

LAURENT COHEN-TANUGI

Avocat aux barreaux de Paris et de New York, ancien président de la mission interministérielle « *L'Europe dans la mondialisation* »

We are the last panel of a very long day, so we are going to try to keep you awake. My name is Laurent Cohen-Tanugi. I have the honor and the pleasure of moderating this panel. I am an international corporate lawyer based in Paris, and maybe I will start with a word of explanation about our topic tonight, which is "The weaponization of law and globalization". Many people ask me what is this about?

Of course, you could object to this title that law has always been a weapon. When you go to court, you use law against your adversary in a litigation. Also, if you take the long view of history, throughout the centuries, law has been used by sovereign powers to legitimize or justify even the most horrible actions. Therefore, you could say, what is new? Well, what is new in my view, and I think probably in the eyes of all of our panelists, is that we seem to be moving from an era - from the end of World War II through the past 70 years - where law has been key to the building of an international world order based on the rule of law, and that has been thanks to both the United States and the European Community and the European Union, we seem to be moving from that rule-based international order to a more chaotic system of international relations where law seems to be used more and more as a pretext for arbitrary or unilateral action. Therefore, I guess our topic is : Is that so? If true, is that evolution a new threat, a new impediment to globalization?

To address these questions, we have a panel of distinguished speakers, most of them lawyers, but not all. I will introduce them very briefly since we have very little time and a lot to say. I will refer you to the brochure for the complete biographies, but very briefly, ladies first. Anne-Thida Norodom, at the far-left here, whom I would describe as a rising star in the public international law academia. Then Michael Møller, who has had a brilliant career in the UN system. Hye-min Lee, who had a great diplomatic career in Korea, particularly in the international economic and trade area. He negotiated both the EU/Korea and US/Korea free trade agreements. Then finally, Stuart Eizenstat, who you all know was a close advisor to President Carter, wrote a great biography of him recently, and was also US Ambassador to the EU.

I would like to start by illustrating what I was just referring to, this troublesome shift from a rule-based order toward a more chaotic world with maybe an abuse of the legal system. In my area, which is international business law and international criminal law, many of you think about the issue of the extraterritorial application of national law, particularly of US law when we think about the weaponization of law. I happen to think that extraterritoriality as such is not the problem. In fact, I think that in a globalized economy, the extraterritorial application of US and other, any national law, is actually the norm, and in fact, the European Union also applies its laws extraterritorially. The only difference is that the US has more powerful enforcement tools. Therefore, at least in the areas where there is an international consensus, like for example the fight against international corruption where there is an OECD convention, the fact that the United States tends to enforce its Foreign Corrupt Practices Act, its national anti-corruption law, more vigorously abroad does not shock me. When there is rather instead a policy split, like in the recent Iranian sanctions by the US, then it is more of a concern because there is no international consensus.

That said, what is more troublesome I think, and what is more recent, and illustrative of the trend I was describing, is what I would call the "geo-politicization" of international business law, in particular criminal law. This geo-politicization is due to three phenomena: first, the targeting of individuals, and particularly corporate executives in addition to corporations themselves. That was a trend that was started by the US enforcement authorities, but is now spreading as a result of the financial crisis. There has been widespread criticism that the CEOs of all these banks that created so much trouble for people were never actually indicted or jailed, so there is a trend towards targeting individual executives.

The second trend in the global economy is, of course, the rise of emerging powers that do not have a rule of law tradition. I do not need to cite them, you know those I am talking about. The third factor is the growing conflictuality of



international relations. Therefore, if you put those three developments together, you have a situation like the Huawei situation where the Huawei CFO is arrested in Vancouver by instruction of the US authorities, which provokes retaliation, and then China detains two Canadian nationals who have nothing to do with this, or anything else. A French banker is arrested in Russia, and I could also mention the Carlos Ghosn affair, even though it is not so much political, but it is sort of corporate politics, in a criminal law system that is at odds with most Western criminal justice systems.

These trends are quite troublesome, and are becoming a threat to globalization. Another example would be the use of anti-corruption laws by notoriously corrupt countries that enact them and then use them as they please against either political opponents or selectively against foreign investors. Therefore, we seem to be moving from a rule-of-law-based system to a system of arbitrariness and force. That is I think what we should be concerned about.