, the Burmese government has been brought forward at the International Court of Justice to respond to allegations that it has breached the Genocide Convention. In addition the International Criminal Court has begun preliminary investigations into the matter. The ABA International Law Section successfully had a Resolution passed in the House of Delegates relating to atrocity crimes in the Arakan, in addition to continuing to advocate for the Rohingya people through Rule of Law letters.

Nurul Islam is a Rohingya lawyer and Chair of the Arakan Rohingya National Organisation (UK) who fled from Burma. The International Refugee Law Committee sat down with him to learn more about how he is using the law even if he is not at home.

What caused you to leave home?

Every day I saw or heard injustices done to our innocent people. I myself encountered discriminations, humiliation and injustices many a time. The Rohingya have no opportunities to remedying their grievances. Many times, we were in troubles when complaining or protesting such wrongs and injustices. They never treated us as human beings. Lastly, I realized that I could not do anything for my people living in a lawless country. So, I decided to leave the country.

What inspired you to become a lawyer?

I was born and brought up in Maungdaw Township under tyranny. Violations of human rights of Rohingya have been widespread in northern Arakan/Rakhine State. There has been no law and order. The perpetrators, most of them government security forces and state sponsored non-state actors, are not accountable for their crimes against the Rohingya

people. The Rohingya are always vulnerable. This lawlessness inspired me to study laws to know what human rights are and become a lawyer.

What do you currently do?

I am the Chairman of the Arakan Rohingya National Organisation (ARNO), which is striving hard for the restitution of the rights and freedoms of Rohingya people, including their ethnic and citizenship rights, through diplomacy, advocacy and other peaceful activities.

How do you use the law in the work that you do?

I believe that human rights have a central role in the life of a nation and its citizens. I endeavour to present and educate the members of our community the basic principles of fundamental freedoms which allow us to develop fully and use our human qualities and conscience. I use the law to empower myself and members of the Rohingya community to fight against corruptions, wrongs and injustices, as well as for the promotion and protection of human rights in the society. One of the most important things I am working on is that the crime of genocide that is continually perpetrated against the Rohingya people is stopped and is recognized so that others in Burma will not suffer the same fate.

[This series by the International Refugee Law Committee interviews lawyers who have fled their home countries due to violence and persecution.](#)

COVID-19 May Signal the End of Mink Fur Farms

Joan Schaffner

COVID-19 has killed millions of people, crippled economies, and unmasked inherent inequities in our society. It has also demonstrated how human health is intricately linked with the health of other animals. In the early months of the pandemic, after realizing the disease may have originated in a wet market in Wuhan China, authorities warned that wildlife trade and trafficking and human encroachment and destruction of natural habitat has “increased interactions between us and wild animals”¹ thus increasing the potential for the spread of zoonotic diseases. As the One Health approach embraced by the United Nations and the US Center for Disease Control and Prevention recognizes, the health of humans and the risk of disease spilling over to humans from animals (zoonotic disease)² is directly related to the health of animals.³

A devastating example of the link between human treatment of animals and the spread of zoonotic disease is the outbreak of COVID-19 on mink fur farms in 10 nations.⁴ In late October, Denmark, the world’s largest producer of mink with more than one thousand farms housing approximately 17 million mink, began a mass cull of all mink, in an effort to stop the spread of a new mutated virus strain, “Cluster-5,” that poses a “risk to the effectiveness” of a future COVID-19 vaccine.⁵ Mink, especially susceptible to respiratory viruses, are infected by catching the virus from humans. Recent genetic work has shown that the disease has spread from mink to

humans in Denmark and the Netherlands.⁶ Although mutations are common, the “Cluster-5” mutation is of particular concern because it occurs in the spike protein, which is the protein targeted by vaccines in development.⁷

In early November, Denmark deployed police and armed forces to farms to cull both healthy and unhealthy mink, killing some 2.85 million within a week.⁸ Many of the mink were culled inhumanely, “crowded into killing boxes and gassed insufficiently.”⁹ “Trucks filled with dead mink dropped carcasses on the road, while some live animals were stuffed in containers with dead mink,”¹⁰ as “mass graves appeared in Danish countryside filled with slaughtered animals.”¹¹ Soon thereafter, dead mink began emerging from their graves due to gases formed during decomposition, and authorities had to cover them with more soil.¹² Concerns have been raised that some of the graves are too close to lakes and underground water reserves, and thus may contaminate drinking water.¹³

Opponents of the mink cull had argued that “the eradication of all healthy mink was a breach of the Danish Constitution.”¹⁴ By mid-November, Prime Minister Mette Frederiksen admitted that the government lacked the legal authority to cull all mink and instead “only had jurisdiction to cull the infected mink or herds within a safety radius.”¹⁵ Soon thereafter, a political majority reached an agreement that purported to

¹ Helen Briggs, *Coronavirus: Calls to shut down ‘dirty fur trade,’* BBC (May 5, 2020), <https://www.bbc.com/news/science-environment-52535075>.

² JOINT REPORT OF THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE (ILRI), COVID-19 RESPONSE AND CGIAR ON PREVENTING THE NEXT PANDEMIC: ZOOONOTIC DISEASES AND HOW TO BREAK THE CHAIN OF TRANSMISSION 15-16 (2020) <https://wedocs.unep.org/bitstream/handle/20.500.11822/32316/ZP.pdf?sequence=1&isAllowed=y>.

³ Centers for Disease Control and Prevention, *One Health Basics*, <https://www.cdc.gov/onehealth/basics/index.html> (“One Health is an approach that recognizes that the health of people is closely connected to the health of animals and our shared environment.”).

⁴ Kitty Block, *Dropping demand put fur in free fall in 2020*, A HUMANE WORLD (Dec. 7, 2020), https://blog.humanesociety.org/2020/12/dropping-demand-put-fur-in-free-fall-in-2020.html?credit=blog_em_120720_id11852&utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=humanenation.

⁵ *Denmark to cull up to 17 million mink amid coronavirus fears*, BBC (Nov. 5, 2020), <https://www.bbc.com/news/world-europe-54818615>.

⁶ Helen Briggs, *Mink virus might jeopardize vaccines*, BBC (Nov. 5, 2020), <https://www.bbc.com/news/world-europe-54818615>.

⁷ Adrienne Murray, *Coronavirus: Denmark shaken by cull of millions of mink*, BBC (Nov. 11, 2020), <https://www.bbc.com/news/world-europe-54890229>.

⁸ *Id.*

⁹ Lisa Abend, *“I’m only a mink killer”: How COVID-19 Caused Denmark’s Historic Fur-Industry Disaster*, VANITY FAIR (Nov. 19, 2020), <https://www.vanityfair.com/style/2020/11/how-covid-caused-denmarks-historic-fur-industry-disaster>.

¹⁰ Morten Butler, *Death of a Fur Industry Exposes COVID’s Enduring Threat*, BLOOMBERG (Dec. 6, 2020), <https://www.bloomberg.com/news/features/2020-12-06/denmark-mink-cull-scandal-exposes-covid-s-enduring-threat>.

¹¹ Murray, *supra* note 8.

¹² Jon Henley, *Culled mink rise from the dead to Denmark’s horror*, THE GUARDIAN (Nov. 25, 2020), <https://www.theguardian.com/world/2020/nov/25/culled-mink-rise-from-the-dead-denmark-coronavirus>.

¹³ *Id.*

¹⁴ Butler, *supra* note 10.

¹⁵ Murray, *supra* note 8.

“legalize” the cull while forbidding the keeping of mink in Denmark and banning the transport of live mink to or from Denmark until December 31, 2021.¹⁶ The agreement included payment of 30 kroner per mink to all farmers affected by culls carried out by November 19, with a 10 kroner bonus to all farmers with mink killed before November 12.¹⁷

The Danish mink cull created a firestorm of public outrage. Mogens Jensen, Minister of Food and Agriculture, resigned after a report emerged showing that he knew in September that a change to legislation would be required to give the government authority to order the cull. Investigations are underway to determine “who knew what and when did they know it?”¹⁸ Although the WHO announced that the “Cluster-5” strain was no longer circulating in humans as of November 20, it advises a variety of measures to prevent the risk of disease transmission.¹⁹

The Danish cull, #minkgate, has had a devastating effect on all involved—the mink, the mink farmers, Danish authorities, and arguably the entire industry.²⁰ The Danish began raising mink in the 1920s and are considered the world’s premiere breeders.²¹ While some believe this may be the end of mink fur farming in Denmark,²² the Prime Minister indicated she hopes the industry may be reestablished once the ban is lifted in 2022. Others estimate that it will take at least seven years for the industry to revive.²³

There are more than 50 million mink bred for their fur throughout the world.²⁴ The other leading national markets for mink production are China, the Netherlands, and Poland, but Spain, Sweden and the United States also have significant numbers of farms.²⁵ Each of those countries have reported outbreaks of the virus in minks. In the U.S., in August, Utah confirmed deaths of minks on mink farms from COVID-19,²⁶ and in October, the

disease spread to Wisconsin mink farms.²⁷ Fur from the dead infected mink in Utah were nevertheless used for coats and other garments after processing to remove traces of the virus.²⁸ With thousands of mink dead from the virus, the US Department of Agriculture ordered quarantines of infected farms but no mass cull.²⁹

However, China, the second largest producer before the pandemic, is capitalizing on the mink culls. Taking advantage of the recent surge in global mink fur prices following the Danish cull, farmers in China have resumed breeding mink on their 8,000 farms housing some 5 million animals.³⁰ Fur farming is a cheap means for local governments to try to address poverty in rural communities and rustbelt regions where industrial workers have lost their jobs.³¹ As an example, one Chinese breeder’s earnings increased 30-50% after the announcement of the cull in Denmark.³² Although China had banned all wildlife trading in response to the pandemic, the government classified mink, arctic fox, and raccoon as “special livestock” exempt from the ban. In China, many large breeders claim to have rigorous vaccination and hygiene regimes, and the government has administered free COVID-19 tests for captive mink since the Denmark cull was announced.

Nevertheless, the health risks posed by the farms are closely linked to the conditions in which the animals are housed: large numbers of mink, densely populated in cages, one on top of the other, characterized by some as “filthy fur farms . . . packed with sick, stressed, and injured animals and breeding grounds for disease.”³³

Fur farming has been under attack for years as an inherently cruel industry designed to cater to mere human vanity and prestige. While some mink that enter farms are trapped, many more are bred in captivity and

¹⁶ Luke Roberts, *Government finally has legal agreement to continue with ongoing mink cull*, CPH POST ONLINE (Nov. 17, 2020), <https://cphpost.dk/?p=120446>.

¹⁷ Roberts, *supra* note 16.

¹⁸ Abend, *supra* note 9.

¹⁹ World Health Organization, *SARS-CoV-2 mink-associated variant strain – Denmark* (Dec. 3, 2020), <https://www.who.int/csr/don/03-december-2020-mink-associated-sars-cov2-denmark/en/>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Butler, *supra* note 10.

²⁴ Helen Briggs, *What’s the science behind mink and coronavirus?*, BBC (Nov. 9, 2020), <https://www.bbc.com/news/science-environment-54842643>.

²⁵ Briggs, *supra* note 6.

²⁶ Theresa Machemer, *COVID-19 reaches mink farms in Utah*, SMITHSONIAN MAG. (Aug. 20, 2020), <https://www.smithsonianmag.com/smart-news/covid-19-reaches-mink-farms-utah-180975605/>.

²⁷ Sophie Lewis, *Thousands of mink dead from COVID-19 outbreaks in Utah and Wisconsin*, CBS NEWS (Oct. 9, 2020), <https://www.cbsnews.com/news/thousands-mink-dead-coronavirus-covid-19-disease-outbreak-utah-wisconsin-fur-farms/>.

²⁸ *Id.*

²⁹ Butler, *supra* note 10.

³⁰ Yew Lun Tian & David Stanway, *China’s fur farms see opportunity as countries cull mink over coronavirus fears*, REUTERS (Dec 3, 2020), <https://www.reuters.com/article/health-coronavirus-china-mink/chinas-fur-farms-see-opportunity-as-countries-cull-mink-over-coronavirus-fears-idINKBN28D0P5>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

live their entire lives in tiny, unenriched, cages.³⁴ Millions of mink are farmed,³⁵ often in unregulated inhumane conditions,³⁶ and inhumanely killed.³⁷ Unlike domesticated farmed animals who have been in captivity for over 5,000 years, mink have been held in captivity a mere 90 years, and thus retain many of their wild instincts.³⁸ Mink are “highly active and inquisitive animals,” instinctively nomadic with home ranges in the U.S. of three to six miles.³⁹ Nevertheless, the average cage in which a mink spends their entire life is one foot high, one foot wide, and three feet deep.⁴⁰ Also, as semi-aquatic animals, “they are physiologically hardwired to seek large bodies of water for diving, hygiene, and food.”⁴¹ The intensive confinement and lack of bodies of water and other accommodations to satisfy their needs leads to physical and emotional suffering. The killing of mink also entails pain and suffering, when the animals are gassed, poisoned or electrocuted.⁴² The most common method in the United States is “asphyxiation, which occurs when the mink are placed into an air-tight container and administered poisonous carbon monoxide gas.”⁴³ Because mink are semi-aquatic animals and are highly tolerant to hypoxia, they are able to hold their breath for extended periods of time, which in turn prolongs their death and suffering.⁴⁴

Although the fur industry claims that real fur is better for the environment than faux fur, studies suggest this is not true; in fact, the fur industry is devastating to the environment.⁴⁵ It is estimated that “each mink produces 44 pounds of feces in its lifetime,” creating waste that “can produce hazardous byproducts including often uncontrollable amounts of phosphorous and nitrates”

that pollute the air.⁴⁶ The disposal of carcasses through incineration also contributes to air pollution. The “feces and waste contain nitrates, phosphates and other chemicals, which are as toxic to water systems as they are to the air.”⁴⁷ In addition to polluting the air and water, the pollutants may also contribute to ecosystem damage and the loss of biodiversity.⁴⁸ And, the fur industry is energy inefficient—consuming approximately fifteen times more energy than the faux fur industry.⁴⁹

With increasing concern for the welfare of the animals and the environment, consumers have begun to shun fur. Many top designers, including Versace, Ralph Lauren, and Chanel, have dropped it from their collections; many retailers, including Macy’s, Bloomingdale’s and Nordstrom’s, have discontinued sales of fur products.⁵⁰ Moreover, Copenhagen Fur, the world’s largest fur auction house, will cease operations after 90 years.⁵¹ And with the change in public demand and the high risk to public health, lawmakers are following suit. Fur farms are already banned in the U.K., Austria and Germany.⁵² The Netherlands, in the wake of the pandemic, “fast-tracked its existing plan to phase out fur farming” from 2023 to 2021.⁵³ France announced in October that it will ban mink fur farming by 2025 and Poland may do so as well.⁵⁴ In the U.S., the mink industry recorded its worst year of profits in 2019, when the value of produced mink pelts fell to \$59.2 million.⁵⁵ Four cities in California have banned the sale of fur and, in July, a federal district court judge upheld the constitutionality of San Francisco’s fur ban.⁵⁶ In October, Wellesley, Massachusetts became the first city outside of California to ban fur,⁵⁷ and Israel became the first

³⁴ Rachael Bale, *Fur farms still unfashionably cruel*, NAT’L GEO. (Aug. 17, 2016), <https://www.nationalgeographic.com/news/2016/08/wildlife-china-fur-farming-welfare/>.

³⁵ While the focus of this article is on mink, other animals are farmed for their fur as well, including fox, raccoon dogs, chinchillas and rabbits. Briggs, *supra* note 1.

³⁶ James Kenner, *Think about mink: Examining the gap in legal protection for fur-farmed animals through the lens of mink farming*, 16 ANIMAL & NAT. RESOURCE L. REV. 81, 82-83 (2020) (noting the lack of regulation over fur farming in the United States).

³⁷ *Id.* at 91-92.

³⁸ *Id.* At 86.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Lucy Connolly, *Horrorifying footage shows animals electrocuted and beaten at fur farm*, UNILAD (Dec. 4, 2019), <https://www.unilad.co.uk/animals/horrorifying-footage-shows-animals-electrocuted-and-beaten-at-fur-farm/>.

⁴³ Kenner, *supra* note 36, at 90.

⁴⁴ *Id.*

⁴⁵ Isaac Wakefield, *Drop dead stylish: Mitigating environmental impact of fur production through consumer protection in the truth in fur labelling act of 2010*, 19 PENN ST. ENVTL. L. REV. 267, 270 (2011).

⁴⁶ *Id.*

⁴⁷ *Id.* at 272.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Kate Gibson, *Nordstrom to stop selling fur and exotic animal skin products*, CBS NEWS (Sept. 29, 2020), <https://www.cbsnews.com/news/nordstrom-fur-exotic-animal-skin-to-stop-selling-products/>.

⁵¹ Butler, *supra* note 10.

⁵² Murray, *supra* note 7.

⁵³ *Denmark mink cull: Government admits culling had no legal basis*, BBC (Nov. 10, 2020), <https://www.bbc.com/news/world-europe-54893287>.

⁵⁴ *Id.*

⁵⁵ Natural Agricultural Statistics Serv., *Pelt production down 15 percent*, USDA (July 23, 2020), <https://downloads.usda.library.cornell.edu/usda-esmis/files/2227mp65f/bz60dj033/dr26zk387/mink0720.pdf>.

⁵⁶ IFTF v. San Francisco, 2020 WL 4459123 (July 16, 2020).

⁵⁷ Bob Brown, *Wellesley Massachusetts votes to ban sales of new fur products—starting a year from now*, THE SWELLESLEY REPORT (Oct. 28, 2020), <https://theswellesleyreport.com/2020/10/wellesley-votes-to-ban-sales-of-new-fur-products-starting-a-year-from-now/>.

nation to announce its intention to ban the fur trade.⁵⁸ The Israeli environmental protection minister explained it well: “The fur industry causes the killing of hundreds of millions of animals around the world, and involves indescribable cruelty and suffering. . . . Utilizing the skin and fur of wildlife for the fashion industry is immoral.”⁵⁹ Looking back, one silver lining that is recognized amongst the tragic consequences of the COVID-19 pandemic may be that it accelerated the end to an unjustified, cruel, and environmentally devastating industry.

Joan Schaffner is an Associate Professor of Law at the George Washington University Law School and co-chair of the International Animal Law Committee.

⁵⁸ Aaron Reich, *Israel set to be first nation to ban the fur trade*, THE JERUSALEM POST (Oct. 5, 2020), <https://www.jpost.com/israel-news/israel-set-to-be-first-nation-to-ban-the-fur-trade-644590>.

⁵⁹ *Id.*

ABA Submission to UN Working Group

UN Guiding Principles on Business and Human Rights

Morvarid Bagheri and Corinne Lewis

The United Nations Human Rights Council's unanimous adoption of the *UN Guiding Principles on Business and Human Rights* (UNGPs),¹ in June 2011,² marked a significant advancement in addressing the long-standing governance gap concerning corporations' responsibilities for their negative impacts on human rights, wherever they might occur. The UNGPs are considered the global standard for preventing and addressing adverse human rights impacts of businesses.

At the same time, the UN Human Rights Council established the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, commonly referred to by the shorter designation - the Working Group on Business and Human Rights (UNWG).³ The UNWG's key responsibility is to promote the effective and comprehensive dissemination and implementation of the UNGPs. Among ways in which the UNWG has done so is through its chairmanship of the annual three-day UN Forum on Business and Human Rights, which in recent years has attracted over 2,000 participants, that include governmental officials, business representatives, civil society participants, academics and others. The UNWG also carries out field visits and issues annual and thematic reports, including on gender and corporate human rights due diligence.

The Past Decade: Some Progress but Problems Remain

Pursuant to the encouragement of the UNWG, over 20 countries have created National Action Plans on business and human rights in connection with the State responsibility to disseminate and implement the UNGPs. Financial institutions, including the International Finance Corporation and the World Bank, have integrated human rights due diligence principles from the UNGPs into their lending requirements. Businesses have also taken steps to fulfil their responsibility to respect human rights through the adoption of policies addressing their human

rights responsibilities and practices for assessing and addressing their human rights impacts. In addition, businesses are increasingly creating grievance mechanisms to provide a means for persons whose rights have been adversely affected to seek a remedy.

However, as the UNGPs enter their second decade, serious human rights infringements continue to pervade business practices throughout the world and negatively affect workers' rights, the food, water and health of local communities and even the survival of indigenous peoples and minority communities. Oftentimes, persons whose rights have been negatively impacted by businesses have difficulty accessing legal avenues to seek accountability and obtain a remedy.

ABA Support for Implementation of the UNGPs

The UNWG, in looking forward to how to further implementation of the UNGPs over the next decade, has launched the global project, "Business and Human Rights: Towards a Decade of Global Implementation," also known as "UNGPs 10+/Next Decade." In adopting an inclusive and transparent approach to the project, the UNWG invited written input from a wide range of stakeholders, including on: what progress has taken place with respect to the implementation of the UNGPs in the past decade; the promising developments and practices that could be built on; the remaining gaps and challenges; and what is needed to achieve meaningful progress over the next decade.

In response to this call, in November 2020, the ABA submitted a letter to the UNWG highlighting examples of how the ABA has, and continues to, contribute to the implementation of the UNGPs. The submission was prepared by an International Law Section (ILS) working group comprised of members from the International Human Rights and UN and International Organizations Committees and the ABA Representatives to the United Nations. Morvarid Bagheri, Co-Vice Chair - Policy and Programs, ILS International Human Rights Committee,

¹ [UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#) (2011).

² [UNGA Res 17/4](#), para. 1 (2011).

³ *Id.*, para. 6.

coordinated the effort. Valuable support and assistance were provided by: Renee Doplick, Special Advisor to the ABA UN Representatives; David Dettman, ABA Rule of Law Initiative (ROLI), Michael Pates, ABA Center for Human Rights (CHR); Kristi Gaines, ABA Governmental Affairs Office; and Max Trujilo, the ILS Rule of Law Officer. The submission benefited greatly from this collaborative approach.

The submission notes that the ABA endorsed the UNGPs in 2012 and urges governments, the private sector, and the legal community to integrate the UNGPs into their respective operations and practices.⁴ Additionally, the submission illustrates how the ABA has supported and contributed to the implementation of the UNGPs through its efforts to improve the role and responsibilities of lawyers, advance the rule of law, promote the rights of women, and combat human trafficking and corruption at home and abroad. Below are some of the ABA policies, programs and publications, which were highlighted in the submission to assist the UNWG in identifying how to build upon achievements, address gaps and challenges and develop a roadmap for the widespread implementation of the UNGPs by 2030.

A. Advancing the Role of Lawyers in Implementing the UNGPs

Through trainings, programs and publications, the ABA promotes lawyers' understanding of the UNGPs and encourages the provision of advice on human rights risks to business clients consistent with their ethical and professional responsibilities. For example, the ABA International Law Section (ABA ILS) is currently conducting a series of 12 virtual training sessions for lawyers on a range of key topics relating to business and human rights, including on conducting human right due diligence. In 2019, ABA ROLI held a program for six Pakistani law faculty to observe business and human rights teaching at U.S. law schools, discuss course development and teaching methodology with U.S. law faculty, and exchange views on emerging trends in the field with human rights organizations. Additionally, the ABA held panels at the annual UN Forum on Business and Human Rights in 2019 relating to the role and responsibilities of lawyers, and ABA CHR is currently

⁴ [ABA Resolution 109](#) (2012).

⁵ Business and Human Rights Resource Centre & International Service for Human Rights, *Shared Space Under Pressure: Business*

working with stakeholders on a contractual clauses project to ensure human rights due diligence in business contracting.

The ABA also publishes books and guidelines to advance the role of lawyers in implementing the UNGPs, including "A Guide to Human Rights Due Diligence for Lawyers," (forthcoming in the fall of 2021), "Business and Human Rights: Advising Clients on Respecting and Fulfilling Human Rights" (2020), "The Lawyers Corporate Social Responsibility Deskbook: Practical Guidance for Corporate Counsel and Law Firms" (2019), "Designing an Effective Anti-Bribery Compliance Program: A Practical Guide for Business" (2018), "Business, Human Rights, and Sustainability Sourcebook" (2016), and "Corporate Responsibility for Human Rights Impacts" (2015).

B. Supporting Implementation of the UNGPs by Strengthening the Rule of Law

Through its advocacy for governments to respect the rule of law, the ABA strives to ensure that States implement policies, legislation and regulations that ensure businesses prevent, investigate, punish and redress human rights abuses by third parties. The ABA also works to promote corporate accountability through judicial mechanisms by strengthening judicial systems and promoting respect for the legal profession.

The ABA also recognizes the important role of non-lawyer human rights defenders in protecting the rule of law and has urged businesses to promote support for civic freedoms and human rights defenders by implementing the analytical and operational framework set forth in the report "Shared Space Under Pressure."⁵

C. Supporting Implementation of the UNGPs by Advancing Women's Rights

The ABA recognizes the role of law in promoting the equality, equal protection and equal access to opportunities and benefits for women and affirms the importance of legal literacy to the functioning of democracies and the exercise of human rights. In 2018, ABA ROLI launched its "Women and Girls Empowered" (WAGE) initiative to help advance women's economic empowerment by providing financial support to women

Support for Civic Freedoms and Human Rights Defenders: Guidance for Companies (Sept. 2018).

microentrepreneurs and working with local microfinance institutions and civil society to reduce legal and practical barriers that women face in the business world. ABA ROLI also participates in the Grameen Foundation's "Reducing Barriers to Women's Economic Empowerment in El Salvador and Honduras Initiative," which aims to address challenges faced by female entrepreneurs in starting and growing sustainable businesses, including linkages between financial inclusion, gender-based violence and conflict.

The ABA also has helped further implementation of the UNGPs by encouraging the use of a gender lens in its programs, including "Legal Perspectives on Impact Investing for Gender and Women's Empowerment" at the ABA ILS 2020 Meeting, "Women's Rights in Sustainable Development: The New Legal Frontiers" at the 2016 Session of the UN Commission on the Status of Women, and "Advancing the Role of Women in Peace, Justice, and Strong Institutions" at the 2019 UN High-Level Political Forum, which covered economic empowerment, impact investing, meaningful workplace inclusion, and workplace protections against sexual harassment and violence.

D. Supporting Implementation of the UNGPs by Combatting Human Trafficking

The ABA has helped combat human trafficking by formulating the "ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor" and publishing "Freedom for All: An Attorney's Guide to Fighting Human Trafficking," "International Guiding Principles on Street Children," as well as model contract clauses providing human rights protections for workers in international supply chains. Moreover, the ABA supports legislation to combat human trafficking and has urged other bar associations to help improve laws addressing the trafficking of children, including through the development and adoption of model or uniform anti-trafficking laws.

ABA ROLI also created a Human Trafficking Assessment Tool to help states and civil society combat human trafficking and provides legal and technical assistance programs on legislative drafting, policy formulation, capacity building and training, strengthening multi-sectoral and international cooperation, civic education, strategic litigation and trial monitoring to help further this objective.

Moreover, the ABA has urged for the rights of trafficking victims to be protected, including that victims not be prosecuted for crimes committed in relation to their status as a victim of human trafficking. The ABA further recommends that NGOs, donors, and multilateral agencies work with governments to develop and adopt appropriate methodologies to create publicly accessible national databases of information on assistance to victims of sexual violence, enabling stakeholders to coordinate, track, and evaluate this assistance.

E. Supporting Implementation of the UNGPs by Combatting Corruption

The ABA encourages national governments and the international community to adopt and implement effective legal measures and mechanisms, which are actively monitored and enforced, to deter corrupt practices in the conduct of international business. It also encourages ratification by governments of the UN Convention Against Corruption, the Inter-American Convention against Corruption, and the Council of Europe's Criminal Law Convention on Corruption.

The ABA has helped to combat corruption through publications such as "A Compendium of Good Practice to Counter Corruption: A Collection of Briefings and Checklists for Key Sectors," and "Business Bribes: Corporate Corruption and the Courts." Moreover, ROLI's "Regional Anti-Corruption Advisor" program has worked to create systems and tools that help reduce avenues for corruption and promote cultural norms and practices within agencies that advance integrity. In 2019, ABA ROLI conducted six programs in South and South-East Asia to help prevent transnational crime and provide appropriate remedies for harm caused by such activity.

Next Steps for the ABA: Addressing Gaps in Policy

In leading the ABA's response to the UNWG's call for input, the ABA ILS International Human Rights Committee (IHRC) was able to identify the existence of gaps in current ABA policy, which if addressed, could enable the ABA to more effectively support the widespread implementation of the UNGPs over the next decade. As a result, the IHRC's Business and Human Rights Subcommittee plans to work collaboratively with other relevant ABA entities to address shortcomings in ABA policy. This will include building on existing ABA policies, including resolution 109 (2012), which endorsed the UNGPs.

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The European Public Prosecutor Office

A New Key Player for Corporate White-Collar Crime Investigations?

Princessa Fouda, Julia Velho and Julie Zorrilla

Facing widespread concern about the huge losses affecting the European Union (“EU”) budget due to specific serious offences,¹ the EU has set an independent European Public Prosecutor’s Office (the “EPPO”) up by a Council regulation dated 12 October 2017 (“Regulation”).² Indeed, and despite the establishment of several European institutions such as Eurojust (2002) and OLAF (1999), the offenses related to the European Union budget were deemed insufficiently investigated and prosecuted in Europe.³ Similarly, the investigations conducted by Member States’ national authorities, which jurisdiction ceases at national borders, suffered from gaps in the judicial cooperation.⁴ The EPPO, as the first EU’s supranational authority is therefore responsible for investigating and prosecuting criminal offences affecting its financial interests in 22 out of the EU’s 27 Member States (“Participating countries”), including fraud, cross-border VAT fraud, money laundering, misappropriation and corruption. The EPPO will start operating as of 2021, already having appointed the first European Chief Prosecutor in October 2019, Laura Kovesi, and the full College of European Prosecutors in July 2020.⁵ This independent authority which has a wide - even extraterritorial - jurisdiction, would be a potential significant addition to the white-collar enforcement landscape in the European Union that will strengthen complex and global investigations for all companies involved in EU projects or subject to the EU’s VAT regime.

The EPPO’s efficiency is guaranteed by a dual level of organization and the principle of independence

In order to ensure its efficiency, Participating Countries have committed to respect the independence of the EPPO and “*to not attempt to influence it in the performance of its assignment*”. Similarly, the EPPO will not accept instructions from the EU institutions or national authorities. From an operational point of view, the EPPO will operate as a single office divided into two levels: central and national level. The central level, which consists of the European Chief Prosecutor and the College of prosecutors, is in charge to (i) determine the criminal justice policy *via* decisions regarding the strategy and (ii) supervise the investigations conducted at the national level. The decentralized level, which consists of a European Delegated Prosecutor in each Participating country, carries out the investigation and prosecution on the national territory.⁶ This divided structure enables the EPPO to ensure compliance with national rules while remaining independent of countries’ interference as the decisions are issued by the central level.

The broad jurisdiction of the EPPO will impact a large number of companies

The EPPO is in charge to enforce the 2017 PIF Directive (“Directive”). This Directive harmonizes the definitions, sanctions and limitation periods of the criminal offences falling within the EPPO’s jurisdiction as well as extensively defines the concept of EU’s “*financial interests*” and therefore the jurisdiction *rationae materiae* of the EPPO. As such, the EPPO will have jurisdiction to

¹ An estimated €1 billion in losses in addition to the €140 billion in Value-Added Tax revenues in 2018. Report from the Commission to the European Parliament and the Council 30th Annual Report on the Protection of the European Union’s financial interests Fight against fraud, 2018, p. 28 and 33.

² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office.

³ Council Decision 2003/659/JHA amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, 18 June 2003, Council Decision 2009/426/JHA of on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, 16

December 2008, OLAF’s report 2017, “*Eighteenth report of the European Anti-Fraud Office, 1 January to 31 December 2017*”, Publications Office of the European Union, 2018, p. 42.

⁴ “*The European Public Prosecutor’s office: protecting taxpayers against fraud and corruption*” European Commission Brochure, https://ec.europa.eu/info/sites/info/files/eppo_brochure_en.pdf.

⁵ “*EU Public Prosecutor’s Office (EPPO): Council appoints European prosecutors*”, press release, Council of the EU, 27 July 2020.

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office. Frequently Asked Questions on the European Public Prosecutor’s Office, European Commission, 7 August 2018.

investigate offences affecting “*all revenues, expenditure and assets covered by, acquired through, or due to the Union budget and the budgets of the institutions, bodies, offices and agencies*”.⁷ The Directive also enables the EPPO to pursue both authors and accomplices of these offences. It should be noted that a company can be under an investigation conducted by the EPPO only in the event that the offense has been committed by a person who has a leading position within the company and for the latter’s benefit. To broaden EPPO’s scope, the Directive defines however very briefly the concept of “*leading position*” based on (i) the power to represent the company (ii) the authority to take decisions on behalf of it, or the authority to exercise control within the company. Similarly, the Directive makes no difference if the person acted “*either individually or as part of an organ*” of the company. It therefore seems that the Directive aims at including a large number of persons within the company whose acts can incur the company’s liability. The purpose is to ease the prosecution of companies. Further, the Directive only requires the Member States to implement corporate liability, whether criminal or not – administrative for example – with the aim, anew, of extending the scope of the EPPO.⁸ Consequently, it appears that the EPPO will oversee a large number of offences, positioning itself as a new interlocutor that many companies have to consider.

The Regulation aims at extending EPPO’s scope to foreign companies

According to OLAF report 2018, of the 84 investigations concluded in 2018, no less than 37 concerned a country outside the Union.⁹ For this reason, the Regulation clearly aims at extending the territorial competence of the EPPO providing that “*the EPPO should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States*”. The Regulation therefore states that the EPPO will be competent to investigate and pursue foreign companies when (i) the offence is committed in whole or in part

within the territory of one or several Member States or when (ii) the person who committed the offence is a national of an Member State or subject to the “*Staff Regulations or to the Conditions of Employment*”, provided in the last both cases that a Member State has jurisdiction for such offences when committed outside its territory. Beyond extensive territorial competence, the EPPO also benefits from international cooperation tools. On the one hand, the EPPO will benefit from close cooperation with several EU agencies, inter alia, Eurojust, OLAF and Europol. On the other hand, the Regulation requires enhanced cooperation between the EPPO and third countries – e.g., working arrangements with the authorities of third countries and international organizations regarding the exchange of strategic information, international agreements concerning cooperation in criminal matters concluded by the EU etc.¹⁰

Conclusion

The EPPO is promoted as the first step for enhanced supranational cooperation, opening the door to European jurisdiction in criminal matters. The Regulation and the Directive have therefore provided the EPPO with tools to become an important player in the European white-collar crime enforcement field in order, *inter alia*, to increase the level of protection of the EU budget and to provide a safer environment to all economic actors. Recently created, one can already guess an extension of competence to areas other than European finance. This innovative initiative may indeed serve other cross-border fights such as terrorist crimes¹¹ or serious environmental crimes.¹² The EU shows a deep interest in increased cooperation in criminal matters at the European level, especially since the European Treaty on the Functioning of the EU foresees the possibility to extend EPPO’s jurisdiction to further forms of “*serious crime having a cross-border dimension*”.¹³

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⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office.

⁸ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law.

⁹ OLAF report, Nineteenth report of the European Anti-Fraud Office 1 January to 31 December 2018, 29 October 2019, Figure 4.

¹⁰ 31st Annual Report on the protection of the European Union’s financial interests, fight against fraud, 2019, p. 8, (“*including anti-fraud provisions in agreements with non-EU countries*”).

¹¹ “Fighting Terrorism through the European Public Prosecutor’s Office (EPPO)?”, A. Juszcak, E. Sason, Eurocrim 1/2019, p. 66 to 74.

¹² “EPPO and environmental crime: May the EPPO ensure a more effective protection of the environment in the EU?”, New Journal of European Criminal Law 2018, C. Di Francesco Maesa, Vol. 9(2) 191 to 215.

¹³ Article 86-4, Treaty on European Union and the Treaty on the Functioning of the European Union, 13 December 2007.

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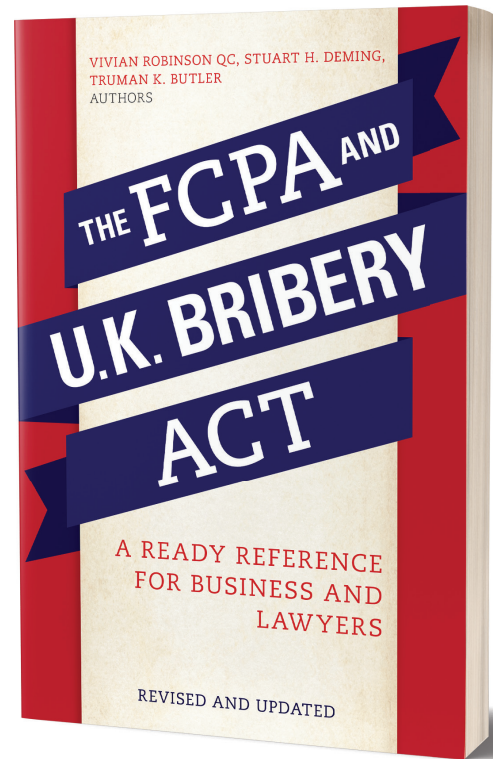
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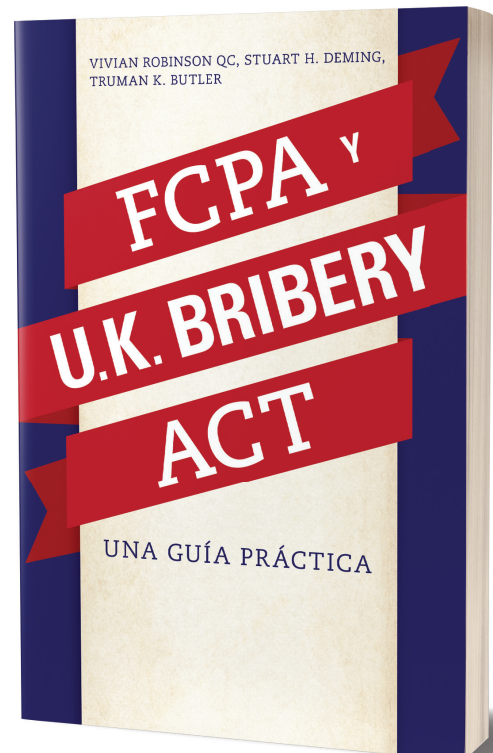
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