

DEBAT

Laurent COHEN-TANUGI

I would like to take questions from the audience right away, as time is short and we have already covered a lot of ground. Let us start here.

Peje EMILSSON

Thank you. My name is Peje Emilsson, entrepreneur and education and communication, coming from Sweden. I have listened with lots of interest to Stuart Eizenstat about how the law can be used, and I want to put a question to you about the United States, because we have a number of issues in Europe when it comes to corruption and money laundering in European companies, and even if those companies only have 0.1% activity in the US, it is being handled by US authorities. US authorities outsource the work to law firms, and then European firms have to pay millions or billions of US Dollars, and I do not think-, of course they should pay when they have done mistakes, but what I cannot understand is why we have not got the system within the European Community to handle this? Why should it be US jurisdiction that controls the world in this area?

Laurent COHEN-TANUGI

Thank you, maybe we are going to take two or three questions, and then we will respond. We will take three questions. Please be brief.

Dania KHATIB

Okay. My question is to Mr Eizenstat, Dania Khatib from Issam Fares Institute at the American University of Beirut. You spoke about the Palestinians and their use of lawfare. What other option do they have when the Israelis slowly eat up their land and build settlements, and there is no international pressure to compel Israel for the two-state solution? What other options do the Palestinians have? I also want to tell you that while Barack was negotiating with Arafat, he was bragging that he build settlements more than any other prime minister, thank you.

Laurent COHEN-TANUGI

Thank you. A third question here, and then we will respond.

Daniel SHEK

Hi, I'm Daniel Shek, I'm a former Israeli diplomat. I would love to hear someone expand a little bit about a notion that was mentioned at the beginning of the universal jurisdiction. There is of course the one sort which is within the international bodies that have been created and regulated through agreements like the ICC, but there are also individual states which have acquired different levels of universal jurisdiction, which creates a somewhat uncertain, and unclear, and fluid legal landscape, especially in Europe. Therefore, I wonder if somebody would like to say what they think this is worth, and is it still a useful tool when there are recognised international bodies that have to deal with it.

Laurent COHEN-TANUGI

Okay, thank you. Maybe if we start with the last question, Anne-Thida, do you want to answer this?

Anne-Thida NORODOM



Okay. Universal jurisdiction, I think for some authors it is a lawfare problem because effectively you have individual states who use the universal jurisdiction to fight against specific individuals, Pinochet for example, you have action against Tony Blair as well, from Belgium and so on.

I do not think so. I think that universal jurisdiction is not a lawfare argument because it is based on universal convention, so it is an obligation for the states who are party to this convention to respect their obligation, and if this convention, this international convention mentions a universal jurisdiction, they have to respect this convention obligation. Therefore, I do not think it is lawfare. It is a legitimate use of law, and you have this obligation if you are a party of this convention. Therefore, I am not sure it is-

Daniel SHEK

I am talking about the ICC. I am talking about local-

Anne-Thida NORODOM

Yes, local, but most of the time you have an obligation based on an international convention. Even if you act as an individual state, according to your national law, you have an international obligation. You can have an international obligation to use universal jurisdiction. That is why for me, it is not lawfare because it does not use to destabilise the other parts. It is only a conventional obligation.

Yes, I think the problem is to draw the limit between the legitimate and the illegitimate use of law between the legal and the illegal use of law.

Laurent COHEN-TANUGI

Stuart, Palestinian lawfare and the extraterritorial application of U.S law?

Stuart EIZENSTAT

I will answer all three. On the last point, it is a use of lawfare. It is an inappropriate use of lawfare. The Dutch, the British, the Belgians use it as a way of asserting jurisdiction over actors who are not their citizens, and who they say have committed war crimes, including a private corporation that I happen to represent in the Netherlands who had a leased business with construction equipment that was used in the West Bank, and he was arrested and he spent three or four years trying to avoid it.

Now, with respect to the Palestinians and the question, the first question on the financial situation. I understand exactly your point on the Palestinians. Let me point out, if I may, and I have been engaged in these negotiations for a very long time, in many administrations. At Camp David 2, under Clinton, Prime Minister Barak offered 95% of the West Bank. East Jerusalem as the capital of a new Palestinian state, 50 000 refugees coming back permanently to Israel. Arafat, who I had negotiated with just two weeks before and who told me, 'Do not have President Clinton invite me to Camp David because I am not willing to make the compromises he wants'. They could not give up the law, their so-called right of return.

Several years later, Prime Minister Amr, 96% of the West Bank, East Jerusalem as the capital, 50 000 refugees. Abbas turned it down, and by the way, Arafat created the Second Intifada when he turned this down.

There is no question but that we have a government in Israel that is not predisposed to say the least to these kinds of negotiations, but if the Palestinians had had a Martin Luther King, if they had had someone who was willing, in a non-violent way, to say, 'Everything is on the table, we are willing to accept', as Oslo, they did, a Jewish state, 'we want our state, and we are willing to negotiate, as we did not do in Camp David 2 and in Amr's time', we would have a completely different situation. It would turn the tables, and there would not be a need. They use lawfare because they



are not willing in the end to make the final decision that they are not going to have a 1.5 million refugees coming back to Haifa and to Tel-Aviv.

With respect to the financial situation, the answer is in one word, the Dollar. I mean the Dollar is the king. You cannot do business without the Dollar. The Euro is not a comparison. Now, having said that, I have to conclude because I am not a defender of all the things we have done. With the war on terror, until the US Supreme Court said we could not do it, we had extra judicial, after 9/11, assassinations and abductions. We created, in Guantanamo, a situation in which to avoid US law, we used torture in order to extract confessions, trying to come into a hole, saying, 'Well they are not a US court'. The Supreme Court turned that down.

We have a president, and my colleague from South Korea, we actually served together in Brussels, nailed it right on the trade issue, but let me go beyond that. How can we have, Michael, an international rule of order when we have a president who has withdrawn from agreements reached by his predecessors which never had been done before? The Paris Accord, the JCPOA Nuclear Agreement, the Transpacific Partnership with 12 countries. All of these, the IMF Treaty with Russia, all of these things have been unilaterally withdrawn from. I mean you talk about governance, my goodness, how can we urge any kind of rule of law on other countries when we abrogate agreements that previous presidents had reached in good faith?

I will close with one example, Jimmy Carter negotiated the SALT-II nuclear agreement. It was never ratified by the senate for reasons which I mention in my book but it is not relevant here. Reagan took over, polar-opposite ideology. He and the Soviets abided by SALT-II as if it had been ratified till the last day it was due to expire, because he respected what his predecessor had done.

Laurent COHEN-TANUGI

Before taking three more questions from this side of the room, I would like to answer your question a little more specifically. Why are the Europeans not doing the job? Because until very recently, Europeans did nothing on anti-corruption. In France, bribes were tax-deductible until the OECD Convention went into force in 2000. It is only two years ago that we have got a law that the UK also enacted, so it is just starting, and it is a good thing. However, until now, they left the floor open to the US, which has been the anti-corruption policeman of the world.

Jawad KERDOUDI

Ma question s'adresse à Madame Anne-Thida. Le Président Bush, après les attentats du 11 septembre, lorsqu'il a traité l'Irak et l'Afghanistan d'« Etats voyous », est-ce que l'on peut considérer cela comme du *lawfare* ? Merci.

Nadia MOTII

Hello, Nadia Motii, University Mohammed V, Professor. I am not a lawyer, but I am very curious to know: how can the law prevail? If the law is here to protect minorities, to protect certain issues worldwide, and you lawyers cannot do something to do what we call the firewalls for computers, how can the law prevail and make something good for humanity? Thank you.

Laurent COHEN-TANUGI

Ok, third question on the other side there.

Joseph MAÏLA

Thank you so much, my name is Joseph Maïla, I am an Academic from France. My question is to follow the issue that was raised at the previous panel, concerning the weaponization of dollar. We heard from the gentleman from Russia that dollar as a currency is considered as a common international public good. And at the same time, the doctrine of the Trump administration was to state, when it comes to the sanctions against Iran, that the dollar was a national currency. So nobody is allowed or authorized to use the dollar in order to go not to abide by the sanctions that have been put by the administration. My question is very simple, and it comes to the legal side of it. Do you consider, from a



legal point of view - if this is not a lawfare, what could it be – but from the legal point of view, is it legal to consider that your currency, which is the universal currency, as I might say, or the world currency, is at the same time a national currency and that you can put your law, and make your law prevail on, not the international legislation, I do not know if there is a legislation, but it is jeopardizing the whole trade system? Thank you so much.

Laurent COHEN-TANUGI

Ok, so Anne-Thida I think certainly the first question, maybe the second question, was addressed to you.

Anne-Thida NORODOM

Sur l'Etat voyou, je crois que ce n'est pas du *lawfare* encore une fois parce que je serais pour une définition plus stricte du *lawfare*, parce que l'Etat voyou n'est pas un argument juridique. C'est une qualification politique, qui vise à stigmatiser des Etats et à justifier éventuellement l'adoption de sanctions. Mais il n'y a pas d'argument juridique dans la qualification d'Etat voyou. Or pour moi, le *lawfare* c'est vraiment l'utilisation du droit et des armes juridiques, des instruments juridiques, pour déstabiliser la partie adverse.

Stuart EIZENSTAT

First of all, when you asked about lawyers, I mean if the world has to depend on lawyers to solve our problems, we are certainly not in great shape, but let me talk about the Dollar because it is obviously a neuralgic issue. A number of people have asked about it. I see Mr Trichet here who has done so much with the European Central Bank to create a viable Euro, and I was Ambassador to the EU in the Clinton administration when the Euro was just about to get started.

Therefore, we have done things during the Clinton administration that were multilateral, and did not abuse our power. For example, we created, and it still exists, a global system for dealing with anti-money laundering. We had a common agreement, know your customer, all of these things were agreed to. We even listed a number of countries, including Israel and Russia and Lichtenstein that did not meet those standards.

Second, if you want a great example of the Dollar versus the Euro, look at what has happened since the US unilaterally pulled out of the JCPOA. The European Union, and rightly so, wanted to keep Iran in that agreement. They tried to come up with alternative financing mechanisms so that there could be trade with Iran, and Iran would get some of the benefits of the JCPOA in return for having given up two-thirds of their centrifuges, their heavy water system, 24/7 IAEA inspection and the like, and it did not work. It did not work because any multinational company, even a Europe-based company, has to do business with the United States, it is the biggest market. If the US, and I wish we had not done it, pulled out and said, 'We are going to sanction you if you do business with Iran', Europe was powerless to counteract that, even though it is a 500 million people market, larger than ours. We have 325 million, but the Euro, with all the advances it has made under Mr Trichet and under his successor, who saved it, Draghi, it is not a global currency, it is not an alternative currency.

Therefore, there is no company in the world, if given the choice between doing business with Iran and doing business with the US, it is a no-brainer. That is why this agreement is falling apart. I mean you talk about global governance, my God, we had a situation. It was not perfect. It was not a perfect agreement. There were sunset problems and so forth. Okay, we could have built on that. Now, in retaliation, Iran is restarting its centrifuges, it is talking about going back to its heavy water plant, it is enriching uranium up to a dangerous level when it was at a very low level. It is a catastrophe in terms of any kind of international governance, but it is undergirded by the strength of the Dollar, by the strength of the Dollar.

Therefore, Trump can get away with it because no company again is going to choose to do business with Iran and hope that the EU's alternative finance mechanism works, it will not. It is a shame, but that is the reality of it.

Laurent COHEN-TANUGI

Just to answer the technical question there, there is often a misconception that the sole ground for jurisdiction is the use of the Dollar, or of the US financial system, but most of the time there are other grounds for jurisdiction. If you take

the famous BNP case, if you have a US banking licence, whether you use the Dollar or the Euro, you are subject to US jurisdiction. That is the legal answer. Therefore, it is not all about the Dollar.

Stuart EIZENSTAT

Just the economic power of the US, against South Korea, was used by this administration to get a better deal for agriculture, okay? It was used against Mexico, and against Canada, our two great neighbours, to get a better deal on NAFTA. It has been used against China to our detriment as well but to get a better deal, and there will be some deal, Trump will call it the best deal ever. It will not be, but okay.

Therefore, the power of the US economy has to be used very delicately, but it is when it is used with a bludgeon, which is what is being used now, it does produce some results, but with terrible aftereffects, and aftershocks. It will be years and recreating and going back to a rules-based system.

Laurent COHEN-TANUGI

I believe Jean-Claude Trichet had a question, or a comment?

Jean-Claude TRICHET

Thank you very much indeed. No, I only wanted to echo what you just said, both of you. I think, when I ask the major European multinationals, it is not because they are bound to have transaction with Iran in Dollars. They could do that in other currencies, and of course the Euro exists, as a matter of global transactions, the rapport de force, if I may, is not dramatic. I mean it is 45% for the Dollar, 34 for the Euro. The problem is, as you said, they have interest, other interest in the US, and if they do not respect the legislation and the sanctions, then they are punished, not because they are utilising the Dollar but because they have a lot, of course, of trade, of interest, or FDI, in the United States. That explains, in my observation, why immediately the major European multinationals said, 'No, forget about us'. Therefore, the special purpose vehicle was not utilised, at least by them, which was some kind of nice barter, utilising the Euro, but again, the main problem is that legislation in the US it seems to me is perceived by the multinationals is really, really overwhelmingly threatening.

Stuart EIZENSTAT

I mean the use of secondary sanctions, I will give you a perfect example of how two administrations can differ. When I was Under Secretary of State in the Clinton administration, I negotiated with the European Union on the Iran/Libya Sanctions Act, which was a secondary sanction, that is to say not against US companies alone, but against European companies who were doing business with Iran, or under Helms-Burton, doing business with Cuba. It was perfectly legal under European law, and not under ours, and we tried to enforce it with secondary sanctions but, and negotiated waivers in both cases with the European companies, so we did not have to actually use those sanctions, and we got in return things like a commitment in terms of investment in Cuba. Okay, you can invest, but do more to promote democracy and reach out to democratic groups. Okay, you can invest in Iran, but do not do dual-use products.

Therefore I mean there are ways to handle these secondary sanctions in sensible ways, but when we have a situation as we have today, where there are sort of no limits, then you really get a very, very significant problem in the whole global governance system.

Laurent COHEN-TANUGI

We are going to take one or two last questions. Jean-Claude Gruffat?

Jean-Claude GRUFFAT

On just, I was for many years a French banker in the United States, and then I became an American banker in Europe, so I have come across many of these situations that you are talking about. In the case of BNP, one thing that people do not always understand, BNP was run by the Department of Financial Services in New York, not the Fed, not the

administration, the Department of Financial Services, which is under the governor of the State of New York, Andrew Cuomo. He was warned that they were doing transactions that were not confirmed to US legislation. It was done out of Paribas, BNP Paribas in Switzerland, so they went to Switzerland and told them, 'Do not do this transaction, they are not confirmed'. What they did, they continued doing this transaction, and effectively that was a payment that was for Sudan, oil export to Sudan, and that was done using two banks, BNP and another bank that were not American banks. To make sure that the deal goes through, they thought they would not go through the financial system in the US. They used the BNP branch in New York to clear the transaction. As you know, if you make a Dollar payment, every Dollar payment clears by 8pm New York time, in New York through the Fed system.

Therefore, these transactions were in the US financial system. Regardless of the way they were structured, they ended up being in the US financial system, and cleared through the Fed. That is why the Fed imposed, and the sanction, the financial sanction was USD\$9 billion, as you know. One-third of it went to the Department of Justice, one-third went to the Department of Financial Services, and one-third went to the Fed.

Stuart EIZENSTAT

This is really an important point. Let me just make-, it is really important to understand this. Whenever one thinks about the JCPOA, the nuclear deal with Iran, and again, it is imperfect, it is much better than the alternative, but whatever one thinks about it, it is unmistakable that the reason Iran came back to the negotiating table and agreed to the JCPOA was not because of our unilateral sanctions, it was because we got our allies in Europe to join with us, who were also concerned about Iran's nuclear plan. What did they do? Europe gave up 16% of all of its energy imports. It stopped importing all the oil from Iran. It agreed on the Swift system in Brussels that they would not clear transactions. They agreed with us to sanction the Central Bank of Iran, Mr Trichet, the Central Bank of Iran.

If we had done that alone it would not have worked. Therefore, here, we pull out of an agreement that the European Union sweated bullets to help us get, and now they are trying desperately to hang onto it and do not have the financial wherewithal to do it. It is really a tragedy, and it is not a way to treat your allies who sacrificed for us. You know, President Trump just said, when talking about unilateral actions, when we decided we were getting out of Syria, and Turkey comes in, and he said, about the Kurds who lost 20 000 men fighting with us against ISIS, 'Where were they in Normandy?'

Laurent COHEN-TANUGI

Bien, on m'a donné instruction de clore le débat. Je crois que notre hôte du dîner est ponctuel, comme l'a rappelé Thierry de Montbrial ce matin. Je vous remercie tous de vos interventions et de vos questions.