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The imaginary pirate of globalization

The terrorist, the hacker and the financier are the new pirates, taking advantage of the spatial revolution brought about by globalization. Carving out a new geography for themselves, they force legal institutions to change their responses: universal jurisdiction turns every judge into a pirate of the law.

Be it the hijacking of aeroplanes and hence terrorism, computer hacking or the pirate radio stations of yesteryear, "biopiracy"¹ or tax-havens and offshore trusts, or the opportunist viruses that live as parasites on our organism like stowaways, in today's globalized world the notion of piracy is having a noticeable effect on our imagination. It allows us simultaneously to express the new dimensions of that world and its implied political philosophy. In a world that has become liquid,² it embodies a new way of being. In an ever-changing universe we admire and at the same time fear these elusive creatures. Pirates cannot be pinned down; any down-to-earth definition never quite fits: they are brigands as much as lawmen, individualists as well as communists, outsiders as much as reformers, terrorists as well as freedom fighters. There is a good reason for this, since what defines them is, first and foremost, the sea, boundless and formless, that washes at once over every trace, a universe of risk and of capture.

Piracy has to be seen in the context of globalization of trade routes, that is, the process that in the seventeenth and eighteenth centuries established a transatlantic maritime world,³ the birth of Protestantism, a world in transition between the wars of religion and the industrial revolution. Pirates were present at the beginning of the history of the West⁴ and they are to be found in every period of transition. So it is in no way surprising that, in our own rapidly changing world, we should witness the reappearance both of true pirates, such as those that infest the waters off the coast of Somalia, and of "anti-pirates" in the form of illegal immigrants who roam the seas in improvised craft, like the boat-people of the past. Utterly destitute, totally inoffensive, the latter claim to exercise not so much the basic right to depart as the right, just as basic in their view, to be received — a right we deny them.

This imaginary piracy is Protestant in its origins; its language is English and its high seas are dry land. It is wary of any form of politics that binds it to land-based institutions. Although the emergence of pirates may historically be an indication of decline,⁵ the imaginary pirate in a globalized world is a sign that the "international system", which can function only in terms of states and territories, is in crisis. So what sort of new world is it that we are heading towards? The new global geography, the result of the digital revolution, of high-speed communications, of instantaneous circulation of financial products, is still quite mysterious. How can we conceive of a world without

distance, an earth with no territories, a zero hour? What is this strange place that has neither surface nor centre?

The imaginary pirate shows us what the new geography of the world is all about: its consistency, its material, the outline of its borders. Assuming, of course, it has any borders. Pirates take advantage of this "spatial revolution"⁶ brought about by globalization; that is why, instead of hounding them, we should follow their example. They have instinctively understood the new seas on which they carry out their looting. Indeed, the figures of the terrorist, the hacker and the global financier carve out and define this new geography,⁷ and force legal institutions to change their responses.

Understanding the new world through its pirates If pirates are a different class of outlaw, the explanation is to be sought in the nature of the sea itself. *Justissima tellus* says Virgil: the land has its own justice within it; it imposes the law.⁸ But the sea inverts the law of the land; it is a free zone, a place of impunity. The sea generously offers immunity to those bold enough to venture upon it; a crime committed on the high seas is less serious precisely because it happens at sea.⁹ The land rewards those that cultivate it: its soil it will retain their memory and archaeology will stand witness for them before the tribunal of history. But there is no law on the sea because no traces are left behind. It is not labour or cultivation that define our relationship to it, but risk. Just as with a virtual milieu, the sea invites us to explore; the sea is dangerous but rewards those who venture upon it by giving them its fish, perhaps also its ships to pillage and its unexplored shores to colonize.

The sea is like a canvas: a boundless space without borders and therefore without laws. All forms of constraint are at once suspect (think of the hostility that hackers show towards any attempt at regulation). How could we identify any offenders anyway? The sea asks for no identity card: it is a place of anonymity, of initiation or rebirth (in the same way that a pseudonym sanctions a second identity), of freedom regained. Liability, whether civil or criminal, is a terrestrial matter: justice is meted out on *terra firma*. In order to do so, a court has to sit somewhere, under an oak tree for example. Nature may house our first courtroom, but there is nothing of the kind on the sea, where justice is summary in nature and leaves no traces. Upon the sea there are neither prisons nor burials.

The sea is there to be crossed; you have to navigate upon the sea; in other words, you have to be constantly in motion. But the land can be divided up; any appropriation implies demarcation, a setting of boundaries. The land is our first memory but the sea means forgetting; no traces are left; the wake is at once swallowed the waves. The sea's uniform expanse emphasizes movement as the only reality, an ephemeral reality appropriate to a globalized world that experiences itself as generalized traffic and that values only what can be exchanged through the instantaneous processes of the market. As Zygmunt Bauman puts it: "Liquid life is a succession of new departures."¹⁰ Globalization is constantly trying to escape the law of the land, since permanent movement prevents that law from having any real control over events. Upon the sea there is no common space in any real sense: ships follow routes that may or may not cross. A line cannot mark out a space, for that would require three points, not two. A line calls for a type of control that is very different from that needed for a space: it is less a matter of governing than of controlling the route to follow, hence the very contemporary preoccupation with traceability. It has become essential to be able to track a route, to trace back a chain of cause and effect, to indicate a point of origin, to assign

responsibility.

Hostes humani generis

Landlubbers take their revenge for this irritating kind of freedom by declaring pirates to be enemies of humankind (*hostes humani generis*). It is probably no coincidence that piracy was the first internationally recognised common law offence, one that can be traced back as far as the beginning of the seventeenth century. The second offence was slavery, viewed as human pillaging of a land with no ruler. Indeed, as Sévane Garibian points out, the definitive banning of slavery originates with an international decree that today we can see as having established the sharing out of Africa amongst its various colonizers.¹¹

The figure of the pirate thus embodies a new kind of enemy who does not so much threaten one country in particular (even though the British pirates were fighting against the Spanish empire) so much as terrestrial nations in general. It does not threaten a specific sovereignty but rather the idea of sovereignty itself, an idea that has about it something that is necessarily terrestrial. Hence the expression "enemy of humankind", enemy of a species of mammals that can only live on land, a term that will also be used to designate those who commit crimes against humanity, those who are declared, like pirates, *hostes humani generis*.¹²

Paradoxically, pirates or those who commit crimes against humanity construct a world in negative by uniting against themselves the community of civilized nations, who band together regardless of the divisions that normally separate them. To this group of universal outcasts has recently been added the worldwide terrorist: like the pirate, a member of a non-state organization such as al-Qaeda defies not only one power in particular — the US — but the entire international system that shares between sovereign states power over all dry land. The jihadist threatens to bring down international order by destabilizing the *spatiality* of that order. Just like pirates, terrorists "do not seek confrontation: they disappear or disperse to reform in some other place".¹³ There is no longer any battleground, no common theatre of war and therefore no "common ground". It is because of the idea that, beyond the immediate victims, they are defying the human race as a whole that these two crimes are viewed differently from more ordinary offences. These are crimes against politics that have their origin either in the excessive opening of the sea or the excessive closure of a territory, each of which opens the way towards barbarity.

Terrorists are pirates on dry land, says Carl Schmitt, and this is confirmed by the vengeful speech of George Bush in which he promised to pursue terrorists and those who *harbour* them. The battle against those who take advantage of the infinite opening created by globalization will be fought on dry land; all states will be required to decide where they stand, to choose between land and sea, between an alliance with terrestrial power or with these new international pirates.

The young, for whom radical Islam lies in wait, may exercise their right to leave, just as the Protestants once did. Young Muslims who feel oppressed may be tempted by the idea of going to a Muslim country, of a *Hijra*, but unlike their parents what they are seeking is not so much a return to their land of origin (some are converts) but rather to a place that is both Muslim and globalized. Nations like the Emirates or Dubai conform to Islam but are at the same time cosmopolitan; there, the Arab dream meets the American dream.

The pirate as globalized agent

A pirate is the purest kind of rational agent, motivated solely by a desire for gain; free of loyalty towards any flag, he is subject to no system of taxation. In that sense, the pirate symbolizes the globalized individual, free of ties, who behaves solely in response to his *animus furandi*, his predatory instinct. Since pirates are hostile, *a priori*, to any legal constraints, they refuse to "play the game"; rather than feeling bound by the social contract, they create their own, accepting only the law that they have made for themselves. "In the modern liquid world, loyalty is a source of shame not of pride";¹⁴ paying taxes somewhere appears on the debit side of the balance sheet: it is the sign of a lack of creative accounting ability. If there is any form of loyalty deemed worthy of respect, it is loyalty to one's group, and in particular to one's fellow professionals. Indeed, globalized law has its origins in such peer groups. Such law dissolves the ties between the effective standard and the symbolic institution: pirates are not just anti-political, they are anti-institutional too.

The pirate is a profiteer, a parasite: he lives on others' labour and profits from it without paying. He is a being apart. The pirate is dependent upon a political empire (such as Spain once was or as the US is today) or on a technological structure. He needs to find something to hijack. Pirates slip into those areas that the state fails to occupy.

In these empty spaces pirates of a culture will pitch their tents; these are places of freedom which will last only until such time as the state detects them.¹⁵

Hackers insinuate themselves through the gaps in an operating system just as pirates move between areas of sovereignty. Financiers no longer take the trouble to look for loopholes: they organize such unregulated areas themselves, in the form of offshore havens or financial products that defy any attempt at regulation. The difference between these pirates and the real thing is that whereas the latter risk their necks, online freebooters play their game in the context of a democracy whose laws they contest, while our financial virtuosos take risks but then appeal to the state to soak up their debts. Compared with the pirates of the Caribbean, these are like pirates on a boating pond. This brings us to the question of offshore centres, which are the extreme point of financial expatriation.

The flow of finance and tax havens

Offshore centres or tax havens are lands that have no residence requirement, no tax system, no legal requirements. They define themselves in contrast to the state, the classic idea of which is the combination of territory, a system of laws and solidarity based on taxation. Is it a coincidence that, at least in the way they are seen by the collective imagination, most tax havens are islands (especially Caribbean islands, strangely enough)? They are the final destination of a new kind of voyage, a voyage made not by outcasts but by elites, by pirates grown rich, by bankers who are leaving behind the land of sovereign states and the constraints that they impose. Such centres allow them to leave, to quit their own country, without necessarily moving to another one: they legitimize a very unusual right, the right to elude the grasp of any political space that stands, in particular, for such things as taxes (the symbol of power related to territory).

The way we conceive of tax havens is deceptive because they continue to

define themselves in relation to the opposition between dry land and the sea, which is no longer valid if we are to understand the reality of global finance. A tax haven is a kind of flag of convenience for finance; it is "a jurisdiction that offers a political, legal and fiscal framework. An off-shore financial centre is a network of banks, offices for auditors and lawyers registered in a tax haven [...]. It is a mistake to think of such off-shore centres as islands shaded by palm-trees or alpine resorts. Financial centres such as London, New York or Singapore can also be tax havens."¹⁶ Tax havens are not at the edge of the world, way beyond the seas, but at the heart of this new globalized world whose capitals they have become. They are extraordinary capitals which do not seek to define a space but, on the contrary, to dislocate it. These islands of non-regulation that make holes in political space invert the relationship between land and sea; dry land is now located at the periphery of a liquid world, states at the periphery of the financial world. They sever territorial continuity and transform the "financial planet" into a succession of islands, into a world where the sea seems to have seized power over *terra firma*. Whereas the Treaty of Westphalia made territories homogenous and of comparable size, offshore centres are methodically undoing this achievement with the blessing of states.

Offshore centres are the culmination of this expatriation of space, which takes on a very physical aspect of "desurfacing": the surface is broken up into a series of interconnected points; there is no longer any surface area but only lines, networks; in short, a "web". The spatial organisation of globalization is no longer expressed, like the Westphalian model, between countries and colonies, nor even between centre and periphery, or between two blocs that are non-aligned. Rather, it is completely disjointed. The proof is that this new space cannot be represented; it is impossible to draw a map of it.

States appeared to be impotent in the face of these islands with no surface. Then the recent G20 meeting in London attacked the problem, claiming to be doing so with a certain degree of determination. This took on the appearance of revenge by the terrestrial powers against the excesses of the new expatriate powers. "Anyone cheating will have no hiding place" was the proud claim of the head of the OECD.¹⁷ (You might have thought you were listening to President Bush speaking about terrorists.) So the territorialized states will draw up lists, something that is not foreign to the world of the pirate either. There have always been royal privateers as well as pirates, and pirates themselves were sometimes tolerated and sometimes condemned and hunted down.

Putting liquidity back on the side of the law

Scarcely had the Berlin Wall come down than people began to fear that the world would fall prey to a new kind of piracy. Criminal networks or drug dealers, they said, would take over from the communist threat. (Senator John Kerry, the unfortunate US presidential candidate put his name to a book on this new war in 1997.¹⁸) The struggle against money laundering and the war against drugs (the spectre of trafficking) took over the rhetoric of the Cold War and it was not long until its place was taken by the War on Terror.

The war against these new pirates requires new weapons. How can you fight a war in a liquid world where there are no longer battlefields? Should we rebuild walls to protect us from these new pirates? The truth is that we are indeed witnessing the building of new walls, and more generally an entrenchment of certain communities and activities (in financial jargon, the separation of functions is termed a "Chinese wall" and on the Internet we speak of

"firewalls") reminiscent of another period of transition: the Middle Ages. That is why, as a defence against forum shopping (the practice of referring a case to the jurisdiction that will look most kindly upon it), the option that globalization offers to choose your judge and legislature, some people are suggesting strengthening laws relating to public order, the laws that apply by virtue of their authority in a specific territory and which refer to actions to their "home port", making them, as it were, legal walls. But such walls are just a stopgap: this new liquid element requires the law adapt its instruments.

Globalized crime calls for worldwide jurisdiction

It is probably no coincidence that the same judicial technology is used when combating money laundering by Mafia networks, and tracking down terrorists and serious violators of human rights. Such crimes make up a new category that might be called "globalized crimes". The common factor in this category of crimes is twofold. First, the nature of the crimes themselves: organized crime, terrorism and crimes against humanity, which may appear by definition very different, in practice, because of their gravity and their political impact, have many features in common. Second, they are alike in that they are on a world scale: they take advantage of the gaps in the international community, for them distance is no object. They are a direct result of the spatial revolution that is underway. It might be argued that this is just too broad a category to have any meaning. Certain notorious offences still do not fit the classification: tax fraud for a start,¹⁹ but others — off-shore centres, for example, or banking secrecy — will perhaps be included one day as a result of the financial crisis.

It will be no surprise to learn that it was repression of piracy in the eighteenth century that provided the judicial model for devising a system for the repression of these globalized crimes two centuries later. Already in 1789, the young American nation drew up a law, known as the Alien Tort Statute, which gave jurisdiction to federal civil courts to rule on acts of piracy. This law was awakened from its near two-hundred-year period of lethargy in 1980 by a US court, which used it to order a Peruvian torturer to pay reparations to one of his victims,²⁰ a decision upheld by the Supreme Court in another case.²¹

The new features introduced by this US judicial process, originally designed to combat piracy, were twofold: first it gave US judges jurisdiction that extended over all the world's seas; second, this jurisdiction was civil (and not criminal) in its application, that is, it was concerned with property. If a pirate is a predator who takes without paying, who occupies without paying rent, who seizes without compensation, then the best response is to bring in legal liability: to oblige him to pay, to reimburse his victims, to restore what he has taken, in short, to enter into a relationship under the law. This law was aimed less at pursuing pirates in order to hang them from the yardarm than to deprive them of enjoyment of their booty if ever fate should lead them or their victims to set foot on US soil. Whilst such an outcome may have been a rarity in the days of sailing ships, it is becoming very common in an integrated economy, in which the US is the most powerful element. The law thereby gives the US government a power that extends well beyond its frontiers.

The nature of the threat requires civilized nations to take extraordinary measures to combat the scourges of piracy and crimes against humanity.²² It is in the name of such a coalition of civilized nations that the principle of territoriality of laws has been set aside. These laws restricted the jurisdiction of judges to deeds that had occurred on their territory or that involved nationals abroad. In order to respond to a worldwide crime that can occur anywhere, it is

necessary to institute a universal jurisdiction that (in principle) gives competence to all the judges in the world. If the menace has become stateless then the law must become stateless too. The law must be "decontinentalized" so that it too becomes more maritime. Universal jurisdiction means that law is everywhere; it turns each and every judge into a pirate of the law: the law takes on the same form as its object.

Thus the Alien Tort Statute can be seen as a summary of the new legal doctrine in the context of globalization: the search for a wider consensus, extension of territorial jurisdiction, assumption of responsibility rather than criminalization, restoring the liquidity of the world (in the form of money) to positive ends.

A wider consensus

Because these new crimes turn the whole population into potential targets (in the case of terrorism), or because they come up against fundamental values (in the case of crimes against humanity), they justify more active and more general mobilization. This is always the discourse used by political powers, who they see in these threats an opportunity to give renewed strength to a political bond weakened by individualism.

A consensus of this kind is expressed both through international and domestic mobilization; it overturns normal practice, not only of finance but also of corporate entities, which are also brought on side in this great struggle. The banking sector finds itself being ordered to cooperate with the police:²³ from merely having to exercise vigilance with regard to suspect movements of capital, banks are required to provide real assistance.²⁴ Bankers become intelligence agents despite themselves, with banks instituting the post of "internal policeman" in the shape of compliance officers. The distinction between the lender and the controller is tending to become less marked. For businesses, the important thing is not so much to enthusiastically carry out the required checks, which lie outside their core competence, as to show willing towards the regulators.

Certain safe havens are disappearing. For example, the lawyer's office there is nowadays an obligation to inform the authorities of any suspect activities but no right to tell the client that this is being done. Wherever we travel we carry an informant in our pockets in the shape of the electronic travel pass. We are well aware that the most effective way of defeating terrorism is by intensified surveillance. Secret agents are like latter-day privateers, fighting on behalf of a power that has been set up using methods that lie outside the bounds of legality.

Tracking and capturing

Whereas territorial law applies to everything situated in a country's territory, at the global level justice can only be exercised once you hold the person (the Pinochet case only began once the British courts agreed to put the old dictator under house arrest) or once you have seized the assets of a company. In order to do this, you must first of all track down your quarry (this is an enormous task that involves NGOs or organizations such as the Simon Wiesenthal Centre), follow their tracks and trace all the threads back to their source. It is not by capturing the ship that these new criminals will be brought to justice but by following the bow wave. Hence the importance of traceability: what is actually at stake in modern-day regulation is the ability to trace back the chain of transactions. Technology is brought into this task or into this tracking

process (as the acronym Tracfin would suggest).²⁵ Rather than trying to identify possible breaches, the programme puts in place a detection system that will, it is hoped, make it possible to follow the thread back to the perpetrators. This also involves establishing separate charges for failure to report a crime, thereby creating a warning system that is turning out to be ineffective.²⁶ The fight against money laundering will focus on compiling indications that can only lead to the guilty parties as a result of a generalized suspicion. Suspicion is to the financial world what the figure of the suspect is to the war on terror: a *modus operandi*, the result of turning the presumption of innocence on its head rather than acting on the basis of proof.

Today, clearing the sea of pirates means protecting the financial system from Mafia or terrorist infiltration. Flows of capital are treated like the sea's currents, in which you place drift nets that catch everything, big fish and (more often) small fry. The equivalent of the liquid element will be money. To reach these new pirates, the strategy consists in travelling the seas, not only to track them by finding the traces that they have left on it, but also to empty the sea so as to prevent them sailing on it, to cut off their supplies of fresh water. These crimes are detected through what makes them possible or what they produce, through their amniotic fluid, as it were.

A prescriptive liquid environment

The preferred judicial instrument of land-based territorial sovereignty is the order or decree. But whatever is liquid eludes the logic of command and control; by definition, liquids cannot be grasped and slip away through the gaps. The struggle against modern forms of booty — against pirated money, the tainted money that comes from drugs or terrorism — that is today becoming an obsession, has to find new kinds of penalty. These are no longer a matter of orders, but rather incentives and disincentives, self-regulation, peer pressure, whistle-blowing — in other words, regulation by subordinates or by customers, by threats to your reputation. We are no longer dealing solely with a ban that comes down from above but from a process of regulation that comes from all sides: from above, horizontally, from peers, consumers, in short from the environment (it is in that sense that it resembles the liquid element). It will have achieved its goal when it has been sufficiently internalized to turn each individual into their own regulator. The fight against pirates relies as much on a prescriptive environment as on standardization by the environment.

This is a method of regulation that is very economical in terms of public resources and that, most importantly, can manage without a government; it toys with the dream of self-regulation. Its weapon is exclusion rather than punishment, a sanction that is applied by everyone — consumers as well as peers. The naming and shaming process works through disgrace rather than through honour; it triggers a fear of the opinion of civilized nations in the face of a horrifying spectacle, the spectre of the criminal network in our world, a horror of currents that cannot be controlled. This fear of contaminated currents may be deeper yet: it stirs up the age-old terror of being tainted by crime (which explains the idea of dirty money²⁷). You can see it at work in the Nike affair:²⁸ American consumers would feel morally outraged if their children were wearing trainers that still smelled of the sweat, and sometimes the death, of those who had manufactured them. Can we not see in this a danger of moral contamination? When pirates take to moving around on terra firma, they are not only dangerous because they may attack or rob us, but also because they threaten us on the moral level by polluting finance, by destroying the ethical status of capitalism. This idea of contamination is particularly effective for the

puritan outlook that is obsessed with the idea of purity (which for the puritan also signifies the sea).

Blacklist the enemy

This entire process results in the drawing up of lists. Listing is an old technique, used for the first time on Rhodesia in 1966 (Rhodesia was declared a pariah state and was the first to be subjected to non–military sanctions) and progressively extended to individuals and non–state organizations. It became especially fashionable after 9/11. The technique, which was again used at the recent London G20 meeting, is applied both in the War on Terror and against money laundering, or indeed in the fight against corruption. Its effect is to block the bank accounts of the individual or organization that appears on the list, to impose a travel ban and, of course, to veto the sale of arms and indeed to make suspect any kind of trade with them. Being placed on a list is a way of isolating the pirates amongst us by identifying them, stigmatizing them and, above all, depriving them of access to the open sea of exchanges. Whereas the strength of the pirate was his ability to move without leaving traces, the list identifies him and makes associating with him an immediate source of contagion.

The aim is to disconnect the suspects and thereby neutralize them. It is therefore a consciously preventive measure; and from this a certain confusion or even mystification arises. The decision to put someone on a list does not require the same level of proof as would be called for if you were imposing a sentence in a court. Listing is thus one of those so–called preventive measures that impose the sentence even before the accused has been found guilty, and this happens outside of any kind of trial. Prevention and sentence collide and become one and the same, thereby excluding the moment when justice is delivered (as if the traditional harshness of maritime practices were still at work in this form of justice).²⁹ In so far as the list involves not actions but persons, non–state bodies or states, then, just as with pirates, it is not so much that the activities are meant to be curbed as that the bad guys have to be neutralised or even removed. This form of prevention tends to make the action invisible and thereby favours an essentialization of the terrorist, the gang or the gangster state. The premise of this logic is not the identification of the act but targeting of the person with the aim of separating pariahs from partners, to the exclusion of any possible third position.

When all these elements are taken together, they create an extremely complex picture of contemporary judicial regulation. Thus, a French bank may be summoned before a New York court for having commercial dealings with a Palestinian bank that has unilaterally been included by the state of Israel in a list of terrorist organisations. Everything is interlinked: financial globalization, the Israeli–Palestinian conflict, universal jurisdiction. Such is the paradox of globalization: this liquid world offers us its new horizons but also lays traps for us; we have never had so many opportunities open to us and, at the same time, regulation has never been so intrusive.

¹ The expression was coined by Vandhana Shiva.

² Zygmunt Bauman, *Liquid Life*, Cambridge 2005.

³ Razmig Keucheyan, "Philosophie politique du pirate" [The Political philosophy of the pirate], *Critique*, June–July 2008, 460.

⁴ "The first Greeks were all pirates", said Montesquieu, *De l'esprit des lois*, XXI, chap. 7.

⁵ R. Keucheyan, " Philosophie politique du pirate ", art. cit., 469.

- 6 "Every time a new breakthrough in historical forces occurs, whenever a new explosion of new kinds of energy causes new countries and new seas to enter the visual field of human awareness, the areas of historical existence also shift. At that point new criteria, new sciences, new orders appear; peoples come to life or are reborn. This redeployment may be so radical and so deeply felt that it brings about changes not only in size and scale, in the external horizons of mankind but also in the very structure of how space itself is conceived. It is at that point that one may speak of a 'spatial revolution'. For indeed any major historical transformation most often implies a spatial transformation too." [— trans. M.R.] (Carl Schmitt, *Terre et mer. Un point de vue sur l'histoire mondiale*, [Land and sea. A View of world history] Paris, Éd. du Labyrinthe, 1985, with an afterword by Julien Freund, 52, quoted by Olivier Battistini, *La Guerre du Péloponnèse. Thucydide d'Athènes* [The Peloponnesian War. Thucydides of Athens], Paris, Ellipses, coll. " Les textes fondateurs ", 2002, 116–117).
- 7 In his latest SAS novel, *SAS -- Pirates*, Gérard de Villiers anticipates a terrifying alliance between Somali pirates and the Taliban.
- 8 Virgil, *Georgics*, II, 460, quoted by Carl Schmitt, *Le Nomos de la Terre dans le droit des gens du jus publicum europaeum*, translated from German by Lilyane Deroche–Gurcel, with an introduction by Peter Hagggenmacher, Paris, PUF, 2001, 48. [translated into English by G. L. Ulmen as *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, Telos Press, 2003].
- 9 "Pirata minus delinquit, qui in mari delinquit" says Alciat, the Italian jurist and humanist, quoted by Alberico Gentili (see also: Carl Schmitt, *Le Nomos...*, op. cit., 175).
- 10 Z. Bauman, *La Vie liquide*, op. cit., 8.
- 11 Sévane Garibian, "Hostes humani generis : les pirates vus par le droit" [Hostes humani generis : The Law's view of pirates], *Critique*, June–July 2008, 474.
- 12 As suggested by the evocative title of the article by the celebrated jurist, Donnedieu de Vabres, "De la piraterie au génocide... les nouvelles modalités de la répression universelle" [From piracy to genocide... new methods of universal repression], *Mélanges Georges Ripert*, Paris, LGDJ, 1950, quoted by S. Garibian, "Hostes humani generis...", art. cit., p. 472.
- 13 Razmig Keucheyan and Laurent Tessier, "Présentation. De la piraterie au piratage" [Presentation: From piracy to pirating], *Critique*, June–July 2008, 455.
- 14 Z. Bauman, *La Vie liquide*, op. cit., 17.
- 15 R. Keucheyan and Laurent Tessier, art. cit., 455.
- 16 John Christensen in *Le Monde*, 25 March 2009.
- 17 Angel Gurria, *Le Monde*, 5–6 April 2009.
- 18 *The New War. The Web (!) of Crime that Threatens America's Security*, New York, Simon & Schuster, 1997, quoted by Gilles Favarel–Garrigues, Thierry Godefroy and Pierre Lascoumes, *Les Sentinelles de l'argent sale. Les banques aux prises avec l'antiblanchiment* [Guardians of dirty money. The banks battle with anti–money laundering], Paris, La découverte, 2009, 36.
- 19 Tax fraud went hand in glove with loyalty to a state; consequently it was not in phase with globalization, at least until the financial crisis revealed how large was the loss that the state had to recover.
- 20 Ruling in *Filartiga v. Peña–Irala* (2nd circuit, 1980).
- 21 Ruling in *Sosa v. Alvarez–Machain* (2004).
- 22 This metaphorical expression is common to both piracy, which is referred to as a "scourge", and to the sea, which may be said to be "infested" with pirates.
- 23 G. Favarel–Garrigues, T. Godefroy and P. Lascoumes, *Les Sentinelles de l'argent sale...*, op. cit., 277.
- 24 G. Favarel–Garrigues, T. Godefroy and P. Lascoumes, *Les Sentinelles de l'argent sale...*, op. cit., 62.
- 25 The the inter–ministerial body set up in France to combat money laundering.
- 26 Peter Hägel, " La lutte anti–blanchiment d'argent menée par l'Union européenne " [The EU's fight against money–laundering], *Questions pénales*, 2003, XVI.4, 2.
- 27 If, as Ricoeur suggests, this idea of soiling is primary, it is not surprising that it should be the most consensual (*Philosophie de la volonté. 2. Finitude et culpabilité* [Philosophy of the will 2. Finiteness and guilt], Paris, Le Seuil, coll. " Point essais ", 2009, 229 ff.).
- 28 The American giant had to do a deal with a human rights organisation in order to avoid being sentenced for having concealed from consumers the fact that some of its sub–contractors employed children.
- 29 A recent decision by the Court of Justice in Luxembourg ruled invalid the Security Council's inclusion on a list of a Saudi national on the grounds that this inclusion had been

carried out without regard to the right to a defence (ruling in Kadi, 3 September 2008).

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