4 Legality of extraterritorial sanctions

Mirko Sossai

Introduction

The US withdrawal from the Joint Comprehensive Plan of Action (JCPOA) – the landmark nuclear agreement signed in July 2015 – has marked the end of the coordinated lifting of nuclear related sanctions endorsed by the UN Security Council with Resolution 2231 (2015).[1] By expressing its deep regret for the US announcement, the European Union (EU) declared to remain committed to the continued full and effective implementation of the nuclear deal, as long as Iran continued to implement its nuclear related commitments.[2]

In announcing the US withdrawal from the JCPOA, President Donald Trump issued a Presidential Memorandum reimposing "all United States sanctions lifted or waived in connection with the JCPOA"[3] within 180 days. These sanctions – which included both "primary" and "secondary" sanctions – were to be implemented in two phases: phase one entered into effect 90 days later on August 7, 2018, for various non-energy-related sanctions, while phase two began 180 days later on, November 5, 2018, for the remaining sanctions.[4] The EU responded to the reimposition of the so-called secondary sanctions by the US with the update of the Blocking Regulation, as a countermeasure vis-à-vis the illegal extraterritorial effect of such measures.[5]

The application of secondary sanctions, targeting activities of non-US persons with no connection to the US, has proven highly controversial. Insofar as they constitute exercise of jurisdiction on an extraterritorial basis, they raise concerns from the viewpoint of international law, as they may violate, *inter alia*, the principle of nonintervention in the internal affairs of other States.[6] The European refusal to recognize the effects of this type of sanction is not a new phenomenon: the Blocking Regulation was originally approved in 1996[7] to counteract the effects of certain extraterritorial sanctions adopted by the US vis-à-vis Cuba, Libya, and Iran. At that time, similar initiatives were undertaken by Canada and Mexico.[8]

The purpose of this chapter is to offer an overview of the different generations of the US "extraterritorial sanctions," with a focus on the different positions concerning their legality from an international law viewpoint. It is also important to assess the effectiveness of the initiatives taken by the EU, by way of countermeasure, in order to neutralize the effects of US extraterritorial jurisdiction. The new

DOI: 10.4324/9780429052989-5

scenario opened by the US announcement on the withdrawal from the Iran nuclear deal has brought additional legal complexity: SWIFT, the Belgian company providing an international system for facilitating cross-border payments, has become the symbol of how companies risked being caught in a transatlantic dilemma in relation to the decisions made once the US financial sanctions have entered into force.

I. Different "generations" of US extraterritorial sanctions

The organizing principles of the coercive measures taken by the US against Iran are the distinction between primary and secondary sanctions, based on the identity of the targets, on the one hand, and the distinction based on the purpose between nuclear and nonnuclear ones, on the other.[9]

In other words, secondary sanctions are supplementary to primary sanctions, which restrict economic relations directly between an imposing State – and its own individuals and companies – and a target of the sanctions: it presupposes that third-party countries have not instituted comparable sanctions to prohibit their own citizens and companies from doing business with the target State.[10]

The specific legal nature of US autonomous sanctions needs to be understood against the background of the complex framework of unilateral and multilateral actions against Iran's nuclear program. This has been a paradigmatic example of the cumulative effect of different layers of sanctions, where unilateral measures – by the US, the EU, and other countries – supplemented and expanded UN sanctions.[11] As for the content, they show the shift in focus regarding the use of financial sanctions in order to isolate the target State from the credit and monetary markets.[12]

If autonomous sanctions – either adopted by individual states or by regional organizations – coexist with UN sanctions, then a key question arises as to whether the former should be qualified as enforcement measures on the basis of UN sanctions or, rather, as additional measures, whose legality needs to be appreciated under general international law. In this second scenario, autonomous sanctions may be regarded as acts of retorsion if they constitute "unfriendly" conduct not inconsistent with any international obligation; if unlawful, they can be justified as countermeasures.

Apt characterization is essential to determine the legal status and effects of unilateral coercive measures as well as their potential continuation after termination of UN sanctions. Moreover, the requirement of proportionality operates on the basis of different standards: while countermeasures must be commensurate with the injury suffered and the gravity of the wrongful act, the evaluation of UN sanctions should be conducted on the basis of the objectives to be achieved, taking into account the possible adverse humanitarian consequences.[13] An assessment on the legality of the economic sanctions vis-à-vis Iran would require to determine if the US were entitled to take countermeasures as a reaction to an alleged breach of international law, i.e., the interdependent obligations under the Treaty on the Non-Proliferation of Nuclear Weapons,[14] and whether recourse to

countermeasures remains open to States once the UN Security Council has taken action under Chapter VII.[15]

It remains that, since the beginning of the 1980s, a specific feature of US sanctions is that they have been aimed at increasing the economic isolation of the targeted States by intervening in the commercial and financial relations among actors that are not active within its jurisdiction. Such measures have been qualified as extraterritorial in the sense that they seek to affect the conduct of foreign persons outside the US. The goal of "universalizing" its primary sanctions has resulted in an attempt to reduce the discretion that third States could exercise in their foreign policy vis-à-vis the targeted State.[16]

1. The first generation

The extraterritoriality of the US secondary sanctions has progressively expanded during the last three decades, to the extent that it is possible to identify at least two generations. Although broad, the "first generation" of extraterritorial measures introduced in the 1980s and 1990s were relatively precise in their stated scope and in their enforcement.[17] The paradigmatic example was represented by the enactment of "secondary boycotts" and export controls: provided that the unilateral decision not to export goods to another country is of limited usefulness if other States do not join it, the US has attempted to prohibit companies incorporated in third States from exporting to the State that had already been subject to a "primary" boycott.[18]

The 1982 Soviet Pipeline Regulations – an embargo on the supply of pipeline equipment aimed at inducing the USSR to adopt a less intrusive attitude toward Poland – received broad criticism because it included in its scope of application foreign subsidiaries of US companies.[19] Even more numerous negative reactions were directed against the extraterritorial nature of both the Helms-Burton Act[20] and the Iran and Libya Sanctions Act (ILSA) of 1996.[21] Title III of the Helms-Burton Act authorizes civil suits by US nationals against any individual or entity – regardless of their nationality – that "traffics" in property that has been confiscated by the Cuban government following the 1959 socialist revolution. A separate title of the statute requires the US Secretary of State to deny visas to any corporate officer or controlling shareholder of a company that has trafficked in a US national's property confiscated by the Cuban government.[22] As for ILSA, the act imposed sanctions on any foreign person or entity investing more than $20 million in either Iran or Libya to support the development of its petroleum resources.

In an attempt to resist the extraterritorial reach of secondary sanctions, the EU even initiated WTO dispute settlement proceedings, complaining that the extraterritorial effects of the act were inconsistent with the international obligations of the US under GATT 1994 and GATS. In April 1997, the US and the EU decided to settle the dispute by concluding a series of "understandings" aimed at suspending the effects of Helms-Burton on European companies.[23] Since then, Title III of the Helms-Burton Act has been fully waived by every US president not only

because of the opposition from the international community but also because of fears that it could create chaos in the US court system with a flood of lawsuits. However, in 2019 the US Secretary of State Mike Pompeo, in an unprecedented move, announced the decision to not renew the waiver:[24] both Canada and the EU reacted considering "the extraterritorial application of unilateral Cuba-related measures contrary to international law."[25]

The issue of the legality of extraterritorial measures was brought to universal attention within the context of the UN General Assembly. Since 1992, a resolution on the "necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" has received increasing support year by year: significantly, concern has been expressed vis-à-vis "the promulgation and application . . . of laws and regulations whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation."[26] However, it is important to bear in mind that the UN General Assembly actually appears much more divided when voting on resolutions condemning "unilateral coercive measures," which are introduced on a regular basis by the Non-Aligned Movement and the Group of 77.[27]

2. The second generation

The second generation of extraterritorial sanctions has been characterized by the focus on the financial sector.[28] The paradigmatic example of such a development is represented by the US sanctions against Iran: not only did the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) include restrictions on the supply of refined petroleum and refining equipment or services by foreign or domestic persons and entities, but it also imposed serious limits on foreign financial institutions' access to the US financial system if they engaged in certain transactions involving Iran.[29]

The enactment by the US Congress of the Countering America's Adversaries Through Sanctions Act (CAATSA) in July 2017 – which contained sanctions targeting Russia, North Korea, and Iran – marked a further evolution: as for Russia, not only did the new piece of legislation codify existing sanctions against Russia, but it also imposed new coercive measures and restricted the US President's authority to modify or eliminate these sanctions without congressional approval.[30] As concerns their extraterritorial reach, non-US persons face potential secondary sanctions risk if they enter into or facilitate "significant" transactions for or on behalf of targeted persons and entities.

What characterizes the second wave of US economic sanctions is that they include not only limits on trade, i.e., restrictions on particular exports or imports, but, most importantly, the blocking of assets and interest in assets subject to US jurisdiction; limits on access to the US financial system, including limiting or prohibiting transactions involving US individuals and businesses; and restrictions on private and government loans, investments, insurance, and underwriting.[31] Although the sanctions programs are administered by several US government

agencies, the primary administrator is the Treasury Department's Office of Foreign Assets Control (OFAC), which publishes the list of so-called Specially Designated Nationals (the SDN List) and enforces these measures. OFAC and the US Department of Justice have targeted non-US financial institutions in a series of high-profile sanctions enforcement actions over the last decade. The comprehensive settlement with the PNB Paribas – accused of violating US sanctions against Iran, Sudan, Burma, and Cuba from 2005 to 2012 – demonstrated how OFAC effectively and aggressively applied US sanctions law to foreign institutions incorporated and doing business abroad; the French bank acknowledged the violations and also agreed to pay a total of $8.97 billion (USD).[32]

The point has been made that this new generation of sanctions is characterized by a "chilling effect," as banks and corporations declined to engage in legally permissible transactions because legislation is unclear, and the consequences in case of violation would be catastrophic.[33] In the three-year period between the lifting of secondary sanctions against Iran in 2016 and their reimposition in 2018, reports stressed the difficulties in navigating the complex web of residual sanctions within Iran's opaque economy: "Due diligence is costly and cumbersome, and its standard is ill-defined, adversely affecting businesses' risk-reward calculus of trying to comply while operating within the Iranian economy's opaque ownership structure."[34] European financial institutions were hesitant to play a role in any transactions with Iran, as the basis for the previous heavy fines were, put in general terms, actions or omissions by which they assisted their customers to make payments that involved the US financial system.

The Financial Action Task Force (FATF) has used the term "de-risking" to describe this phenomenon: it refers to the practice of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk.[35] In the period of relaxation in the US sanctions policy vis-à-vis Iran, the ambiguities concerning dollar-clearing transactions played a significant role in explaining the difficulties in taking advantage of the business opportunities in Iran. Significantly, OFAC had to publish additional guidance on the US dollar transactions and appropriate due diligence by non-US persons engaging in business involving Iran: it clarified that foreign financial institutions, including foreign-incorporated subsidiaries of US financial institutions, could process transactions denominated in US dollars or maintain US dollar-denominated accounts involving Iran, so long as the transactions do not involve, directly or indirectly, the US financial guarantee fund, in order to facilitate international finance for small- and medium-sized investments.[36]

II. Do EU restrictive measures have extraterritorial effects too?

Given that the EU "has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union," it comes with no surprise that the EU Sanctions

Guidelines stress that the EU "will refrain from adopting legislative instruments having extra-territorial application in breach of international law."[37]

The same document makes clear that the application of EU restrictive measures is limited to situations where links exist with the EU. The standard clause setting out to what extent an EU regulation concerning restrictive measures should apply covers the territory of the EU, including its airspace; aircrafts or vessels of Member States; nationals of Member States, inside or outside the territory of the EU; companies and other entities incorporated or constituted under Member States' law; or any business done in whole or in part within the EU.[38]

It follows that usually non-EU subsidiaries of an EU parent company are not subject to the European restrictive measures if they are incorporated outside the EU, and if they do not do business in the EU. Therefore, EU guidelines warn entities incorporated in an EU Member State against using "a company that it controls as a tool to circumvent a prohibition, including where that company is not incorporated in the EU" or giving instructions to such effect.[39]

It has been observed that the EU has sought to expand the jurisdictional scope of its restrictive measures in an indirect manner by inviting certain third countries to align with its imposed sanctions.[40] Since the mid-1990s, the EU has been successful in involving a considerable number of neighboring countries, particularly candidate States, potential candidates, and members of the European Economic Area (EEA).[41] However, third States might be reluctant in joining the EU restrictive measures: with the notable absence of Serbia and Turkey, only Montenegro, Albania, Norway, and Ukraine aligned themselves with the most recent sanctions against Russia. It might happen that nonalignment is due to time pressure, or that an aligning government decided to settle on a policy of not taking part in EU declarations about the sanctions.[42] In principle, under international law third States remain free to decide whether to join EU sanctions or not; however, in the light of the principle of good faith, candidate countries having started accession negotiations are under certain not to intentionally undermine the Common Foreign and Security Policy (CFSP).[43]

III. A transatlantic divide on the legality of secondary sanctions

Secondary sanctions are to be generally defined as those that expose foreign natural and legal persons in third countries to sanctions when they conduct business with individuals, groups, regimes, or countries that are the target of the "primary" sanctions regime.[44] They fall within the category of extraterritorial measures in that they correspond to situations where a State enacts and enforces laws and regulations aimed at controlling the conduct of entities that are situated outside its territory, overriding the power of the territorial sovereign to regulate the same course of conduct.[45]

The basic question remains the one identified by Andrea Bianchi more than two decades ago: to what extent, in the absence of an international agreement, can the regulating State lawfully impose, under international law, obligations on foreign

subjects – be they natural persons or corporate entities – or pretend to regulate transactions carried out well outside its territory?[46]

It has been correctly observed that the issue of extraterritoriality further exacerbates the question of the legality of unilateral nonforcible measures in case of violations of *erga omnes* obligations, i.e., obligations due to the international community as a whole.[47] It is important to situate the question of the jurisdictional scope of such measures against the background of the tension between an understanding of sanctions as coercive measures imposed by centralized authorities, like the UN, and the autonomous attempts by third states to enforce self-defined community norms outside of the institutional collective security regime. Assuming that only the UN and competent regional organizations have the power to impose collective measures that bind all Member States to adopt nonforcible measures, "no single state has the power to bind other states to act in this way, although they may try to enmesh other states and actors by including an extraterritorial element in unilateral non-forcible measures imposed on a target state."[48]

The starting point of any discussion on the issue of the jurisdictional scope of economic sanctions remains the basic principle of territoriality:[49] there is no doubt that the principle of nonintervention in the internal affairs of other States restricts the extraterritorial exercise of state powers, insofar as it prohibits acts of coercion by one state on the territory of another state without the latter's consent.[50] National laws may be given extraterritorial application, provided that these laws could be justified by one of recognized principles under customary international law.[51] Of course, the application of such principles to concrete situations is open to interpretation.

The US has relied on the principle of active personality to claim jurisdiction over foreign companies that are owned or controlled by a US person: however, the application of the so-called control theory has been largely rejected as contrary to international law on the basis of the *Barcelona Traction* case holding.[52] Alternatively, the authors of the 1996 Helms-Burton Act invoked the controversial effects doctrine, by including a statement in the act that reads as follows: "International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory." However, those efforts were strongly criticized in the literature.[53] Alternatively, one might wonder whether the Helm-Burton Act could be better justified under the protective principle – which protects the State from acts perpetrated abroad that jeopardize its sovereignty or its right to political independence – as it considered Cuba to be posing a national security threat to the US; however, the point has been made that "there is/was apparently no convincing evidence of terrorist activity sponsored by the Cuban government nor of the specific security threat posed by mass migration of Cubans to the United States."[54]

Finally, many have argued that secondary sanctions cannot be justified under Article XXI (b) of the GATT[55] – which excuses a Member State of the WTO from measures "it considers necessary for the protection of its essential security interests" – even where primary sanctions might satisfy it: the reference to the "essential" character of the security interests seems to preclude measures against

trading partners which have a very "indirect, remote, and attenuated" relationship to the them.[56]

The controversies on the legal basis of secondary sanctions should not lead to the conclusion of their unlawful nature in any circumstances. An author has suggested that a wide range of such measures might be permissible "if tailored to regulate exclusively on 'terrinational' grounds, on the combined basis of territorial and nationality jurisdiction."[57] Still, the amount of protest vis-à-vis the content of certain measures aimed at exercising authority over foreign persons and entities should be seen as obstacles to the crystallization of a norm of customary international law, which would expand extraterritorial jurisdiction for foreign policy objectives.[58]

This seems to find further confirmation in the entry into force of the amendments to the Blocking Regulation on August 7, 2018, which has demonstrated the European choice of a confrontation with the US based on the legal terrain; in the explanatory memorandum on the draft text, the European Commission observed that

> Some of the measures which the United States will reactivate against Iran have extraterritorial effects and, in so far as they unduly affect the interests of natural and legal persons established in the Union and engaging in trade and/or the movement of capital and related commercial activities between the Union and Iran, they violate international law and impede the attainment of the Union's objectives.[59]

The EU had introduced the Blocking Statute in 1996 as a countermeasure, within the meaning of Article 49 of the Draft Articles on State Responsibility, in response to the US extraterritorial sanctions legislation concerning Cuba, Iran, and Libya. In August 2018, the Guidance Note to the updated regulation affirms that

> the Blocking Statute aims to protect the established legal order, the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union against the unlawful effects of extra-territorial application of such legislation.[60]

It follows that the EU counteraction points to the unlawful character of the secondary sanctions because of their contrariety with the principle of nonintervention. One could have the impression of a continuity in the position of the European countries throughout the last two decades. However, in the period 2010–2012, EU Member States seemed to manifest acquiescence vis-à-vis the extraterritorial dimension of the US comprehensive Iran sanctions adopted at that time. Following the adoption of UNSC Resolution 1929 (2010),[61] less than a month after President Barack Obama signed CISADA, the EU widened the scope of its restrictive measures against Iran in order not only to implement the UN sanctions but also to introduce "accompanying measures," focusing "on the areas of trade,

the financial sector, the Iranian transport sector, key sectors in the oil and gas industry."[62] Moreover, following intense negotiations with the US,[63] the EU Council agreed on additional restrictive measures in 2012, which definitely mirrored those imposed by the US.[64] Interestingly, Regulation 267/2012 prohibited specialized financial messaging providers, such as SWIFT, from providing services to EU-sanctioned Iranian banks.[65]

It has been observed that the EU avoided the question of whether US sanctions apply to nationals of EU Member States by imposing almost the same restrictions itself.[66] Others noted[67] that when BNP Paribas was under investigation in 2014, French President François Hollande wrote to President Obama to complain that the expected fine would be disproportionate, but he did not challenge the legitimacy of the measure.[68] However, it is a shared view that the EU practice should not be read as accepting extraterritorial sanctions as legitimate in all circumstances. The EU considered the additional restrictive measures adopted in 2010–2012 as tools aimed at strengthening the existing UN sanctions, given the dissatisfaction as to their impact and effects. At that time, the EU Council stressed that "Iran continues to refuse to comply with its international obligations and to fully cooperate with IAEA to address concerns on its nuclear programme, and instead continues to violate those obligations."[69] It goes without saying that China and Russia expressed strong opposition against the practice of unilateral sanctions, as they contravened the principle of sovereign equality of UN Member States, undermined the authority of the UNSC, and was counterproductive to crisis resolution.[70]

IV. On the legality of the reimposition of sanctions on the basis of the JCPOA

One of the most relevant aspects of the JCPOA has been the introduction of a "snap back" procedure which ensures sanctions reimposition in case of significant nonperformance of the commitments under the deal: this mechanism provides that, on the basis the notification of "a JCPOA participant State," the UNSC deliberates on a resolution to continue the termination of its sanctions. The consequence of a failure in adopting the decision – for instance because of the negative vote of a permanent member – is the reintroduction of the sanctions regime.[71] The risk of "snap back" represented a relevant variable which influenced decisions on business opportunities in Iran: companies were advised to introduce specific contractual protections in order to manage risks of snap back.[72]

However, the US administration did not rely on a "snap back" procedure. The concept of proportionality was, on the contrary, invoked in the context of the reimposition of what the US regarded only as suspended sanctions against Iran. President Trump's decision to decertify the nuclear deal in October 2017, was made on the assumption that the suspension of sanctions was not "appropriate and proportionate"[73] to the steps that Iran has taken to end its illicit nuclear activities. The position of the Trump Administration is that the JCPOA is a deal, definitely based on reciprocal commitments, but political and therefore nonbinding. This was, of course, due to domestic reasons: the Obama Administration would have had difficulties in getting the consent from the US Congress.[74]

The reaction of the EU seems to convey a different message on the nature of the JCPOA. After the US withdrawal from it, the EU High Representative Federica Mogherini declared that: "the nuclear deal is not a bilateral agreement and it is not in the hands of any single country to terminate it unilaterally."[75] It has been observed that the declaration of the High Representative would announce a confrontation with the US to be held within the framework of international law. In the first place, the EU position seemed to imply that not only does the JCPOA possess the nature of a treaty governed by international law, but the deal is also a multilateral agreement designed to pursue collective objectives. Second, the EU has a legal interest in the implementation of the JCPOA and is entitled to claim compliance with it. It follows that only a breach of its commitments by Iran may justify a corresponding breach by the other parties.[76]

Such an alternative view of the legally binding character of the JCPOA is based on both the content of its commitments – including that of lifting the UN sanctions against Iran – and its peculiar system of implementation. This position, which has not attracted much attention in the literature, has the merit of pointing to the difficulties in justifying a unilateral repudiation of the nuclear deal, given that, under Article 60 of the Vienna Convention on the Law of Treaties, the termination of a multilateral treaty as a consequence of a breach by one of its parties requires a concerted response by all other parties.[77]

Significantly, although the US Presidential Memorandum noted that "[i]n 2016, Iran also twice violated the JCPOA's heavy water stockpile limits,"[78] neither it nor the remarks of the US President[79] identified any Iranian noncompliance with the JCPOA since the beginning of the Trump Administration.

It is to be noted that Iran developed an argument based on the contrariety of the US reimposition of sanctions with the JCPOA, as endorsed by UNSC Res. 2231 (2015), by qualifying US conduct as a serious breach of its legal obligations under the UN Charter. Iran's Ambassador to the UN[80] affirmed the binding nature of paragraph 2 of Resolution 2231 (2015), in which the UNSC

> calls upon all Members States, regional organizations and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA, including by taking actions commensurate with the implementation plan set out in the JCPOA and this resolution and by refraining from actions that undermine implementation of commitments under the JCPOA.

That issue is also addressed by *ad hoc* Judge Momtaz in his declaration attached to the order on the request for provisional measures in the case of the *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights*, in which he argued that

> [i]t is absolutely clear from the opening of the resolution's operative part, immediately preceded by a reference in its preamble to Article 25 of the Charter, that the Security Council intended to establish binding obligations for all Member States, including the United States.[81]

V. The effectiveness of the blocking regulation and other EU initiatives

In the transatlantic confrontation on the reimposition of US sanctions, one of the most debated issues has been the effectiveness of the Blocking Regulation as a mechanism to offset the effects of reinstated US sanctions on Iran, at least from an economic or commercial point of view.[82] Measures like blocking statutes generally: (1) forbid compliance with particular US extraterritorial sanctions; (2) provide for nonrecognition of judgments and administrative determinations that give effect to the sanctions; (3) establish a "clawback" cause of action for recovery of damages incurred for sanctions violations; and (4) require reporting of activity related to the sanctions.[83]

When the Trump Administration decided that it would no longer suspend Title III of the 1996 Helms-Burton Act, the EU announced that it would consider all options at its disposal to protect its legitimate interests, including through the use of the blocking statute:

> The Statute prohibits the enforcement of US courts judgements relating to Title III of the Helms-Burton Act within the EU, and allows EU companies sued in the US to recover any damage through legal proceedings against US claimants before EU courts.[84]

Still, there has been a clear awareness among EU Member States that the new generation of US secondary sanctions, particularly those affecting financial transactions, are more robust and costly for EU corporate entities, in comparison with the situation existing in 1996, when the idea of a blocking regulation was conceived.[85] The Vice-President of the European Commission, Valdis Dombrovskis, who was also in charge of financial stability, financial services, and the capital markets union, soon questioned the effectiveness of a revised Blocking Regulation, especially for banks, "given the international nature of the banking system and especially the exposure of large systemic banks to US financial system and US dollar transactions."[86] As a matter of fact, the Blocking Regulation could do nothing to prevent financial institutions that engage in transactions with Iran from losing access to the US financial system.

In the period between May and November 2018, the Belgian-based Society for Worldwide Interbank Financial Telecommunication (SWIFT), which provides an international system for facilitating cross-border payments, faced the dilemma of choosing whether to comply with US sanctions or to adhere to the obligations under the EU Blocking Regulation. The Trump Administration clarified that "SWIFT would be subject to US sanctions if it provides financial messaging services to certain designated Iranian financial institutions."[87] As the latest and most significant wave of sanctions against Iran came into effect, SWIFT eventually announced the suspension of several Iranian banks from its service, "in the interest of the stability and integrity of the global financial system": a decision criticized as "regrettable" by the European Commission.[88]

In a joint ministerial statement, the remaining parties to the JCPOA

> welcomed practical proposals to maintain and develop payment channels, notably the initiative to establish a special purpose vehicle, to facilitate payments related to Iran's exports (including oil) and imports, which will assist and reassure economic operators pursuing legitimate business with Iran.[89]

After long discussions, France, the UK, and Germany, with help from the European Commission and the EEAS, launched a new mechanism for facilitating legitimate trade between European economic operators and Iran called the "Instrument in Support of Trade Exchanges" (INSTEX). The joint statement of the three foreign ministers made clear that the initial focus was "on the sectors most essential to the Iranian population – such as pharmaceutical, medical devices and agri-food good," and that its long term aim was to open up to "economic operators from third countries who wish to trade with Iran."[90] High Representative Mogherini stressed that "INSTEX is not directed against the US. It will operate fully in line with EU and international law and standards on anti-money laundering or countering the financing of terrorism." At the time of writing, it is too early to assess the mechanism; it will seek to reduce the need for transactions between the European and Iranian financial systems by allowing European exporters to receive payments for sales to Iran from funds that are already within Europe, and vice versa.[91]

Conclusion

The question of the legality of US secondary sanctions, as exorbitant measures having extraterritorial effects, needs to be understood against the background of the complexities in the implementation of the JCPOA. The convergence between the US and the EU in the period 2010–2012, when the European restrictive measures substantially mirrored the content of US sanctions, cannot be considered as expression of an overall acceptance of that type of measure. The challenge posed to the deal by the Trump Administration puts the EU in the uncomfortable position of "having to choose between its role as guardian of the JCPOA, protecting it from interpretative drift, and confronting the US on the issue of good faith in living up to its multilateral commitments."[92] After the US withdrawal from the nuclear deal, the EU intended for the confrontation with the US to be held within the framework of international law: having affirmed the unlawful nature of certain sanctions reimposed by the US, the EU decided to update the 1996 Blocking Regulation as a form of countermeasure under international law. Its effectiveness risks to be undermined by the design of the new generation of secondary sanctions, particularly those affecting financial transactions and the banking sector in general. It remains that the issue of the jurisdictional scope of unilateral non-forcible measures needs to be assessed by taking into consideration the inherent tension between centralized sanctions and the autonomous measures outside of the institutional collective security regime.

Notes

1 U.N. Doc. S/RES/2231 (2015).
2 Council of the European Union Press Release, "Declaration by the High Representative on Behalf of the EU Following US President Trump's Announcement on the Iran Nuclear Deal (JCPOA)," (May 9, 2018), *available at* <www.consilium.europa.eu/en/press/press-releases/2018/05/09/declaration-by-the-high-representative-on-behalf-of-the-eu-following-us-president-trump-s-announcement-on-the-iran-nuclear-deal-jcpoa>.
3 Presidential Memorandum, "Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon," (May 8, 2018), *available at* <www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon>.
4 President Donald Trump, "Executive Order Reimposing Certain Sanctions with Respect to Iran," (August 6, 2018), *available at* <www.whitehouse.gov/presidential-actions/executive-order-reimposing-certain-sanctions-respect-iran>.
5 Commission Delegated Regulation (EU) 2018/1100 of June 6, 2018, amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *Official Journal* L 199 I (August 7, 2018), p. 1.
6 See Habib Gherari and Sandra Szurek eds., *Sanctions unilatérales, mondialisation du commerce et ordre juridique international – À propos des lois Helms-Burton et D'Amato-Kennedy* (1998); Jeffrey A. Meyer, "Second Thoughts on Secondary Sanctions," *University of Pennsylvania Journal of International Law*, Vol. 30, No. 3 (2009), p. 905.
7 Council Regulation (EC) No 2271/96 of November 22, 1996, protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *Official Journal* L 309 (November 29, 1996), p. 1.
8 See Harry L. Clark, "Dealing with US Extraterritorial Sanctions and Foreign Countermeasures," *University of Pennsylvania Journal of International Law*, Vol. 20, No. 1 (1999), p. 61; John W. Boscariol, "At the Cross-Roads of US and Canadian Trade Controls: The Cuba Conflict," *Global Trade and Customs Journal*, Vol. 5, No. 6 (2010), p. 237.
9 See Michael P. Malloy, *United States Economic Sanctions: Theory and Practice* (2001).
10 Meyer, *supra* note 6, p. 926.
11 See Alexander Orakhelashvili, "The Impact of Unilateral EU Economic Sanctions on the UN Collective Security Framework: The Cases of Iran and Syria," in Ali Z. Marossi and Marisa R. Bassett eds., *Economic Sanctions Under International Law* (2015), p. 3.
12 Daniel H. Joyner, "UN Counter-Proliferation Sanctions and International Law," in Larissa van den Herik ed., *Research Handbook on UN Sanctions and International Law* (2017), p. 105.
13 Cf. Natalino Ronzitti, "Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective," in Natalino Ronzitti ed., *Coercive Diplomacy, Sanctions and International Law* (Brill, Nijhoff, 2016), p. 1, at pp. 26–27.
14 See N. Jansen Calamita, "Sanctions, Countermeasures, and the Iranian Nuclear Issue," *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 5 (2009), p. 1393; Sahib Singh, "Iran, The Nuclear Issue & Countermeasures," *EJIL:Talk!* (January 10, 2012), *available at* <www.ejiltalk.org/iran-the-nuclear-issue-countermeasures>.
15 For different positions on collective countermeasures, cf. Linos-Alexandre Sicilianos, "Countermeasures in Response to Grave Violations of Obligations Owed to the

International Community," in James Crawford, Alain Pellet, and Simon Olleson eds., *The Law of International Responsibility* (2010), p. 1137; Martin Dawidowicz, *Third-Party Countermeasures in International Law* (2017).

16 Cedric Ryngaert, *Jurisdiction in International Law*, 2nd ed. (2015), p. 116.

17 See Joy Gordon, "Extraterritoriality: Issues of Overbreadth and the Chilling Effect in the Cases of Cuba and Iran," *Harvard International Law Journal Online*, Vol. 57 (2016), p. 1.

18 Cedric Ryngaert, "Extraterritorial Export Controls (Secondary Boycotts)," *Chinese Journal of International Law*, Vol. 7, No. 3 (2008), pp. 625, 626.

19 See Vaughan Lowe, "The Problems of Extraterritorial Jurisdiction: Economic Sovereignty and the Search for a Solution," *International and Comparative Law Quarterly*, Vol. 34, No. 4 (1985), p. 724; moreover, Kenneth W. Abbott, "Defining the Extraterritorial Reach of American Export Controls: Congress as Catalyst," *Cornell International Law Journal*, Vol. 17, No. 1 (1984), p. 79.

20 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104–114, 110 Stat. 785, March 12, 1996.

21 Pub. L. 104–172, 110 Stat. 1541 (50 U.S.C. 1701), August 5, 1996.

22 Nigel D. White, *The Cuban Embargo Under International Law* (2015), p. 105; as for the -debate on the conformity of this piece of legislation with international law, see Brice M. Clagert, "Title III of the Helms-Burton Act Is Consistent with International Law," *American Journal of International Law*, Vol. 90, No. 3 (1996), p. 434; Brigitte Stern, "Vers la mondialisation juridique? Les lois Helms-Burton et d'Amato-Kennedy," *Revue générale de droit international public*, Vol. 100, No. 4 (1996), p. 97; Vaughan Lowe, "US Extraterritorial Jurisdiction: The Helms-Burton and D'Amato Acts," *International & Comparative Law Quarterly*, Vol. 46, No. 2 (1997), p. 378.

23 European Union-United States: Memorandum of Understanding Concerning the U.S. Helms-Burton Act and the U.S. Iran and Libya Sanctions Act, reproduced in *International Legal Materials*, Vol. 36, No. 3 (1997), p. 529. See Stefaan Smis and Kim Van der Borght, "The EU-U.S. Compromise on the Helms-Burton and D'Amato Acts," *American Journal of International Law*, Vol. 93, No. 1 (1999), p. 227.

24 Michael R. Pompeo, *Remarks to the Press* (Washington, DC, April 17, 2019), *available at* <www.state.gov/secretary/remarks/2019/04/291174.htm>.

25 "Joint Statement by Federica Mogherini, Chrystia Freeland and Cecilia Malmström on the decision of the United States to further activate Title III of the Helms Burton (Libertad) Act," (April 17, 2019), *available at* <https://eeas.europa.eu/headquarters/headquarters-homepage/61181/joint-statement-federica-mogherini-chrystia-freeland-and-cecilia-malmstr%C3%B6m-decision-united_en>.

26 U.N. Doc. A/RES/47/19 (1992); the last resolution, U.N. Doc. A/RES/73/8 (2018), was adopted by a recorded vote of 189 in favor to 2 against (Israel, United States), with no abstentions.

27 U.N. Doc. A/RES/73/167 (2019) on "Human rights and unilateral coercive measures," which strongly objects to the extraterritorial nature of those measures which threaten State sovereignty. See Hofer, *supra* note 8, p. 175.

28 See Barry E. Carter and Ryan M. Farha, "Overview and Operation of US Financial Sanctions, Including the Example of Iran," *Georgetown Journal of International Law*, Vol. 44, (2013), p. 903.

29 See "Developments in the Law – Extraterritoriality," *Harvard Law Review*, Vol. 124, No. 5 (2011), p. 1246, pp. 1255–1256.

30 See "Congress Enacts Sanctions Legislation Targeting Russia," *American Journal of International Law,* Vol. 111, No. 4 (2017), p. 1015.

31 See Michael Gruson, "The U.S. Jurisdiction Over Transfers of U.S. Dollars Between Foreigners and Over Ownership of US Dollar Accounts in Foreign Bans," *Columbia Business Law Review*, No. 3 (2004), p. 721.

32 See Marija Đorđeska, "From Targeted Sanctions to Targeted Settlements: International Law-Making Through Effective Means," *EJIL:Talk!* (July 22, 2014), *available at* <www.ejiltalk.org/from-targeted-sanctions-to-targeted-settlements-international-law-making-through-effective-means/>.
33 Gordon, *supra* note 17, p. 6.
34 International Crisis Group, *Implementing the Iran Nuclear Deal: A Status Report* (2017), available at <www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/173-implementing-iran-nuclear-deal-status-report>; moreover, John Changiz Vafai, "The New Era of Doing Business with Iran: Iran's International Commercial Transactions and Global Security," *Pace International Law Review*, Vol. 29, No. 1 (2017), p. 1. Ironically, in August 2017, a global business investigative and regulatory risk mitigation firm that provides due diligence services for various countries and their citizenship by investment programs has agreed to pay $259,200 (USD) to settle what the OFAC identifies as violations of the sanctions program, in connection with due diligence of several individuals, including some Iranian nationals.
35 See FATF, *Risk-Based Approach for the Banking Sector* (2014), *available at* <www.fatf-gafi.org/publications/fatfrecommendations/documents/risk-based-approach-banking-sector.html>.
36 See Joel Schectman and Yeganeh Torbati, "New U.S. guidance on Iran sanctions seeks to reassure banks," *Reuters*, October 10, 2016, *available at* <www.reuters.com/article/us-iran-usa-sanctions-idUSKCN12A29Q>.
37 European Union, *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy*, Doc. 5664/18 (May 4, 2018).
38 See, for instance, Council Regulation (EU) No. 401/2013 of May 2, 2013, concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No. 194/2008, *Official Journal* L 121 (May 3, 2013), p. 1. On the jurisdictional scope of the EU sanctions see Marco Gestri, "Sanctions Imposed by the European Union: Legal and Institutional Aspects," in Ronzitti ed., *supra* note 13, p. 70, at p. 79; Leonardo Borlini and Stefano Silingardi, "Defining Elements and Emerging Legal Issues of EU 'Sanctions'," *Italian Yearbook of International Law* Vol. 27 (2018), p. 33, at pp. 40–41.
39 *EU Guidelines*, *supra* note 38, para. 54.
40 *Cf.* Christina Eckes, "The Law and Practice of EU Sanctions," in Steven Blockmans and Panos Koutrakos eds., *Research Handbook on the EU's Common Foreign and Security Policy* (2018) p. 206, at p. 217.
41 See Elin Hellquist, "Either with Us or against Us? Third-Country Alignment with EU Sanctions against Russia/Ukraine," *Cambridge Review of International Affairs* Vol. 29, No. 3 (2016), p. 997.
42 See Baldur Thorhallsson, "Iceland's Alignment with the EU – US Sanctions on Russia: Autonomy v. Dependence," *Global Affairs*, Vol. 3, No. 3 (2017), p. 307.
43 Gestri, *supra* note 39, p. 79.
44 Tom Ruys, "Sanctions, Retortions and Countermeasures: Concepts and International Legal Framework," in van den Herik ed., *supra* note 12, p. 19, at p. 28.
45 See Bernard H. Oxman, "Jurisdiction of States," in Rudiger Wolfrum ed., *Max Planck Encyclopedia of Public International Law*, Vol. VI (2012), p. 546; Frederick Alexander Mann, "The Doctrine of Jurisdiction in International Law," *Recueil des Cours,* Vol. 111 (1964), p. 1; moreover see "Extraterritorial Jurisdiction," in *Yearbook of International Law Commission*, Vol. II, Part Two (2006), p. 229.
46 *Cf.* Andrea Bianchi, "Extraterritoriality and Export Controls: Some Remarks on the Alleged Antimony between European and US Approaches," *German Yearbook of International Law*, Vol. 35 (1992), p. 366, at p. 368.
47 Charlotte Beaucillon, "Practice Makes Perfect, Eventually? Unilateral State Sanctions and the Extraterritorial Effects of National Legislation," in Ronzitti ed., *supra* note 13, p. 103, at p. 106.

48 Nigel D. White, "Autonomous and Collective Sanctions and the International Legal Order," *Italian Yearbook of International Law*, Vol. 27 (2017), p. 3, at p. 14. In addition, for a radical position on the tension between extraterritorial sanctions and competences of the UN Security Council, see *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, U.N. Doc. A/72/370 (August 29, 2017), p. 19, para. 55: "the enactment of domestic legislation with purported extraterritorial reach, resulting in a *de facto* "multilateralization" of unilateral coercive measures, could be seen as infringing on the competences of the Security Council. . . . It is thus highly questionable that any State should take upon itself to impose sanctions that apply worldwide "without borders," without any justifiable right to exercise universal jurisdiction, which is in the purview solely of the Security Council."
49 *Case of the "S.S. Lotus" (France v. Turkey) (1927) P.C.I.J., Ser. A, No. 10,* p. 18.
50 See, generally, Maziar Jamnejad and Michael Wood, "The Principle of Non-Intervention," *Leiden Journal of International Law*, Vol. 22, No. 2 (2009), p. 345.
51 *Cf.* Ryngaert, *supra* note 16, p. 101; Alex Mills, "Rethinking Jurisdiction in International Law," *British Yearbook of International Law*, Vol. 84 (2014), p. 187; moreover, see Susan Emmenegger, "Extraterritorial Economic Sanctions and their Foundation in International Law," *Arizona Journal of International & Comparative Law*, Vol. 33, No. 3 (2016), p. 631.
52 "Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)" *I.C.J. Reports 1970*, Judgment (February 5, 1970), pp. 3, 37: "The concept and structure of the company are founded on and determined by a firm distinction between the separate entity of the company and of the shareholder."
53 Cf. Andreas F. Lowenfeld, "Congress and Cuba: The Helms-Burton Act," *American Journal of International Law*, Vol. 90, No. 3 (1996), p. 419.
54 Ryngaert, *supra* note 16, p. 118.
55 General Agreement on Tariffs and Trade, *United Nations Treaty Series*, Vol. 1867, p. 187.
56 See Andrew D. Mitchell, "Sanctions and the World Trade Organization," in van den Herik ed., *supra* note 12, p. 283, at p. 300, and the authors quoted therein; moreover, see Brigitte Stern, "Can the United States set Rules for the World? – A French View," *Journal of World Trade*, Vol. 31, No. 4 (1997), p. 5. On the margin of discretion that States possess in determining what is necessary for the protection of essential security interests when they invoke the exception, see Michael Bothe, "Compatibility and Legitimacy of Sanctions Regimes," in Ronzitti ed., *supra* note 13, p. 33, at p. 35.
57 Meyer, *supra* note 6, p. 909.
58 Beaucillon, *supra* note 48, p. 105.
59 See European Commission, *Explanatory Memorandum: Commission delegated regulation of 6.6.2018 amending the annex to Council regulation No. 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom* (June 6, 2018), Doc. C (2018) 3572 final, para. 1.
60 European Commission, *Guidance Note – Questions and Answers: adoption of update of the Blocking Statute*, C/2018/5344, *Official Journal* C 277I (August 7, 2018), p. 4.
61 U.N. Doc. S/RES/1929 (2010).
62 Council Decision 2010/413/CFSP of July 26, 2010, concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, *Official Journal* L 195 (July 27, 2010), p. 39. See Pierre-Emmanuel Dupont, "Countermeasures and Collective Security: The Case of the EU Sanctions Against Iran," *Journal of Conflict and Security Law*, Vol. 17, No. 3 (2012), p. 301.
63 For an analysis of the factors influencing the convergence of EU-US sanction policies against Iran in the period 2006–2012, see Sascha Lohmann, "The Convergence

of Transatlantic Sanction Policy against Iran," *Cambridge Review of International Affairs,* Vol. 29, No. 3 (2016), p. 930.

64 Council Decision 2012/35/CFSP of January 23, 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, *Official Journal* L 19 (January 24, 2012), p. 22.

65 Council Regulation (EU) No 267/2012 of March 23, 2012, concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010, *Official Journal* L 88 (March 24, 2012), p. 1.

66 "Developments in the Law – Extraterritoriality," *supra* note 29, p. 1251; Quentin Genard, "European Union Responses to Extraterritorial Claims by the United States: Lessons from Trade Control Cases," *Non-proliferation Paper*, No. 3 (2014), *available at* <www.nonproliferation.eu/european-union-responses-to-extra-territorial-claims-by-the-united-states-lessons-from-trade-control-cases-2/>.

67 Ryngaert, *supra* note 16, p. 119.

68 See "BNP Paribas Expects 'Heavy Penalty' for Sanctions Violations," *The Guardian*, June 30, 2014, *available at* <www.theguardian.com/business/2014/jun/30/bnp-paribas-fine-penalty-sanctions>.

69 *EU Council Conclusion on Iran*, 3142th Foreign Affairs Council meeting (January 23, 2012), para. 2.

70 Cf. U.N. Security Council, *Verbatim Record* (November 25, 2014), U.N. Doc. S/PV/7323; U.N. Security Council, *Verbatim Record* (February 11, 2016), U.N. Doc. S/PV/7620.

71 See Jean Galbraith, "Ending Security Council Resolutions," *American Journal of International Law*, Vol. 109, No. 4 (2015), pp. 806, 809.

72 On the introduction specific clauses to allow companies to exit contracts without any claims for damages in case the sanctions landscape deteriorates, see Andrea Atteritano and Maria Beatrice Deli, "An Overview of International Sanctions' Impact on Treaties and Contracts," in Ronzitti ed., *supra* note 13, p. 207.

73 "Remarks by President Trump on Iran Strategy," (October 13, 2017), *available at* <www.whitehouse.gov/briefings-statements/remarks-president-trump-iran-strategy/>.

74 See Daniel H. Joyner, *Iran's Nuclear Program and International Law: From Confrontation to Accord* (2016), p. 228; "Contemporary Practice of the US: Agreement on Iran Nuclear Program Goes into Effect," *American Journal of International Law*, Vol. 109, No. 4 (2015), p. 874.

75 "Remarks by HR/VP Mogherini on the statement by US President Trump regarding the Iran nuclear deal (JCPOA)," (May 8, 2018), *available at* <https://eeas.europa.eu/delegations/iran/44238/remarks-hrvp-mogherini-statement-us-president-trump-regarding-iran-nuclear-deal-jcpoa_en>.

76 Cf. Enzo Cannizzaro, "Editorial: The Iran Nuclear Deal and the Future of the European Foreign Policy," *European Papers*, Vol. 3, No. 1 (2018), p. 3.

77 *Ibid*.

78 Presidential Memorandum, *supra* note 3.

79 Donald J. Trump, "Remarks on the Joint Comprehensive Plan of Action to Prevent Iran from Obtaining a Nuclear Weapon and an Exchange with Reporters," White House – Office of the Press Secretary (May 8, 2018).

80 Gholamali Khoshroo, "Trump's Sanctions Against Iran Are a Clear Breach of International Law," *Guardian* (August 8, 2018), *available at* <www.theguardian.com/commentisfree/2018/aug/08/donald-trump-sanctions-iran-international-law>.

81 Declaration of *ad hoc* Judge Momtaz, unofficial translation, *available at* <www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-02-EN.pdf>.

82 For a rare invocation of the EU Blocking Statute, see the press statement of the Government of Gibraltar with respect to a US request for the seizure of the Iranian oil tanker: "Further Mutual Legal Assistance Requests from the United States of America," Press

Release No. 604/2019 (August 18, 2019), *available at* <https://www.gibraltar.gov.gi/press-releases/further-mutual-legal-assistance-requests-from-the-united-states-of-america-6042019-5198>.

83 Clark, *supra* note 8, p. 82. More recently, see Charlotte Van Haute, Sara Nordin, and Genevra Forwood, "The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place," *Global Trade and Customs Journal*, Vol. 13, Nos. 11-12 (2018), p. 496.

84 *Joint Statement by Federica Mogherini and Cecilia Malmström on the Decision of the United States to Further Activate Title III of the Helms Burton (Libertad) Act* (April 17, 2019), *available at* <https://eeas.europa.eu/headquarters/headquarters-homepage/61183/joint-statement-federica-mogherini-and-cecilia-malmstr%C3%B6m-decision-united-states-further_en>.

85 See also Daniel Franchini, "'With Friends Like That, Who Needs Enemies?' Extraterritorial Sanctions Following the United States' Withdrawal from the Iran Nuclear Agreement," *EJIL:Talk!* (May 29, 2018), *available at* <www.ejiltalk.org/with-friends-like-that-who-needs-enemies-extraterritorial-sanctions-following-the-united-states-withdrawal-from-the-iran-nuclear-agreement/>.

86 See "EU Says Block on U.S. Sanctions on Iran of Limited Use for EU Banks," *Reuters* (May 17, 2018), *available at* <www.reuters.com/article/us-iran-nuclear-eu-banks/eu-says-block-on-us-sanctions-on-iran-of-limited-use-for-eu-banks-idUSKCN1II17K>.

87 "Briefing on Iran Sanctions: Michael R. Pompeo, Secretary of State, Secretary of the Treasury Steven T. Mnuchin," (November 2, 2018), *available at* <www.state.gov/secretary/remarks/2018/11/287090.htm>.

88 "EU Says SWIFT Decision on Iran Banks Regrettable," *Reuters* (November 7, 2018), *available at* <www.reuters.com/article/us-usa-iran-swift-commission/eu-says-swift-decision-on-iran-banks-regrettable-idUSKCN1NC1I1>.

89 *Implementation of the Joint Comprehensive Plan of Action: Joint Ministerial Statement*, New York (September 24, 2018), *available at* <https://eeas.europa.eu/headquarters/headquarters-homepage/51036/implementation-joint-comprehensive-plan-action-joint-ministerial-statement_en>. See "EU and US Sanctions, which Sovereignty?" *Policy Paper* No. 232, Notre Europe (October 13, 2018), *available at* <http://institutdelors.eu/publications/leurope-face-aux-sanctions-americaines-quelle-souverainete/?lang=en>.

90 Press release: "New Mechanism to Facilitate Trade With Iran: Joint Statement," (January 31, 2019), *available at* <www.gov.uk/government/news/joint-statement-on-the-new-mechanism-to-facilitate-trade-with-iran>.

91 See Ellie Geranmayeh and Esfandyar Batmanghelidj, "Trading With Iran via the Special Purpose Vehicle: How it Can Work," *European Council on Foreign Relations* (February 7, 2019), *available at* <www.ecfr.eu/article/commentary_trading_with_iran_special_purpose_vehicle_how_it_can_work>.

92 Steven Blockmans and Astrid Viaud, "EU Diplomacy and the Iran Nuclear Deal: Staying Power?" *CEPS Policy Insight*, No. 2017–2028 (July 14, 2017), p. 12, *available at* <www.ceps.eu/publications/eu-diplomacy-and-iran-nuclear-deal-staying-power>.