American Extraterritorial Legislation

The Data Gathering behind the Sanctions

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Abstract: Since the early 2000s, the United States' different administrations of justice have been prosecuting foreign companies suspected of violating US laws on bribery of foreign public officials and of failing to respect embargoes and economic sanctions. Even if these violations take place outside US borders, the American prosecution authorities (including the Department of Justice, the Securities and Exchange Commission and the Office of Foreign Assets Control) consider themselves legitimate to intervene. European multinationals have been particularly sanctioned. For instance, in 2014, fines reached up to 9 billion dollars for the French bank BNP, which was accused of using dollars in its transactions with certain countries sanctioned by the US (mainly Iran, Cuba and Sudan). Punishing companies and hitting them in the wallet are not the only objectives of the American administration. The United States takes advantage of legal procedures against foreign companies to collect millions of bytes of data, sometimes including sensitive information on them as well as on their partners and markets. Facing this legal offensive, Europe is still struggling to provide responses to protect its companies.

Keywords: American judicial system, competitive intelligence, economic information, European markets, extraterritoriality, Iran, sanctions

It is naively thought that the law only serves justice.¹ In fact, in global economic competition, the law also supports the economic

interests of the great powers, especially those of the United States (US), which has perfectly understood what profits it can derive from exporting its legislation around the world. The US extraterritoriality law consists of legislation passed by the US Congress that are applicable, according to the authorities, outside the borders of the United States. This legislation has developed essentially along two main lines. The first is the fight against corruption through the Foreign Corruption Practice Act (FCPA) passed in 1977 under the Carter administration. The second is the fight against the violation of embargoes. These are laws prohibiting not only US companies, but all foreign companies as well, from doing business with a particular country. Two such legislation were passed in 1996: the Helms-Burton Act and the Amato-Kennedy Act. The first was directed against Cuba, the second against Iran and Libya. Since the terrorist attacks of 2001, the US has been building up its legal arsenal aiming at tracking down dirty money that could be used to finance terrorism. The problem is that in the majority of cases this aggressive and terribly effective tool hits European companies, which were sanctioned with heavy fines during the 2000s (USD 9 billion for the French bank BNP) and deprived of large amounts of confidential information on their partners and markets. As lawyer Olivier de Maison Rouge (2016) explains, the law is ‘an offensive weapon, a formidable warhead of economic warfare’ (de Maison Rouge 2016: 10). The law makes it possible not only to hit companies with fines, but also to steal their most sensitive data.

US Extraterritorial Legislation

The greatest legal-economic warrior of the current age is the United States. Since the mid-1990s, the US has been exporting its legislation all over the world. Under the pretext of punishing states that do not respect human rights or which support terrorism, some of this legislation, notably the D’Amato-Kennedy and Helms-Burton Acts passed in 1996, protects Washington’s economic interests. Officially, the purpose of this legislation is to economically stifle America’s enemies by prohibiting all trade with them. Cases in point are the famous ‘rogue states’ on Washington’s blacklists: Cuba, Libya, Sudan, Iran, Iraq, North Korea and Myanmar. These

veritable diktats expose any company that continues to do business with such countries to prosecution by the US authorities.² Those who resist or remain obdurate can be fined several hundred million dollars and even, in some cases, several billion dollars, a financial sanction which for some multinationals or large, small or medium-sized enterprises is preferable to an even worse fate: the death sentence of being excluded from the US markets. Woe betide all those who do not respect the *lex americana*.

If US legislation applied only to US companies, this issue would hardly merit the attention of the rest of the world. But it does not. On the contrary, in recent years the Foreign Corrupt Practices Act (FCPA), the Cuban Liberty and Democratic Solidarity Act (Helms-Burton) and the Iran and Libya Sanctions Act (D'Amato-Kennedy) have been developing their extraterritorial potential. They apply to any company and any individual worldwide. The American sheriff of business intends to keep the law worldwide, as Blake Redding described it in 2007, by invoking the famous formula of the vigilantes of the American westerns: the Long Arm of the Law will hunt down outlaws even in the most remote corners of the global *wild west* (Redding 2007).

Yet, why not welcome legislation, albeit extraterritorial, which can do good by fighting evil, and then thank the Americans for cleaning up the world? This assumption is based on an overt link between the US's international interventions and promoting the ends of justice. It remains to be seen, however, whether such external interventions are always guided by the duty of justice. If this is really the case, if its thirst for justice is so sincere, then one would presume the the United States would choose to join the International Criminal Court (ICC),³ which is responsible for tracking down war criminals. To the contrary, the US government has attacked the court's prosecutor, Fatou Bensouda, for having the audacity to be interested in possible war crimes committed by GIs in Afghanistan or by Israeli soldiers in the West Bank and in the Gaza Strip (Verma 2020). It seems, then, that business justice may be more important to them than human rights.

The problem with US extraterritorial legislation is the objectives it serves. Are they as noble as claimed? In the eyes of many observers I have met in the course of my investigations, the export of US legislation is suspect.⁴ It does not only aim at doing good

by sanctioning anti-democratic political regimes and corrupt companies and individuals. It has hidden purposes. Antoine Garapon, magistrate and secretary general of the Institut des hautes études sur la justice (Institute for Advanced Studies on Justice), and Pierre Servan-Schreiber, a lawyer at the Paris and New York bars, who edited one of the few books on the subject, think that the US's motivations are not pure: 'It is no more and no less than a new way of governing that is being put in place, involving a new use of power: more pragmatic, more efficient, but also more insidious, in which the interests of American power and the moralization of business are mixed up to the point of confusion' (Garapon and Servan-Schreiber 2013: 6).

Interpreting US Extraterritoriality

For the French parliamentary deputies who have studied this phenomenon, US extraterritorial legislation is indeed a 'legal-administrative war machine' (Lellouche and Berger 2016: 132). According to them, the US legal empire has two objectives: hit the finances of the targeted companies heavily, and weaken them to make them vulnerable to possible takeover by a US competitor. Extraterritorial legislation is part of US geo-economic strategy, conceived as another way of waging war⁵ and of defending its global leadership.

This is also the opinion of the French intelligence service. On 14 November 2018, the newspaper *Le Figaro*, under the headline 'How the United States is spying on our companies', revealed that the Direction générale de la sécurité intérieure (General Directorate for Internal Security, DGSI) believes that 'American actors are deploying a strategy of conquering export markets which translates, with regard to France in particular, into an offensive policy in favor of their economic interest'. The DGSI is particularly concerned about the use of American legislation as a weapon to destabilize French companies and siphon off their sensitive information (Leclerc 2018). This is indeed a case of global intelligence looting. 'Uncle Sam' is taking advantage of these extraterritorial procedures to scan the economic planet and plunder as much information as possible in order to put both his enemies and his friends under surveillance and consolidate his world leadership in intelligence.

Let us be clear from the outset. It is not a question of whitewashing companies implicated by the US government, nor of presenting them as victims. When they are accused of corruption, the facts (in terms of American criteria) are most often proven. Numerous testimonies confirm the fraudulent practices of some French and European companies such as Siemens, Technip, Alstom and more recently Airbus, which agreed in early February 2020 to pay more than 3.6 billion euros to avoid legal proceedings.⁶ Fighting economic crime is therefore everyone's business. On the other hand, the legitimacy of American legal action against those countries that Washington wants to stifle economically raises a problem from the point of view of international law. Indeed, neither the UN, nor the World Trade Organization, nor any multilateral institution imposes punishments as severe as those imposed by the United States against Havana, Tehran and even Moscow.⁷ Moreover, some international jurists feel that the term 'sanction' seems unsuited to the actual context, since a sanction must come from a collective or a jurisdictional body of the international community, not from a single country. These jurists prefer to speak of a 'unilateral measures of economic coercion' (Burdeau and Stern 1998: 164). Whether they are measures or sanctions, the result is just the same: exorbitant fines such as that imposed on the Banque Nationale de Paris (BNP Paribas), which in 2014 had to pay nine billion euros to the American Treasury solely because it had traded in dollars with Iran, Cuba and Sudan, notwithstanding that it had done so in a manner authorized by international institutions. Which companies are next on the US's list?

The question is thus to ascertain if the campaign against violators of US embargoes is not just a pretext to destabilize foreign competitors and maintain US economic supremacy. By tearing up the agreement on Iran's nuclear programme on 9 May 2018,⁸ despite reports by the International Atomic Energy Agency attesting to Tehran's respect for it, the US is digging up the economic hatchet.⁹ Donald Trump imposed the toughest economic sanctions in history against Tehran by prohibiting all trade by US and foreign companies with the country of the Mullahs.¹⁰ In Paris, Berlin and Brussels officials seem to be outraged by this American 'blackmail' and vow to defend their economic sovereignty. On the ground, however, it is a different story. The howls of indignation from European leaders do

not prevent the Old World's multinationals from bowing to Washington's orders. They will all leave Iran even if Berlin, Paris and London announce that they have found a way out thanks to a device called Instex,¹¹ which takes us centuries back in time: a platform for . . . barter. It circumvents the use of the dollar, which *de facto* places companies in the realm of US extraterritorial legislation.

On paper, the European platform looks smart, but three years after it was created it has still not proved its worth, although at the beginning of April 2020 a company in the health sector was reported to be using it (Kaval 2020). In fact, no one dares to buy Iranian oil for fear of triggering the wrath of the US. Worse, in January 2020, the Europeans were forced to give in to the blackmail of President Trump, who asked them to choose between filing a complaint against Iran or suffering a 25 per cent increase in taxes on their cars (Hudson and Mekhennet 2020). Tehran is not worth a sacrifice and, once again, the Europeans – who do not, however, respect their commitments to Iran – are getting into line to the great satisfaction of the US president. Time will tell whether, by accepting this political economy of renunciation and appeasement, Brussels has definitively lost part of its economic and therefore political sovereignty. However, some European think tanks are finally starting to react. A recent report of the European Council on Foreign Relations entitled 'Protecting Europe from economic coercion' indicates that passivity is no longer an option (Hackenbroich et al. 2020).

Internal Investigation: The US Intelligence Pump

When a company suspected by US authorities of violating US legislation agrees to cooperate, it must undergo an internal investigation as well. It must immediately take urgent and precautionary measures: communicate internally (to its board of directors, its employees, etc.) and externally (to its partners, the media and the markets) that it is entering the radar of the US judicial authorities; ensure the preservation of evidence; and order the head of the IT department to stop automatic deletions on the company's server(s), a common and regular procedure that avoids overloading the hard drives. If the investigation is triggered by a whistleblower within a company,

management must guarantee their anonymity, protect them and not pressurise them.

Once a company is in the hands of the US authorities, it can negotiate the scope of the investigation: which market, countries, period, people, data, documents, computers, external hard drives and so on are involved. Under US legislation, the statute of limitations for bribery and embargo violations is five years. However, the US authorities do not hesitate to ask for files from the last ten years. On that matter, Sophie Scemla, an attorney at the New York and Paris bars, explains: 'I advise my clients not to give in to pressure and to remind the American authorities that the statute of limitations is five years, not ten'.¹²

The survey begins once all of these issues have been addressed. The investigation actually ignores the rights of the company, as lawyer Olivier Boulon (2013: 70) notes: 'A long informal process of cooperation, sometimes heavy, is thus set up. It is confidential and takes place outside any legal framework'. The investigation is most often carried out by an Anglo-American law firm – Norton Rose Fulbright, Clifford Chance, Hugues Hubbard & Reed, these global firms have branches in Paris and various other capitals – supported by forensic companies specializing in collecting information on computer media. Lawyers and consultants are paid by the company itself. The cost is significant, amounting to several tens or even hundreds of millions of euros in major cases such as BNP Paribas, Société Générale, Airbus or Alstom.

It is always US or UK firms with a strong presence in the United States, which are advising European firms. Furthermore, US authorities only want to deal with Anglo-American lawyers, even if French, German or Italian lawyers are working in US or UK firms. It is a question of competence and trust. According to the individuals involved, the Americans fear that a French lawyer working for a French multinational would not fulfill his mission adequately. Investigate against his client? This conception of counsel is indeed rather foreign to the mentality of French lawyers. Yet, in the eyes of US prosecutors, the purpose of an internal investigation is not to defend the company but, on the contrary, to burden it. In the former Soviet Union and in communist China, the more the accused blamed themselves, the more the authorities were satisfied!

These lawyers, half defense lawyers, half prosecutors, are supported by forensic consultants in charge of recovering all the company's computer data that will be used as legal evidence. The data is gathered on a special server that contains hundreds of thousands or even tens of millions of e-mails and other documents belonging to the target company. In theory, these servers are located in Europe, are highly encrypted, and only the lawyers of the Paris-based Anglo-American law firm and a few administrators have the codes to access them. But how can one be sure that access and passwords are not divulged in New York and Washington?

There is reason for doubt. Indeed, US laws, notably the Foreign Intelligence Surveillance Act (FISA) of 1978, amended in 2008¹³ after the adoption of the Patriot Act following the 9/11 attacks,¹⁴ obliges all US public institutions to share information in their possession. Under Section 314(a) of the Patriot Act and through its Financial Crimes Enforcement Network, the Treasury Department boasts access to more than 37,000 contacts at 16,000 financial institutions around the world for purposes of combatting terrorism and money laundering (FinCEN 2019). The US concept of money laundering is very broad: it ranges from traditional money laundering to the violation of embargoes, fraudulent investments, arms trafficking and cigarette smuggling.

Trump: An Economic Warrior Who Listens to the Markets

President Trump is known to be a strong supporter of trade wars. They are, he says, easy to win because the US is the Big Brother of world business. The president has therefore sharpened new and particularly aggressive economic weapons. On 23 March 2018, he passed the Clarifying Lawful Overseas Use of Data (Cloud) Act, an extremely intrusive piece of legislation giving access to personal and corporate data. The Cloud Act allows US law enforcement authorities to gain direct access to data from US digital giants whether it is stored on servers in the US or elsewhere in the world. From now on, local US police forces and federal security and intelligence agencies can obtain any information contained in the servers of Microsoft, Facebook, Amazon, Google and others, without

notifying the main parties involved. Strangely enough, Silicon Valley has expressed its satisfaction with the Cloud Act. In a 6 February 2018 letter addressed to Senators Orrin Hatch, Lindsey Graham, Christopher Coons and Sheldon Whitehouse, Google, Facebook, Apple and Microsoft welcomed this act as reflecting ‘an important consensus in favor of the protection [sic] of Internet users around the world. This legislation is an important step towards the protection of individual privacy rights’.¹⁵ When internet giants think privacy, senators think national security.

Hence, Congress justifies the Cloud Act in order to ‘fight serious crime’.¹⁶ This sufficiently vague notion authorizes all digital intrusions: the fight against terrorism and its financing, the fight against mafias and criminal groups, but also the fight against fraud and corruption. In other words, it is an open door to all-round espionage, since hosts no longer have the right to refuse a request for information from the FBI, the CIA or market regulation and supervision authorities. Moreover, they must comply without even notifying the internet user whose data has been transferred to the US agencies. The Cloud Act is in direct opposition to US commitments to international judicial cooperation and equally opposed to European laws intended to protect the personal data of EU citizens.

Another front opened by Washington is the monitoring of foreign investment. Despite its recognized effectiveness, the Americans have given even more power to the body in charge of this mission, the Committee on Foreign Investment in the United States (CFIUS). The Foreign Investment Risk Review Modernization Act (Firma) was signed into law¹⁷ by President Trump on 6 August 2018. This act expands the economic sectors under the supervision of the CFIUS to include joint ventures and minority interests, and gives agents of the Office of the Director of National Intelligence more time to investigate cases.

Unsettlingly, this legislation has very strong extraterritorial potential. The president of the United States and CFIUS can require their foreign partners to adopt a foreign investment oversight model that is similar to that of the United States in order to facilitate coordination. Otherwise, Americans may refuse to share information with their recalcitrant allies, or even demand that they renounce certain investments that they consider threats to their interests. The Aixtron affair is thus generalized and enshrined in US legislation.

Aixtron is a German company that manufactures semiconductors and has a subsidiary in California. It develops advanced technologies that can be used to manufacture laser weapons, antennae and radars. When the company went through a difficult period in 2016, the Chinese investment fund Grand Chip proposed to buy it for more than 670 million euros. For national security reasons, President Obama issued an executive order on 4 December 2016 prohibiting the sale of the California subsidiary. Even though the financial operation had initially received the green light from the German Ministry for Economic Affairs, at the end of the day it had to comply with the US injunction.¹⁸

Just one week after signing the FIRRMA Act, President Trump signed the Export Control Reform Act (ECRA). The ECRA tightens oversight over the export of US technology. In section 1758, ECRA gives the government (Departments of State, Commerce, Energy and Defense) full power to authorize foreign sales of so-called ‘fundamental and emerging’ technologies. Here again, the ambiguities of the legislation allow for the prohibition of the export of many technologies across diverse sectors: from biotechnology, artificial intelligence, microprocessors, autonomous vehicles, navigational aids, robotics, 5G, data analysis and quantum computers to 3D printing. It is thus easier to look for what is not within the purview of ECRA. The objective is clear: to preserve US technological domination and prevent the emergence of overly threatening foreign competitors, regardless of whether they are enemies or friends.

American Legislation, an Excellent Weapon of Economic Warfare

When the US administration suspects that a company has crossed the red line, the administration takes it upon itself to put that company back on the right track, without going through the justice system. It prefers to solve the problem with billions of dollars in fines. It is not the judge but the prosecutor who decides on a possible conviction. In this type of liberalism, the state (essentially the United States) does without justice, which is considered too cumbersome, too slow, too costly, in short, rationally inefficient. It is no coincidence that the neoliberal Chicago School, that of Milton Friedman,

dominates the relatively recent discipline of law and economics. This school argues that litigation must be approached solely from an economic point of view, that is, by minimizing the costs for the parties involved as much as possible.¹⁹ Such an approach applied to the economic field allows the incriminated company to make amends and proceed to the cashier without any further consequences.

At the slightest suspicion of fraud or corruption, the US administration summons the company's managers and proposes that they investigate their bad practices themselves and at their own expense. If they refuse, they are threatened with a long and costly trial, or even the closure of the US market to them. This amounts to pointing a pistol at the heads of managers: cooperate and live, or refuse and die. Such an expeditious justice makes the old European democracies grind their teeth. If the investigation is sufficiently substantiated and serious, the company risks an 'acceptable' fine. Otherwise, the amount of the fine could reach peaks such as the one imposed on BNP Paribas in 2014 (Läidi 2019). Let us repeat that no international institution prohibits trade with these countries. It is therefore a unilateral US decision imposed on the whole world.

A company can always refuse to accept this 'justice deal' with the US administration and instead go to court (Garapon and Servan-Schreiber 2013). In this case, it runs the risk of damaging its image, losing the lawsuit and hence saying goodbye to the huge American market. The result: the court no longer appears to be a place where justice will be being carried out, but as a vital threat to the company. Hayek and his supporters would have found such government interference in economic affairs unacceptable. The fact remains that this administrative extortion is very effective: lawsuits are multiplying, with many companies never daring to challenge the US administration by going to court.

One company refused to bow to the diktat of the US prosecutors: Privinvest, owned by the billionaire Iskandar Safa. Privinvest was accused by the US Department of Justice of fraud and money laundering in a multi-billion dollar contract for the sale of military and fishing vessels to the Mozambican government in 2013 and 2014. With the backing of his hierarchy, Jean Boutani, one of Privinvest's top executives, presented as the mastermind behind the crime, went to trial. On 2 December 2019, the twelve jurors of the Federal Court of New York unanimously absolved him (Cabirol 2019). Despite

this ending to the affair, however, no company seems to want to follow in Privinvest's footsteps.

'The purpose of coercion', writes jurist Antoine Garapon (2013: 42), 'is not to enforce the law but, on the contrary, to oblige one to renounce it! The application of the law, and especially the economic sanctions it entails, is no longer experienced as protective but as devastating, even apocalyptic. Avoiding it justifies all transactions', as well as all renunciations. Beware, all those who resist the *lex economica americana*. This conception of the law is disturbing. As the Nazi leader Hermann Göring famously had it, 'Right is whatever pleases us' (*'Recht ist das, was uns gefällt'*).²⁰

With this economic weapon, the United States threatens its enemies as well as its allies. Indeed, on closer inspection, European companies appear to be the priority targets. For corruption alone, the amount of fines imposed on European companies (nearly USD 8 billion) between 2009 and 2019 is three times higher than those paid by American companies. Do these figures mean that the latter are three times more virtuous than their Old World competitors? In their investigation, which led to a parliamentary report, French deputies Karine Berger and Pierre Lellouche give two reasons for Washington's relentless fight against 'Made in Europe'.²¹ First, to do the job of European governments that do not effectively combat their corrupt companies; second, to ransom Europeans to contribute financially to the military commitments of the United States. Faced with such an offensive, Europe remains petrified and responseless.

US law is frightening because it applies to the whole world. Voted in only by the representatives of the American people, it is, however, wielded like a stick that can strike any individual or company on the planet. Going beyond the borders of the United States, this extraterritorial legislation is becoming a formidable weapon in global economic competition. It does not serve to resolve the numerous trade conflicts that neoliberalism is giving birth to, but to impose the geo-economic domination of the strongest. The force of the law is being replaced here by the law of the strongest.

The law is no longer at the service of justice, but serves above all the interests of the markets. 'Justice and equity are noble causes', writes economist Jean-François Bouchard. 'But what poisons! Capitalism cannot accept such principles from another age. Capitalism is competition and struggle. In this struggle ... every blow is

allowed. A justice under orders is the best guarantee to perpetuate such a system forever' (Bouchard 2019: 47).

In the event of litigation, *homo economicus* often takes precedence over *homo juris*. In international business, the law is reduced to variable data that depends on a simple economic calculation: if I cheat and get caught, how much does my company have to pay to preserve its access to markets? If the sum does not exceed the gains accumulated by cheating the markets, then why deprive oneself? The game's worth the candle: one fine, the slate is wiped clean and the great economic game continues. Clearly, justice does not go hand in hand with business. Either it is blind, or it is being instrumentalized.

What is the European and the French Response?

How can we explain the fact that the United States imposes its laws, sues foreign companies, collects fines and siphons off strategic information without anyone really protesting? Europe remains silent, although France has tried to react. Raphael Gauvain, La République En Marche deputy, in a report commissioned by the prime minister and delivered at the end of June 2019,²² denounced US domestic legislation that 'allows, by bypassing international cooperation, a massive and uncontrolled transfer of data from French companies'.²³ Gauvain proposed three possible responses: the creation of the status of corporate lawyer to protect legal opinions by evoking a legal privilege equivalent to that of the United States; increasing penalties for violations of the 1968 legislation that prohibits the transmission of economic information to a foreign country; and finally, extending the General Data Protection Regulation²⁴ to legal entities and thus creating a legislation conflict by prohibiting US hosts from transferring economic information to a US prosecution authority under the Cloud Act.

For the time being, none of these measures have been transposed into French legislation. Moreover, the legal response alone seems largely insufficient in the face of a US superpower that is less and less inclined to take its allies into account. Data protection poses a geopolitical challenge to France and, more broadly, to the other 26 members of the European Union: either the Europeans give in and accept their vassalage vis-à-vis Washington, or they resist and

finally establish themselves as a great and powerful player in international relations. But to do the latter, they must follow the path recently traced out by Josep Borrell, the chief of European diplomacy, who has called on Europeans to adapt ‘their mental schema’ in the face of a reality that is proving to be ‘cruel’ because:

many global players are now ready to use force to achieve their ends. Day after day, there are countless economic tools, data flows, technologies and trade policies that are being misused for strategic purposes. . . . To avoid losing out in the competition between the United States and China, the European Union must relearn the language of power and see itself as a leading geostrategic player’. (Borrell 2020)

For the time being, Europeans are content with words. In Brussels, the lexicon is changing but action is slow in coming. Yet the obstacles remain and the election of the Democrat Joe Biden should not get rid of them with a magic wand. Joe Biden also loves America and wants to see it shine again on the horizon. The new host of the White House is therefore expected to make decisions on several issues concerning the extraterritoriality of American law: Iran of course, but also the heavy dispute with the Europeans (mainly Germany) on the commissioning of the NordStream pipeline, which is supposed to bring Russian gas into Germany. The United States has never wanted it and Congress recently voted new sanctions against the foreign companies involved in its construction.²⁵ Brussels and Washington therefore have their work cut out to restore trust between the two sides of the Atlantic and to revive the Western model pretensions: that of the force of law and not the law of force.

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Notes

1. This article is a revised and updated version of a contribution previously published in French in *Revue pratique de la prospective et de l'innovation. Justice – Droit – Société* (May 2020, 1: 25–29). Translated by Victor Lu.
2. This term includes all US authorities with the power to prosecute companies or individuals: the federal prosecutor of the Department of Justice and state prosecutors such as the district attorney of New York, home to the stock exchange, as well as supervisory and regulatory agencies such as the Securities and Exchange Commission for the markets and the Office of Foreign Asset Control attached to the Department of Treasury and responsible for verifying the proper application of economic sanctions against embargoed countries.
3. The United States signed the Rome Statute of 1998 that endorsed the creation of the ICC but withdrew its signature in 2002. It has therefore not ratified it. In a speech to the Federalist Society in September 2018, John Bolton, Donald Trump's security advisor, described the ICC as 'illegitimate, ineffective, downright dangerous' and 'already dead'. He even threatened the ICC with sanctions if the court continued to focus on the conduct of US soldiers in Afghanistan. See 'National Security Advisor John R. Bolton Address', The Federalist Society, 10 September 2018. <https://fedsoc.org/events/national-security-advisor-john-r-bolton-address>.
4. Lawyers, jurists, politicians, business leaders and members of the intelligence and security services.
5. Geo-economics is defined as 'the use of economic instruments to promote and defend national interests and produce a beneficial geopolitical outcome' (Blackwill and Harris 2016: 20). Robert Blackwill is a former ambassador to India under the G W Bush administration, and Jennifer Harris works with him at the Council on Foreign Relations.
6. Two billion for France, the rest divided between London and Washington. 'Convention judiciaire d'intérêt public entre le procureur de la République financier près le tribunal judiciaire de Paris et Airbus SE', 29 January 2020. 'Airbus Agrees to Pay over \$3,9 Billion in Global Penalties to Resolve Foreign Bribery and Itar Case', Department of Justice, Friday 23 January 2020.
7. Congressional Research Service, *US Sanctions on Russia: An Overview*. Updated, 23 March 2020. <https://fas.org/sgp/crs/row/IF10779.pdf>.
8. According to the agreement signed in July 2015 between Iran on the one side and the five countries of the UN Security Council (Russia, the United States, China, the United Kingdom and France) and Germany on the other side, Tehran committed to halt its military nuclear programme in return for the lifting of major international economic sanctions.
9. At the end of May 2018, Mike Pompeo, US secretary of state, set twelve conditions (none of which are part of the 2015 agreement, and which would constitute a veritable surrender by Iran) to restore confidence with Tehran: a total halt to uranium enrichment, the withdrawal of its troops from Syria, disengagement from Yemen, the abandonment of its support for Lebanese Hezbollah, Hamas and Palestinian Islamic Jihad, and a halt to its threats against Tel Aviv. On the same day, the US ambassador in Berlin urged German companies to leave Iran immediately while the Treasury Department gave foreign companies until November 2018 to pack up, on pain of heavy fines or even outright expulsion from the US market.
10. According to Mike Pompeo, US secretary of state, 21 May 2018.
11. Instex (Instrument in Support of Trade Exchanges) was created by France, the United Kingdom and Germany. See the 'Joint Statement on the creation of Instex, a special vehicle to facilitate legitimate trade transactions with Iran as part of the

- efforts to safeguard the Joint Global Action Plan (JAGP)', 31 January 2019. Joint Statement by the Foreign Ministers of France, the United Kingdom and Germany. www.diplomatie.gouv.fr/fr/dossiers-pays/iran/evenements/article/declaration-conjointe-sur-la-creation-d-instex-vehicule-special-destinee-a.
12. Interview with the author, September 2018.
 13. FISA became FISAA for Foreign Intelligence Surveillance Amendments Act
 14. H.R.3162 – Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001–107th Congress (2001–2002). www.congress.gov/bill/107th-congress/house-bill/03162.
 15. <https://fr.scribd.com/document/374641879/Tech-Companies-Letter-of-Support-for-Senate-CLOUD-Act-020618>.
 16. www.congress.gov/bill/115th-congress/house-bill/4943/text.
 17. https://home.treasury.gov/sites/default/files/2018-08/The-Foreign-Investment-Risk-Review-Modernization-Act-of-2018-FIRRMA_0.pdf.
 18. 'Obama bloque le rachat d'Aixtron par le Chinois Grand Chip', *Le Figaro/Reuters*, 5 December 2016. www.lefigaro.fr/societes/2016/12/04/20005-20161204ART-FIG00105-obama-bloque-le-rachat-d-aixtron-par-le-chinois-grand-chip.php.
 19. Read one of the founding articles of this discipline written by Ronald Coase, 'The Problem of Social Cost', *Journal of Law and Economics* 3 (1), October 1960. www.law.uchicago.edu/files/file/coase-problem.pdf.
 20. Quoted by Rush Rhees in a conversation with Wittgenstein (in Wittgenstein 1992: 173).
 21. Joint fact-finding mission on the extraterritoriality of US legislation, October 2016.
 22. 'Restoring the sovereignty of France and Europe and protecting our companies from extraterritorial laws and measures', French National Assembly, 26 June 2019. www.vie-publique.fr/sites/default/files/rapport/pdf/194000532.pdf.
 23. Ibid., p. 33.
 24. Regulation 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32016R0679>.
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