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Securitizing Corruption

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SECURITIZING CORRUPTION

Nedim Hogic*

Abstract:

This paper investigates the responses of the United States and its European allies to the rise of strategic, weaponized corruption and the prevention of foreign interference. I claim that the designation of corruption as a national security threat shapes this response and changes the nature of global anti-corruption interventions. I call this approach – borrowing a term developed in international relations – the securitization of transnational corruption.

The paper deals with the emergence, consequences, and impact of such orientation towards anti-corruption policies. I argue that the trend of securitization started by the Biden administration and its European allies is reshaping the field of anti-corruption policies and challenging our understanding of corruption. I investigate the diverse regulatory changes securitization brings, arguing that they create three main problems for global anti-corruption efforts. First, they are undoing much of what was done on the creation of a global anti-corruption norm as they are unilateral engagements that seek to target foreign illicit influence, primarily Russian and Chinese. Second, they face serious domestic opposition that prevents the efficiency of solutions considering the illicit political influence and money laundering to be fully applied within the U.S. and the E.U. Third; they conflate the meaning of corruption with foreign influence.

I conclude that while the threat of strategic or weaponized corruption is real, the response may constitute a security overreach leading to unintended consequences for the fragmentation of international legal and political order. Specifically, these consequences could also cause the undoing of many of the achievements the global anti-corruption movement led and inspired by the United States has achieved so far. I conclude by arguing that for the world of international development, the change of discourse and focus of anti-corruption interventions from development to security represents a paradigm shift. However, it may remain a mere policy refocus for the U.S. national security actors.

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Introduction

Russian aggression against Ukraine that began in February 2022 met a swift response from Western actors. This response included numerous sanctions that targeted Russia's ability to wage war but also its ability to influence the behavior of other global actors. A clique of businesspersons usually referred to as oligarchs that owed significant portions of their wealth to the favoritism of the Russian government[1] found itself under law enforcement actions from a coalition of law enforcement officials led by the U.S. Department of Justice.[2] In the first three months after the invasion, the total sum of properties blocked through law enforcement actions totaled 30 billion dollars.[3] By the end of 2022, the sum grew to 95 billion dollars.[4]

Rather than an extension of the earlier U.S. sanctions policy based on the Sergei Magnitsky 'Rule of Law Accountability' Act and the Global Magnitsky Act that were used, together with executive orders against actors in Russia, Venezuela, Bosnia and Herzegovina, Bulgaria, and other countries[5], these sanctions were a response to the strategic, weaponized corruption[6] used by Russia in an attempt to influence political

[1] Marshall I. Goldman, Putin and the Oligarchs, 83 FOREIGN AFF. 33 (2004)
[2] Department of Justice, *Russian Elites, Proxies, and Oligarchs Task Force Ministerial Joint Statement*, https://www.justice.gov/opa/pr/russian-elites-proxies-and-oligarchs-task-force-ministerial-joint-statement
[3] Department of Treasury, Russian Elites, Proxies, and Oligarchs Task Force Joint Statement, https://home.treasury.gov/news/press-releases/jy0839. Note that this sum does not include the assets belonging to the Russian state - the value of these assets blocked was more than 300 billion dollars. See *Allies freeze $330 bn of Russian assets since Ukraine invasion: task force*, France 24, https://www.france24.com/en/live-news/20220629-allies-freeze-330-bn-of-russian-assets-since-ukraine-invasion-task-force
[4] *Russian Oligarchs Lose $95bn in 2022 Amid Sanctions after Ukraine War,* The Guardian, at https://www.theguardian.com/world/2022/dec/30/russian-oligarchs-lose-95bn-in-2022-amid-sanctions-after-ukraine-war.
[5] Heather A. Conley et al., *The Kremlin Playbook 2: The Enablers* (2019) (demonstrating the success that Russia has had in weaponizing corruption, using it to influence political outcomes in Croatia, Hungary, Italy, Austria, and other European countries).
[6] The term corruption remains contentious in the literature. See Yasmin Dawood, *Classifying Corruption*, 9 DUKE J. CONST. L. & PUB. POL'Y 103 (2014). (identifying the struggles of the US Supreme Court in this regard), For the purposes of this paper, I will understand corruption to mean, "misuse of public power for private gain" this being a most used definition of corruption. See RASMA KARKLINS, THE SYSTEM MADE ME DO IT: CORRUPTION IN POST-COMMUNIST SOCIETIES. (2005). 4-5 (detailing the choices over the definition of corruption and their usage in analysis); Also, see EMANUELA CEVA & MARIA PAOLA FERRETTI. POLITICAL CORRUPTION: THE INTERNAL ENEMY OF PUBLIC INSTITUTIONS. (2021). 22-28.

outcomes in the West.[7] The sanctions against the oligarchs were not simply—as is sometimes the case with sanctions—a display of disapproval of one regime's actions[8] but also a preventive effort to block the further rise of Russian influence through the corruption of both European and U.S. elected and appointed officials[9], key law enforcement personnel[10] and other influential persons.[11] As such, they were part of a broader engagement against transnational corruption, its declaration as a national security threat[12], the creation of the first US national anticorruption strategy,[13] and changes in different anti-corruption related fields of regulatory governance and law enforcement.[14]

Owing to the leading role that the U.S. has as a global anti-corruption actor[15] and regulatory center[16], the reshaping of the tools and the refocusing of the anti-corruption policies has the potential to alter the international enforcement of anti-corruption policies substantially. The extension of the field of national security to corruption that is happening in response to the rise of global corruption and due to the expansion of the US security policies, in general,[17] may change the regulatory and enforcement approaches in

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[7] Tom Ruys, *Reflections on the Global Magnitsky Act and the Use of Targeted Sanctions in the Fight Against Grand Corruption*, Rev., BDI 50, 492 (2017).
[8] DANIEL W. DREZNER, THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS (1999).
[9] *Kremlin-Linked Group Arranged Payments to European Politicians to Support Russia's Annexation of Crimea*, Organized Crime and Corruption Research Project (Feb 3, 2023), https://www.occrp.org/en/investigations/kremlin-linked-group-arranged-payments-to-european-politicians-to-support-russias-annexation-of-crimea
[10] Former Senior F.B.I. Official in New York Charged With Aiding Oligarch, The New York Times, Jan 23, 2023.
[11] How the Biggest Fraud in German History Unraveled, The New Yorker, March 2, 2023, https://www.newyorker.com/magazine/2023/03/06/how-the-biggest-fraud-in-german-history-unravelled; Anton Moiseienko, *Transnational Crime in Ex-Soviet Countries, Research Handbook on Transnational Crime* (2019).
[12] Administration of Joseph R. Biden, Jr., 2021 Statement on the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, Daily Comp. Pres. Docs. 1 (2021).
[13] United States Strategy On Countering Corruption Pursuant to the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf
[14] Generally, see FRANK VOGL, THE ENABLERS: HOW THE WEST SUPPORTS KLEPTOCRATS AND CORRUPTION-ENDANGERING OUR DEMOCRACY (2021).
[15] Jennifer L. McCoy, *The emergence of a global anti-corruption norm*. 38 INTL POL. (2001): 65-90.
[16] David Levi-Faur, *The global diffusion of regulatory capitalism*, 598 Annals of the Am. Academy of Pol. & Soc. Sci. 1 (2005): 15-17.
[17] J. Benton Heath, *Making sense of security*, 116 AM. J. INTL. L. 2 (2022): 289-291.

diverse matters regulated by constitutional or criminal law norms in the U.S. and the countries around the world. This holds especially true if the European Union (E.U.), another important global regulation center[18], facing the same challenges the U.S. does, responds similarly. As I will argue in this paper, what makes the picture complex is that while the challenges the two jurisdictions face are similar, the responses take a different shape. However, the more aligned the responses are, the greater the likelihood of changing the anti-corruption policies across the world. For all its shortcomings, anti-corruption is widely understood to represent a quest for good governance[19], the opposite of corruption[20], protection of the rule of law,[21] and for more just economic development.[22] Expanding security policies in the domain of anti-corruption efforts could endanger some of these proclaimed and stated goals and have an opposite effect. The measures risk undoing one of the main accomplishments achieved in the last three decades, the breakthrough in terms of government transparency.

For that reason, I conclude that this development has the potential to reshape the entire scope of global efforts against corruption, representing an important paradigm shift-prioritization of security over principles of democratic deliberation and the rule of law. In the following section, I explore the development of global anti-corruption policies and the specific position of the U.S. within it. I explore the new discursive practices and the foreign policy usage of corruption promotion, also introducing the position of the E.U. In section III, I look at the legal practices and approaches in U.S. and E.U. law and policy that are bound to be changed by the impact of security policies or other related current developments in the responses to strategic corruption. In section IV, I summarize the findings, asking the question of the necessity of securitization. I conclude by offering a resume of this evolutionary step in anti-corruption policies.

[18] ANU BRADFORD, THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD (2020).
[19] ALINA MUNGIU-PIPPIDI, THE QUEST FOR GOOD GOVERNANCE: HOW SOCIETIES DEVELOP CONTROL OF CORRUPTION, (2015).
[20] Paul M. Heywood, *Combating corruption in the twenty-first century: New approaches*, 147 DAEDALUS 3 (2018): 83-97.
[21] Paul D. Carrington, *Law and Transnational Corruption: The Need for Lincoln's Law Abroad*, 70 L. & CONTEMP. PROBS. 109 (2007).
[22] Vito Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures*, IMF Staff Papers 45(4), 559–594 (1998)

I. Brief history of global anti-corruption and the role that the U.S. and E.U. had in its development

A. The Global Anti-Corruption Effort

Since ascending to importance in the 1990s, understanding effective anti-corruption measures has undergone three phases. In the first phase that began in the 1990s, the fight against corruption was considered primarily important because of corruption's detrimental effect to economic development.[23] In this phase, a specific epistemic community viewing corruption as the main obstruction to successful economic restructuring programs emerged in international financial institutions.[24] The reform package it shaped would become a part of the Washington Consensus, a neoliberal economic program for developing nations promoted through good governance reforms by institutions such as the World Bank.[25] Initially confined to measures that were to keep the government small and its regulatory agencies independent[26], the scope of good governance reforms proposed by the World Bank grew fueled by the promotion of liberal democratic order that was happening at the same time.[27] This growth of good governance reforms led to conflation between the rule of law promotion and anti-corruption reforms.[28] Consequently, at the beginning of the 21st century, corruption and the measures to curb it became central to understanding the functioning of the rule of law as securing economic development and the quality of democracy.[29] Policy measures such as transparency, which were of little interest to researchers and policymakers before the 1990s, become a cornerstone of governmental policies.[30] The literature on corruption

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[23] Johann Graf Lambsdorff, *Corruption and Rent-Seeking*, 113 PUB. CHOICE (1), 97–125 (2002);
[24] Sarah O'Byrne, *"There is nothing more important than corruption": The Rise and Implementation of a New Development Idea* (2012).
[25] David M. Trubek & Alvaro Santos (Eds.), *The New Law and Economic Development: A Critical Appraisal* (2006).
[26] Rajeev K. Goel & Michael A. Nelson, *Corruption and government size: A disaggregated analysis*, 97 PUB. CHOICE 1-2 (1998): 107-120.
[27] Michael Barnett & Martha Finnemore, The power of liberal international organizations, Power in global governance 161 (2005): 163-171.
[28] Anne-Marie Slaughter, *The real new world order*, Foreign Affs. (1997): 183, 189-194.
[29] Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge* (2003).
[30] Maria Cucciniello, Gregory A. Porumbescu, & Stephan Grimmelikhuijsen, *25 Years of Transparency Research: Evidence and Future Directions*, 77 PUB. ADMIN. REV. (1), 32–44 (2017).

proliferated during this period, and theories explaining why anti-corruption measures succeed and fail emerged.[31] Budgets for anti-corruption interventions and international aid generally rose as states and their international development agencies competed to invest more,[32] and the understanding of what anti-corruption policies may entail expanded significantly among democratic and authoritarian states alike.[33]

Traditionally, the root of legal anti-corruption measures laid in constitutional law, particularly the principle of separation of powers and criminal law, in anti-bribery legislation. But, international and transnational legal regulation of anti-corruption and the spread of anti-corruption policies began to include strengthening institutions that dealt with transparency, accountability, and good governance.[34] In view of Mark Tushnet, these institutions have become the fourth branch of government serving to protect democracy.[35] A wide but unsuccessful mobilization to expand the understanding of corruption as a human rights violation failed.[36] Similarly, the initiatives to set-up an international criminal court that would try corruption offenses would appear only to lose momentum eventually.[37] Regardless of that failure, all major international organizations and international businesses incorporated anti-corruption work and compliance in their operations.[38]

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[31] Susan Rose-Ackerman & Bonnie J. Palifka, *Corruption and Government: Causes, Consequences, and Reform* (2016) (explaining anti-corruption policies through the principal–agent model); Anna Persson, Bo Rothstein, & Jan Teorell, *Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem*, 26 GOVERNANCE (3), 449–471 (2013) (explaining the failure of anticorruption reforms because of ignorance of collective action problems); Matthew C. Stephenson, *Corruption As a Self-Reinforcing Trap: Implications for Reform Strategy*, The World Bank Research Observer 25(2), 192–226 (2020).

[32] Nicholas Charron, *Exploring the Impact of Foreign Aid on Corruption: Has the "Anti-Corruption Movement" Been Effective*, 49 THE DEVELOPING ECON. (1), 66–88 (2011).

[33] Kenneth Abbott & Duncan Snidal, (2002), *Values and Interests: International Legalization in the Fight against Corruption*,' 31 J. OF LEG. STUD., 141-177

[34] JOSEPH POZSGAI-ALVAREZ (ED.) THE POLITICS OF ANTI-CORRUPTION AGENCIES IN LATIN AMERICA. (2021) (explaining the role of specialized anti-corruption agencies in Latin America).

[35] Mark Tushnet, THE NEW FOURTH BRANCH: INSTITUTIONS FOR PROTECTING CONSTITUTIONAL DEMOCRACY. (2021).

[36] See Cecily Rose, The Limitations of a Human Rights Approach to Corruption, 65 Int'l & Comp. L.Q. 405 (2016). (Offering a critique and summarizing the debate on the inclusion of corruption within the larger human rights framework).

[37] Brett D. Schaefer, Steven Groves & James M. Roberts, *Why the US Should Oppose the Creation of an International Anti-Corruption Court*, Backgrounder 2958 (2014).

[38] David Hess, *Catalyzing corporate commitment to combating corruption*, 88 J. OF BUSINESS ETHICS (2009): 781-790.

Such an elevated stance on corruption in the 1990s and the first decade of the 21st century was a complete departure from the previously dominant views that examined corruption as a byproduct of modernization, a practice of governance that will disappear as societies progress and political competition evolves.[39] In this period, corruption was seen as inevitable, accepted as tax deductible for multinationals, and considered necessary to bypass bureaucratic obstacles.[40] Within the United Nations, strong opposition to such practices came from developing countries that sought an international treaty that would ban foreign interference of multinationals into domestic policies.[41] The developed world refused such a treaty, with only the U.S. willing to concede a regulation of the conduct of its companies abroad through the Foreign Corrupt Practices Act (FCPA).[42] Still, the law and the issue of corruption generally lay dormant during the 1980s, with the enforcement and the return to policy significance only in the 1990s.

During the 1990s and the early 2000s, anti-corruption policies gained more attention and became widespread. However, these efforts were met with criticism because they did not achieve the intended outcomes. The failure of the U.S. to establish a functional state in Afghanistan[43] and the European Union's (E.U.) troubling efforts to promote anti-corruption and good governance[44] have demonstrated difficulties in the implementation of anti-corruption governance. Countries dubbed success stories, such as Romania, have paid a heavy price for the success of anti-corruption policies through political polarization and rule-of-law crises.[45] Academic research has questioned many anti-corruption interventions as being limited in evidence,[46] lacking direction or purpose,[47] or too focused

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[39] Generally, see Samuel P. Huntington, *Political development and political decay*, 17 WORLD POL. (3) (1965): 386-430.
[40] Patrick Glynn, Stephen J. Kobrin & Moises Naim, The globalization of corruption, in Kimberley Ann Elliott (ed.) Corruption and the global economy 7 (1997): 16-17.
[41] CECILY ROSE, THE ORIGINS OF INTERNATIONAL ANTI-CORRUPTION LAW: THE FAILED NEGOTIATION OF AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS IN NEIL BOISTER, SABINE GLESS & FLORIAN JEßBERGER, HISTORIES OF TRANSNATIONAL CRIMINAL LAW. (2021). 187, 191-194.
[42] *Id.*
[43] DOUGLAS A. WISSING, FUNDING THE ENEMY: HOW US TAXPAYERS BANKROLL THE TALIBAN (2012).
[44] ALINA MUNGIU-PIPPIDI, EUROPE'S BURDEN: PROMOTING GOOD GOVERNANCE ACROSS BORDERS (2019).
[45] Martin Mendelski, *15 years of Anti-Corruption in Romania: Augmentation, Aberration and Acceleration*, 22 EUR POL. & SOC'Y (2), 237–258 (2021).
[46] Kevin E. Davis, *The Limits of Evidence-Based Anti-Bribery Law*, U. of Toronto L. J. 71(Supplement 1), 35–73 (2021).
[47] IDA KOIVISTO, THE TRANSPARENCY PARADOX (2022)

on the law in force and not the law in action.[48] Many existing anti-corruption and anti-money laundering measures did not prevent kleptocratic dictators such as Teodoro Obiang from successfully hiding or laundering wealth in rich Western democracies such as the US or France.[49] The anti-corruption movement became an industry and, for some, a part of the problem.[50]

B. The United States and its role in global anti-corruption

That left global anti-corruption standing between impunity and imperialism.[51] The dealings of Obiang and other kleptocrats illustrate impunity, while the role of the U.S. illustrates imperialism. Through the working of its development agency, the United States Agency for International Development (USAID), the U.S. became a leading promoter of solutions for good governance policies worldwide. U.S. legislation—namely, the FCPA—became a tool for the global policing of corporate compliance[52] and a template for the criminalization of corporate bribery worldwide.[53] Some countries have successfully replicated the U.S.-developed institutional accountability mechanisms, such as congressional oversight. In contrast, a replication of others, such as financial rewards for whistleblowers, has remained controversial.[54]

For different reasons, the U.S. domestic policies against corruption significantly differed from that of other countries. The regulatory variety of capitalism entrenched in the U.S.

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[48] Ophelie Brunelle-Quraishi, *Assessing the Relevancy and Efficacy of the United Nations Convention against Corruption: A Comparative Analysis*, 2 Notre Dame J. Int'l & Comp. L. 101,101 (2011).
[49] CASEY MICHEL, AMERICAN KLEPTOCRACY: HOW THE US CREATED THE WORLD'S GREATEST MONEY LAUNDERING SCHEME IN HISTORY (2021).
[50] See David Kennedy, *The International Anti-Corruption Campaign*, CONN. J. INT'L L. 14, 455 (1999); Steven Sampson, *The Anti-Corruption Industry: From Movement to Institution, Fighting Corruption in Eastern Europe* (2013), 193–210).
[51] KEVIN E. DAVIS, BETWEEN IMPUNITY AND IMPERIALISM: THE REGULATION OF TRANSNATIONAL BRIBERY (2019).
[52] Rachel Brewster, *Enforcing the FCPA: International Resonance and Domestic Strategy*, Va. L. Rev. 103, 1611 (2017).
[53] ELITZA KATZAROVA, THE SOCIAL CONSTRUCTION OF CORRUPTION (2019), 82-85. (detailing how the U.S. effectively captured the global anti-corruption regulation against the wishes of the developing world).
[54] Nedim Hogic, *Financial Rewards for Whistleblowers*, 2 Eur. J. Comp. L. & Governance (2023) (explaining how the financial rewards for whistleblowers are 8viewed differently in the US and European jurisdictions).

favors private enforcement,[55] and private donations – and not public financing – keep the U.S. political parties going. The appointment process of federal judges and top-level bureaucrats is arguably more politicized than in most democracies. Still, the judicial reputation[56] and the prevailing bureaucratic standards limit partisanship and promote independent decision-making.[57] Unlike their foreign counterparts that often focus solely on the specific anti-corruption policies or the enforcement of criminal law norms against corruption, American legal scholars writing on corruption focus on the legislative and constitutional histories of the anti-corruption norm seeking to establish its roots in the U.S. constitutional history.[58] Inspired by the usage of sanctions as a tool of economic statecraft and the opportunities provided for individualized targeting, the U.S. expanded the reach of its human-rights based sanctions to include corruption.[59] The Department of Justice carried out many important seizures against the property of the kleptocrats who have laundered their wealth in the U.S.

This increase in enforcement targeted at foreign perpetrators starkly contrasted with the regulation of corruption targeting domestic officials. Unlike most of the world, where the scope of anti-corruption policies dramatically expanded in the last thirty years, this field has shrunk in the U.S., particularly during the last fifteen years. As described by Ciara Torres Spelliscy, in both constitutional and criminal law, the U.S. Supreme Court effectively deregulated corruption.[60] The complete opening of political financing to private money conditioned the importance of transparency as a tool for tracing the movement of funds. Coupled with media independence, this transparency should lead to increased accountability.[61] Indeed, many non-governmental organizations exploited the

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[55] Jacqueline E. Ross, *Undercover policing and the shifting terms of scholarly debate*: The United States and Europe in counterpoint, 4 Ann Rev of L and Soc Sci 4 (2008): 239-273.
[56] Nelson Lund, *Judicial Independence, Judicial Virtue, and the Political Economy of the Constitution*, HARV. J.L. & PUB. POL'Y 35 (2012): 47.
[57] Francis Fukuyama, *What is governance*?, 26 Governance 3 (2013): 351-354.
[58] Zephyr Teachout, *The anti-corruption principle*, CORNELL L. REV. 94 (2008): 341; Lawrence Lessig, *What an originalist would understand corruption to mean*, Calif. L. Rev. 102 (2014): 1; Samuel Issacharoff, *On political corruption*, 124 HARV. L REV. 1 (2010): 118, 129. (referring to the Federalist papers in the context of the debates on campaign spending in the aftermath of Citizens United)
[59] Ruys *supra* note 7.
[60] Ciara Torres-Spelliscy, *Deregulating Corruption*, HARV. L. & POL. REV. 13 (2018): 471.
[61] Fred H. Cate, Annette Fields & James K. McBain, The right to privacy and the public's right to know: The central purpose of the Freedom of Information Act, ADMIN. L. REV. 46 (1994): 41.; Adriana S. Cordis &

demand of the public to know more about the sources of funding,[62] and the quest for transparency was an important policy objective for the Obama administration promoted, both domestically and internationally.[63] The country's high ranking in virtually all global indices measuring good government, absence of corruption, and judicial independence suggested that the citizens considered corruption to be of low importance or, alternatively, that perceived societal injustices were not stemming from the corruption of the judiciary or political system.[64] Much of the U.S. anti-corruption activities, such as the FCPA enforcement, remained focused on regulating the world and the threats to American corporations outside U.S. borders.[65] The nexus between foreign influence and corruption was rarely a matter of policy concern for the intelligence community[66] or, for that matter, corruption scholars.[67]

The 2016 electoral campaign and the presidency of Donald Trump changed this focus. Featuring the populist anti-corruption call for "draining the swamp[68]" and followed by the allegations that Russian influence allowed Trump's victory, the campaign and the events surrounding it demonstrated the vulnerability of the U.S. to external influence.[69] Congressional oversight and the appointment of Special Counsel Robert Mueller achieved little to dispel doubt over allegations linking Trump to Russia.[70] Instead, the report only

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Patrick L. Warren, *Sunshine as disinfectant: The effect of state Freedom of Information Act laws on public corruption*, J. OF PUB. ECON. 115 (2014): 18-36.

[62] See *Gender, Race and Money-in-Politics*, 2020, Open Secrets, https://www.opensecrets.org/gender-race-and-politics

[63] Harlan Yu & David G. Robinson, *The New Ambiguity of Open Government*, 59 UCLA L. REV. Discourse 178 (2011).

[64] Pamela S. Karlan, *Two Concepts of Judicial Independence*, 72 S. CAL. L. REV. 535 (1999). (Exploring the independence of the U.S. judiciary), Shaun Bowler & Todd Donovan, *Campaign money, congress, and perceptions of corruption*, 44 AM POL RESEARCH 2 (2016): 272-295.; Andon Majhosev, *World justice project, rule of law index 2021*, (2021) (noting the placement of the United States on the index measuring judicial independence).

[65] Brewster *supra* note 52.

[66] ESPIONAGE AND OTHER COMPROMISES OF NATIONAL SECURITY, DEFENSE PERSONNEL SECURITY RESEARCH CENTER, (2009).

[67] See Joseph Pozsgai-Alvarez, & Iván Pastor Sanz, Mapping the (anti-) corruption field: key topics and changing trends, 1968–2020, J. OF COMPUTATIONAL SOC. SCI 4 (2021): 851-881. (analyzing the database of anti-corruption literature curated by Professor Matthew Stephenson of Harvard Law School).

[68] *Trump calls to 'drain the swamp' of Washington*, USA Today, https://www.usatoday.com/story/news/politics/elections/2016/2016/10/18/donald-trump-rally-colorado-springs-ethics-lobbying-limitations/92377656/

[69] Kimberly L. Wehle & Jackson Garrity, Executive Accountability Legislation from Watergate to Trump - and beyond, 7 U. PA. J.L. & PUB. AFF. 37 (2021). 71-76.

[70] ANDREW WEISSMANN, WHERE LAW ENDS: INSIDE THE MUELLER INVESTIGATION. (2021).

exacerbated the already rising polarization that continued following Trump's defeat in the 2020 elections and the initial reluctance of the prosecutors to prosecute him for different charges.[71] As the polarization lowered the importance of the stance of political officials regarding corruption, the value of transparency as a corruption prevention tool also fell.[72] At the same time, Russia and China successfully influenced the economies of developed and undeveloped countries, managing to geopolitically compete for influence with Western democracies in various regions across the globe.[73]

These events created a need for a new paradigm for assessing corruption and its influence on political actors. The traditional paradigm of corruption as a misuse of public power for private gain that is detrimental to the economic development and the rule of law in the country where it was occurring was enriched by the addition of the term strategic (or weaponized) corruption. The term was rarely used in corruption literature before 2020[74]; its usage (and definition) would gain prominence following a Foreign Affairs article published in 2020 that described the practices of Russian and Chinese governments in advancing their geopolitical interests as strategic corruption.[75] The primary difference from the previous usage of the term corruption was that strategic corruption referred to the behavior of corrupt agents secretly or openly working for the interests of a state as their main principal. Thus, the primary gains to be made by strategic corrupt behavior is not for private interest but for a state's national interests.[76] Illicit enrichment, often the main motivation for corrupt behavior, is a less important or even absent motive here.[77]

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[71] MARK POMERANTZ, PEOPLE VS. DONALD TRUMP, AN INSIDE ACCOUNT, (2023).
[72] BRUCE KNAUFT, TRUMP'S CORRUPTION AND THE VIRUS OF POLARIZATION: RACE, CLASS, AND THE REIGN OF THE WEALTHY, CORRUPTION AND ILLIBERAL POLITICS IN THE TRUMP ERA, (2022) 271-284. *But*, see Mickael Melki & Andrew Pickering. *Polarization and corruption in America*, 124 EUR. ECON. REV. (2020): 103, 397.(arguing that polarization could actually increase transparency but make voters care less about it)
[73] Conley et al. *supra* note 5; Mikkaela Salamatin, China's Belt and Road Initiative Is Reshaping Human Rights Norms, 53 VAND. J. TRANSNAT'L L. 1427 (2020). (detailing how Chinese economic investment is detrimental to human rights);
[74] E.g. *see* Nnaoke Ufere et al, *Merchants of corruption: How entrepreneurs manufacture and supply bribes*, 40 WORLD DEV. 12 (2012): 2440-2453. (using the term strategic corruption to describe the behavior of elite entrepreneurs and their relationship to the government in Nigeria.).
[75] Philip Zelikow et al, *The rise of strategic corruption*, 99 FOREIGN AFF. (2020): 107.
[76] STRATEGIC CORRUPTION, IN ENCYCLOPEDIA OF CORRUPTION (Louis de Sousa & Susan Corroado eds, forthcoming 2024)
[77] Zelikow *supra* note 75.

Recognizing that the economic openness of democracies places them at an elevated risk from strategic corruption, some leading U.S. think tanks sought a more robust policy response against this malign foreign influence.[78] Owing to the inclusion of persons that would later become leading figures of the Biden administration, these think tanks have influenced the formulation of policy responses to the rise of strategic corruption.[79] Broadly, these responses advocated for a whole-of-the-state approach to strategic corruption through its declaration as a national security threat – its securitization and a focus on foreign kleptocratic practices.

C. The securitization of corruption

1. Origins of the concept

That countries may use corruption across borders to exploit the vulnerability of an adversary or even an ally is known from the writings of classical Greek authors.[80] The association of corruption with the security of a state or polity from an external enemy has existed throughout history.[81] Improvements in corruption management have been associated with preparations for war[82] or a country's attempts to survive and protect itself

[78] Ahmed Salman et al., Making U.S. Foreign Policy Work Better for the Middle Class, Carnegie Endowment for World Peace (2020).; Nate Sibley and Ben Judah, Countering Global Kleptocracy: A New US Strategy for Fighting
Authoritarian Corruption, Kleptocracy Initiative, Hudson Institute (2021).; Alexander Cooley et al. *Paying for a World Class Affiliation Reputation Laundering in the University Sector of Open Societies*, National Endowment for Democracy https://www.ned.org/wp-content/uploads/2021/05/Reputation-Laundering-University-Sector-Open-Societies-Cooley-Prelec-Heathershaw-Mayne-May-2021.pdf; Larry Diamond, *Exposing the Kleptocrats: Ten steps to combat the mega-corruption that saps national wealth and smothers democracy*, 3 HOOVER DIGEST (2021): 19-27.; ABIGAIL BELLOWS, REGAINING U.S. GLOBAL LEADERSHIP ON ANTICORRUPTION, CARNEGIE ENDOWMENT FOR WORLD PEACE (2020).

[79] See Richard N. Haass, Think tanks and US foreign policy: a policy-makers perspective, 7 US Foreign Policy Agenda 3 (2002): 5-8.; James G. McGann, *The Fifth Estate: Think Tanks and American Foreign Policy*, 11 GEO. J. INT'L AFF. 35 (2010). (explaining the role and positioning of the think tanks in the formulation of U.S. foreign policy.

[80] RONALD KROEZE, ANTI-CORRUPTION IN HISTORY: FROM ANTIQUITY TO THE MODERN ERA (2017) 24.

[81] Generally, see: CARLO ALBERTO BRIOSCHI, CORRUPTION: A SHORT HISTORY (2017).

[82] See: Francis Fukuyama, *Democracy and the Quality of the State*, 24 J. OF DEMOCRACY (4), 5–16 (2013) (describing 19th-century Prussia as a case of anti-corruption for military means); William C. Jordan, *Anti-Corruption Campaigns in Thirteenth-Century Europe*, J. of Medieval History 35(2), 204–219 (2009) (explaining the anti-corruption campaign in 13th-century France as a quest for military preparation).

following or fearing a military defeat.[83] However, within the broader field of corruption studies that emerged in the 1990s, approaching corruption as a national security threat was not part of the dominant narrative. Authors writing in the field of security studies have framed corruption as a security threat, usually seeking to connect it to broader security threats such as organized crime and terrorism.[84] Criticized for conflating different threats coming from different sources[85] this approach did not become a dominant or influential way of thinking about corruption and the design of anti-corruption interventions. Studies focused on the few countries where corruption was declared a national security threat, such as Georgia[86] and Romania,[87] leaving the impacts of foreign kleptocracies in the Western democracies and explanations on how they shape the political landscape of that country relatively understudied.[88] In 1994, when corruption first entered the US National Security Strategy, the U.S. was among a handful of countries to recognize corruption as a national security threat – with the others that have recognized its weaponization potential such as Russia and China.[89]

Corruption first found its place in national security strategy in 1994, in the period when the consolidation of democracy and human rights in emerging democracies in Eastern Europe and Latin America elevated its importance.[90] During the Clinton administration, the fight against corruption also became important to the promotion of economic development through World Bank development programs,[91] the prevention of bribery of

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[83] James B. Helmer Jr & Robert Clark Neff Jr, *War Stories: A History of the Qui Tam Provisions of the False Claims Act, the 1986 Amendments to the False Claims Act, and Their Application in the United States ex rel. Gravitt v. General Electric Co. Litigation*, Ohio N.U.L. Rev. 18, 35 (1991); Metter F. Jensen, *Getting to Denmark–The Process of State Building, Establishing Rule of Law and Fighting Corruption in Denmark 1660–1900*, QoG Working Paper Series, 6–7 (2014) (explaining how Denmark sought to recover following war losses of territory in the 17th century).

[84] Louise Shelley, *The Unholy Trinity: Transnational Crime, Corruption, and Terrorism*, Brown J. World Aff. 11, 101 (2004).

[85] Peter Andreas, *Review of Louise Shelley, Dirty Entanglements*, Pol. Sci. Quarterly (2015).

[86] Alexander Kupatadze, *Explaining Georgia's Anti-Corruption Drive*, 21 Eur. Sec'y (1), 16–36 (2012).

[87] Valentin Stoian-Iordache, *A Rawlsian Approach to De-securitization*, Romanian Intelligence Studies Rev. 203, 19–20 (2016).

[88] SARAH CHAYES, THIEVES OF STATE: WHY CORRUPTION THREATENS GLOBAL SECURITY (2015).

[89] V. V. Moiseev et al., *Corruption in Russia—A Threat to National Security*, The European Proceedings of Social & Behavioural Sciences Conference (2018).

[90] The White House, A National Security Strategy of Engagement and Enlargement, National Security Strategy Archive, https://nssarchive.us/wp-content/uploads/2020/04/1994.pdf, (1994) 19-20.

[91] The White House, A National Security Strategy of Engagement and Enlargement, National Security Strategy Archive, https://nssarchive.us/wp-content/uploads/2020/04/1994.pdf, (1998) 28.

foreign officials[92] and transnational crime of drug traffickers.[93] By 2002, the five mentions of corruption in the National Security Strategy were confined to economic development, reducing the vulnerability of poor countries and promoting liberty.[94] National security strategies produced during the Obama administration would increase corruption's relevance, highlighting its corrosive effect[95] and promoting its treatment and regulation as a human rights violation.[96] Importantly, the 2015 National Security Strategy is the first where the transnational character of corruption is not linked only to transnational crime (a rhetorical maneuver from the strategies of the 1990s) but to the ability of foreign officials to conceive their illegally obtained gains.[97] In the 2017 National Security Strategy, corruption and the FCPA enforcement gained prominence, albeit as tools of economic security and business protection - recognizing the role that weaponized corruption has for China.[98] The Biden administration did not change that assertion but doubled down on its relevance and the relevance of other corruption-related topics by adopting the first United States Strategy on Countering Corruption, preceded by the Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest.[99]

The choice to pass a specific anti-corruption strategy is atypical for a country such as the U.S. Specialized anti-corruption strategies have been adopted mostly by less-developed countries or those that have sought to establish their reputation as places where the rule of law is not under pressure from leading political actors.[100] Furthermore, such strategies

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[92] *Id*. 30
[93] *Id*. 48
[94] The White House, The National Security Strategy of the United States of America, National Security Strategy Archive, https://nssarchive.us/wp-content/uploads/2020/04/2002.pdf, (2002). 17.
[95] *See* Nicole Bremner Casarez, Corruption, Corrosion, and Corporate Political Speech, 70 Neb. L. Rev. 689 (1991). 711-714. (discussing this metaphor in the context of Supreme Court decisions on political financing).
[96] The White House, The National Security Strategy of the United States, https://nssarchive.us/wp-content/uploads/2020/04/2010.pdf (2010). 38; The White House, The National Security Strategy of the United States of America, https://obamawhitehouse.archives.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf. (2015),
[97] *Id*. at 21.
[98] The White House, The National Security Strategy of the United States, The National Security Strategy Archive (2017) 38.
[99] Strategy *supra* note 13.
[100] See MARK PYMAN ET AL. ANALYSING THE ANTI-CORRUPTION APPROACHES OF THE 26 TOP-RANKED COUNTRIES, Also, see DAVID JACKSON, HOW CHANGE HAPPENS IN ANTI-CORRUPTION, 18-19. (detailing how, in the context

are focused on the jurisdictions in which they are adopted, unlike the U.S. Strategy, which is primarily focused outward. Out of its five pillars, two (Preserving and Strengthening the Multilateral Anti-Corruption Architecture and Improving Diplomatic Engagement and Leveraging Foreign Assistance) are, in their entirety, dedicated to the engagement with foreign partners or against foreign adversaries.[101] The remaining three (Modernizing, Coordinating, and Resourcing U.S. Efforts to Fight Corruption, Curbing Illicit Finance and Holding Corrupt Actors Accountable) speak of domestic regulatory and policy actions but also mainstream numerous foreign-oriented enforcement actions.[102] The primary focus of domestic actions is the legislative changes to the U.S. and global anti-money laundering regime, including changes to the corporate transparency and registers as well as a more holistic anti-corruption policy, meaning, essentially, more anti-corruption engagements that seek to exclude the corrupt actors from the Federal supply chain and the U.S. market.[103] Implicitly, the Strategy recognizes the role of corruption in the failure of state-building in Afghanistan recommending an assessment of corruption risk before provision of security related assistance to other countries.[104] The Strategy defines strategic corruption as a situation where the "government weaponizes corrupt practices as a tenet of its foreign policy.[105]" In September 2023, almost two years after the adoption of the Staretgy an implementation plan has been produced. Other than giving some deadlines for the activities planned by the Strategy it has introduced little novelty to the plan.

Important as they are, more than national security strategies are needed to guarantee a permanent focus of U.S. policies. Advocating for long overdue changes that would increase the capacity of the U.S. government to combat corruption, the strategy was also coupled with an interesting shift in discursive practices and a different foreign policy approach. This expansion and the current foreign policy orientation of the administration

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of United Kingdom, development agency influences other sectors of government to fight corruption effectively).

[101] Strategy supra note 13, 13-15.

[102] *Id.* 2-12. For example, the Strategy expects foreign partners to engage in the termination of citizenship by investment schemes or to work with the U.S. to prevent corporate tax evasion.

[103] *Id.* 9-12.

[104] *Id.* 37-38.

[105] *Id.* 6.

demonstrate that the securitization of transnational corruption is more than just a part of the general trend of declaring various important world developments as threatening to the national security of the US.[106]

2. Shift in discursive practices

Changes in policy focus, just as paradigm shifts often prompt changes in communication strategies and the reframing of policy problems.[107] The recent anti-corruption policies we examine here have increasingly used the term kleptocracy. According to Merriam–Webster's online dictionary, the word "kleptocracy" has been used in the English language since at least 1819, carrying a meaning still associated with it today; however, only in the second decade of the 21st century did its use in anti-corruption studies and anti-corruption policies and practices become frequent.[108] The publication of the book *Putin's Kleptocracy*[109] seems to have contributed to cementing the U.S. view that Russia's transition from communism to democracy in the 1990s represented a failed effort ending in a kleptocracy.[110] The main feature of this kleptocracy was the presence of oligarchs, a group of politically connected individuals close to the president who govern large sectors of the economy through state-owned enterprises (SOEs) or private companies.[111]

This does not mean kleptocracy was not recognized as threatening anti-corruption efforts[112] and national security. Rather, it means that kleptocratic practices were understood to be confined to the borders of developing states.[113] While corruption scandals rocked Italy and France in the 1990s, leading to numerous prosecutions, the

[106] Heath, *supra* note 17, 316–317.
[107] Dennis Chong & James N. Druckman, *Framing Theory*, 10 ANNUAL REV. OF POL. SCI. (1), 103–126 (2007).
[108] Merriam–Webster Dictionary: https://www.merriam-webster.com/.
[109] KAREN DAWISHA, PUTIN'S KLEPTOCRACY: WHO OWNS RUSSIA? (2015).
[110] Garry Kasparov, *Another Russia? Battling KGB Inc.*, 18 J. OF DEMOCRACY (2), 114–119 (2007).
[111] Generally, see: Mark Wu, *The China, Inc. Challenge to Global Trade Governance*, HARV. INT'L. L.J. 57, 216 (2016) (re: how weaponization of Chinese oligarchs threatens the world economy) and Jiangnan Zhu, *The Rise and Fall of Ruling Oligarchs: Fighting "Political Corruption" in China*, CHI. REV. 22(2), 49–79 (2022).
[112] Susan Rose-Ackerman, *Democracy and 'Grand' Corruption*, 48 INTL. SOC. SCI. J. (149), 365–380 (1996).
[113] Jens Christopher Andvig et al., *Corruption*, REV. OF CONTEMPORARY RESEARCH 41 (2001) (arguing that the term kleptocracy was used to describe the neo-patrimonial practices of governments in Francophone countries of Africa and in Haiti).

word kleptocracy was not applied to the corrupt governing practices uncovered in these investigations.[114] Instead, the label kleptocracy was applied to practices that were "leftover," or confined to a post-colonial[115] or recently transitioned state.[116] As such, kleptocracy was dealt with by law enforcement officials, taking actions, for example, to prevent kleptocrats' money laundering within the U.S., albeit often without much success.[117] These failures and the rise of initiatives to seize assets looted from developing countries have raised awareness of the significance of kleptocracy and asset recovery.[118] Still, none of the national security documents referred to in the previous section contains the term kleptocracy[119] or dekleptification. This word seems only to have been introduced into mass usage in 2022.[120]

Dekleptification has become a focal point of U.S. domestic and international efforts against corruption and malign cross-border influence.[121] Inspired by the Ukrainian concept of deoligarchization[122], a set of concerted efforts by the US government was undertaken, intended to eliminate the influence that Russian president Putin and the oligarchs have used against the sovereignty of Ukraine;[123] dekleptification is an umbrella

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[114] The Anti-Corruption Corpus Library, which has more than 7,000 indexed works on corruption kept by the NGO Global Integrity, contains only nine references to kleptocracy in the late 20th century. None refer to corrupt practices in Western democracies. See: https://library.globalintegrity.org/.

[115] Syed Farid Alatas, *The Post-Colonial State: Dual Functions in the Public Sphere,* HUMBOLDT J. OF SOC. REL. 23(1–2), 285–307 (1997).

[116] Bernard Black, Reinier Kraakman, & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong,* STAN. L. REV. 52, 1731 (1999).

[117] *Keeping foreign corruption out of the United States : four case histories : hearing before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs*, United States Senate, 111th Congress, second session, February 4, 2010. (extensively documenting the failures of U.S. law enforcement and the banking sector to prevent money laundering through real estate).

[118] Mark V. Vlasic & Greg Cooper, *Repatriating Justice: New Trends in Stolen Asset Recovery and Fighting Corruption*, 12 GEO. J. INT'L AFF. 98 (2011).

[119] In 2006, President George W. Bush released a statement on kleptocracy that has, despite the adoption of several strategic documents, remained without significant operationalization save for the identification of assets from developing countries. See: George W. Bush, President's Statement on Kleptocracy, The White House 10 (2008).

[120] Obama National Security Strategy 2010; National Security Strategy 2015; National Security Strategy 2017; https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf; National Security Strategy 11 (Oct 2022) at https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf.

[121] *United States Agency for International Development*, *Dekleptification Guide*, Sep 6, 2022, https://www.usa*Id*.gov/sites/default/files/2022-12/USAID_Dekleptification_Guide_FINAL.pdf.

[122] *Zelensky Wages War on Ukraine's Oligarchs*, Carnegie Endowment for International Peace, Aug 10, 2021. https://carnegiemoscow.org/commentary/85128

[123] USAID *supra* note 121 at 55–57.

term under which different anti-corruption and good governance reforms, as well as law enforcement actions, are located. Specifically, the Dekleptification Guide, released in September 2022, presents dekleptification as a political process taking place across different countries during auspicious timeframes representing "windows of opportunity" for change.[124] Based on the political analysis of corrupt networks in these processes, the Guide concludes that it is important to support the civil society actors who will, together with independent media, expose the corrupt networks and overthrow the kleptocracies.[125] While using examples of exceptionally ambitious anti-corruption reforms that have been (with much technical assistance) conducted in Ukraine since its 2014 revolution, the Dekleptification Guide offers little new in terms of anti-corruption engagement, with most of its arguments having been used before in the promotion of anti-corruption measures.[126] Its main standout feature is the expansion of the usage and framing of the term kleptocracy to different regimes that oppress citizens around the world standing in stark contrast from previous practices whereby the term was reserved for Francophone African countries.

3. *Foreign policy agenda*

Distinct political cultures of statecraft, historically present since the country's founding, shape the grand strategies of US foreign policy.[127] For this reason, to an academic or experienced practitioner who understands the many faces of corruption and its uses, current changes may appear as a policy focus;[128] this has happened with the changing of different US administrations—with such policy focus shifting from one administration to

[124] *Id*. at 30–40.
[125] *Id*.
[126] Cf. FLORENCIA GUERZOVICH, MARÍA SOLEDAD GATTONI & DAVE ALGOSO, *SEEING NEW OPPORTUNITIES: HOW GLOBAL ACTORS CAN BETTER SUPPORT ANTICORRUPTION REFORMERS*, OPEN SOCIETY FOUNDATION (2020) (offering the same argumentative framework for windows of opportunity as the USAID Dekleptification Guide) and the 2004 USAID Anticorruption Strategy https://pdf.usa*Id*.gov/pdf_docs/PDACA557.pdf at 29–31.
[127] MICHAEL CLARKE, AMERICAN GRAND STRATEGY AND NATIONAL SECURITY (2021).
[128] For example, see Janine R. Wedel, *Rethinking Corruption in an Age of Ambiguity*, ANN. REV. OF L. & SOC. SCI 8, 453–498 (2012); and Chayes, *supra* note 88, advocating for refocusing anti-corruption efforts toward the U.S.

the next.[129] For example, such was the case with President Clinton's declaration of organized crime as a national security threat in 1995 or with the declaration of AIDS as a national security threat by the George W. Bush administration.[130] Such policy refocusing makes foreign policy outreach even more important in establishing a common understanding of the changes in anti-corruption policies that the U.S. and its Western allies promote.

Anti-corruption has been a part of the U.S.'s efforts to support democratic and transparent societies, and this engagement has been proclaimed in the government's strategic documents and through the actions of all administrations from the beginning of this century.[131] Some U.S. policymakers advocating for the securitization of corruption have recognized that preventing kleptocracy might be a popular idea with an American audience not only in terms of its application abroad but also as a domestic political matter.[132] Money laundered from criminally obtained assets if used to acquire real estate – despite sometimes making little economic sense - may greatly increase the value of the neighboring real estate, thereby detrimentally affecting the purchasing power of citizens.[133] While the explanatory potential exists, as U.S. foreign policy shifts may sometimes resonate well with domestic constituencies,[134] it appears that the administration, the U.S. civil society, and the media largely ignore the opportunity to present achievements in curbing transnational kleptocracy to the domestic public.

Instead, most of the outreach targets the international audience. Beyond the high level of coordination between the E.U. and the U.S. in issuing sanctions and freezing the assets of

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[129] E.g., see the refocusing of intelligence policy between the Carter and Reagan administrations outlined in Loch Johnson, *Intelligence Policy in the Carter and Reagan Administrations: From Reform to Remission*, 16 SE. POL. REV. (1), 73–104 (1988).
[130] PETER ANDREAS & ETHAN NADELMANN, POLICING THE GLOBE (2008).
[131] See National Security Strategies, *supra* note 120. See USAID Anticorruption Strategy, *supra* note 126. See Derrick W. Brinkerhoff & Nicolas P. Kulibaba, *Identifying and Assessing Political Will or Anti-Corruption Efforts*, USAID's Implementing Policy Change Project Working Paper 13 (1999).
[132] Salman et al., *supra* note 78.
[133] Michel, *supra* note 49.
[134] *See* Anne van Aaken & Jurgen Kurtz, *Beyond Rational Choice: International Trade Law and the Behavioral Political Economy of Protectionism*, 22 J. INT'L ECON. L. 621-625 (2019). (arguing that President Trump's focus on foreign trade was primarily a rhetorical move that was to galvanize his support with the domestic constituency).

Russian individuals and the state, the U.S. invests in a high level of promotion of the anti-corruption agenda through international forums. The Summit of Democracy, a flagship initiative of the Biden administration; G7 meetings, conferences of anti-corruption practitioners, and other formal and informal events are focal points of the administration's efforts to diffuse this new understanding of corruption.[135] This is not surprising, as corruption and the fight against it may align countries toward shared values and goals,[136] leading them to cooperate in international regulation.[137] To such ends, administrations have enlisted help from global civil society and strongly supported international investigative journalism networks.[138] Such efforts help shape the narrative important to the dekleptification initiatives' success but also in the struggle against foreign influence and for global democratic renewal led by the U.S. and the proclaimed foreign policy for the middle class.[139]

D. The E.U as an anti-corruption actor

Together with the U.S., the E.U. remains the least corrupt region of the world. That doesn't mean that it was free from state capture. Judicial crackdowns on corruption in different member states are evidence of an ongoing battle against corrupt practices within the E.U.[140] The resignation of the European Commission in 1999, following corruption charges and the subsequent creation of the European Anti-Fraud Office, represent a watershed moment from which corruption would demonstrate its importance in European politics.[141] More recently, widespread Russian influence weaponized via support to right-wing populist movements, strategic energy policy, and organized crime

[135] E.g. see *Republic of Moldova—Summit for Democracy Written Statement*, Jan. 7, 2022, at https://www.state.gov/wp-content/uploads/2022/03/Moldova-Summit-for-Democracy-Commitments-Accessible-03112022.pdf (detailing the commitments made by the government of the corruption-besieged nation of Moldova at the latest installment of the Summit.)
[136] Sofia Wickberg, *Understanding Corruption in the Twenty-First Century: Towards a New Constructivist Research Agenda*, FRENCH POLITICS 19, 82–102 (2021).
[137] Cecily Rose, Corruption and Global Security, in Geiss and Melzer (Eds)., *Oxford Handbook of the International Law of Global Security* (2021).
[138] USAID Dekleptification Guide, *supra* note 121, 18-21.
[139] Joseph R. Biden Jr, *Why American Must Lead Again: Recusing US Foreign Policy after Trump*, 99 FOREIGN AFF., 64 (2020).
[140] Mendelski *supra* note 45; Veronique Pujas, *Les pouvoirs judiciaires dans la lutte contre la corruption politique en Espagne, en France et en Italie*. 44 DROIT ET SOCIÉTÉ (1), 41-60. (2000).
[141] ANDI HOXHAJ, THE E.U. ANTI-CORRUPTION Report (2021) 16-18.

networks allowed Russia significant leverage over high-level decision-making in central European states.[142] The recent Qatargate scandal, an attempt of Moroccan and Qatari institutions to influence the European Parliament via briberies, and the subsequent inability of the European institutions to agree on a set of effective measures addressing it evidence of the vulnerability of the European institutions to corrupt foreign influence.[143] Furthermore, the growing threat of money laundering from organized crime groups is particularly important in Europe as the strength of its economy makes it the most desirable destination for money laundering.[144]

The E.U. is an important foreign policy actor because of its economic strength and despite its inability to act as a security provider. For that reason, and because national security remains regulated primarily at the national state level, a genealogy of perceived corruption risks within the continent's national security documents, such as the one present in the United States, does not exist. Other important differences may also be observed; much of the discourse we find in the U.S. National Security Strategies, the E.U. places in the Economic Security strategy, and other strategic documents listed below. The discourse shifts towards kleptocracy may be observed in the resolutions of the European parliament that invoke kleptocracy as the reason for the retreat of democracies in different countries and the strengthening of oligarchs but is, compared to the U.S., less present.[145] This difference in framing does not entail a difference in the policy goals that the U.S. and the E.U. are pursuing. The role and significance of the E.U. as a global anti-corruption actor and a target for foreign influence resembles that of the U.S. Through the development aid it provides to the less developed countries, the E.U. and its member states aim to provide good governance and the funding and promotion of the rule of law and corruption prevention programs play an important role in that regard.[146] Corruption

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[142] Conley et al. *supra* note 5.
[143] Alberto Alemanno, *Qatargate: A Missed Opportunity to Reform the Union*, Verfassungsblog, Feb 2, 2023. https://verfassungsblog.de/qatargate-a-missed-opportunity-to-reform-the-union/
[144] Brigitte Unger, Improving anti-money laundering policy. European Parliament (2020).
[145] European Parliament, Corruption and Human Rights European Parliament recommendation of 17 February 2022 to the Council and the Vice President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning corruption and human rights (2021/2066(INI)) https://www.europarl.europa.eu/doceo/document/TA-9-2022-0042_EN.pdf. 8, 14.
[146] Mungiu – Pippidi *supra* note 36

prevention is crucial to the E.U. in ensuring the competitiveness of its companies within the E.U. single market.

Access to the E.U. market requires necessary compliance with regulations, such as supply chain and digital sphere regulations that give the E.U. important leverage in the global regulatory sphere.[147] As an anti-corruption promoter, the E.U. also directly conditions the countries of its neighborhood and the so-called candidate countries that have or will join the bloc with the rule of law standards that the E.U. negotiators embed in the strategic commitments that the countries make towards the bloc.[148] Still, many of the post-communist countries remain particularly vulnerable to corruption. The ongoing rule of law crisis triggered by the attempts of the Polish, Hungarian, and to a lesser extent, Romanian governments to curb the standards of judicial independence increased corruption risks within the bloc but also demonstrated separate degrees of commitment to the rule of law as one of the core values on which the Union is founded.[149] Only the series of judgments of the Court of Justice of the European Union (CJEU) limited the legislative efforts of national governments to curb judicial independence.[150] The E.U. adopted several instruments to strengthen the anti-corruption drive, including the creation of a European public prosecutor to investigate the fraud in the use of European funds.[151] But, the Union resisted the monitoring by the peer-review mechanisms and the leadership to tighten the oversight mechanisms controlling corruption.[152]

To address the problem of rising foreign influence spread via corruption and money laundering, the E.U. faces the obstacle to framing its approach in terms of national security as it lacks the competence to regulate this matter. Instead, following the approach taken in some member states, it has focused on economic security and preventing foreign interference. A series of different legislative acts, such as the European Democracy Action

[147] Bradford *supra* note 17.
[148] Mungiu – Pippidi *supra* note 36.
[149] Generally, see Laurent Pech & Kim Lane Scheppele, *Illiberalism within: rule of law backsliding in the EU*, 19 CAMBRIDGE YEARBOOK OF EUR. LEG. STUD. (2017): 3-47.
[150] Aida Torres Pérez, *From Portugal to Poland: The Court of Justice of the European Union as watchdog of judicial independence*. 27 MAASTRICHT J. OF EUR. AND COMP. L. (1) (2020), 105-119.
[151] But, see Fabio Giuffrida, The European Public Prosecutor's Office: King without Kingdom, CEPS Research Report 3.2017 (2017): 1-47.
[152] Hoxhaj *supra* note 141.

Plan[153], Anti-Coercion Instrument[154] Defense of Democracy Directive[155], the Directive on Combatting Corruption Through Criminal Law,[156] and the European Economic Security Strategy,[157] as well as European Parliament resolutions,[158] envisages new ways of addressing corrupt foreign influence and the revision of the E.U.'s money laundering framework. However, the commitments of many European governments towards enforcing laws on the European level remain confined to what they are prepared to do within their borders as they fear that stronger anti-corruption measures implemented by European institutions would weaken the national member states. Because of the spread of the anti-corruption measures adopted by different actors and in different contexts within the E.U. institutions and the national governments, the drive towards securitization is less clearly expressed than in the U.S., with few European countries considering explicitly addressing corruption in their national security documents.[159]

II. Legal and policy topics

The evolving approach to anti-corruption based on foreign interference and national security aspires to change global practices and domestic policies. The two leading regulatory jurisdictions of the world, the U.S. and the E.U., are currently attempting to address different challenges in developing regulations that may curb the rise of strategic

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[153] European Democracy Action Plan: making EU democracies stronger, European Commission (2020). https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250

[154] European Commission, Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from Economic Coercion by Third countries (8.12.2021) COM(2021) 775 final, 2021/0406 (COD).

[155] Currently, the Defense of Democracy package, despite being the most anticipated initiative of the European Commission, is still in the consultation phase and is not publicly available online.

[156] European Commission, Proposal for a Directive of The European Parliament And of The Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council COM/2023/234 final.

[157] European Commission, *supra* note 131.

[158] European Parliament, Resolution on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)); European Commission, 2022 State of the Union Address.

[159] See Mickaël Roumegoux Rouvelle & Christoph Kowalewski, *Strategic Corruption Is a Security Threat*, 49 SECURITY, Nov 30, 2022. https://fourninesecurity.de/2022/11/30/strategic-corruption-is-a-security-threat (calling for Germany to address strategic corruption as a national security threat in its strategic national security documents)

corruption. An overview presented in this chapter cannot encompass all such attempts[160] (between which there is a significant overlap) and may include some, such as foreign investment screening, that have only recently been thought of as (anti-)corruption tools[161] and exclude other such as the Global Initiative to Galvanize the Private Sector as Partners in Combating Corruption or corruption risk assessments for the security assistance that have not yet produced observable effects[162] or have been, for the time being at least, abandoned.[163] I aim to highlight the most critical policy areas while at the same time exposing significant legal obstacles and novelties that the regulation introduces.

A. Individual targeted sanctions

Traditionally, sanctions are a foreign policy tool through which the states express their economic statecraft. However, the rise of targeted sanctions and the recognized importance of transnational corruption gave rise to their usage as an anti-corruption tool. The sanctions dealt with in this chapter are those against individuals and their companies, not the Russian public sector or companies owned by the Russian state. As such, these sanctions are unilateral targeted sanctions developed at the beginning of the 21st century within the larger framework of the sanctions related to terrorist activities and human rights violations. A more systemic way of regulations came in the U.S. through the Magnitsky and Global Magnitsky Act and sanctions programs against individuals responsible for corruption.[164] From 2015, European countries, Canada, the UK and

[160] For example, tax evasion through tax havens is left from this overview even though it is essential as a part of the broader money laundering effort to conceal illicit wealth that may be used for weaponized, strategic corruption. The reason for its exclusion is that many of the important policies relevant to this topic are treated in the discussion on money laundering and because the discussion on tax evasion opens up many different questions that fall into the domain of international tax law and are outside of the scope of this paper.
[161] Strategy *supra* note 12 at 11.
[162] *Id.* at 30.
[163] The corruption risk assessments have not been adequately included in the security assistance provided for Ukraine. See *A Loud G.O.P. Minority Pledges to Make Trouble on Ukraine Military Aid*, NYTimes, May 13, 2023 https://www.nytimes.com/2023/05/19/us/politics/ukraine-republican-skeptics.html. The revision of domestic criminal laws, referred to in the Strategy under 3.2.
[164] The Magnitsky Act, adopted in 2012 was to punish those responsible for death of Sergey Magnitsky, a Russian tax lawyer. The Global Magnitsky Act, passed in 2017, was to build on the existing country-specific corruption sanctions programme in Venezuela and African countries expanding it to other countries of the

others joined the U.S. in sanctioning those accused of corruption; however, the E.U. did not create a corruption sanctions regime but used the European Council's decisions within the common foreign and security policy framework (CFSP).[165]

Sanctions adopted in the E.U. and the U.S. based on the Magnitsky acts and the decisions of the European Council aimed to identify and punish those alleged to have been involved in the corrupt acts, some of whom, in the case of Ukrainian nationals, were found to be responsible for corruption before a court of law or were involved in the destabilization of the country.[166] The Global Magnitsky Act allows the U.S. President to sanction any foreign individual involved in "acts of significant corruption", while the E.U.'s sanctioning decisions similarly suffer from broad grounds for designation.[167] With the sanctions adopted in 2022 this punitive dimension is less pronounced; the sanctions are also to prevent corrupt influence on the politics of Western countries and their economy. Directly, these sanctions consist of travel bans and asset freezes; indirectly, their effect is also extraterritorial, consisting of limited access to the global financial system and services that directly depend on it.

1. Designation of individuals

Among the many legal instruments globally used against corrupt individuals and their companies, the most publicly accessible is the list of individuals and companies designated by the U.S. Department of Treasury as corrupt.[168] These designations are diverse in terms of the content of the information provided to the public to explain how a

world. See Tom Firestone & Kerry Contini, The Global Magnitsky Act (2018) 29 Crim. L. Forum 617 <http://dx.doi.org/10.1007/s10609-018-9353-z>

[165] Tom Ruys, The European Union Global Human Rights Sanctions Regime (EUGHRSR)" (2021) 60 ILM 298

[166] E.g. see Celia Challet. 2020. Reflections on Judicial Review of EU Sanctions Following the Crisis in Ukraine by the Court of Justice of the European Union, 3-4.

[167] "EUS0001 - Evidence on The Legality of the EU Sanctions Process" (*Parliament.uk*) <https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/the-legality-of-the-eu-sanctions-process/written/41026.html> accessed October 23, 2023, para 9-14.

[168] "Consolidated Sanctions List (Non-SDN Lists)" (*Office of Foreign Assets Control | U.S. Department of the Treasury*) <https://home.treasury.gov/policy-issues/financial-sanctions/consolidated-sanctions-list-non-sdn-lists> accessed October 16, 2023

designation of corrupt has been made of the individuals on the list versus those who are not. For discussion herein, it is important to note that the distinction does not seem to lie in the origin of the wealth but rather in the assessment of national security operatives. Many such designations are without any doubt; for example, it is clear that oligarch Oleg Deripaska was a tool of the Kremlin's regime as evidenced by his bribing of F.B.I. agents[169], the attempts at controlling governments in Ukraine[170] and Montenegro[171] and interference in the U.S. elections.[172]

Still, the distinctions between targeting some oligarchs, such as Roman Abramovich, and excluding others, such as Len Blavatnik, are less clear.[173] Both men made their fortunes in the energy sector of post-Soviet Russia during the transition from communism to capitalism that marked the 1990s in the former Soviet Union and much of Eastern Europe.[174] Blavatnik distanced himself from the Kremlin and conducted a whitewashing campaign to elevate his reputation, but Abramovich remained connected to this seat of power.[175] That also explains the absence on the list of US domestic actors frequently associated with the Kremlin through the building of corrupt networks in the late 1990s.[176] If left unexplained, such a discrepancy may lead to the speculation that an individual's relationship to power matters more than the kleptocratic nature of their enrichment and that whitewashing practices may clean some or all of their previous business ties.[177]

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[169] "Former Special Agent in Charge of the New York FBI Counterintelligence Division Charged with Violating U.S. Sanctions on Russia" (*Justice.gov*, January 23, 2023) <https://www.justice.gov/usao-sdny/pr/former-special-agent-charge-new-york-fbi-counterintelligence-division-charged-violating> accessed October 17, 2023

[170] "Oleg Deripaska and His Business Empire: Security Risks for Ukraine" (*Jamestown*, October 24, 2019) <https://jamestown.org/program/oleg-deripaska-and-his-business-empire-security-risks-for-ukraine/> accessed October 17, 2023

[171] Conley et al. *supra* note 5 at 34.

[172] U.S. Department of Justice, Report on the Investigation into Russian Interference in the 2016 Presidential Election (2019), 1:131.

[173] "Oxford Energy Comment" (*Oxfordenergy.org*) <https://oxfordenergy.org/wpcms/wp-content/uploads/2011/11/BP-Russian-billionaires-and-the-Kremlin.pdf> accessed October 17, 2023, 5-7. (for a differentiation between Blavatnik and other Russian oligarchs)

[174] Stanislav Men'shikov, Our Capitalism: Between Oligarchic and Bureaucratic, (2005) 43 Russian politics and law 22 <http://dx.doi.org/10.2753/rup1061-1940430602>

[175] "From Russian Oil to Rock'n'roll: The Rise of Len Blavatnik" Financial Times (June 6, 2019) <https://www.ft.com/content/c1889f48-871a-11e9-a028-86cea8523dc2> accessed October 22, 2023.

[176] Janine Wedel. "Tainted transactions: Harvard, the Chubais clan and Russia's ruin." *The National Interest* 59 (2000): 23-34.

[177] Cooley et al. *supra* note 67, 29.

Circumstantial evidence from other jurisdictions where the U.S. wielded its designations of individuals as corrupt testifies that many of these individuals maintain a surprisingly close relationship with the officials of the U.S. government. For example, in Southeastern Europe, the sanctioned in at least three jurisdictions have met with American diplomats[178] or have done business with U.S. companies with full knowledge of U.S. authorities.[179] Thus, those sanctioned by the U.S. Treasury (with the involvement of the DoJ) do not necessarily become less relevant political actors on the ground. Those who met with Vladimir Putin on February 24, 2022 (the day of aggression) may become sanctioned on that basis, although the General Court of the E.U. in the *Shulgin* case found that this criterion is insufficient for inclusion on the list as it is unclear whether they represent a part of Vladimir Putin's inner circle of oligarchs.[180] The court's reasoning leads to a conclusion that the sanctions are not to be understood as punitive but rather as a tool to influence the behavior of the sanctioned, i.e., their distancing from the regime.[181]

2. Compliance with sanctions

While the primary effect of sanctions is the freezing and, in some instances, seizure of property, the secondary effects of the sanctions that come with the reputational considerations of many of the actors involved in global economic life, such as the maritime shipping industry or the banks render the financial and personal lives of the sanctioned individuals difficult.[182] The embeddedness of sanctions in the daily operations of compliance offices in banks and other financial institutions makes them the socio-

[178] Ismet Fatih Čančar, "The Fallacy of US and EU Policy in the Western Balkans" (Just Security, March 17, 2023) <https://www.justsecurity.org/85510/the-fallacy-of-us-and-eu-policy-in-the-western-balkans/> accessed October 17, 2023
[179] (Balkaninsight.com) <https://balkaninsight.com/2022/08/08/bangs-for-bucks-serbian-arms-dealer-makes-mockery-of-us-sanctions-again/> accessed October 17, 2023
[180] EU General Court Judgment T-364/22 of September 6 2023, para 62-68.
[181] Id. para. 112-116.
[182] Tom Ruys & Cedric Ryngaert, "Secondary Sanctions: A Weapon out of Control? The International Legality of and European Responses to US Secondary Sanctions" [2020] British Ybook of Intl. L. http://dx.doi.org/10.1093/bybil/braa007 6.

technical basis of compliance, with the compliance and ethics officers of banks being the force behind the enforcement of the sanctions.[183]

Traditionally, the E.U. was more skeptical about using unilateral targeted sanctions against corrupt individuals due to their extraterritorial effect.[184] The skepticism dates back to the 1980s when the U.S. applied sanctions with extraterritorial effect to prevent the construction of a pipeline in the Soviet Union in which European companies were to play a significant part.[185] The gradual acceptance of extraterritoriality came from the realization that the sanctions against individuals who are a core constituency of the regime and the supporters of its influencing and destabilizing operations may be more effective than sanctions against the state.[186] Courts in European countries accept the U.S. sanctions as a valid reason for the nonperformance of contracts with entities registered in sanctioned jurisdictions.[187] Still, the different understandings of the extraterritoriality between the two jurisdictions persist.[188] In the U.S., courts and regulators interpret the extraterritoriality of statutes in matters of sanctions and their effects more broadly, limited only by the statute's focus.[189] Using the U.S. dollar in transactions—under the practice of U.S. regulators and courts—creates a jurisdictional nexus, allowing for the prosecution of those in breach of sanctions.[190] This is why the enforcement of sanctions becomes not the work of the courts but of the private sector, particularly banks, that play

[183] Grégoire Mallard & Anna Hanson, Embedded Extraterritoriality US Judicial Litigation and the Global Banking Surveillance of Digital Money Flows" in Charlotte Beaucillon (ed), *Research Handbook On Unilateral And Secondary Sanctions* (2021) 272–274.
[184] Julia Schmidt ,The Legality of Unilateral Extra-Territorial Sanctions under International Law (2022) 27 J. OF CONFLICT AND SECURITY L. 53 http://dx.doi.org/10.1093/jcsl/krac005, 68.
[185] European Communities: Comments on the US Regulations Concerning Trade with the USSR (1982) 21 ILM 891.
[186] Emma Ashford, "Not-so-smart sanctions: the failure of Western restrictions against Russia", 95 Foreign Aff. (2016): 114-123. (explaining the ineffectiveness of sanctions against the Russian state).
[187] Daniel Ventura, "Contemporary Blocking Statutes and Regulations in the Face of Unilateral and Extraterritorial Sanctions", in Charlotte Beaucillon (Ed), *Research Handbook On Unilateral And Secondary Sanctions* (2021) 229.
[188] Joanne Scott, "Extraterritoriality and Territorial Extension in EU Law" (2014) 62 AM.J. OF COMP. L. 87 <http://dx.doi.org/10.5131/ajcl.2013.0009>, 87–126.
[189] Nedim Hogic, The International Law And Politics Of The Trump Administration's Iran Policy, 10 PENN. ST. J.L. & INT'L AFF. 59 (2022).78-79.
[190] Susan Emmenegger, Extraterritorial Economic Sanctions and Their Foundation in International Law", ARIZ. J. OF INTL/ & COMP. L. 33, 631 (2016).

a key role in monitoring and reporting of suspicious transactions.[191] Such extraterritorial reach of the secondary sanctions results in overcompliance, as physical and legal entities, both those designated under U.S. sanctions and those with strong exposure to the U.S. market, suffer reputational loss and additional sanctions in the case of potential noncompliance.[192] In *Bank Melli*[193], the C.J.E.U. has left the matter of interpretation of the E.U. Blocking Statute passed in 1996 and updated in 2018 to make compliance with the U.S. sanctions against legal entities from a third state to the national courts. German and Finnish courts have recognized the fear of retaliation from the U.S. regulators and risks of exposure to the foreign financial market as legitimate grounds for the banks to refuse to do business with clients.[194] But even if the European courts and regulators become friendlier to those looking to challenge the sanctions, their eventual suspension would not resolve the overcompliance issues—as the problems arising from overcompliance of the banking sector with the Financial Action Task Force recommendations demonstrate.[195] The latest round of sanctions against Russian and Ukrainian oligarchs demonstrates that the E.U. has become more accepting of the extraterritorial effect of the sanctions. As Ruys and Silvestre observe, the E.U. formally remains committed to the non-extraterritorial reach of sanctions. Yet, practice demonstrates that the Union has expanded the measures against third-country nationals and companies that seek to help evade sanctions.[196]

3. Judicial Review of individual targeted sanctions

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[191] Jesse Van Genugten, Conscripting the Global Banking Sector: Assessing the Importance and Impact of Private Policing in the Enforcement of U.S. Economic Sanctions, 18 BERKELEY BUS. L.J. 136 (2021).
[192] Emanuelle Breen, Corporations and US Economic Sanctions: The Dangers of Overcompliance, in *Research Handbook on Unilateral and Extraterritorial Sanctions*. (2021). 256, 269.
[193] Judgment of the Court (Grand Chamber), 21 December 2021, Case C-124/20, Bank Melli Iran.
[194] Ivan Tkachev, Ten Things the Rotenberg Case Tells Us about Sanctions" (*Riddle Russia*, January 23, 2020) <https://ridl.io/ten-things-the-rotenberg-case-tells-us-about-sanctions/> accessed October 17, 2023
[195] The overcompliance can lead to outcomes that subvert the original meaning of individual targeted sanctions and expand their application, usually to the more vulnerable and poorer members of society in third-world countries.
[196] Tom Ruys & Rodriguez Silvestre F., "Secondary Sanctions After Russia's Invasion Of Ukraine – A Whole New World?" in Tom Ruys, Cedric Ryngaert C. & Rodriguez Silvestre F. (eds.), The Cambridge Handbook of Secondary Sanctions and International Law (Cambridge University Press, 2024)

The blanket norms of targeted sanctions adopted by the United Nations in the aftermath of 9/11 and the fight against terrorism led the E.U. courts have developed a rich jurisprudence of sanctions review.[197] This jurisprudence has negated the assumption of courts as lacking the expertise to engage in matters of national security and foreign affairs making also, for example, in the famous *Kadi* judgment,[198] defining contributions to the international status of the EU itself.[199] The *Kadi*-inspired jurisprudence affirmed a stronger judicial review that guarantees a right to be heard regardless of the possible legality of the decision in another, non-European international legal order.[200] As the courts previous jurisprudential stances were formed mostly in the context of the Syrian and Iranian organizations[201] and nationals and their support to regimes in these countries a change in jurisprudence was necessary. Challenges that the cases of oligarchs connected to the Kremlin, whose economic footprint is deeply embedded in the European economies,[202] illustrate a need for a doctrinal refocusing. This review will be crucial for the further application of sanctions by the E.U. as the alternative legal options, such as the ombudsperson's mechanisms proposed as a resolution to the human rights protection issues related to individual targeted sanctions lack the independence needed to ensure due process standards.[203]

A review of C.J.E.U. and the General Court's jurisprudence and its impact reveal that the sanctioned individuals rarely manage to strike down the designation but that the court decisions reviewing the sanctions impact the E.U.'s policy.[204] In *Rotenberg*, the C.J.E.U.

[197] Elena Chachko, Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence, 44 YALE J. INT'L L. 1 (2019) 37-39.
[198] Yassin Abdullah Kadi & Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities (2008) ECR I-6351.
[199] Generally, see Grainne de Búrca.The European Court of Justice and the International Legal Order after Kadi," *Challenges in International Human Rights Law* (2017)
[200] Erika de Wet, "From Kadi to Nada: Judicial Techniques Favouring Human Rights over United Nations Security Council Sanctions" (2013) 12 CHI. J. OF INTL. L.
787<http://dx.doi.org/10.1093/chinesejil/jmt034>
793-797.
[201] Chachko, *supra note* 197, 29-33.
[202] Mungiu – Pippidi *supra* note 44 204 - 224.
[203] Eirik Bjorge. Unilateral and Extraterritorial Sanctions Symposium: The Human Rights Dimension of Unilateral Sanctions, (*Opinio Juris*, March 3, 2022) <https://opiniojuris.org/2022/03/03/unilateral-and-extraterritorial-sanctions-symposium-the-human-rights-dimension-of-unilateral-sanctions/> accessed October 20, 2023
[204] Chachko *supra* note 197.

has reviewed the sanctions against the Rotenberg brothers, Russian oligarchs alleged to have controlled the company that constructed the bridge between Russian-occupied Crimea and Russian mainland.[205] This was one of the few cases where the sanctions were annulled as the C.J.E.U. found insufficient evidence that the Rotenbergs were in control of the said company. More importantly, the Court found that ". In the *Stavitskyi* case, one of the cases in which the sanctioning of a Ukrainian national was reviewed, the Court struck down the decision, finding that the evidence of the applicant's misappropriation of public funds submitted by the Ukrainian officials was insufficient and that he was cleared of charges before the courts in Ukraine.[206] These two decisions significantly limit the vast authority of the European Council and give courts standards to review sanctions imposed on individuals with alleged ties to corruption. Still, the length of the procedures concerning the sanctions means that a decision on which the challenged sanctioning is based expires while the next one with the same content is adopted.

In September 2023, the EU General Court released seven decisions on sanctioned individuals.[207] In these decisions, the Court offered a more nuanced analysis reaffirming the wide margin of appreciation by the Council.[208] Departing from the approach in *Rotenberg*, the court narrowed down the grounds for de-listing, finding that in addition to the criterion for designation described above, the company's control is not crucial for the designation on the sanctions list. Following the decision in *Shulgin*, the Council itself delisted him and two other individuals, realizing that their cases for their listing would

[205] General Court, 30 November 2016, Rotenberg v. Council, T-720/14.
[206] General Court, 30 January 2019, Stavytskyi v. Council, T-290/17. Note, however, that for reasons of confidentiality, key passages of the judgment had been blackened by the Court and cannot, as such, be reviewed.
[207] Judgement of 6 September 2023, Shulgin v Council, T-364/22, EU:T:2023:503; Judgement of 6 September 2023, Timchenko v Council, T-361/22, EU:T:2023:502; Judgement of 6 September 2023, Khudaverdyan v Council, T-335/22, EU:T:2023:500; Judgement of 6 September 2023, Pumpyanskiy v Council, T-291/22,EU:T:2023:499; Judgement of 6 September 2023, Pumpyanskaya v Council, T-272/22,:EU:T:2023:491; Judgement of 6 September 2023, Pumpyanskiy v Council, T-270/22, EU:T:2023:490; Judgement of 6 September 2023, Timchenko v Council, T-252/22, EU:T:2023:496.
[208] Celia Challet. "The Impact of the Adjudication of Sanctions against Russia before the Court of Justice of the EU." In Fabienne Bossuyt & Peter Van Elsuwege (eds.), *Principled Pragmatism in Practice*. (2021).125, 127.

not survive judicial scrutiny.[209] Around sixty decisions remain pending, among them important cases such as the application of Roman Abramovich.

In stark contrast to this, the judicial review of individual targeted sanctions in the U.S. remains limited to a handful of cases where the protection afforded by the U.S. Constitution was granted due to the specific ties the designated individuals and entities had with the U.S.[210] In most cases, the individuals lack a specific tie to the U.S., making their challenge of the sanctions reliant on the Administrative Procedure Act.[211]

B. Asset freezing and money laundering prevention

1. Asset freezing

Although money laundering in the EU and the US is less likely than in most other countries,[212] it remains a crucial element of worldwide money laundering operations.[213] Following the Russian aggression against Ukraine, the US and its European and NATO allies coordinated their efforts in sanctioning the Russian state but also sanctioning the individuals considered to be a part of the kleptocratic network supportive of Putin's regime. The EU, Canada, and New Zealand all maintain their list of designated individuals that do not necessarily correspond to the names on the lists adopted by the U.S.[214] Still, the actions against the property owned by the oligarchs have been well prepared and coordinated.[215] Rough estimates project the total economic loss to their property and

[209] "EU to Cease Sanctions against Three Russian Businessmen This Week, Sources Say" *Reuters* (September 12, 2023) <https://www.reuters.com/world/europe/eu-cease-sanctions-against-three-russian-businessmen-this-week-sources-2023-09-12/> accessed October 20, 2023
[210] Elena Chachko. Due Process Is in the Details: U.S. Targeted Economic Sanctions and International Human Rights Law" (2019) 113 AJIL Unbound 157 <http://dx.doi.org/10.1017/aju.2019.25>
[211] *Id*.
[212] Generally, see Basel Anti-Money Laundering Index (2022), at https://baselgovernance.org/publications/basel-aml-index-2022. (ranking the countries based on the accessibility of money laundering).
[213] *Financial Secrecy Index*, Tax Justice Network (2022).
[214] Generally, see Russia Sanctions Database, Atlantic Council https://www.atlanticcouncil.org/blogs/econographics/russia-sanctions-database/
[215] Treasury, Russian Elites, Proxies, and Oligarchs Task Force Joint Statement (Jun 29, 2022), at https://home.treasury.gov/news/press-releases/jy0839.

businesses at 95 billion dollars.[216] Ukraine's government and some scholars have argued that the oligarchs' frozen assets should be used to reconstruct Ukraine.[217] As a country that is a victim of Russian aggression, Ukraine increasingly demands that the Russian state's and the oligarch's frozen assets serve to reconstruct the country devastated by war. While the earlier precedents support the freezing and usage of assets of Russian state[218] and represent, as such, more of a matter of political will than a legal problem, the situation with the frozen assets is more complex.

The decision to confiscate the assets of the oligarchs solely on the basis of their close connection to the regime would not be legal - the limit of liability for the acts of aggression rests with those private individuals that exercise effective control over the armed forces, something that the oligarchs lack.[219] To obtain a criminal conviction, the oligarchs are not - if we exclude the aforementioned case of Deripaska's bribing of U.S. federal agents - tried for the acts perpetrated in supporting the Russian aggression against Ukraine or other acts of the Kremlin. Rather, the legal strategies that the Department of Justice has opted for in confiscating their assets are indirect. Maintenance of a U.S.-produced plane outside U.S. borders or maintenance of real estate is considered a breach of sanctions, thereby triggering criminal responsibility.[220] But even such actions have been brought against very few oligarchs, making criminal forfeiture a less likely avenue the U.S. government uses.[221] The E.U. member states have not used criminal forfeiture as there are no convictions or proof of direct involvement in international terrorism or war crimes on which to base the forfeiture.[222] As many of its member states consider civil forfeiture controversial allowed only in cases where a specific link to the country that is seizing the

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[216] *The Guardian supra* note 4.
[217] *Funding Ukraine's Recovery with Russian Riches Causes Legal Headache, Politico*, Jul 5, 2022, at https://www.politico.eu/article/funding-ukraines-recovery-with-russian-riches-raises-legal-headache/.
[218] Anton Moiseienko, *Frozen Russian Assets and the Reconstruction of Ukraine: Legal Options*, https://ssrn.com/abstract=4149158 or http://dx.doi.org/10.2139/ssrn.4149158, 20-23.
[219] Nikola R. Hajdin, *Responsibility of Private Individuals for Complicity in a War of Aggression*, AM. J. OF INTL. L. 116, 788–797 (2022).
[220] *Id.* at 11.
[221] Stefan D. Cassella, *Yachts and Airplanes: What Procedures and Legal Theories Are Being Used to Forfeit Russian Assets in the United States?* 4 EUCrim(2022), 273-278. (explaining that the criminal convictions against oligarchs have come due to their attempt to violate the sanctions).
[222] Options paper by the European Commission on the use of frozen assets to support Ukraine's reconstruction, Nov 19, 2022., 4.

assets exists,[223] they didn't seize any property owned by the oligarchs. Instead, their actions stopped at freezing the property, meaning taking control of it and blocking all transactions by its owners.

2. Corporate transparency

The networks of anonymous shell companies enable money laundering as they prevent the determination of beneficial ownership and effective taxation. The U.S., the E.U., and many other jurisdictions have recently adopted legislative changes that would reveal the real ownership structures, thereby limiting their effectiveness in hiding wealth. The Corporate Transparency Act[224] in the U.S. and the E.U.'s Fifth Anti-Money Laundering Directive[225] have increased transparency demands by increasing the reporting obligations for the financial and legal sectors, thus enabling the journalists more access to data. Important information leaks on global tax evasion and money laundering processed by investigative journalism has demonstrated its worth for global anti-corruption prevention.[226]

However, the question of protection of privacy and family life that the transparency of corporate registers may violate was raised before the C.J.E.U. that struck down the provisions on beneficial ownership in the Fifth Anti-Money Laundering Directive.[227] It cited privacy and safety concerns that revealing wealth could have on private individuals and – balancing the demands of transparency with those of privacy – found that the commercial registries that hold the data for business owners should remain closed to the

[223] *Id.*
[224] Corporate Transparency Act of 2019, H.R. 2513.
[225] Directive 2018/843/EU of the European Parliament and of the Council of 30 May 2018 amending Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L 156/43
[226] *The Panama Papers: Exposing The Rogue Offshore Finance Industry, International Consortium of Investigative Journalists*, https://www.icij.org/investigations/panama-papers/
[227] W. M. & Sovim S. A. v. Luxembourg Business Registers, *Judgment* of Nov. 22, 2022.

public.[228] The Court did not exercise a nuanced analysis that would have allowed certain elements of the registry to be available to the public, striking instead the entire transparency requirement.[229] The Court left the matter of a more nuanced analysis to the European Commission, arguing that it should consider defining a legitimate interest of access to the register that would allow the CSOs and investigative journalists access the register.[230] Such a course of action does not seem very likely to resolve the problem and further cases in which the challenge of legitimacy of interests of different elements of the public will appear.[231] In the aftermath of the decision, several European jurisdictions have immediately launched actions to close the business registries from the public, meaning that the beneficial ownership data will remain fully accessible only to law enforcement officials.[232]

3. The enablers of money laundering

But corporate transparency alone is not enough. The final obstacle before law enforcement is the standards of work of the so-called professional enablers of money laundering, the individuals that use their professional expertise in financial and legal matters to help others evade taxes, conduct illicit transactions, and launder money.[233] In most European jurisdictions, this problem does not represent a significant policy issue as the professional associations of lawyers do not view the imposition as violating their rights and the courts' stance is that the limitation of the privilege is allowed in important instances.[234] The issue is much more contentious in the U.S. owing to the different (and significantly larger) scope of the attorney–client privilege that includes a broader

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[228] Katerina Pantazatou, *A Never-Ending Battle Between Privacy and Transparency: The Case of Registers of Beneficial Ownership Before the CJEU*, 32 EC Tax Review 3 (2023).
[229] Judgment supra note 169, para. 72-75.
[230] *Id.*
[231] See Pantazatou *supra* note 170 at 14-15.
[232] *Transparency vs privacy: The CJEU beneficial ownership ruling*, Lexology, Mar 10, 2023. https://www.lexology.com/library/detail.aspx?g=8bcde3e9-fafa-4270-ba72-adf3ebb6a299
[233] Generally, see Michael Levi, *Lawyers as money laundering enablers? An evolving and contentious relationship*, 23 Glob. Crime 2 (2022): 126-147.
[234] *Reporting Obligations for Attorneys in Money Laundering Cases: Attorney-Client Privilege Under Pressure*, GER. L.J. 7-8. (2023). (noting that the European Court of Human Rights has downsized the attorney–client privilege, finding that the protection of private and family life may be limited in the interest of law enforcement).

understanding of confidentiality. House of Representatives adopted the Establishing New Authorities for Business Laundering and Enabling Risks to Security[235] (ENABLERS Act), a proposal that was to expand the anti-money laundering reporting requirements from banks to professional enablers, such as lawyers and financial advisors, while the U.S. Senate rejected it, after strong lobbying by the small businesses and the American Bar Association (ABA).[236] As of October 2023, the new regulation of enablers remains unadopted despite attempts at reconciliation of the different viewpoints of the ABA with that of the administration.

C. Election interference

1. Defining interference

Interference in national elections is a violation of the affected country's sovereignty as it leads to the violation of the people's right to self-determination.[237] As I observed earlier, the practice inspired anti-corruption legislation such as the FCPA that would originate in the U.S. and later become the backbone of global anti-corruption regulation.[238] Yet, it is unclear whether such practice is illegal under international law, as influencing elections and electoral outcomes has been a common practice of both democracies and autocracies.[239] The practices, however, have differed; democracies have focused more on capacity building through, for example, work with the political parties and non-governmental organizations that act as watchdogs and awareness-raising institutions.[240] In contrast, autocracies have focused more on shaping the direct outcomes of elections.[241] Recently, there has been a surge in the number of international political operatives that

[235] H.R.5525 — 117th Congress (2021-2022)
[236] *US Senate Blocks Major Anti-Money Laundering Bill, the Enablers Act, International Consortium of Investigative Journalists*, Dec. 16, 2022, at https://www.icij.org/investigations/pandora-papers/us-senate-blocks-major-anti-money-laundering-bill-the-enablers-act/.
[237] JENS DAVID OHLIN, ELECTION INTERFERENCE (2020).
[238] See Rose *supra* note 40 and Katzarova *supra* note 45.
[239] Tom Ginsburg, *How Authoritarians Use International Law*. 31 J. of Dem'cy, (4), 44, 54.
[240] LORNE W. CRANER & KENNETH WOLLACK, NEW DIRECTIONS FOR DEMOCRACY PROMOTION (2008) 7-9 (detailing the direction for work of the International Republican Institute and the National Democratic Institute).
[241] Ohlin *supra* note 223 at 118; Ginsburg *supra* note 225 at 49.

claim expertise in electoral support through the distribution of private data and illegal surveillance techniques.[242]

The prevention of such interference has not traditionally been part of the anti-corruption repertoire, but as interference often relies on illicit funding,[243] the misuse of public funds, or the mainstreaming of foreign investments to favor electoral outcomes,[244] it is increasingly considered as such. The greatest challenge to preventing transnational political influence is preventing funding or other means of support through untraceable political spending that may come from foreign sources.[245] On the one hand, the narrower basis for spending regulation in Citizens United's aftermath allows modern companies an almost limitless array of options for channeling funding for a party or a candidate. On the other hand, technological advances have made spending resources on a candidate's political presence online equally important in terms of direct funding vehicles used for campaign financing.[246] Across the board, there seems to be a silent consensus in the U.S. that dark money – usually referring to untraceable corporate donations – will remain a part of the campaign.[247] More effort has been made against the companies that allegedly engage in surveillance of political opponents worldwide. They have been barred from doing business in the U.S. and the E.U. has launched parliamentary inquiries aiming to reveal the beneficiaries of such behavior.

2. Specific E.U. challenges in preventing illicit party funding

A significant difference in approach to campaign financing exists between the E.U. and the U.S. and within the E.U. itself. The caps on the amount of spending for the E.U. based

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[242] Revealed: The Hacking and Disinformation team Meddling in Elections, The Guardian, Feb 14, 2023, www.theguardian.com/world/2023/feb/15/revealed-disinformation-team-jorge-claim-meddling-elections-tal-hanan

[243] The scandals in Italy and Austria where foreign influence was to be used to fund campaigns or buy advertising space in the papers testifies to this.

[244] Strategy, supra note 13 at 7.

[245] Ciara Torres-Spelliscy, *Dark Money as a Political Sovereignty Problem*, 28 KING'S L.J. (2), 239–261 (2017).

[246] IAN VANDEWALKER, GETTING FOREIGN FUNDS OUT OF AMERICA'S ELECTIONS (2018).

[247] *Democrats Decried Dark Money. Then They Won With It in 2020*, The NY Times, Jan 29, 2022, www.nytimes.com/2022/01/29/us/politics/democrats-dark-money-donors.html

donors and state subsidies make the effect of private money on the electoral campaigns less pronounced in the E.U.[248] Nevertheless, compared to the U.S., the E.U. and many of its member states need to be more transparent in party financing. Many member states allow foreign contributions, but the reliance on public funding of the parties in the EU context makes the E.U. political system less dependent on private and foreign contributions.[249]

The diversity of European legislative solutions creates difficulties in auditing the full cost of a political campaign let alone the included foreign contributions. Political finance, even more than the previously discussed topics pertaining to the criminal law side of the anti-corruption enforcement, has remained regulated by national legislation. Efforts aimed at harmonization through the works of the Council of Europe's Group of States Against Corruption (GRECO) while exposing the national discrepancies in regulation have not led to less corruption and more transparency.[250] At the heart of the problem is a lack of political will preventing the implementation of the transparency of political financing, and the vast discrepancy between legal commitments, including their enforcement, and understandings of transparency.[251]

Counterintuitively, the countries of Northern Europe, traditionally perceived as corruption-free, are less transparent than many of the Southern and Eastern European countries that are more corrupt.[252] Having achieved corruption control without previously becoming transparent[253], the northern states see little need—given the perceived low levels of corruption—to improve their legislative framework, especially as transparency is a policy principle that does not extend to all key areas of the anti-

[248] For example, in Germany, the state subsidizes the parties in the amount exact to the private donations raised, up to a cap allowed for spending in an election year.
[249] Ingrid van Biezen & Petr Kopecký, *The Limited Impact of State Subsidies on Party Membership in Organizing Political Parties: Representation, Participation, and Power* (2017): 84 - 105. (arguing that the state funding in many European jurisdictions represents between two-thirds and 80 percent of total party funding.)
[250] Alina Mungiu-Pippidi & Ramin Dadašov, When do anticorruption laws matter? The evidence on public integrity enabling contexts, 68 Crime, Law and Social Change (2017): 391-393.
[251] E.g. see European Research Center for Anticorruption and Statebuilding (2019). European Public Accountability Mechanism www.europam.eu (detailing the divisions between the countries in this sense).
[252] Mungiu-Pippidi & Dadašov, *supra* note 236.
[253] Mungiu – Pippidi *supra* note 48 at 12-13.

corruption law.[254] Using this stance of the northern states as a pretext, the southern states have claimed that the enforcement gap exists because the transparency standards — many of which imposed were imposed on them as a part of the conditionality during the 2004 and 2007 enlargement process significantly differ.[255] For that reason, the E.U. offers less transparency of lobbying data and the estimates made by the U.S. authors are less likely to emerge in E.U. contexts.[256] Perhaps this explains why the E.U., despite promising to regulate the issue of political advertising and reform party funding, has shelved these reforms, at least for the time being. As a result, dark money and illicit foreign funds will likely continue to find their way to the European political parties.

D. Lobbying

The political and regulatory strength concentrated in the capitals of the U.S. and E.U. makes them the world centers of lobbying.[257] Investigative journalists, civil society organizations, and in some instances, law enforcement actions often reveal attempts or successes of regulatory capture.[258] However, the recent scandals, such as the Qatargate scandal in the E.U. or the role of foreign influence in the election of Donald Trump, did not feature registered lobbyists but those that evaded registration. That observation drives both jurisdictions to recognize the important role that lobbying has but also in attempting to limit illegitimate lobbying carefully. Both the E.U. and the U.S. regulate the matter of lobbying separately from campaign financing.[259] The enforcement of these two rules also differs; the enforcement of rules on campaign financing is stricter, as these rules are clearer and easier to apply.[260]

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[254] INGER ÖSTERDAHL, TRANSPARENCY AS PART OF A EUROPEAN RULE OF LAW. IN WERNER SCHROEDER (ED.) STRENGTHENING THE RULE OF LAW IN EUROPE: FROM A COMMON CONCEPT TO MECHANISMS OF IMPLEMENTATION, (2019). 61-79.
[255] Laurent Pech, *The Rule of Law as a well-established and well-defined principle of EU law*, 14 HAGUE J. ON THE RULE OF L. 2-3 (2022), 119-120.
[256] See Torres-Spelliscy *supra* note 231, 240-242.
[257] Daniel W. Drezner, *All Politics Is Global* (2008); Bradford, supra note 17.
[258] *A Police Stakeout, Piles of Cash, and a Promise of Reform: The Week that Shook Brussels, The Guardian,* Dec. 16, 2022, at https://www.theguardian.com/world/2022/dec/16/a-tragic-affair-european-parliament-stunned-by-qatar-corruption-inquiry.
[259] Richard Briffault, *Lobbying and Campaign Finance: Separate and Together*, 19 STAN. L. & POL'Y. REV. 105 (2008).
[260] Odile Ammann, *The Constitutional Right to Lobbying*, (2023) forthcoming.

In the U.S., the enforcement of the rules on lobbying, both those under the Foreign Agents Registration Act (FARA) and the remaining three pieces of legislation governing lobbying, namely the Regulation of Lobbying Act, Lobbying Disclosure Act (LDA), remains difficult. The FARA obliges those carrying out political activities for a foreign principal to register with the DOJ. Still, its broad scope – covering electioneering, dissemination of foreign propaganda, and lobbying – makes it difficult to enforce as it overlaps with other legislation better suited to limiting foreign influence.[261] Its equally broad definitions open the door for misuse and targeted prosecutions, inspiring authoritarian regimes trying to curb any external influence.[262] FARA remains underenforced as its broad provisions discourage lobbyists from registering[263] or registering under the Lobbying Disclosure Act rules. The history of FARA enforcement and the judicial opinions reasoning behind it reveals that the presumptions on which it was based were that foreign speakers have a right to disseminate information in the U.S. A particular U.S.-phenomenon is that many U.S.-based diasporas seek to influence the outcome of the elections in their home countries by conditioning their support to a candidate, in particular Presidential candidate, by a shift of politics.[264]

Yet, for the E.U. and its member states, the mere focus on enforcement is not enough, as the similarity in ambitions of enforcement does not bridge the existing differences in the understandings of lobbying between the American and European scholars and regulators. The American approach in scholarly literature and regulation understands lobbying as an activity seated between freedom of speech and democracy.[265] The U.S. has effectively institutionalized lobbying allowing it greater value and significance. This has allocated it greater transparency. In the E.U., lobbying is widely perceived as a word that implies undue influence.[266] These differences stem from the different evolutionary trajectories of

[261] Nick Robinson, *Foreign Agents in an Interconnected World: FARA and the Weaponization of Transparency*, 69 DUKE L.J. 1075 (2020) 1136-1138.
[262] *Id.* 1090-1092.
[263] *Id.*
[264] Yossi Shain, *Ethnic diasporas and US foreign policy*, 109 POL. SCI. Q. 5 (1994): 820-823.
[265] Riccardo de Caria, *The Constitutional Right to Lobby on the Two Sides of the Atlantic: Between Freedom and Democracy*, 2 CAMBRIDGE J. INT'L & COMP. L. 452, 459-461 (2013).
[266] Ammann *supra* note 246.

capitalism; the legal recognition of lobbying in the States came from the gradual acceptance of contracts concluded to influence the federal government by providing the companies and citizens access to government representatives and decision-making procedures.[267] Thus, a sharper distinction between the government and the private sector has prompted an institutionalized way of access to government officials. Lobbying in the E.U. in contrast remains more informal, more feared as its perception of a tool for undue influence remains strong[268] and often seated in the non-transparent relationships between the national governments and the private sector.[269]

That explains the E.U.'s problems with even defining the term. The 2015 definition of lobbying used by the Commission ("solicited communications, oral or written, with a public official to influence legislation, policy or administrative decisions[270]") is now expanded to include an almost blanket ban prohibiting the members of the European Parliament and the Commission officials access to the NGOs that receive funding from foreign sources.[271] In that sense, the proposed regulation of lobbying through the Defense of Democracy package risks cutting off the access of citizens and corporations to the decision-makers infringing their rights to public participation, harming also the process of the E.U. enlargement and co-operation in diffusing of the democratic norms.[272] An alternative is to divide the lobbying into corporate lobbying and lobbying by organizations that are dedicated to human rights, the rule of law, and democracy promotion, as the German law on lobbying risks excluding the important actors. But, that could result in massive fake registration of democracy promotion actors that could serve the corporate interest.

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[267] De Carria, *supra* note 251.
[268] Amann *supra* note 246.
[269] Susana Coroado & Luís de Sousa, Lobbying in Portugal: to regulate or not to regulate?, (2016): 8-9.
[270] Luís de Sousa, Susana Coroado & Bertram Lang, *Lobbying regulation: beyond trading in influence*, Sussex: Conference Draft. (2015). 8-9.
[271] The E.U.'s Defense of Democracy package, Draft (2023).
[272] HEIKE KLÜVER, LOBBYING IN THE EUROPEAN UNION: INTEREST GROUPS, LOBBYING COALITIONS, AND POLICY CHANGE, 95-100.; OLENA CARBOU & OLEKSANDRA KRYSHTAPOVYCH, INSIGHTS FROM PRACTITIONERS: HOW TO IMPROVE COOPERATION BETWEEN UKRAINIAN AND EU THINK TANKS, IN DORIS DIALER AND MARGARETHE RICHTER, LOBBYING IN THE EUROPEAN UNION: STRATEGIES, DYNAMICS AND TRENDS, 259-261.

Suggestions were made to resolve the impasse by expanding the public consultations conducted when the government introduces a new law or regulation.[273] But, neither the E.U. nor, for that matter, other governments have managed to sustain a public participation process that would ensure meaningful and informed public deliberation. Efforts such as the Conference on the Future of Europe did more to reveal the E.U. deficit in this sense instead of resolving it.[274] Other suggestions focused on tightening the rules for the members of the European Parliament, not all of whom are formally obliged to declare meetings with lobbyists.[275] When their career ends, former parliament, and European Commission members often become lobbyists exploiting the previous connections created during their time in office. Known as the phenomenon of revolving doors, this practice – despite recently proposed ethics measures[276] – continues to enrich lobbyist form with individuals that possess inside knowledge and contacts in European institutions.[277] The options that remain for the E.U. are to enforce the implementation of its lobbying transparency register rules and change the ethics code for its parliamentarians and officials.[278]

Finally, a challenge for both jurisdictions is the delimitation of lobbying from influence peddling.[279] The distinction between the two lies in the outcomes; influence peddling results in an illegal outcome; a person on whose behalf the public officials exercise their influence obtains something they should not.[280] But, efficient lobbying may result in regulatory capture, a situation in which the private sector controls vast sectors of

[273] Access Info Europe, Open Knowledge, Sunlight Foundation, Transparency International, International Standards For Lobbying Regulation Towards Greater Transparency, Integrity And Participation (2015).
[274] Alberto Alemanno, *Europe's democracy challenge: Citizen participation in and beyond elections*, 21 GERMAN L.J., 1. (2020): 35-40.
[275] European Parliament, Lobby groups and transparency, (2023). https://www.europarl.europa.eu/at-your-service/en/transparency/lobby-groups (detailing that the obligations to report meeting with lobbyists is only for the members of the European parliament that have the key role in the drafting of legislation).
[276] European Commission, EU Ethics Body: Commission proposes the creation of common ethics standards for all EU institutions (2023). https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3106
[277] David Coen & Matia Vannoni, *Where Are the Revolving Doors in Brussels? Sector Switching and Career Progression in EU Business–Government Affairs*, 50 AM. REV. PUB. ADMIN.1, 1-17. (2020).
[278] Tilman Hoppe, *Tougher Integrity Rules for the European Parliament*, Verfassungsblog, Jan 13, 2023. https://verfassungsblog.de/tougher-integrity-rules-for-the-european-parliament/
[279] See Ilia Gaglio, Jacopo Guzzon, Katarina Bartz, Luca Marcolin, Rrap Kryeziu, Emma Disley, Jirka Taylor & Shann Hulme, Strengthening the fight against corruption: assessing the EU legislative and policy framework, European Commission (2022). 14-15.
[280] de Sousa, Coroado & Lang *supra* note 256 at 9-11.

policymaking, creating institutional corruption.[281] In the U.S., these instances of institutional corruption remain protected by the free speech provisions of the First Amendment.[282] In the E.U., the lack of capacities, common definitions, and expertise to effectively prosecute complex influence-peddling schemes leaves these situations in the gray zone.[283] The newly proposed Directive on Combatting Corruption Through Criminal Law did not introduce any changes in this regard, solely proposing the E.U. member states to consider criminalizing corruption on behalf of a third state as a new criminal act.[284]

E. Foreign investment screening

1. The unintended consequences of foreign investment screening

National security limitations or oversight in economic activity enjoy longstanding recognition in diverse economic areas such as trade,[285] production,[286] and investment.[287] The existence of policies recognized as harmful to American economic interests gave rise to investment screening as a response to the perceived threats of external influence or an economic countermeasure.[288] With the advent of the geoeconomic world order marked by the increased importance of security over economics[289], the desire for self–reliance of the world's biggest economies has inspired a national security creep in corporate

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[281] Lawrence Lessig, *Institutional corruptions* EUI Working Paper Series, https://cadmus.eui.eu/bitstream/handle/1814/24995/RSCAS_2012_68.pdf (2013) 1-3.
[282] Dawood *supra* note 5 111-114.
[283] See Gaglio et al. *supra* note 265.
[284] European Commission supra note 142.
[285] Daria Boklan & Amrita Bahri, *The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?*, 19 WORLD TRADE REV. 123 (2020).
[286] Andrew Verstein, *The Corporate Governance of National Security*, 95 Wash. U. L. REV. 775 (2018)
[287] Generally, see Lizzie Knight & Tania Voon, *The Evolution of National Security at the Interface Between Domestic and International Investment Law and Policy: The Role of China,* 21 J. World Investment & Trade 104 (2020).
[288] Mark B. Baker, *Updating the Foreign Agents Registration Act to Meet the Current Economic Threat to National Security,* TEX. INT'L L. J. 23(25) (1990) (discussing the proposed changes to the lobbying regulation in light of the perceived threat of Japanese influencing of the late 1980s).
[289] Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, 22 J. INT'l ECON. L. 655 (2019).

transactions.[290] The 2018 Foreign Investment Risk Review Modernization Act (FIRRMA), the E.U.'s Framework regulation for the Screening of Foreign Direct Investment, gives large discretion to the administrative branch of government in imposing protectionism under the guise of national security defense.[291] These regulations and direct political interventions have decreased direct Chinese foreign investments, leading to the reluctance of Chinese investors to engage in European and American markets.[292] According to the International Monetary Fund, the regulations inspired similar countermeasures from the Chinese regulators, contributing to a 2 percent fall in the global economic output.[293]

The anti-corruption activists and scholars have traditionally argued that the closure of economies and distrust towards direct foreign investment indicates more proneness towards corruption.[294] The argument advocating the limitation of foreign investment, according to the Strategy, is precisely that they may lead to foreign interference in electoral processes.[295] But, the uncertainty and the lack of transparency that the national security review of investment brings acts as a deterrence to foreign investment, possibly leading to secretive behavior of the investors.[296] As the U.S.-inspired mechanisms for foreign investment screening have already spread to the E.U. and China, they may appear to depend little on the anti-corruption measures designed by any particular jurisdiction. Still, the facilitation of foreign investment and global corporate transactions could move towards wealth funds incorporated in the remaining tax havens or jurisdictions that operate as such. This increases the risk of money laundering as the wealth concentrated in jurisdictions such as Dubai is unlikely to remain parked there; it will follow the logic of

[290] Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, COLUMBIA L. REV. (forthcoming 2023).
[291] Roberts supra note 275 at 666.
[292] Ji Li & Ruonan Tang, *Superpower Rivalry and the" Modernization" of Foreign Investment Risk Review*." U. Ill. L. Rev. (forthcoming 2023):
[293] *Fragmenting Foreign Direct Investment Hits Emerging Economies Hardest*, International Monetary Fund, Apr 5, 2023, https://www.imf.org/en/Blogs/Articles/2023/04/05/fragmenting-foreign-direct-investment-hits-emerging-economies-hardest
[294] Mohsin Habib & Leon Zurawicki, Corruption and foreign direct investment, 33 J. OF INTL. BUS. STUD. (2002): 293-294.
[295] Strategy *supra* note 13 at 7.
[296] Li & Tang 553-555.; See Ji Li, *Superpower Rivalry and the Global Compliance Dilemma*, 28-34 (discussing the compliance with foreign investment screening by the Chinese companies)

transnational capital movements seeking to spread further.[297] Such indirect effects of this measure may increase corruption risks and lead to malign foreign influence.

2. Citizenship and investment

The citizenship by investment programs in which citizenship or a residence in a country is awarded to a foreign investor on the condition of a certain amount of investment has been long criticized as a source of corruption and legalized money laundering.[298] The U.S. has not participated in these programs as a country of residence for the investors, and not many Americans have sought residence abroad for money laundering and tax evasion. There are three reasons for this; one is the sheer power of the American passport and the privileges of visa-free travel and consular protection; second, the reach of the Internal Revenue Service that taxes U.S. citizens everywhere regardless of their residence and the third is the opportunities for money laundering that the U.S. provides.[299] However, the U.S. places the reduction of these programs in other countries as an important goal of its Strategy.[300]

The overview of the E.U. jurisdictions provides a complex picture. Owing to the prosperity of the E.U., its favorable investment climate, and a high degree of human rights protection, its member states possess the world's most desirable citizenship.[301] Unsurprisingly, many E.U. member states offer citizenship in return for investment, with the latest European Commission's assessment identifying twenty programs that qualify as such.[302] However, there are vague areas of legislation that make the exact count of how many jurisdictions operate similar programs difficult, especially with the rise of similar

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[297] Fabian Maximilian Teichmann & Marie-Christin Falker, *Money laundering through banks in Dubai*, 28 J. OF FIN. REGUL. & COMPLIANCE 3 (2020): 337-352.
[298] Golden Visa Programmes In Europe Pose Major Corruption Risk, Transparency International (2018).
[299] Michel *supra* note 49. Also, see Allison Christians, *Buying in: Residence and Citizenship by Investment*, 62 St. Louis U. L.J. 51 (2017) 53-57. (detailing the motivations behind such programs).
[300] Strategy *supra* note 13 at 26.
[301] Dimitry Kochenov & Justin Lindeboom, *Empirical Assessment of the Quality of Nationalities: The Quality of Nationality Index (QNI)*. 4 EUR. J. COMPAR. L & GOVERNANCE 314-317. (noting that the E.U.'s 27 member states rank highest in the ranking of the desirability of citizenship).
[302] Commission reports on the risks of investor citizenship and residence schemes in the EU and outlines steps to address them, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_526

programs that seek to attract residency from the so-called digital nomads.[303] Despite their lucrative value, Ireland and Portugal have recently scrapped the investor-citizenship programs with increasing pressure from the European Commission and the watchdog NGOs on Cyprus and Malta to scrap them due to the corruption risks they possess.[304] While the residency and citizenship schemes could remain one area in which, contrary to the investment trends described above, government policies seek to attract foreign investors ignoring national security risks, their reduction to non–EU countries would most likely achieve much.

The question is, however, whether that is a desirable course of action. It is difficult to assess whether that would constitute an effective anti-corruption measure – those seeking to move their capital and acquire citizenship of other countries usually seek refuge from legal uncertainty and unpredictability, not bribery. Citizenship did not act as a defense for any of the Russian oligarchs; Roman Abramovich's Portuguese and Spanish citizenship have done nothing to save him from E.U. sanctions.[305] Perhaps applying more scrutiny in the individual screening of citizenship applications of investors would make more sense than scrapping these programs altogether. Removal of citizenship as a last resort against those who have exploited the citizenship investor and residency programs remains unlikely. International law and practice have moved away from the standards that have required the so–called genuine link to exist in the relationship between citizens and the state, making the removal of citizenship an unlikely and illegal practice.[306] An exception to that rule could perhaps be only in those cases where citizenship was granted owing to fraudulent procedures or procedures resulting from corruption.

III. Theoretical Contributions and Policy Implications

[303] Dave Cook, *Breaking the Contract: Digital Nomads and the State*, 42 (3) CRITIQUE OF ANTHROPOLOGY, 304-323.)explaining the concept of the digital nomads and arguing that they rearrange the concept of citizenship).
[304] *Ireland scraps scheme offering residency in exchange for investment*, Financial Times, Feb 15, 2023. https://www.ft.com/content/00c75b49-4390-4c08-a4d0-529b6d7d2942
[305] At the time of the writing of this article, it is still unknown whether the CJEU or other courts that will review sanctions against Abramovich consider his triple nationality as a relevant legal fact.
[306] Peter J. Spiro, *Citizenship Overreach*, 38 MICH. J. INT'L L. 167 (2017). 176-179.

Thinking about the expansion of national security and anti-corruption policies means thinking about two concepts whose ultimate meaning is elusive and indeterminate. Yet, most observers would agree that the meaning and breadth of both concepts have expanded significantly in the last three decades. Focusing solely on policies that the move toward securitization will affect may overlook significant areas. Additionally, when examining the consequences, there may be overlaps between the various degrees of implications that should be considered.

A. Anti-Corruption Activities in a Changing Geopolitical Environment

Previously focused on expanding opportunities for direct foreign investment, the two leading regulatory jurisdictions, the U.S. and the E.U., have recently focused on preventing different types of foreign investment.[307] While anti-corruption at the end of the 20th century stood for offensive expansion of the equal playing field for (mostly) Western-based multinationals worldwide, the current efforts are much more defensive. They stand in stark contrast to the previous focus of anti-corruption on leveling the international playing field in terms of ensuring equal opportunities for multinationals to compete against one another in the global market.[308] Additionally, this approach risks reducing anti-corruption to a zero-sum game, ignoring, for example, that not all actions of the Chinese government's investment are corrupt.[309] Moreover, with all the shortcomings in their enforcement, the current global anti-corruption standards have promoted globalization, and globalization, in turn, has promoted them. Suppose we are indeed living in a period of de-globalization. In that case, the demonstrated need to adopt anti-corruption policies that follow similar consequences vindicates those who argued

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[307] Sarah Bauerle Danzman & Sophie Meunier, *The Big Screen: Mapping the Diffusion of Foreign Investment Screening Mechanisms* (2021).3-5.(arguing that the foreign direct investments in 2020 have returned to 2000 levels).

[308] Elizabeth K. Spahn, *Implementing global anti-bribery norms: from the foreign corrupt practices act to the OECD anti-bribery convention to the UN convention against corruption*, IND. INT'L & COMP. L. REV. 23 (2013): 1.

[309] Bertram Lang & Marina Rudyak, *Cooperation with Chinese Actors on Anti-Corruption: Environmental Governance as a Pilot Area*, U4 (2022).

that anti-corruption had little to do with law or politics in the first place but was rather a quest for the spread of neoliberal economic agenda.

Nevertheless, more than their potential inefficiency or the attendant due process issues, the greatest risk of the current policy or paradigm shift is to our perceptions and understandings of anti-corruption campaigns. It was precisely the logic of those targeted by the anti-corruption campaigns or prosecutions to claim that they were victims of lawfare[310], "communist judges," or show trials. That narrative, weaponized by those targeted in the massive judicial anti-corruption campaigns, has allowed them to reframe the debate away from their liability and toward prosecutorial overreach.[311] Western allies cannot prevent this narrative from emerging, but they can make a concerted effort to counter it. In that sense, a more proactive approach is needed, which relies on more than just the dissemination of findings by investigative journalists and is focused on domestic and international audiences.

Every securitization risks decreasing the space of government transparency, and the turn to securitization of corruption is no different in this regard. As demonstrated above, the enforcement patterns may be uneven between the two jurisdictions but (apart from the future regulation of lobbying within the E.U.) they are not friendly towards transparency. The access of NGOs to lawmakers in Washington and Brussels is endangered as the enforcement and changes in regulations are being adopted. The E.U.'s designation of lobbying activities as foreign interference and the proposals to enact an E.U.-wide FARA resemble the designations of every organization receiving foreign funding as foreign agents, a common practice in Russia.[312] At the same time, limited gains concerning corporate transparency in both the E.U. and the U.S. do not secure the limiting of money laundering. Business associations exercise the greatest resistance to those measures adopted in the field of money laundering. The limited judicial review of individual designated sanctions fails to unearth credible data on foreign influencing activities on

[310] Wouter G. Werner, *The Curious Career of Lawfare*, 43 CASE W. RES. J. INT'L L. 61 (2010).
[311] Cristiano Zanin Martins, Valeska Teixeira Zanin Martins, & Rafael Valim. *Lawfare: Waging War Through Law* (2021).
[312] Robinson *supra* note 232 at 1081.

those seeking to influence processes in the Western world. Overall, the securitization of corruption shrinks government transparency as one of the most significant gains achieved in the last three decades of anti-corruption without adequately curbing the money laundering practices. The figure below cannot capture all the complex nuances of the two approaches and certainly, produces significant overlaps, simplifying some regulatory trends but it may help us capture the general direction.

Corruption	Focus	For	Against	Enforced by
as a socio-economic problem	the rule of law, anti-corruption guarantor institutions, consequences of corruption, punishment	Economic development, transparency, globalization, international development	All types of corruption	The judiciary, independent regulatory institutions, law enforcement agencies
Corruption as a national security threat	Defensive, whole-of-government approach, prevention	Economic security, stability, de-risking, de-globalization	Foreign interference, money laundering, kleptocracy	National security agencies and the private sector

Fig 1. The focus of anti-corruption policies

B. International and Domestic Legal Orders

The securitization of corruption and its recognition as an essential tool for influencing foreign governments creates significant consequences in public and private law and international affairs. Corruption is elevated in domestic and transnational criminal law

like terrorism was elevated in the first decade of the 21st century.[313] Just as the state exercised its power to prevent future acts deemed to constitute security threats,[314] so are the actions regarding asset seizure and individual rights now primarily preventive in nature. Despite seizures and the confiscation of assets obtained by illegal proceedings, there is little likelihood of criminal trials in which criminal responsibility of an individual or a company will be established. Therefore, the primary concern of the current anti-corruption drive is not to punish actors for their actions but to prevent the future behavior of corrupt and potentially corrupt actors from spreading cross-border political influence by corrupt means. Currently, the policy focuses on preventive justice, just like during the war on terror era. Preventive justice is deemed more important than retributive or restorative justice.[315] Following the logic of preventive justice means prioritizing administrative law, which is prospective and open to the future, over criminal law, which typically considers an actor's past acts and has important due process safeguards. But one of the lesson of the war on terror of the 2000s is the overreliance on administrative solutions leads to solutions that are often on the verge of legality.[316]

The challenges to the rule of law, both domestically and internationally, are not only concerning because of the legal status and rights of wealthy individuals, such as Russian oligarchs, who can afford top legal representation to challenge measures taken against them. The incomplete limitations to the flow of potentially illegal or undesirable foreign capital do not go far enough in limiting corrupt influences on Western governments. Failure to address the shortcomings of political finance and lobbying influence creates another pathway for the concentration of power within the government, leading to political corruption and abuse of power. The absence of focus given to prosecutions of political corruption and no demonstrated willingness to change the enforcement of

[313] Valsamis Mitsilegas, *The European Union and Preventive (In)Justice*, at https://verfassungsblog.de/os7-preventive/.; Diane F. Orentlicher & Robert Kogod Goldman, *When Justice Goes to War: Prosecuting Terrorists before Military Commissions*, 25 HARV. J.L. & PUB. POL'y 653 (2002).
[314] Valsamis Mitsilegas, *Extraterritorial Immigration Control, Preventive Justice and the Rule of Law in Turbulent Times: Lessons from the Anti-Smuggling Crusade, Constitutionalizing the External Dimensions of EU Migration Policies in Times of Crisis* (2019) 290-292.
[315] Andrew Ashworth & Lucia Zedner, *Preventive Justice* (2014).
[316] Diane F. Orentlicher & Robert Kogod Goldman, *When Justice Goes to War: Prosecuting Terrorists before Military Commissions*, 25 HARV. J.L. & PUB. POL'y 653 (2002).

influence peddling speaks of limited ambition towards domestic actors. Instead, the focus on private sector compliance testifies to the ambition to rely on the internal compliance regimes of banks and other multinational private actors.[317] So far, the only tangible gain in that sense is limiting oligarchs' ability to influence European and American policymakers.

A better policy approach to this problem would be the creation of an international treaty or partnership that would bring together different perspectives on the problem, ensuring more buy-in from jurisdictions that are outside of Europe or North America. To that extent, the U.S. government is currently pursuing an initiative that would attempt to codify approaches to kleptocratic capital within the countries that are in the Organization for Economic Co-operation and Development.[318] This would also help to curb what will undoubtedly be a growing resentment between the administration that cannot convince the Senate to tighten rules that would prevent money laundering and the world of which it expects to follow initiatives to, for example, limit citizenship by investment schemes.

Policy Measure	United States	European Union
Asset freezing	Yes	Yes
Client-attorney privilege revised	No	N/A
Corporate transparency	Yes	No
Individual targeted sanctions against oligarchs and Russian business entities	Yes	Yes
Court review of sanctions	No	Yes

[317] TEREZA ØSTBØ KULDOVA, COMPLIANCE-INDUSTRIAL COMPLEX THE OPERATING SYSTEM OF A PRE-CRIME SOCIETY, 40-41.
[318] Personal communication with an OECD official, July 2023.

Enforcement and tightening of lobbying regulation	Stricter enforcement	Proposed tightening limiting
Political finance reform	No	No
Review of criminalization of corrupt acts	No	Limited
Foreign Investment Screening	Yes	Yes
Revision of citizenship-investment programs	No	Yes

Fig 2. An overview of regulatory and enforcement measures of the U.S. and E.U. member states

C. International Political Order

There is little doubt that the response to strategic corruption demands the involvement of national security agencies. Their presence in oversight and enforcement of the anti-corruption policies existed much before the emerging shift to securitization.[319] If the additional mobilization of state resources against corruption is not behind the drive for securitization, then what are the additional opportunities that the elevation of corruption to a national security matter provides?

The answer lies in the domain of international politics. The discursive shift towards securitization legitimizes the need for increased capacities to suppress transnational corruption to the international audience. It communicates a response to the strategic, weaponized corruption and a return to more multilateral engagement that contrasts the previous isolationist posture of the Trump Administration[320] and presents the Biden

[319] Shelley *supra* note 84, Stoian-Iordache *supra* note 87.
[320] Generally, see Harold Hongju Koh, *The Trump Administration and International Law*, 56 WASHBURN L.J. (2017): 413.

administration as an actor of global democratic renewal.[321] But, the absence of promotion of anti-corruption to the domestic public betrays its potential to become a salient issue in domestic politics.[322] So far, transnational corruption has failed to resonate well with domestic U.S. audiences, as this audience does not see transnational corruption as a risk. Domestic scandals of political corruption receive widespread coverage, yet the close following of foreign-centered activities remains limited to compliance and law enforcement professionals.[323] This discrepancy between the domestic and foreign audiences is risky for those international actors that would take the anti-corruption drive seriously, as it signals a low probability of a sustained effort of successive U.S. administrations that would guarantee engagement in these matters.[324] The European Union is at a lower risk for policy abandonment because of its consensual and intricate decision-making structures, which typically result in slower policy reversals.[325] Still, democratic actors, especially those operating in transitional, post-authoritarian societies are less certain to rely on the continuation and success of these policies than their authoritarian counterparts are in relying on their failure.

The global anti-corruption movement was spurred by the conclusion of the Cold War, symbolizing the cessation of Western democracies' support for dictatorships to stave off Soviet global dominance.[326] The excessive usage of corruption metaphors for foreign interference signals that the U.S. and E.U. leaders believe that anti-corruption is a useful tool for undoing the undesirable effects of globalization and de-risking international relations, especially with China. This viewpoint that looks with open suspicion to foreign

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[321] Ben Rhodes, *The Democratic Renewal: What It Will Take to Fix U.S. Foreign Policy*, 99 FOREIGN AFF. 46 (2020).
[322] Generally, see JOHN MCHALE, MEDIA COVERAGE OF CORRUPTION AND SCANDAL IN THE 2016 PRESIDENTIAL ELECTION: FANTASY THEMES OF CROOKED HILLARY AND CORRUPT BUSINESSMAN TRUMP, IN CORRUPTION, ACCOUNTABILITY AND DISCRETION. (2017). 107-123. (demonstrating the power of the anti-corruption narrative in the 2016 U.S. Presidential elections.)
[323] For example, the rejection of the Enablers Act in the Senate that I refer in III. B. 2. received barely any coverage in U.S. media.
[324] For the global community, the indictments of former President Donald Trump could demonstrate the US's commitment to holding politicians accountable for corruption domestically. As there is a lack of information regarding how these prosecutions are perceived, the interpretation of this move is still uncertain.
[325] Viviane Gravey & Andrew Jordan, *Does the European Union have a reverse gear? Policy dismantling in a hyperconsensual polity*, 23 J Eur Pub Policy 8 (2016): 1180, 1193-1195.
[326] McCoy supra note 15.

relations is incompatible with democratic nations and is more characteristic of authoritarian societies.[327] Identifying cross-border investments as always carrying a high corruption risk inhibits economic and political exchanges. Such striving for economic security risks the exclusion of the so-called battleground states that currently balance between Chinese and Western influence[328] and may lead to an increase of authoritarianism in such societies. The limitations to freedom of speech brought forward by the E.U.'s initiative to limit the access of NGOs to European institutions is a telling example of a measure that is already replicated worldwide against political opponents.[329]

IV. Conclusion

The turn to securitization of corruption brings many laudable changes and even more things to be feared. A welcomed realization is that anti-corruption policies must start at home and that, while peripheral countries may be sites of plunder, the center of global corruption is in the affluent Western democracies. It is laudable that experiences from foreign successes, such as the Ukrainian de-oligarchization campaign, and failures, such as the state-building project in Afghanistan, are accounted for. The focus on the kleptocratic style of government present in Russia and China signals an awareness of what the two countries may accomplish regarding foreign influence through the rise of strategic corruption. These realizations may help the U.S. and the E.U. as the key developers of regulatory regimes to view the moment as a window of opportunity in which robust anti-corruption reforms, democratic renewal, and a more ethical approach to international affairs and stringent control of money laundering may be promoted.

Just as recovery or preparation for a confrontation with a foreign adversary represents an auspicious time for anti-corruption reforms, the centralization of anti-corruption in the

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[327] See Tom Ginsburg, *Authoritarian International Law?* 114 Am. J. Int'l L. 221 (2020) (describing the trends in creating closed international legal regimes launched by authoritarian states).
[328] *But*, see Bradford *supra* note 17 at 270 -272 (arguing that the spread of Chinese regulatory solutions depends more on the growth of the internal Chinese market than on successful contestations of rules in other countries.)
[329] *EU 'foreign agents' law spooks NGOs*, Politico March 13, 2023. The Real Reason Behind Poland's Controversial New 'Russian Influence Law', Time (May 30, 2023) https://www.politico.eu/article/eu-ursula-von-der-leyen-ngo-qatargate-foreign-agents-law-disturbs-ngos/; https://time.com/6283484/poland-election-crackdown/,

foreign policy agenda of the Biden administration comes in the aftermath of a near coup following the 2020 presidential elections.[330] Therefore, it would be a missed opportunity should the present securitization of corruption remain a call for selective corruption control rather than an actual mobilization of the democratic forces. Treating corruption, especially transnational corruption, as a leading development problem, the U.S. used to signal a need for a collaborative effort to curb its effects.[331] The current shift towards securitization ignores this tradition overlooking how global anti-corruption was spread and explained in the past three decades.

Whether the turn to securitization represents, a refocusing of global anti-corruption policy or a paradigm shift also depends on one's standing point. To the international audience that was often the object of anti-corruption interventions, a refocusing on the suppression of corruption in Western countries and abandoning the narrative of socio–economic consequences is undoubtedly a paradigm shift. To anti-corruption scholars and American national security professionals, some of whom have for decades warned that the E.U. and U.S. legal frameworks do not prevent and, in some instances, even enable corruption, this is a (much desired) policy refocusing. Acknowledging this difference of perception between the two audiences and maintaining a communication policy that talks to both should help us realize the tremendous difficulties involved in the project of the suppression of corruption through securitization.

[330] SARAH KENDZIOR, THEY KNEW HOW A CULTURE OF CONSPIRACY KEEPS AMERICA COMPLACENT (2022).
[331] Wayne Sandholtz & Mark M. Gray, *International integration and national corruption*, 57 INT. ORG. 4 (2003). 769-771.